



January 11, 2022

Mr. Tony Guigli
Project Manager
Building Department
333 Washington Street
Brookline, MA 02445

Re: John R. Pierce School Project
Designer Services Contract Amendment No. 3

Dear Mr. Guigli,

LeftField has reviewed Designer Contract Amendment No. 3 presented by Miller Dyer Spears, Inc. in their Proposals, dated January 3, 2022 and January 5, 2022, for a Traffic Analysis around the Pierce School and for a Geothermal Feasibility Study for the HVAC system for the Pierce School, respectively. The Traffic Analysis services are to be performed by MDS' Traffic Consultant Vanasse & Associates Inc. for \$82,500.00 including MDS' administrative costs of \$8,250.00 for a total of \$90,750.00. The Traffic Analysis was requested by the Brookline Transportation Board who has reviewed and approved Vanasse's Proposal. The Geothermal Feasibility Study services are to be performed by MDS' Geothermal Engineering Consultant CDM Smith for \$40,000.00 including MDS' administrative costs of \$4,000.00 for a total of \$44,000.00. The Geothermal due diligence is required to accurately estimate the costs for a Geothermal system for the Pierce School.

These services were previously discussed as being required and the fees presented are fair and reasonable for the services to be provided. LeftField therefore recommends that the Town of Brookline accept Designer Contract Amendment No. 3 for the total of \$134,750.00.

Should you have any questions regarding this recommendation of approval, please contact me.

Sincerely,

Lynn Stapleton, AIA, LEED AP B D + C

Cc: Jim Rogers, LeftField, LLC
Jennifer Carlson, LeftField, LLC
Adam Keane, LeftField, LLC
Margret Clark, Miller Dyer Spears, Inc.

main: 617-737-6400 fax: 617-217-2001
225 franklin street, 26th floor, boston, ma 02110

owner project manager
owner representative construction audits
cost forecasting **capital budgeting**

CONTRACT FOR DESIGNER SERVICES

AMENDMENT NO. 3

WHEREAS, the TOWN OF BROOKLINE (“Owner”) and MILLER DYER SPEARS, INC. (the “Designer”) (collectively, the “Parties”) entered into a Contract for Designer Services for the Feasibility Study and Schematic Design Phases for the John R. Pierce Elementary School Project (Project Number 201800460040) on January 26, 2021, (“Contract”). The John R. Pierce Elementary School is located at 50 School Street, Brookline, MA 02445; and

WHEREAS, the scope of this work is summarized in the attached Proposals from Miller Dyer Spears Inc., dated January 3, 2022 and January 5, 2022, for Traffic Analysis services by their Traffic Consultant Vanasse & Associates Inc. and for Geothermal Feasibility Study services by their Geothermal Consultant CDM Smith, respectively.

WHEREAS, Contract Amendment No. 1 was approved by the Town of Brookline on August 10, 2021; and

WHEREAS, Contract Amendment No. 2 was approved by the Town of Brookline on September 14, 2021; and

WHEREAS, effective as of January 11, 2022, the parties wish to amend the contract, as amended:

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained in this Amendment, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. The Owner hereby authorizes this Contract Amendment No. 3 for the total value of \$134,750.00. The Miller Dyer Spears’ Amendment for is based on Vanasse’s Proposal for \$90,750.00 including MDS mark-up, dated January 3, 2022, and CDM Smith’s Proposal for \$44,000.00 including MDS mark-up, dated January 3, 2022, as attached. The Designer is herein authorized to commence the services outlined in this Amendment, pursuant to the terms and conditions set forth in the Contract, as amended.
2. For the performance of services required under the Contract, as amended, the Designer shall be compensated by the Owner in accordance with the following Fee for Basic Services:

Fee for Basic Services	Original Contract	Previous Amendments	Amount of This Amendment	Total of All Amendments
Feasibility Study/Schematic Design Phase	\$1,294,466	\$ 28,050	\$ 134,750	\$ 1,457,266
Design Development Phase	\$ 0	\$ 0	\$ 0	\$ 0
Construction Documents Phase	\$ 0	\$ 0	\$ 0	\$ 0
Bidding Phase	\$ 0	\$ 0	\$ 0	\$ 0
Construction Phase	\$ 0	\$ 0	\$ 0	\$ 0

Completion Phase	\$ 0	\$ 0	\$ 0	\$ 0
Total Fee	\$1,294,466	\$ 28,050	\$ 134,750	\$ 1,457,266

This Amendment is as requested by the Town to provide a Traffic Analysis around the Pierce School and to perform a Geothermal Feasibility Study for the Pierce School.

3. The Construction Budget shall be as follows:

Original Budget: \$ TBD

Amended Budget _____

4. The Project Schedule shall be as follows:

Original Schedule: Schematic Design Completion – 6/22/2022

Amended Schedule _____

5. This Amendment contains all of the terms and conditions agreed upon by the Parties as amendments to the original Contract, as amended. No other understandings or representations, oral or otherwise, regarding amendments to the original Contract, as amended, shall be deemed to exist or bind the Parties, and all other terms and conditions of the Contract, as amended, remain in full force and effect.

IN WITNESS WHEREOF, the Owner, with the prior approval of the Authority, and the Designer have caused this Amendment to be executed by their respective authorized officers.

OWNER:
TOWN OF BROOKLINE

DESIGNER:
MILLER DYER SPEARS, INC.

(print name)

(print name)

(print title)

(print title)

By: _____
(signature)

By: _____
(signature)

Date: _____

Date: January 11, 2022



January 3, 2022

Ms. Jennifer Carlson
101 Federal Street,
Boston, MA 02110

Re: Pierce School - Additional Service Request #4 Geothermal Study

Dear Jen,

As discussed, MDS is submitting this proposal for additional services for expenses to be incurred by MDS in the form of a geothermal study, including three possible well-field locations. The three options are 1) under the building, 2) in the drop off loop area at the end of Pierce Street, and 3) in the park area across School Street. It is our understanding that this is a typical reimbursable expense under the standard MSBA contract. See attached proposal from CDM Smith.

For this additional scope, MDS proposes the fees below:

Fee Proposal:

CDM Smith Geothermal Feasibility Study (lump sum) \$40,000

TOTAL CDM Smith with MDS coordination x 1.1= \$44,000

Please note that a test well and final well field design and documentation are not included. A proposal for those additional services will be provided at a later date.

Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Margaret O. Clark'.

MILLER DYER SPEARS INC.
Margaret O. Clark, RA, LEED AP BD+C
Senior Associate

Cc: W. Spears



75 State Street, Suite 701
Boston, Massachusetts 02109
tel: 617 452-6000

January 3, 2022

Ms. Margaret Clark
Senior Associate
MDS/Miller Dyer Spears Architects
40 Broad Street, Suite 103
Boston, MA 02109

Subject: Revised Proposal for Geothermal Feasibility Study
Pierce School Project, Brookline, Massachusetts

Dear Ms. Clark:

CDM Smith Inc. (CDM Smith) is pleased to submit this revised proposal to provide geothermal feasibility study for the proposed Pre-K to 8th grade Pierce School Project located in Brookline, Massachusetts. As requested, this proposal provides our approach, scope, and budget for a feasibility study on utilizing a ground source heat pump (GSHP) system to provide heating and cooling for the proposed school building. In addition, we have added a rough-order-of-magnitude cost estimate and time to the schedule to complete the site-specific test well program.

We understand that the project is currently at its early stage and the schematic design will start early in 2022. This feasibility study will need to be completed by April 2022. We understand that currently there are three possible location options that are considered for the potential geothermal well field. The three options are: 1) under the building, 2) in the drop off loop area at the end of Pierce Street, and 3) in the park area across the School Street.

Scope of Work

Based on our understanding of the overall project design at this moment, our scope of work for the feasibility study will include the following:

- CDM Smith will evaluate site-specific geologic conditions for the project site based on published information on geologic and hydrogeologic data, and boring logs or geotechnical reports that are available for the project.
- CDM Smith will review heating/cooling design parameters provided by the project team.
- CDM Smith will assess different types of GSHP system that are suitable for the project.
- CDM Smith will evaluate the three well field location options and other site restrictions established by the project team.



Ms. Margaret Clark

January 3, 2022

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- CDM Smith will provide construction logistics and schedule impacts of each well field location options that are considered.
- CDM Smith will provide construction costs with narrative for each of the three well field location options based on its feasibility. The construction costs will include well field installation consisting of vertical and horizontal piping, vaults or manifolds, associated excavation, and coordination cost to bring the geothermal piping to building mechanical room.
- CDM Smith will provide a recommendation for an appropriate type of the GSHP system and well field location for the project based on the evaluation or assessment and recommendations for a site-specific test well program.
- CDM Smith will provide a rough-order-of-magnitude cost estimate and time schedule to complete the site-specific test well program recommended in the feasibility study.
- CDM Smith will research and identify applicable environmental regulations and permitting requirements associated with the well field construction.
- CDM Smith will provide a technical memorandum to summarize the findings of the feasibility study.
- CDM Smith will attend up to two (2) coordination meetings to conduct this feasibility study.
- CDM Smith will attend one (1) cost estimate review meeting to reconcile the costs for different well field locations and/or GSHP system type.

Cost

The lump sum fee for the above scope of work is \$40,000.

CDM Smith has extensive experience in providing geothermal services including feasibility study, well field design and construction administration support. We understand that the project team is leaning towards the option for the well field location under the building in order to leave other options for other town buildings in the future. Of note, CDM Smith has completed and is currently working on many similar projects that require geothermal well field to be placed under buildings. We understand the design and construction challenges when placing well field under buildings and have experience in successfully addressing these challenges. We will work cooperatively and effectively with the project team to leverage our expertise to provide practical and effective geothermal engineering services that match the needs of the project.



Ms. Margaret Clark
January 3, 2022
Page 3

CDM Smith sincerely appreciates this opportunity to contribute to this exciting school development project. If you have any questions or require additional information, please do not hesitate to contact me at (617) 452-6586.

Very truly yours,

A handwritten signature in blue ink that reads "Robert Button". The signature is written in a cursive, flowing style.

Robert O. Button, P.E.
Vice President
CDM Smith Inc.

cc: Jerry Wang, CDM Smith





January 3, 2022

Ms. Jennifer Carlson
101 Federal Street,
Boston, MA 02110

Re: Pierce School - Additional Service Request #3 Expanded Traffic Study

Dear Jen,

As discussed, MDS is submitting this proposal for additional services for expenses to be incurred by MDS in the form of an additional traffic study related to possible School Street revisions. It is our understanding that this is a typical reimbursable expense under the standard MSBA contract. See attached proposal from Vanasse & Associates inc.

For this additional scope, MDS proposes the fees below:

Fee Proposal:

1.0 Initial Investigations and Meetings	\$ 1,000 Lump Sum
2.0 School Street Modification Study	\$77,000 Lump Sum
<u>3.0 Project and Public Meetings</u>	<u>\$ 4,500 Hourly Not to Exceed T&M</u>
Total Vanasse Associates	\$82,500

TOTAL Vanasse & Associates with MDS coordination x 1.1 = **\$90,750**

Please note that a Pilot Study is not included. A proposal for those additional services will be provided at a later date.

Please do not hesitate to contact me if you have any questions.

Sincerely,

MILLER DYER SPEARS INC.
Margaret O. Clark, RA, LEED AP BD+C
Senior Associate

Cc: W. Spears

Ref: 8791.1

January 3, 2022

Ms. Margaret Clark, RA, LEED AP BD+C, WELL AP, MCPPO
MDS/Miller Dyer Spears Architects
99 Chauncy Street, 8th Floor
Boston, MA 02111

Re: School Street Modification Study
Brookline, Massachusetts

Dear Margaret:

Vanasse & Associates, Inc. (VAI) is pleased to submit this proposal for providing Traffic Engineering and Transportation Planning Services in support of the proposed modifications to School Street connected with the revisions to the John R. Pierce School in Brookline, Massachusetts.

The enclosed Scope of Services describes the work elements for the phases of work. The results of our work effort will be summarized in a report submitted to you for review. We envision a multiple-element work program with the Town and propose to complete the Scope of Services as described for a fee of \$82,500 (including traffic counts and expenses), within a timeframe of eight to twelve (8-12) weeks. I have included 15 hours of meetings as an element as these will most likely be required to present the findings of the study scenarios. I have not yet estimated costs associated with the pilot study as discussed by the Town as the enclosed scope may undergo further adjustment.

We are prepared to initiate work and complete the enclosed effort after receipt of the signed agreement. Written authorization must be received before work can begin. If you are in agreement with the attached Scope of Services and terms and conditions of the Agreement, please countersign the document and return it to our office.

We look forward to continuing to assist you with this project. If you should have any questions regarding this agreement or the enclosed materials, please feel free to contact me.

Sincerely,

VANASSE & ASSOCIATES, INC.



Scott W. Thornton, P.E.
Principal

Enclosures: Scope and Fee
Count Map

AGREEMENT FOR PROFESSIONAL SERVICES

BETWEEN

VANASSE & ASSOCIATES, INC.

AND

MDS/MILLER DYER SPEARS ARCHITECTS

JANUARY 3, 2022

This Agreement is composed of Part I and Part II. Part I includes details of the services to be performed, client-furnished information, timing of the services, and compensation. Part II (attached) contains the Terms and Conditions of Agreement, which are the general terms of the engagement between MDS/Miller Dyer Spears Architects, hereinafter called the CLIENT, and Vanasse & Associates, Inc. (VAI).

PART I

PROJECT DESCRIPTION

VAI will provide Traffic Engineering and Transportation Planning Services to the CLIENT for the proposed modifications to School Street connected with the revisions to the John R. Pierce School in Brookline, Massachusetts. The study area will be limited to the roadways in the vicinity of the project sites as defined herein.

SCOPE OF SERVICES

1.0 Initial Investigations (Enclosed)

VAI will provide the following initial investigation services:

- Meet with Town Staff and School Building Committee to review project and requirements for the study.
- Meet with Todd Kirrane, Town Transportation Administrator, to review transportation issues and scope of traffic study.

2.0 School Street Modification Study (Enclosed)

VAI will review impacts associated with the following four conditions for School Street:

1. School Street Closure Scenario
2. Temporary Closure of School Street 7am-3pm Scenario
3. School Street one-way EB Scenario
4. School Street one-way WB Scenario



- Gather physical and operating information for area roadways, which includes:
 - Traffic volumes
 - Pedestrian volumes
 - Bicycle volumes
 - Roadway geometrics
 - Sight Distances at proposed crossing locations on School Street
 - Traffic operating parameters

- Compile manual turning movement and vehicle classification counts for a two-hour weekday morning (7:00 to 9:00 AM) period, a four-hour weekday afternoon (2:00 to 6:00 PM) period, and a two-hour Saturday midday (11:00 AM to 1:00 PM) period at the following intersections:
 1. Brookline Ave at Washington Street*
 2. High Street at Washington Street*
 3. Davis Ave at Washington Street and Harvard Street at Kent Street*
 4. Harvard Street at Pierce Street*
 5. Linden Pl at Harvard Street*
 6. Holden Street at Pierce Street*
 7. Pierce Street drop-off area*
 8. School Street at Aspinwall Ave and Harvard Street*
 9. Saint Paul Street at Aspinwall Ave
 10. Harvard Street at Harvard Ave
 11. Auburn Street at Park Street
 12. Harvard Ave at Park Street
 13. Park Street at Washington Street
 14. School Street at Pierce School driveway*
 15. School Street at loading area*
 16. Cypress Street at Washington Street and School Street*
 17. Garage access/exit at Washington Street
 18. Thayer Street at Washington Street*
 19. Holden Street at Washington Street
 20. Cypress Street at Davis Ave*
 21. Boylston Street at Cypress Street*

These locations are shown on Figure 1 with locations where partial data exists marked with an * as above.

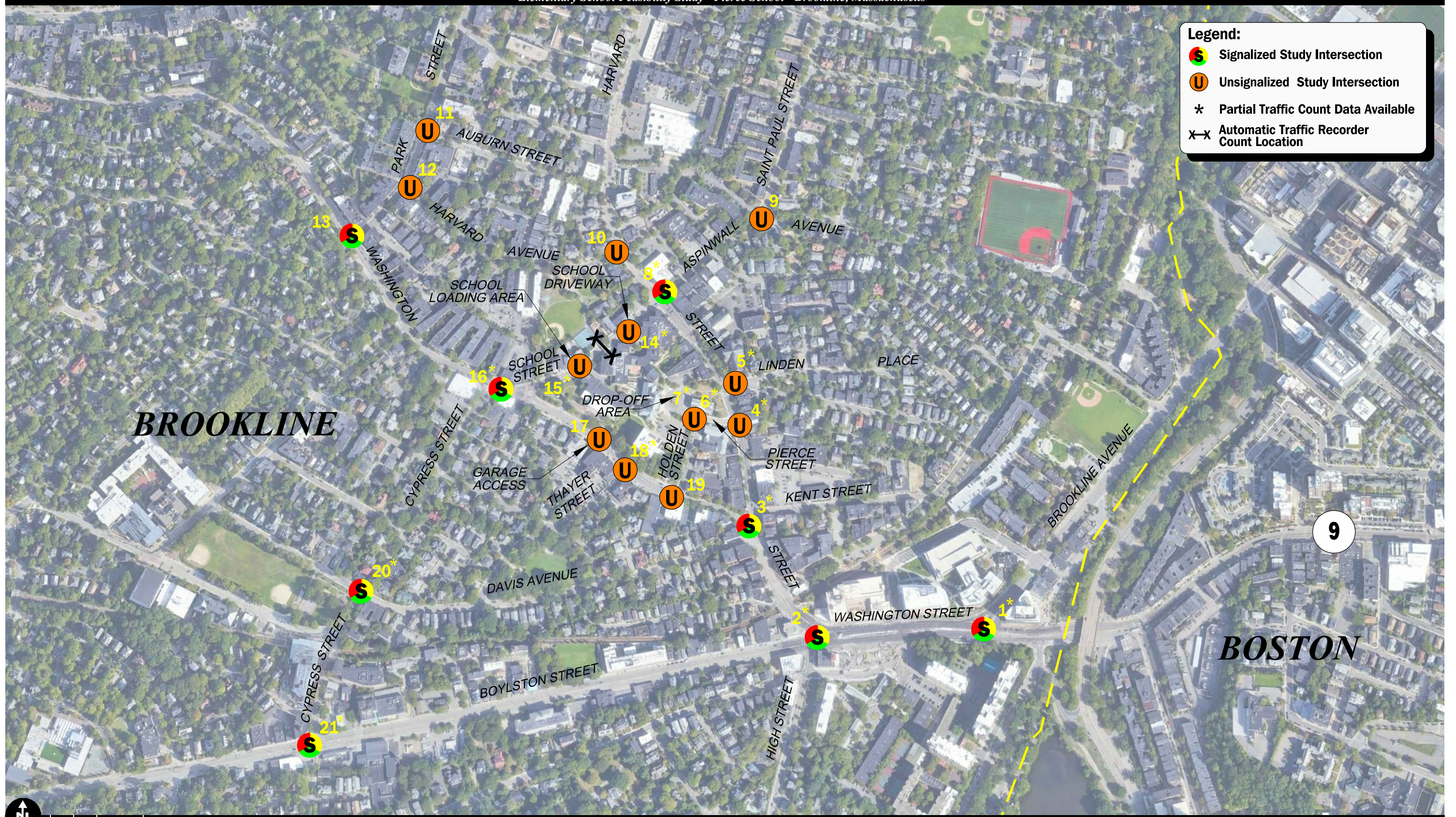
- It is anticipated that the Town of Brookline will provide VAI with access to StreetLight traffic-volume data and existing traffic count data as available.

- Collect Automatic Traffic Recorder (ATR) data for a one-week period on School Street in the vicinity of the school driveways to compile daily traffic flow and vehicle speeds by hour over an extended period including a Saturday.

- Collect crash data for the study area intersections and School Street for the most recent 5-year period from Brookline Police Department and MassDOT databases.

- If required, provide adjustments to traffic volumes to account for effects of the COVID-19 pandemic.





Legend:

- Signalized Study Intersection
- Unsignalized Study Intersection
- Partial Traffic Count Data Available
- Automatic Traffic Recorder Count Location

Figure 1
Study Area Intersections

- The existing traffic volumes will be adjusted to average-month conditions based on historical traffic counts and data available through the Town.
- Estimate future No-Build traffic volumes from historical traffic counts and from information on recently approved or proposed projects. Increases in background traffic growth will then be established and applied to the existing traffic flow networks to develop the No-Build traffic-volume networks.
- Superimpose traffic generated by the proposed school onto the base condition network (No-Build) to develop the Build condition traffic-volume network for each analysis period (weekday morning and weekday afternoon). Existing school count data and trip-generation data available from Institute of Transportation Engineers (ITE)¹ data will be reviewed and used as appropriate. The following analysis conditions will be examined:
 - Existing conditions – 2022
 - Opening year conditions without modifications (2027 No-Build)
 - Opening year conditions with modifications (2027 Build)
 - i. Closing School Street Scenario 1
 - ii. Temporary Closure of School Street 7:00 AM – 3:00 PM Scenario 2
 - iii. School Street one-way EB Scenario 3
 - iv. School Street one-way WB Scenario 4

These time frames and scenarios are understood as those identified and requested by the School Building Committee and Traffic Division of Brookline DPW.

- Assess volume-to-capacity ratios and level of service for existing and future conditions. The traffic analysis will be based on the existing street system and any planned roadway improvements. The extent and nature of any system deficiencies will also be identified.
- Identify traffic calming measures and/or pedestrian/bicycle improvements for School Street. Potential modifications include provision of a separated bike path, bike lanes, and a raised crosswalk/speed table among others. Provide concept plans as appropriate.
- Provide clear height recommendations and review sight distance considerations associated with a proposed bridge over School Street.
- Review impact of garage entrance changes including the following:
 - Direct access to Harvard Street for all school users (may involve turn/access restrictions)
 - Washington Street garage access for all Town Hall staff

Sight distance, driveway operations and configuration, turn/access restrictions, impacts to existing roadway travel, parking, and bike lanes as well as sidewalk impacts to be reviewed as part of this element.

- Prepare a draft report summarizing the results of the analysis for CLIENT review and comment.

¹*Trip Generation*, 11th Edition; Institute of Transportation Engineers; Washington, DC; 2021.



- Prepare a final report, upon CLIENT review and approval of the draft, which incorporates pertinent comments for use in submitting in the local approval process.
- In addition to the above labor compensation, VAI shall be reimbursed for expenditures made specifically for the project, such as printing and reprographics, travel and subsistence, data collection, telephone charges, shipping, postage, and courier service charges, purchase of maps and similar documents, etc. These expenses will be billed on a percentage completed basis.

2.1 Pilot Study (To be provided upon review and acceptance of scope)

3.0 Project and Public Meetings (Enclosed)

VAI will participate in project team meetings and/or public presentations with local and state officials as requested by the CLIENT. Services include preparation, travel, attendance and supporting graphics. Meeting costs will be billed on a time and materials basis with a total of approximately 15 hours of meetings included in this proposal.

CLIENT-FURNISHED INFORMATION

It is understood that VAI will perform services under the sole direction of the CLIENT. In the performance of these services, VAI will coordinate its efforts with other project team members and other consultants, as required. The CLIENT shall provide VAI with project-related technical data including, but not limited to, the following:

- Future School Layout(s)
- Garage access locations
- Loading requirements for service vehicles
- Parking facilities and parking requirements of school
- Survey data of School Street

VAI will rely upon the accuracy and completeness of CLIENT-furnished information in connection with the performance of services under this Agreement.

SCHEDULE

VAI will require eight to twelve (8-12) weeks to prepare the Study for CLIENT review. This schedule begins on the date written authorization to proceed is received. The schedule is also subject to timely delivery of information promised by the CLIENT and is exclusive of CLIENT and local review of interim products. If the CLIENT requests that work under this Agreement be stopped, the schedule and fee are subject to re-negotiation when written authorization to proceed is received.



COMPENSATION

VAI will perform the Scope of Services as outlined in this Agreement for up to \$82,500 as follows:

<u>Element</u>	<u>Tasks</u>	<u>Fee</u>	<u>Schedule</u>	<u>Payment Method</u>
1.0	Initial Investigations and Meetings	\$ 1,000	2 Weeks	Lump Sum
2.0	School Street Modification Study	77,000	8-12 Weeks	Lump Sum
2.1	Pilot Study	--	To be provided	
3.0	Project and Public Meetings	<u>4,500</u>	As Required	T&M
TOTAL Elements 1.0, 2.0, and 3.0		\$82,500		

SERVICES NOT INCLUDED

The following services may be required at a future date but are not included in this Agreement at this time:

- Additional study area intersections
- Preparation of any detailed engineering design

When services are required in these areas, or areas not previously described, we will prepare a proposal or amendment, at the CLIENT's request, that contains the Scope of Services, fee, and schedule required to complete the additional items.



CLIENT CONFIRMATION AND AUTHORIZATION

MDS/Miller Dyer Spears Architects agrees with and accepts this proposal for professional services. MDS/Miller Dyer Spears Architects also agrees with the Terms and Conditions of Agreement, which is attached, and acknowledges this as being received. Together these constitute the entire agreement between Vanasse & Associates, Inc., and MDS/Miller Dyer Spears Architects.

MDS/Miller Dyer Spears Architects certifies that funds or financing are available to meet their financial commitments and maintain the payment schedule under the terms and conditions of this Agreement.

Agreed and Accepted for:

MDS/MILLER DYER SPEARS ARCHITECTS

Total Contract Amount: \$82,500

	Element	Fee
_____ Authorized Agent Signature	1.0	\$ 1,000
_____ Title	2.0	77,000
	2.1	--
	3.0	<u>4,500</u>
_____ Name (Please Print)	TOTAL	\$82,500
_____ Date		

VANASSE & ASSOCIATES, INC.



Authorized Agent Signature

Principal
Title

Scott. W. Thornton, P.E.
Name

January 3, 2022
Date



PART II

VANASSE & ASSOCIATES, INC. (VAI) TERMS AND CONDITIONS OF AGREEMENT

The engagement of Vanasse & Associates, Inc. (VAI) by CLIENT is under the following terms and conditions and is an integral part of the collective Agreement between CLIENT and VAI.

1. The fee estimate for the proposed Scope of Services, attached hereto as Part I and incorporated herein by reference, is valid for sixty (60) days from the date of the proposal.
2. Full and timely payment of all amounts due and owing to VAI is the sole responsibility of CLIENT and MDS will pay invoices, when paid by the Town of Brookline.
3. The CLIENT may terminate this Agreement at any time by giving VAI ten (10) days written notice. In such event, all finished or unfinished documents prepared by VAI shall at the option of the CLIENT become the CLIENT's property, subject to the Terms and Conditions of paragraph 12 of this Agreement. In the event of termination, VAI will be paid for all services performed up to the date of termination, including those expenditures necessary for the orderly termination of work, and all costs of settling or discharging outstanding obligations incurred by VAI with respect to the terminated services and work under this Agreement.
4. All time schedules set forth in Part I shall commence upon receipt of a signed Agreement and a retainer in the amount set forth below. All retainer amounts will be applied to the final invoice. A RETAINER OF \$0.00 IS REQUIRED BEFORE WORK CAN COMMENCE UNDER THE AGREEMENT.
5. VAI is not obligated to perform any services not explicitly set forth in Part I. Should CLIENT request that VAI perform any services in addition to those explicitly set forth in Part I, VAI may, in its sole discretion, agree to perform such additional services. Before VAI will begin performance of any such additional services, VAI and CLIENT must enter into a written agreement regarding the scope of, and the compensation to be paid for, such additional services.
6. VAI will render invoices monthly. MDS will pay invoices, when paid by the Town of Brookline.
7. Should it become necessary to utilize legal or other resources to collect any or all monies rightfully due for services rendered under this Agreement, VAI shall be entitled to full reimbursement of all such costs, including reasonable attorney's fees, as part of this Agreement.
8. Invoice payments must be kept current for work to continue. If CLIENT fails to pay any invoice due and per above, VAI may, in its sole discretion and without waiving any other claim or right against CLIENT, pursue, without limitation, any course of action available at law or in equity, and/or any one or more of the following courses of action:
 - (a) Suspend all services under this Agreement until CLIENT has paid all amounts due and owing VAI and/or any of its Consultants or Subcontractors;



PART II (Continued)

**VANASSE & ASSOCIATES, INC. (VAI)
TERMS AND CONDITIONS OF AGREEMENT**

- (b) Withhold any documents prepared by VAI and/or any of its Consultants or Subcontractors pursuant to this Agreement from CLIENT and/or any third-party;
- (c) Notify any third-party to which any documents prepared by VAI and/or any of its Consultants or Subcontractors pursuant to this Agreement of CLIENT's failure to pay all amounts due and owing to VAI;
- (d) Request the immediate return of all documents prepared by VAI and/or any of its Consultants or Subcontractors under this Agreement from CLIENT and/or any third-party; and/or
- (e) Deliver a statement to any one or more persons it selects withdrawing support for any documents prepared by VAI and/or any of its Consultants or Subcontractors under this Agreement.

In the event that CLIENT fails to pay VAI, CLIENT agrees to return all documents furnished to it by VAI under this Agreement within fifteen (15) days of a request for such made by VAI.

9. VAI agrees to carry the following insurance during the term of this Agreement: Workers' Compensation, General Liability, Professional Liability, and Comprehensive Automobile Liability. VAI shall maintain during the performance of this Agreement insurance coverage as follows:

General Liability

\$2,000,000 per occurrence

\$4,000,000 aggregate for products and completed operations

\$4,000,000 general aggregate

Automobile Liability

\$1,000,000 per accident for bodily injury and property damage

Umbrella Liability

\$5,000,000 per occurrence and aggregate

Employer's Liability

\$1,000,000 per accident for bodily injury or disease

Worker's Compensation

Statutory

Professional Liability

\$2,000,000 per claim and aggregate limit

Insurance coverage shall be provided by a company or companies licensed to do business in the State of Massachusetts. Such insurance shall name the CLIENT as additional insured.

Certificates of Insurance will be furnished upon request. If the CLIENT requires insurance coverage or limits in excess of VAI's normal policies, and it is available, CLIENT agrees to reimburse VAI for such additional expenses.



PART II (Continued)

VANASSE & ASSOCIATES, INC. (VAI) TERMS AND CONDITIONS OF AGREEMENT

10. VAI agrees, to the fullest extent permitted by law, to indemnify and hold harmless CLIENT, its officers, directors and employees (collectively, the CLIENT) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by VAI's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom VAI is legally liable.

CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold harmless VAI, its officers, directors, employees and subconsultants against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the CLIENT's negligent acts in connection with the Project and the acts of its contractors, subcontractors or consultants or anyone for whom the CLIENT is legally liable.

Neither the CLIENT nor VAI shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

11. VAI shall not be responsible for any damages arising from failure to perform, or delay in the performance of, services identified in Part I which failure or delay arises out of causes beyond VAI's control or without negligence on the part of VAI. VAI shall not be responsible for any consequential damages, including, without limitation, any delay or expense arising out of the exercise by VAI or any right provided to VAI under this Agreement, including, without limitation, the rights to suspend services, withhold documents, and withdraw support as described in paragraph 8. VAI's liability under this Agreement is limited to the total of all fees paid to VAI by CLIENT under this Agreement.
12. All documents including, without limitation, all Drawings and Specifications, prepared by VAI and/or any of its Consultants or Subcontractors pursuant to this Agreement are the property of VAI; provided, however, that CLIENT shall have full ownership of all documents, including without limitation, all Drawings and Specifications, prepared by VAI and/or any of its Consultants or Subconsultants under this Agreement once CLIENT has paid for the same.

VAI does not represent that any documents prepared by VAI and/or any of its Consultants or Subcontractors pursuant to this Agreement are suitable for use in connection with any extension of the current Project or any other project.

If CLIENT uses any such documents in violation of this paragraph, CLIENT shall:

- (a) Be liable for, and indemnify and hold harmless VAI from, all claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from such use, and
- (b) In addition to paying all invoices due and owing for services provided under this Agreement, pay VAI the amount of the fee estimate set forth in Part I as liquidated damages presenting a reasonable estimate of the compensation to which VAI would be entitled for generating documents for such use.



PART II (Continued)

**VANASSE & ASSOCIATES, INC. (VAI)
TERMS AND CONDITIONS OF AGREEMENT**

13. This Agreement may only be modified in writing and signed by CLIENT and VAI. No act or failure to act by VAI waives any rights provided to VAI under this Agreement or by operation of law.
14. This Agreement constitutes the entire agreement between CLIENT and VAI regarding the services specified in Part I. In entering into this Agreement, CLIENT has not relied upon any warranties, representations, or statements not set forth herein. No verbal warranties, representations, or statements shall be considered a part of this Agreement or a basis upon which CLIENT relied in entering into this Agreement.

