

CONTRACT FOR PROJECT MANAGEMENT SERVICES
AMENDMENT NO. 3

WHEREAS, the Town of Brookline (“Owner”) and LEFTFIELD, LLC, (the “Owner’s Project Manager”) (collectively, the “Parties”) entered into a Contract for OPM Services for the Driscoll Elementary School on March 25, 2019, “Contract”; and

WHEREAS, the scope of this work is summarized in the attached Rider Levett Bucknall (RLB) letter proposal, dated July 6, 2020, for a Construction Market Study; and

WHEREAS, Contract amendment No. 1 was approved by the Town of Brookline on January 3, 2020; and

WHEREAS, Contract amendment No. 2 was approved by the Town of Brookline on April 8, 2020; and

WHEREAS, effective as of July 8, 2020, 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 the Owner’s Project Manager to hire RLB to perform a Construction Market Study in relation to the Driscoll Elementary School for the amount of \$27,500.00, 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 Owner’s Project Manager shall be compensated by the Owner in accordance with the Fee for Basic Services shown below:

Fee for Basic Services	Original Contract	Previous Amendments	Amount of This Amendment	After This Amendment
Schematic Design Phase:	\$34,015	\$0	\$ 0	\$ 34,015
Design Development Phase:	\$ 0	\$ 429,575	\$ 0	\$ 429,575
Construction Documents Phase:	\$ 0	\$ 524,441	\$ 0	\$ 524,441
Bidding Phase:	\$ 0	\$ 188,436	\$ 0	\$ 188,436
Construction Phase:	\$ 0	\$ 1,989,628	\$ 0	\$ 1,989,628
Completion Phase:	\$ 0	\$ 50,010	\$ 0	\$ 50,010
Advertising & Printing	\$ 0	\$ 588.59	\$ 0	\$ 588.59

Reimbursable Expenses	\$ 0	\$ 0	\$ 27,500.00	\$ 27,500.00
Total Fee	\$34,015.00	\$3,182,678.59	\$ 27,500.00	\$3,244,193.59

This Amendment is for a Construction Market Study to better determine the general economic outlook effecting escalation of construction costs.

3. The Construction Budget shall be as follows:

Original Budget: \$ 92,909 563
Amended Budget \$92,791,890

4. The Project Schedule shall be as follows:

Original Schedule: (Building; Site) January 2023; August 2024
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 Town of Brookline, and the Owner's Project Manager have caused this Amendment to be executed by their respective authorized officers.

OWNER:
TOWN OF BROOKLINE

(print name)

(print title)


By: _____
(signature)

Date: _____

OWNER'S PROJECT MANAGER:
LEFTFIELD, LLC

James F. Rogers, Jr.
(print name)

Principal
(print title)

By: 
(signature)

Date: July 8, 2020

July 8, 2020

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

Re: Michael Driscoll School Project
Fee proposal for Market Study - OPM Contract Amendment No. 3

Dear Mr. Guigli,

Attached is a proposal from Rider Levett Bucknall (RLB) for a Construction Market Study in relation to the Michael Driscoll School. This work is to be performed by RLB as a subconsultant to LeftField. RLB has agreed to complete the study prior to the completion of the 100% Design Development estimates to inform estimates as applicable.

Fee

In accordance with Article 10 - Reimbursable Expenses of the OPM Contract, the services associated with this proposal are to be invoiced on a lump sum basis, plus 10%, as specified in Article 10, Paragraph 10.1.

RLB Market Study Fee	\$ 25,000.00
<u>LeftField 10% Administration Fee</u>	<u>\$ 2,500.00</u>
Total	\$ 27,500.00

Should you have any questions regarding this proposal, 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
Philip Gray, Jonathan Levi Architects



Rider Levett Bucknall

Two Financial Center
Suite 810
60 South Street
Boston, Massachusetts 02111

T: +1 617 737 9339

MOR:FP:20010

6th July 2020

Mr. Jim Rogers
LEFTFIELD LLC
225 Franklin Street, 26th Floor,
BOSTON MA., 02110

Dear Jim,

BOSTON MARKET STUDY

We are pleased to provide you with our proposal for providing construction cost management services on the above project.

We understand the project to consist of the preparation of a Study of the current Boston Construction Market, in specific relation to the Driscoll Elementary School in Brookline, Massachusetts.

SCOPE OF SERVICES

Rider Levett Bucknall is to provide a Study and Report of the current Boston Construction Market, including a presentation to the Building Commission, which will focus on (but not be limited to) the following areas:

- General Economic Outlook (pre-COVID, post-COVID projections, how is Boston and MA tracking nationally).
- Employment/Unemployment (per-COVID, post-COVID, how is Boston and MA tracking nationally).
- Boston Construction Activity (up to 2020, projections for 2020 onwards).
- Labor (construction unemployment, projections).
- Materials (Materials Price Index, Trends of Commodities and Key Materials).
- Materials Availability (delays, shipping, trade/import).
- Potential post-COVID cost-drivers (additional general conditions and general requirements, availability of materials, labor workforce, productivity on site, reduced opportunities and increased competition, insurances, taxes); how is this being captured in bid submissions.
- Escalation.
- Construction Activity (construction activity cycle, current and projected workload, current and projected opportunities, projected growth/recoil sectors).
- Industry capacity (materials, labor – CM/GC, skilled, labor, consultants).
- Construction in progress, construction planned.
- Hunger Factor – workload/opportunities, projection for margins, recent bids (interest/competition).

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To provide the services listed above Rider Levett Bucknall proposes the following fee:

Construction Cost Management

Design/Study Phase	
Construction Market Study	\$25,000.00
TOTAL FIXED FEE	\$25,000.00

GENERAL INFORMATION

Services, other than those covered by our fixed fees and hourly rates detailed above, that are to be billed on an hourly basis, will be billed at the following rates:

Director	\$190.00	Principal-in-Charge	\$175.00
Associate	\$165.00	Senior Cost Manager	\$145.00
Cost Manager	\$120.00	Technical Support	\$65.00

The attached Terms and Conditions are also a part of our agreement with you and are incorporated herein by this reference. Please return a signed copy of this letter to us indicating your acceptance of the agreements contained herein and in the attached Terms and Conditions.
This is required prior to our commencement of work.

Thank you for the opportunity to submit a proposal on your project and we look forward to working with you. Should you have any queries or require additional information or clarification of any of the above, please do not hesitate to contact me.

Accepted: _____

Client's Project Number, if any,
for billing purposes:

Date: _____

Sincerely,



Michael O'Reilly ccp
Associate Principal
Rider Levett Bucknall Ltd

Encls.

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**RIDER LEVETT BUCKNALL LTD
CONDITIONS OF ENGAGEMENT AND PAYMENT OF ACCOUNTS**

1. Rider Levett Bucknall Ltd (Rider Levett Bucknall) services shall be performed in a manner consistent with that degree of skill and care ordinarily exercised by practicing professionals performing similar services in the same locality, and under the same or similar circumstances and conditions. Rider Levett Bucknall makes no other warranties, express or implied, with respect to the services rendered.
2. The scope of Rider Levett Bucknall services shall consist of and be limited to only those activities identified in our proposal unless specifically agreed to otherwise in writing, acknowledged, and executed by Rider Levett Bucknall and the Client for whom Rider Levett Bucknall is performing services for (Client).
3. Client understands that fees owed to Rider Levett Bucknall are payment for time expended by Rider Levett Bucknall on behalf of Client and must be paid. As a result, payment is not contingent upon any project outcome that may include but is not limited to: a cost estimate being under a project budget; whether a project commences; whether a project is completed; and/or, when Rider Levett Bucknall is providing advisory/litigation support services based on any outcome of a deposition, mediation, arbitration, litigation, or any other form of adjudication.
4. Accounts/invoices will be submitted at monthly intervals unless otherwise agreed to in writing. Payment shall be made within 30 days of the date of the invoice unless a specific payment term is agreed to in writing.
5. Rider Levett Bucknall services will be billed in accordance with our proposal (i.e., whether on a fixed fee, percentage of construction cost or hourly). Work that is performed on an hourly basis, and any additional work not included in our scope/proposal, will be billed at the stated hourly rates contained in our proposal.
6. Rider Levett Bucknall shall be reimbursed for all reimbursable expenses reasonably incurred in the performance of its services. Reimbursable expenses may include but are not limited to: travel and subsistence expenses for out-of-town travel (subject to Client's approval); long distance telephone (including cellular/mobile charges and facsimile transmissions); costs of postage, overnight express mail, and delivery services; and/or, printing or copying of drawings and other documents (including those received electronically). Unless otherwise agreed to in writing, reimbursable expenses will be marked up 10% above cost.

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7. Overdue accounts may have interest added at the rate of 1.0% per month on the outstanding balance. In the alternative, Rider Levett Bucknall, in its sole judgment, reserves the right to cease its work to any degree in whole or in part in the event the Client has not provided timely payment.
8. Should the original dates for completion of Rider Levett Bucknall services be delayed by more than 20% for any cause beyond the control of Rider Levett Bucknall, then additional fees for services carried out after the original service period will be negotiated.
9. When Rider Levett Bucknall officers, principals, directors, employees, agents, and independent professional associates/consultants are providing testimony at any hearing or trial, all fees must be current before any testimony is provided by Rider Levett Bucknall unless prior written arrangements have been made. A retainer may be required prior to the commencement of any preparation for testimony. The amount of the retainer is determined by Rider Levett Bucknall and commensurate with the expected work effort.
10. Instructions received by Rider Levett Bucknall from the Client's agent or attorney shall be deemed to be the Client's instructions. The Client understands that their agent, attorney, or other consultants may request that Rider Levett Bucknall perform certain tasks in association with the scope of Rider Levett Bucknall services under this appointment/Agreement, that Rider Levett Bucknall will comply with these requests unless written direction is received regarding who is/are the specific persons who may direct Rider Levett Bucknall scope of work, and that Rider Levett Bucknall will bill Client for the work associated with instructions received by Rider Levett Bucknall from the Client's agent or attorney.
11. The Client or its agent will provide Rider Levett Bucknall with all documents, drawings, specifications and instructions necessary to enable Rider Levett Bucknall to carry out the professional duties Rider Levett Bucknall was/is engaged to perform. Rider Levett Bucknall shall not in any way be held responsible for any errors, omissions, or discrepancies in the documents provided or for delays resulting therefrom.
12. Rider Levett Bucknall shall not be held responsible for any error or discrepancy that may arise as a result of any difference between documents issued to a contractor or sub-contractor and the documents issued to Rider Levett Bucknall for the purpose of carrying out the professional duties Rider Levett Bucknall was/is engaged to perform. Any costs incurred in the preparation of amending documents necessary to correct any such differences shall be the responsibility of the Client.

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13. Reports, Feasibility Studies, Estimates, Bills of Quantities or any other document(s) prepared by Rider Levett Bucknall shall not be used on any project not specifically covered by this assignment, appointment, or Agreement, and as permitted by law. Copyright in all Feasibility Studies, Estimates, Reports and Bills of Quantities prepared by Rider Levett Bucknall will remain the property of Rider Levett Bucknall.
14. Rider Levett Bucknall will maintain any work product, information gathered or documents provided to us by Client unless otherwise directed in writing by Client.
15. Client may, by written instruction, make changes to the scope of Rider Levett Bucknall services. To be effective, written direction must be provided in the form of a change order and signed by both parties. In the event that Rider Levett Bucknall performs work at Client direction prior to the execution of any change order, Client hereby agrees to compensate Rider Levett Bucknall for such effort on an hourly basis in accordance with the stated hourly rates contained in our proposal.
16. To the fullest extent permitted by law, Rider Levett Bucknall agrees to indemnify and hold the Client harmless from and against any liabilities, claims, damages and costs arising out of or resulting from Rider Levett Bucknall services, but only to the extent caused by the negligent acts of Rider Levett Bucknall in the performance of services under this appointment/Agreement.
17. Client and Rider Levett Bucknall hereby acknowledge and expressly agree to waive any and all claims against each other for consequential damages arising out of or relating to this appointment, Rider Levett Bucknall services under this Agreement, and/or due to either party's termination of this Agreement. This waiver includes, but is not limited to claims and/or damages for: rental expenses; losses of use; loss of income; loss of profit or anticipated profit; loss of business opportunities; financing costs; business and reputation; loss of productivity; escalation costs; general or extended general conditions costs; and/or, diminution in property value.
18. The Client and Rider Levett Bucknall waive all rights against each other, including the officers, principals, directors, employees, agents, and independent professional associates/consultants of the other, for damages to the extent that the damages sustained by either party are covered by insurance.

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19. To the fullest extent permitted by law, Client acknowledges and expressly agrees that the total maximum liability in the aggregate of Rider Levett Bucknall and that of Rider Levett Bucknall officers, principals, directors, employees, agents, and independent professional associates/consultants, and any of them, to Client and any one claiming by, through or under Client, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to Rider Levett Bucknall services, the project, or this appointment/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 Rider Levett Bucknall or Rider Levett Bucknall officers, principals, directors, employees, agents, and independent professional associates/consultants, or any of them, shall be limited and shall not exceed the total compensation received by Rider Levett Bucknall under this appointment/Agreement.
20. Either party may terminate this agreement at any time provided 30 days advance written notice is given. In the event of termination by either party all outstanding fees and costs shall be paid in accordance with the proposal fee schedule and these conditions of engagement. Additionally, in the event of termination by either party, and payment of all outstanding fees and costs through the date of termination has been made, Rider Levett Bucknall shall provide copies of its work product associated with the matter that Rider Levett Bucknall is providing services for.
21. In the event of any dispute between Client and Rider Levett Bucknall regarding this Agreement, the services rendered by Rider Levett Bucknall, or the fees and/or expenses billed for services rendered, Client agrees that such dispute shall be resolved in the following manner unless otherwise agreed to in writing between Rider Levett Bucknall and Client: (1) by attempting to resolve any dispute amicably at a meeting to be attended by persons with decision-making authority; then (2) if, within thirty (30) calendar days after such meeting the parties have not resolved the dispute, they shall submit the dispute to mediation by written demand under the Construction Industry Mediation Procedures and cognizance of the American Arbitration Association and bear equally the costs of the mediation; and then, (3) if within thirty (30) calendar days after mediation is initiated the mediation has not resulted in a settlement of the dispute, then the dispute shall be settled by arbitration under the Construction Arbitration Rules (in place at the time of filing the demand for Arbitration) and cognizance of the American Arbitration Association, and not by litigation. Either party may submit the unresolved dispute to arbitration thirty (30) calendar days after mediation, which arbitration shall be conducted by a sole arbitrator. The arbitrator shall be selected in accordance with American Arbitration Association rules and must have experience in construction disputes and must not have any conflict of interest. Any such ruling or decision of the arbitrator shall be binding on Client and Rider Levett Bucknall and may be entered as a judgment in any judicial forum. The locale for any mediation and/or arbitration under this provision shall be in the city where the Rider

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Levett Bucknall office that provided the services for this appointment/Agreement is located, and the laws of the Commonwealth of Massachusetts shall apply to any arbitration and/or enforcement of any settlement/ruling/decision. The prevailing party in arbitration shall be entitled to recover its reasonable attorneys' fees, costs, and disbursements.

22. **CLIENT AND RIDER LEVETT BUCKNALL, AFTER CONSULTING WITH COUNSEL, HEREBY KNOWINGLY AND VOLUNTARILY WAIVE THEIR RIGHTS TO TRIAL BY JURY, AND ACKNOWLEDGE THAT THEY UNDERSTAND AND ACCEPT THE DISPUTE RESOLUTION PROCEDURE SET FORTH HEREIN.**
23. In the event that there are conflicts in the provisions of any Client generated contracts and these Rider Levett Bucknall Conditions of Engagement and Payment of Accounts, these Rider Levett Bucknall Conditions of Engagement and Payment of Accounts shall take precedence unless specifically agreed to otherwise in writing which is acknowledged and executed by Client and Rider Levett Bucknall.