

AGREEMENT FOR LANDSCAPE ARCHITECTURE
AND ENGINEERING SERVICES
BY AND BETWEEN THE
TOWN OF BROOKLINE
AND
WESTON & SAMPSON ENGINEERS, INC.

THIS AGREEMENT is made this ____ day of _____, 20__, by and between the Town of Brookline, Massachusetts acting herein by and through its Department of Public Works-Parks and Open Space Division, hereinafter called the OWNER and WESTON & SAMPSON ENGINEERS, INC., with offices at 85 Devonshire Street, Floor 3, Boston, Massachusetts 02109, hereinafter called the ENGINEER.

WITNESSETH, for the consideration hereinafter set forth, the parties hereto agree as follows:

ARTICLE 1 - ENGAGEMENT OF THE ENGINEER AND STANDARD OF CARE

- 1.1 THE OWNER hereby engages the ENGINEER, and the ENGINEER hereby accepts the engagement to perform certain professional engineering services for the Cypress Street Playground and Athletic Field Improvements in Brookline, Massachusetts hereinafter called the PROJECT.
- 1.2 The ENGINEER's services shall be performed in a manner consistent with that degree of skill and care ordinarily exercised by practicing design professionals performing similar services in the same locality, at the same site and under the same or similar circumstances and conditions. The ENGINEER makes no other representations or warranties, whether expressed or implied, with respect to the services rendered hereunder.

ARTICLE 2 - SCOPE OF SERVICES

- 2.1 The ENGINEER will assist the OWNER with design of the Cypress Street Playground & Athletic Field Improvements. The work will include the design development and design review process through production of complete construction bid documents for improvements to meet the Town's overall construction budget for the playground, perimeter sidewalk and streetscape improvements. The work shall be accomplished in coordination with a public design review process managed by the Park and Recreation Commission and Town staff. An appointed Design Review Committee, working with the public, staff and consultant team, will ultimately make a recommendation regarding the final proposed design improvements, to be approved by the full Brookline Park and Recreation Commission.
- 2.2 The Design Scope of Work includes design development through final design and construction documentation and all required meetings for the following components:
 - 2.2.1 Complete renovation of the existing playground and athletic field. It is anticipated this work will be from existing curb around the park in to the park.

- 2.2.2 Design of modifications to Greenough Street for the area in front of the High School between Davis Ave and Tappan Street as a “slow street” project, in coordination with the new work at the High School campus. Town staff will coordinate with the design team at the High School and coordinate with the Consultant team regarding the interface with work in front of the High School along Greenough Street.
- 2.2.3 Complete renovation of the existing natural turf athletic field. This will include the Consultant team investigating the existing soil profile across the athletic field and development of a new sustainable natural turf athletic field through amendment of existing soils, replacement of soils, or combination as required. It is anticipated this investigation will require on site borings, test pits and/ or other investigative means including agronomic and particle size soil testing and infiltration testing. The Town will provide a backhoe and operator for on-site test pit investigations.
- 2.2.4 Design of the softball fields shall include new backstops and dugout areas with potential shade shelters, bull pens, and creative ways to incorporate spectator seating, as well as other associated fencing, and ball netting as necessary. The design should review existing field orientations and the potential for alternative layouts if appropriate. Town staff will coordinate with the High School Athletics and the Town Recreation Department and convey that information back to the Consultant team.
- 2.2.5 Grading and drainage improvements as necessary for proper field grading to promote longevity of the new natural turf athletic field and to infiltrate and direct runoff appropriately. The drainage design shall not incorporate new surface drainage structures within the playing area, but will investigate the viability of subsurface drainage systems.
- 2.2.6 Incorporation of appropriate green infrastructure techniques to promote on-site infiltration. It is anticipated the soil investigations above will aid in understanding the infiltration opportunities of the site.
- 2.2.7 Design of a new LED athletic field lighting system for the natural turf field including both softball fields and the multipurpose rectangular field between, as well as the basketball court(s). It is anticipated this will include the athletic lighting layout as well as geotechnical borings to allow for design of the light pole bases, and full electrical system design for the lighting system. Lighting system design shall include a 30/ 50 foot-candle option as well as low level security lighting. This work shall also include coordination with the lighting manufacturer on the design of the foundation for the light pole bases, based on the geotechnical borings. In addition, design of pedestrian scale ornamental lighting within the park along the main pathway from Davis Ave to Tappan Street and other areas as appropriate.
- 2.2.8 Design of a new irrigation system for the overall park. Existing water supply and water line pressure information will be provided by the Town. Coordinate electrical power provisions with electrical design of lighting system noted above. System design shall include water meter, backflow preventer, ability for winterization, lockable weatherproof enclosure to house all components of the system, system controller with rain and

evapotranspiration sensors, appropriately zoning for watering all field uses including separate zones to water infields, individual hose connections at each softball field and on each side of the rectangular field. Irrigation system shall be compatible with the Town's Irrigation Maintenance and Management System. This information will be provided to the Constant team by the Town.

2.2.9 Design of a new basketball court. This may be re-located in the same general area as part of the design process with the consideration of an additional adjacent court or half court. Court(s) shall include new pavements, court surfacing and striping and new backboard systems. Court(s) shall be properly drained to shed water appropriately without drainage structures on the court.

2.2.10 Design of a new creative playground, including play equipment, resilient surfacing and edging. The playground shall be welcoming and inclusive to all users regardless of ability or disability. The Playground shall incorporate 2-5 year old user groups as well as 5-12 year old user groups.

2.2.11 Design of a new creative aquatic play design area (water splash park) designed for interactive water play. The park shall be adjacent to the playground but appropriately separated. The park may include flush mount and above grade elements. The park is anticipated to be a potable water type system.

2.2.12 Coordinate electrical power provisions with electrical design of lighting system noted above. Existing water supply and water line pressure, information will be provided by the Town.

2.3 It is anticipated that any required permitting will be accomplished by the Town staff utilizing the Consultant team's design drawings.

2.4 The Consultant team shall include the following professional disciplines or expertise as part of their overall team, and others as necessary or appropriate, to fully complete the scope of services. Team members may be in-house or as a sub-consultant.

Landscape Architecture
Civil Engineering
Athletic Field Design, specifically natural turf design
Soil Science/Agronomy
Irrigation Design
Electrical Engineering
Geotechnical Engineering
Cost Estimating

2.5 Construction phase services are not a part of this scope, but will be negotiated and paid for on an hourly basis outside of this contract.

2.6 Printing of the final bid documents package will be provided by the Town.

2.7 The following Scope of Services shall be performed based upon the above described Design Scope of Work. The Scope of Services is subject to revision and coordination during contract negotiations.

2.7.1 Task 1: Project Kick-off

- A The Consultant shall familiarize themselves with the current existing conditions survey that will be provided by the Town in AutoCAD format to the Consultant. The Town previously had the site surveyed by Feldman Land Surveyors in October 2018. The Consultant shall identify any gaps in the existing conditions survey and notify the Town if additional information is required.
- B The Consultant shall also review the existing site conditions on site.
- C The Consultant shall attend a site visit and kick-off meeting with Town staff.
- D The Consultant shall gather a thorough understanding of the playground's history and site conditions, review the existing conditions survey and report back if additional information is needed.
- E The Consultant shall attend one kick-off meeting combined with a site visit to the park.

2.7.2 Task 2: Preliminary Design, Design Development and Design Review Process

- A The Consultant shall conduct an on-site investigation of the surface and subsurface soil conditions for the design of the natural turf athletic field and associated drainage, design of the new foundations for the athletic lighting system, design of pavements for the basketball court(s), and design of foundation and drainage beneath the play areas. (Some of this work will be weather dependent and may need to occur as weather allows.)
- B The Consultant shall develop a preliminary design based upon the above Design Scope of Work which shall include layout, materials, grading, drainage, utilities, planting, and site improvements, and design alternatives accompanied by a preliminary cost estimate.
- C The Consultant shall refine the design through the Design Development process in response to comments made during the Design Review Committee meetings and as directed by Town staff.
- D The Consultant shall present the design alternatives in the form of rendered drawings accompanied by cost estimates at a minimum of four meetings to the Design Review Committee. Additional meetings and/or work sessions with Town staff prior to the public presentations will be required to track progress and prepare for the meetings.

- E After the Design Review Committee approves the final design with any additional comments to be incorporated, and the Consultant has revised the final design to incorporate those changes, the Consultant will present the design at a Park and Recreation Commission meeting for their vote. The Design Review Committee meetings and the Park and Recreation Commission meetings are open to the public.
- F A preliminary design and preliminary cost estimate meeting the Town's project budget, design alternatives to address Design Review Committee meeting comments, Design Development drawings.
- G A minimum of four Design Review Committee meetings, one meeting with the Park and Recreation Commission, and meetings and/or work sessions prior to each Design Review Committee meeting with Town staff.

2.7.3 Task 3: Construction Documents for Bid Package

- A Upon completion of design development, the Consultant shall prepare detailed construction bid documents including plan and detail drawings, technical specifications in the Massachusetts Department of Transportation (MassDOT) Highway Division unit price bid item format, a list of bid items to be developed with the Town's assistance, and a final cost estimate based on the bid items, quantities, and unit costs. Final drawings shall be able to be publically bid and in such a format that the Contractor can establish layout and grades.
- B The Consultant's technical specifications will be inserted into the Town of Brookline's standard specifications, with the Town providing the specifications front end, the bid sheets, and the contract pages.
- C The Consultant shall work with Town staff in developing bid alternatives as necessary to meet the Town's anticipated project budget. The Consultant shall meet with Town staff in finalizing the Construction drawings.
- D A complete set of Construction Drawings, including plans and details, technical specifications utilizing individual bid items in the Town's standard format, and a detailed cost estimate (that is within the Town's available project budget) for insertion in the bid package.
- E A minimum of five meetings and/or work sessions with Town staff to check progress and coordinate for compliance with Town standards.

ARTICLE 3 - RESPONSIBILITIES OF THE OWNER

The OWNER, without cost to the ENGINEER, shall do the following in a timely manner so as not to delay the services of the ENGINEER:

- 3.1 Designate in writing a person to act as the OWNER 's representative with respect to work to be performed under this AGREEMENT, such person to have complete authority to transmit instructions, receive information, interpret and define the OWNER'S policies and decisions with respect to materials, equipment elements and systems pertinent to the work covered by this AGREEMENT.
- 3.2 Assist the ENGINEER by placing at the disposal of the ENGINEER, all available information pertinent to the PROJECT including previous reports and any other data relative to design or construction of the PROJECT.
- 3.3 Arrange for access to and make all provisions for the ENGINEER to enter upon public and private lands as required for the ENGINEER to perform its work under this AGREEMENT.
- 3.4 Furnish the ENGINEER all needed property, boundary and right-of-way maps.
- 3.5 Cooperate with and assist the ENGINEER in all additional work that is mutually agreed upon.
- 3.6 Pay the ENGINEER for work performed in accordance with the terms specified herein.
- 3.7 Provide full information as to OWNER's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards, which OWNER will require to be included in the Drawings and Specifications.
- 3.8 Attend the pre-bid conference, bid opening, pre-construction conference, construction progress and job-related meetings, substantial completion inspections and final payment inspections.
- 3.9 Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER's services or any defect or non-conformance of the work of any Contractor(s).

ARTICLE 4 - TIME OF PROJECT

- 4.1 The ENGINEER will initiate work under this AGREEMENT following formal acceptance of this AGREEMENT by the OWNER. The ENGINEER agrees to provide services for the estimated duration of work, starting February 2019 and concluding January 2020.
- 4.2 If the specific periods of time for services provided under this AGREEMENT are changed through no fault of the ENGINEER, the rates and compensation provided for herein shall be subject to equitable adjustment.
- 4.3 If ENGINEER's services are delayed or suspended in whole or in part by the OWNER for more than three months through no fault of the ENGINEER, ENGINEER shall be entitled to an equitable adjustment of the rates and compensation to be paid herein.

ARTICLE 5 - PAYMENTS TO THE ENGINEER

- 5.1 For services performed under this AGREEMENT, the OWNER agrees to pay the ENGINEER within thirty (30) days of the invoice date, as charges accrue on a time charged plus expense basis. For this PROJECT, the rates of the ENGINEER are as indicated on Exhibit B, and 1.1 times other direct costs which include transportation, printing and reproduction of plans and reports, telephone charges, postage, computer time, sub-consultant charges such as specialty engineering, soils, surveying, testing of materials, and other identifiable expenses. Compensation shall be payable monthly, as earned, and shall be in accordance with the task breakdown identified on the Price Proposal Form/Exhibit A and of the hourly rates identified in Exhibit B.
- 5.2 If the OWNER fails to make any payment due the ENGINEER for services and expenses within thirty (30) days after receipt of the ENGINEER'S statement therefore, the ENGINEER may, after giving seven (7) days' written notice to the OWNER, suspend services under this AGREEMENT. Unless the ENGINEER receives payment within seven (7) days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the ENGINEER shall have no liability to the OWNER for delay or damage caused the OWNER because of such suspension of services.

ARTICLE 6 - INSURANCE

6.1 General Liability Insurance

The ENGINEER shall secure and maintain, for the duration of this PROJECT, the following General Liability Insurance policy or policies at no cost to the OWNER. With respect to the operations the ENGINEER performs, the ENGINEER shall carry Commercial General Liability Insurance for bodily injury, death, and property damage in the amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

6.2 Automobile Liability Insurance

The ENGINEER shall secure and maintain, for the duration of this PROJECT, Automobile Liability Insurance covering the operation of all motor vehicles, including those hired or borrowed, used by the ENGINEER in connection with this AGREEMENT, in the amount of \$1,000,000 combined single limit per accident.

6.3 Umbrella Liability Insurance

In addition to the above-mentioned coverage, the ENGINEER shall carry a minimum of One Million Dollar (\$1,000,000) umbrella liability policy for the duration of the PROJECT.

6.4 Professional Services Liability Insurance

The ENGINEER shall secure, at its own expense, a Professional Services Liability Insurance policy with a limit of \$3,000,000 per claim and in the aggregate, and maintain such policy for the duration of the PROJECT.

6.5 Workers Compensation Coverage

6.5.1 The ENGINEER shall maintain statutory Worker's Compensation insurance coverage for all of its employees at the PROJECT as required by the State of Massachusetts.

6.6 Additional Insured

OWNER shall be named an additional insured for insurance coverage included in Articles 6.1, 6.2 and 6.3 only.

ARTICLE 7 - LIMITATION OF LIABILITY AND INDEMNIFICATION

7.1 To the fullest extent permitted by law, the total liability in the aggregate, of ENGINEER and its officers, directors, employees, agents, and independent professional associates, and any of them, to the OWNER and any one claiming by, through or under OWNER, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to ENGINEER'S services, the project, or this AGREEMENT, from any cause or causes whatsoever, including but not limited to, the negligence, errors, omissions, strict liability, breach of contract, misrepresentation, or breach of warranty of ENGINEER or its officers, directors, employees, agents or independent professional associates, or any of them, shall not exceed the total amount recoverable from the available limits of the insurance identified in Article 6. ENGINEER shall have no upfront duty to defend the OWNER but shall reimburse defense costs of the OWNER to the same extent of its indemnity obligation herein.

7.2 To the fullest extent permitted by law, and subject to the limitation of liability set forth in 7.1, the ENGINEER agrees to indemnify and hold harmless the OWNER and its officers, directors, employees, agents, and independent professional associates, and any of them, from any claims, losses, damages or expense (including reasonable attorneys' fees) arising out of the death of, injuries, or damages to any person, or damage or destruction of any property, in connection with the ENGINEER'S services under this AGREEMENT to the extent caused by the negligent acts, errors, or omissions of the ENGINEER or its officers, directors, employees, agents or independent professional associates, or any of them.

7.3 Hazardous Waste Indemnifications

7.3.1 The ENGINEER and its consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous waste in any form at the PROJECT site. Accordingly, the OWNER hereby agrees to bring no claim for negligence, breach of contract, strict liability, indemnity, contribution or otherwise against the ENGINEER, its principals, employees, agents or consultants if such claim in any way arises from such services. The OWNER further agrees to defend, indemnify and hold the ENGINEER and its consultants and their principals, employees and agents harmless from and against any claims, demands, loss or damage (including reasonable attorneys' fees) sustained by any person or entity arising from such services or circumstances. The ENGINEER shall not be liable for any damages or injuries, of any nature whatsoever, due to any delay or suspension in the performance of its services caused

by or arising out of the discovery of hazardous substances or pollutants at the PROJECT site.

- 7.3.2 The OWNER hereby warrants that, if he or she knows or has any reason to assume or suspect that hazardous materials may exist at the PROJECT site, he or she has so informed the ENGINEER. The OWNER also warrants that he or she has done his or her best to inform the ENGINEER of such known or suspected hazardous materials' type, quantity and location.
- 7.3.3 If, in the performance of the work, hazardous materials are encountered and are judged by the ENGINEER to be an imminent threat to on-site personnel and/or the general public, the ENGINEER shall take all steps immediately available which are, in his judgment, prudent and necessary to mitigate the existing threat. The OWNER agrees to compensate the ENGINEER for any time spent or expenses incurred by the ENGINEER to mitigate the threat, in accordance with the ENGINEER'S prevailing fee schedule and expense reimbursement policy.
- 7.3.4 The OWNER recognizes that special risks occur whenever engineering or related disciplines are applied to identify subsurface conditions. Even a comprehensive sampling and testing program, implemented with appropriate equipment and experience with personnel under the direction of a trained professional who functions in accordance with the prevailing standard of care may fail to detect certain hidden conditions. For similar reasons, actual environmental, geological, and technical conditions that the ENGINEER properly inferred to exist between sampling points may differ significantly from those that actually exist. The passage of time also must be considered, and the OWNER recognizes that due to natural occurrences or direct or indirect human intervention at the Site or distance from it, actual conditions may quickly change.

Subsurface sampling may result in unavoidable contamination of certain subsurface areas, as when a probe or boring device moves through a contaminated area, linking it to an aquifer, underground stream or other hydrous body not previously contaminated and capable of spreading hazardous materials off-site and OWNER accepts that risk. Because nothing can be done to eliminate the risk of such an occurrence, and because subsurface sampling is a necessary aspect of the work which the ENGINEER will perform on the OWNER'S behalf, the OWNER waives any claim against the ENGINEER and agrees to defend, indemnify and hold the ENGINEER harmless from any claim or liability for injury or loss which may arise as a result of alleged cross-contamination caused by sampling. The OWNER further agrees to compensate the ENGINEER for any time spent or expenses incurred by the ENGINEER in defense of any such claim, in accordance with the ENGINEER'S prevailing fee schedule and expense reimbursement policy.

- 7.3.5 The ENGINEER will hold soil samples collected during the subsurface investigation for three [3] months after the completion of the PROJECT at their offices. After the three-month period, the ENGINEER shall contact the OWNER requesting information regarding the disposition of the soil samples. At the OWNER'S request, after receiving written instructions, ENGINEER will either [1] ship the samples to the OWNER for the OWNER'S use or [2] dispose of the samples. If the Engineer does not receive a response

from the OWNER within thirty (30) days of submitting the request for information relative to the disposition of the samples, the ENGINEER shall dispose of the samples.

ARTICLE 8 - EXTENSION OF SERVICES

8.1 Additional Work

In the event the ENGINEER, as requested by the OWNER, is to make investigations or reports on matters not covered by this AGREEMENT, or is to perform other services not included herein, additional compensation shall be paid the ENGINEER as is mutually agreed upon by and between the OWNER and the ENGINEER. Such services shall be incorporated into written amendments to this AGREEMENT, or into a new written AGREEMENT.

8.2 Changes in Work

The OWNER, from time to time, may require changes or extensions in the Scope of Services to be performed hereunder. Such changes or extensions, including any increase or decrease in the amount of compensation, to be mutually agreed upon by and between the OWNER and the ENGINEER, shall be incorporated into written amendments to this AGREEMENT.

8.3 Litigation Support Services

In the event the ENGINEER is to prepare for or appear in any litigation on behalf of the OWNER, additional compensation shall be paid the ENGINEER.

The OWNER agrees to compensate the ENGINEER for time spent and expenses incurred in preparation for and attendance at meetings and appearances, including depositions. This shall include appearances before the OWNER'S attorney and before the attorney of any other party to the litigation, in addition to all other support services as requested by the OWNER. Additional compensation shall be paid the ENGINEER as is mutually agreed upon by and between the OWNER and the ENGINEER. Such services shall be incorporated into written amendments to this AGREEMENT, or into a new written AGREEMENT.

8.4 Hazardous Materials Encountered

If, in the performance of the work, hazardous materials are encountered and are judged by the ENGINEER to be an imminent threat to on-site personnel and/or the general public, the ENGINEER shall inform the Local and State Emergency Personnel of the release. The OWNER agrees to compensate the ENGINEER for any time spent or expenses incurred by the ENGINEER to mitigate the threat, in accordance with the ENGINEER'S prevailing fee schedule and expense reimbursement policy. Such services shall be incorporated into written amendments to this AGREEMENT or into a new written AGREEMENT.

ARTICLE 9 - OWNERSHIP AND USE OF DOCUMENTS

9.1 The OWNER shall retain ownership of the documents submitted to the OWNER by the ENGINEER pursuant to this AGREEMENT. However, such documents are not intended or

represented to be suitable for reuse by the OWNER or others on extensions of the PROJECT or on any other PROJECT. Any reuse or adaptation by the OWNER without written verification by the ENGINEER shall be at the OWNER'S sole risk and without liability or legal exposure to the ENGINEER or to the ENGINEER'S independent sub-consultants, and the OWNER shall indemnify and hold harmless the ENGINEER and the ENGINEER'S sub-consultants from all claims, damages, losses and expenses, including reasonable attorneys' fees arising out of or resulting therefrom. Any verification or adaptation performed by the ENGINEER shall entitle the ENGINEER to further compensation at rates to be agreed upon by the OWNER and the ENGINEER.

ARTICLE 10 – TERMINATION

- 10.1 The obligation to provide further services under this AGREEMENT may be terminated by either party upon thirty (30) days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
- 10.2 If the PROJECT is suspended or abandoned in whole or in part for more than three (3) months, the ENGINEER shall be compensated for all services performed prior to receipt of written notice from the OWNER of such suspension or abandonment, together with other direct costs then due and all Termination Expenses as defined in Article 10.4. If the PROJECT is resumed after being suspended for more than three (3) months, the ENGINEER'S compensation shall be equitably adjusted.
- 10.3 In the event of termination by the OWNER under Article 10.1, the ENGINEER shall be paid for all unpaid services and unpaid other direct costs incurred to the date of receipt of written notice of termination, including sub-consultants, and for the services necessary to affect termination, in accordance with the provisions of Article 5 of this AGREEMENT.
- 10.4 In the event of termination by the ENGINEER under Article 10.1, or termination by the OWNER for the OWNER'S convenience, the ENGINEER shall be paid for all unpaid services and unpaid other direct costs incurred to the date of receipt of written notice of termination, including sub-consultants, for the services necessary to affect termination. Payment for services will be in accordance with the provisions of Article 5 of this AGREEMENT.

ARTICLE 11 - GENERAL PROVISIONS

11.1 Precedence

The terms and conditions in this AGREEMENT shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice to proceed, or like document regarding the ENGINEER'S services.

11.2 Severability

If any of the terms and conditions in this AGREEMENT shall be finally determined to be invalid or unenforceable in whole or part, the remaining provisions hereof shall remain in full force and effect, and be binding upon the parties hereto. The parties agree to reform this AGREEMENT to

replace any such invalid or unenforceable provision with a valid enforceable provision that comes as close as possible to the intention of the stricken provision.

11.3 Mediation

All claims, disputes or controversies arising between the OWNER and the ENGINEER shall be submitted to non-binding mediation prior to and as a condition precedent to the commencement of any litigation between those parties. The American Arbitration Association, or such other person or mediation service shall conduct the non-binding mediation as the parties mutually agree upon. The party seeking to initiate mediation shall do so by submitting a formal written request to the other party to this AGREEMENT and the American Arbitration Association or such other person or mediation service as the parties mutually agree upon. The costs of mediation shall be borne equally by the parties. All statements of any nature made in connection with the non-binding mediation shall be privileged and will be inadmissible in any subsequent court or other proceeding involving or relating to the same claim.

11.4 Subrogation

The OWNER and the ENGINEER waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, but only to the extent covered by any property or other insurance in effect whether during or after the PROJECT. The OWNER and the ENGINEER shall each require similar waivers from their contractors, consultants and agents.

11.5 Consequential Damages

Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the OWNER nor the ENGINEER, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the OWNER and ENGINEER shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in the Project.

11.6 Sole Remedy

Notwithstanding anything to the contrary contained herein, OWNER and ENGINEER agree that their sole and exclusive claim, demand, suit, judgment or remedy against each other shall be asserted against each other's corporate entity and not against each other's shareholders, A/E's, directors, officers or employees.

11.7 Third Party Obligations

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the OWNER or the ENGINEER.

11.8 Statute of Limitations

Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to acts occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than the date when the ENGINEER's services are substantially completed.

11.9 Engineer's Liability for Construction Contract Award Recommendations

In consideration of the ENGINEER'S performance of its obligation to review and evaluate the various bidders and bid submissions and to make recommendations to the OWNER regarding the award of the construction contract, the OWNER agrees to hold harmless the ENGINEER for all costs, expenses, damages and attorneys' fees which are incurred by the ENGINEER as a result of any claims, allegations, administrative or court proceedings, arising out of or relating to any bid protest or such other action taken by any person or entity with respect to the review and evaluation of the bidders and bid submissions and/or recommendations concerning the award of the construction contract. This paragraph shall not apply in circumstances in which the ENGINEER is finally adjudicated by a court to have actually engaged in intentional and willful conduct without any legitimate justification, privilege or immunity.

11.10 Limitation of Engineer's Responsibilities During Construction

The ENGINEER shall not be responsible for the acts or omissions of any Contractor(s), or of any subcontractor(s) or supplier(s), or any of Contractor(s)' or subcontractor(s)' or supplier(s)' agents or employees or any other persons (except ENGINEER's own employees and agents) at the site or otherwise furnishing or performing Contractor(s)' work.

11.11 Engineer Not Responsible for Accuracy of Contractor-Supplied Information Used in Record Drawings

The ENGINEER shall not be responsible for any errors in or omissions in the information provided by Contractor that is incorporated in the record drawings or other record documents. ENGINEER shall not check the Contractor's record drawings information unless included in the scope of the ENGINEER's services contained in Article 2, and then ENGINEER will only be responsible for checking what is not hidden behind walls, in the floor or roof slabs, etc.

11.12 Opinions of Probable Construction Cost

The ENGINEER makes opinions of probable costs using its best judgement as an experienced and qualified professional engineer generally familiar with the construction industry. ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or the Contractor's methods of determining prices, or competitive bidding or market conditions or when the Project will be constructed. ENGINEER cannot and does not guarantee that Contractor's bids

or actual construction costs will not vary from opinions of probable construction cost prepared by ENGINEER. If OWNER desires greater assurance as to probable construction cost, OWNER shall employ an independent cost estimator.

11.13 Changed Conditions

If concealed or unknown conditions that affect the performances of the services are encountered, that are not ordinarily found to exist or that differ materially from those generally recognized as inherent in the services of the character provided for under this AGREEMENT or which could not have reasonably been anticipated, notice by the observing party shall be promptly given to the other party and, if possible before the conditions are disturbed. If the ENGINEER makes the claim, ENGINEER's schedule and compensation shall be equitably adjusted to reflect additions that result from such changed conditions.

11.14 Force Majeure

If delays or failures of performance of the ENGINEER are caused by occurrences beyond the reasonable control of the ENGINEER, the ENGINEER shall not be in default of this AGREEMENT. Said occurrences shall include Acts of God or the public enemy; expropriation or confiscation; compliance with any other of any governmental authority; changes in law; act of war, rebellion, terrorism or sabotage or damage resulting therefrom; fires, floods, explosions, accidents, riots, strikes or other concerted acts of workmen, whether direct or indirect; delays in permitting; OWNER's failure to provide data in OWNER's possession or provide necessary comments in connection with any required reports prepared by the ENGINEER, or any other causes which are beyond the reasonable control of the ENGINEER. ENGINEER's scheduled completion date shall be adjusted to account for any force majeure delay and ENGINEER shall be compensated for all costs incurred in connection with or arising from a force majeure event or in the exercise of reasonable diligence to avoid or mitigate a force majeure event.

ARTICLE 12 – DISCLOSURE RIGHTS

- 12.1 OWNER agrees the ENGINEER has the authority to use its name as a client and a general description of the project as a reference for other prospective clients.

ARTICLE 13 – NON-DISCRIMINATION PROVISION

During the performance of this Contract, the ENGINEER, for himself, his assignees and successors in interest (hereinafter referred to as the "ENGINEER"), agrees as follows:

- (a) The ENGINEER will comply with the provisions of Chapter 151B, as amended, of the General Laws of Massachusetts relative to non-discrimination which are incorporated herein by reference and made a part of this Contract.
- (b) In the performance of work under this Contract, the ENGINEER shall not discriminate in employment practices or in the selection or retention of subcontractors or in the procurement of materials or rental of equipment on the grounds of race, color, religion, gender identity or gender expression, or national origin, or on the grounds of age or sex except when age or sex is a bona fide occupational qualification.

The ENGINEER will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the ENGINEER's commitments under this section, and shall post copies of such notice in conspicuous places available to employees and applicants for employment.

(c) In all solicitations either by competitive bidding or negotiation made by the ENGINEER for work to be performed under a subcontract and for the procurement of materials and equipment, each potential subcontractor or supplier shall be notified in writing by the ENGINEER of the ENGINEER's obligations under this Contract relative to non-discrimination on grounds of race, color, religion, gender identity or gender expression, national origin, age or sex, and his obligations to pursue an affirmative course of action as required by paragraph (d).

(d) The ENGINEER will pursue an affirmative course of action as required by affirmative action guidelines adopted by the Human Relations Commission in effect on the effective date of the contract, or when calls for proposals are made, whichever is sooner, which are herein incorporated by reference, attached hereto, and made a part of this contract and to the nature and size of his work force, to insure that applicants are sought and employed, and that employees are treated, during their employment, without regard to their race, color, gender identity or gender expression, national origin or ancestry, or religion. No changes in affirmative action guidelines hereinafter adopted by the Commission shall be effective with respect to contracts already in effect, without the express written consent of the ENGINEER.

(e) In the event the ENGINEER fails to comply with the foregoing non-discrimination provisions of this Contract, the contracting agency of the Town, upon advice and counsel of the Human Relations Commission, shall impose such contract sanctions as it may determine to be appropriate, including but not limited to: (1) withholding of payment due the ENGINEER under this contract until the ENGINEER complies, and/or (2) cancellation, termination or suspension of this Contract, in whole or in part.

For the purposes of this section the contracting agency of the Town shall accept as proof of noncompliance with the provisions of subsection (a), only final orders or decisions of the Massachusetts Commission Against Discrimination.

(f) The provisions of this section shall be deemed supplementary to, and not in lieu of, or in substitution for, the provisions of Massachusetts Law relating to non-discrimination, and other applicable Federal, State or Town law, by-law, rule, regulation and directive relative thereto. In the event of a conflict between the provisions of this section and, where inserted or incorporated in this contract, an applicable state or federal law, rule, regulation or directive, the conflicting provisions of the latter shall control.

ARTICLE 14 – NOTICES

Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address that appears below, and given personally, by registered or certified mail, return receipt requested, by facsimile, or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

Notices shall be provided to:

Owner:

Name _____

Title _____

Address _____

Engineer:

Name EUGENE R BOLINGER

Title VICE PRESIDENT

Address WESTON & SAMPSON ENG., INC.
85 DEVONSHIRE ST. FL 3
BOSTON, MA 02109

ARTICLE 15 – CONTROLLING LAW

This Agreement is to be governed by the law of the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT the day and year first above written.

ACCEPTED FOR THE TOWN

OF BROOKLINE, MA

WESTON & SAMPSON ENGINEERS, INC.

By Its SELECTBOARD

By:

SCHOOL COMMITTEE

Eugene R. Bolinger

BUILDING COMMISSION

2/6/2019

DATE

Signature Page Attached

DATE

This agreement is entered into as of the day and year first written above.

APPROVAL OF OWNER

SELECTBOARD

Date: _____

BUILDING COMMISSION

Date: _____

SCHOOL COMMITTEE

Date: _____

CERTIFICATION OF AVAILABLE FUNDS

Certification is herewith given that, 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 Engineer for the work described by the terms of this AGREEMENT.

By: _____
OWNER Comptroller

Date: _____

By: _____
OWNER Director of Purchasing

Date: _____

APPROVED AS TO FORM:

By: _____
OWNER Counsel

Date: _____

OWNER'S Massachusetts Sales and Use Tax Certificate Exemption Number #046-001-102

Work performed under this contract will be billed on an hourly basis up to the price quoted for each task outlined in the Project Price Proposal.

The project price proposal is the basis used to establish the agreed upon value of this contract with the following:

Task 1: Project Kick-off and Familiarization	\$6,000
Task 2: Preliminary Design, Design Development & Design Review Process	\$184,000
a.) Preliminary Design	\$60,000
b.) Design Development	\$74,000
c.) Design Review Process	\$24,000
d.) Field Work & Testing	\$26,000
Task 3: Construction Documents for Bid Package	\$110,000
Total Price:	\$300,000

Cypress Street Playground HOURLY RATES

Proposed Team Member	Hourly Rate	Proposed Team Member	Hourly Rate
Eugene Bolinger	\$210	Timothy Sheehan	\$170
Cheri Ruane	\$190	Mark Mariano	\$140
Jeanne Lukenda	\$170	Richard Campbell	\$190
Brandon Kunkel	\$160	Scott Bruso	\$160
Michael Moonan	\$160	Thomas Strike	\$160
Cassidy Chroust	\$110	Daniel Marchand	\$160
Amanda Gaal	\$105	Anthony Zerilli	\$150
Evan Andrikos	\$105	James Pearson	\$150
Michael Easler	\$105	Alyssa Peck	\$140
Cassie Bethoney	\$105	Michael Coleman	\$180
Rachelle McKnight	\$100	Jeff Santacruce	\$190
Jeffrey Bowman (Irrigation Consulting, Inc.)	\$160	Laurence Keegan	\$190