

COMMISSIONING AGREEMENT

This Agreement made as of the 5th day of March, 2024 by and between the City of Stamford having an office located at 888 Washington Boulevard, Stamford, CT 06904 (hereinafter "Owner") and the Commissioning Agent / CxA BVH Integrated Services, Inc., a Salas O'Brien Company having an office located at 206 West Newberry Road Bloomfield, CT 06002 (hereinafter "Commissioning Provider").

WITNESSETH

WHEREAS, Owner solicited qualifications and proposals from commissioning agents to provide commissioning and energy consulting services, and the Owner desires to retain the advisory services of a Commissioning Provider ("Services") in connection with its Westhill High School Construction Project (hereinafter the "Project"), as more fully described in Exhibits A and B annexed hereto, and Commissioning Provider desires to be so retained.

WHEREAS, Commissioning Provider desires to furnish such advisory services during planning and implementing of the Project;

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

ARTICLE 1 – SERVICES

1.1. Commissioning Provider shall provide the professional commissioning services set forth in the Request for Proposals for Commissioning Agent Services the Owner issued on November 16, 2023 with all addenda and appendices thereto, all of which are attached hereto as Exhibit A, which are hereinafter collectively referred to as the "RFP", and which hereby are made a part of this Agreement.

1.2 **STANDARD OF CARE AND REPRESENTATIONS.** In performing the Services, the Commissioning Provider will use that degree of care and skill ordinarily exercised under similar circumstances by members of its profession practicing in the same or similar locality (the "Standard of Care"). The Commissioning Provider represents that it is qualified in relation to the Services and further represents that it has the requisite skill, expertise, and knowledge necessary to perform the Services, including any supplementary services, in accordance with the Standard of Care. The Commissioning Provider hereby acknowledges that the Owner has relied upon said representations in entering into this Agreement.

1.3 Notwithstanding anything to the contrary in this Agreement, Commissioning Provider's obligations under this Agreement (specifically including the Scope of Services set forth Section IV of the RFP (see Exhibit A) are not in any way intended to require or imply that Commissioning Provider is to assume any of the responsibilities of any of Owner's contractors or consultants, and the parties expressly acknowledge and agree that Commissioning Provider shall not be responsible or liable for the failures, breaches, and/or negligence of any of Owner's contractors or consultants with regard to their performance and/or respective obligations in connection with the Project.

ARTICLE 2 - OWNER'S RESPONSIBILITIES

2.1 Owner has designated the City of Stamford Director of Operations with the authority to oversee the design and construction of the project. In this capacity, the Director of Operations, will be the authority to whom the Commissioning Provider reports and from whom the Commissioning Provider receives key direction in the progress of the Project. Communications to and from the Owner may be coordinated through the Owner's Project Manager, Colliers Project Leaders. The designation may be changed from time to time by the Owner by written notice to the Commissioning Provider.

2.2 Owner shall provide to the Commissioning Provider data necessary to allow the Commissioning Provider to provide the Services, which may include design drawings, construction documents, record drawings, shop

drawings and submittals, operation and maintenance manuals, master plans, operation costs, operation budgets, and pertinent records relative to historical building data, building equipment, furnishings, and repairs.

2.3 Owner shall provide access to the property, buildings, and personnel necessary for the Commissioning Provider to provide the Services. The Owner's personnel shall conduct tours and walk-throughs and explain the facility's original, current, and anticipated future use.

2.4 Owner shall furnish the services of design consultants, testing agencies, and contractors necessary to allow the Commissioning Provider to provide the Services.

ARTICLE 3 – FEES

3.1. Owner shall pay Commissioning Provider a fee ("Fee") equal to \$409,195.00. The Fee shall be invoiced in installments on a monthly basis in arrears with the installments based on the services performed during the prior month in alignment with the schedule of values identified in the Commissioning Provider's fee proposal form (see Exhibit B). In addition to the Fee amount and breakdown outlined in the schedule of values, the owner wishes to include an additional allowance of \$60,000.00 for services on a time and material basis for any owner-requested services beyond the scope of the services outlined in the RFP. The intent for this additional allowance is for the Commissioning Provider to engage in additional meetings, oversight, testing, and similar services as requested by the owner. Such additional services would be provided based on unit pricing and rates outlined in the Commissioning Providers responses (see Exhibit B) and any additional unit pricing the owner might request in advance of potential additional services. The Commissioning Provider shall obtain prior authorization from the Owner prior to providing any such additional services under the allowance.

3.2 The Fee shall be the sole compensation to Commissioning Provider hereunder, and is inclusive of its general and office overhead, insurance, profit, and all other costs.

3.3 If the Owner agrees that an invoice fairly reflects the services performed during the prior month, it shall pay the invoice within 45 days of its submission. If the Owner determines that an invoice does not fairly reflect the services performed during the prior month, it may withhold payment in an amount by which it concludes that the invoice does not fairly reflect those services.

ARTICLE 4 – INSURANCE

4.1 Commissioning Provider shall maintain an insurance policy meeting all requirements as established in the RFP. (See Exhibit A).

ARTICLE 5 – REIMBURSABLE EXPENSES

5.1 In accordance with the RFP, the lump fee proposal by the Commissioning Provider is inclusive of all expenses.

ARTICLE 6 – TERMINATION

6.1 This contract becomes effective as of the execution date of this agreement and will continue in effect until the services outlined in Article 1 are complete. If the Project or the Commissioning Agent's services are suspended for more than 90 consecutive days by the Owner's written request, the Commissioning Agent may terminate this Agreement by giving not less than 30 days' written notice. Either party may terminate this Agreement upon not less than 30 days' written notice should the other party fail to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. The Owner may terminate this Agreement upon not less than 30 days' written

notice to the Commissioning Agent for the Owner's convenience and without cause. In the event of such termination, the Commissioning Agent shall be compensated for all work satisfactorily performed through the date of termination.

ARTICLE 7 – MISCELLANEOUS

7.1. All notice required by or permitted to be given pursuant to this agreement shall be deemed validly given three (3) days after the same shall be deposited in the United States Mail, certified or registered, return receipt requested, postage prepaid, or by overnight courier addressed as noted herein to the parties as follows:

TO OWNER:

City of Stamford
Director of Operations, Matt Quiñones
888 Washington Boulevard
Stamford, CT 06904

with a physical and electronic copy to:

Colliers Project Leaders
Senior Project Manager: Adam Levitus
135 New Rd, Madison, CT 06443
adam.levitus@collierseng.com

TO COMMISSIONING PROVIDER:

BVH Integrated Services, a Salas O'Brien company
Principal, Jeffrey S. Cichonski
206 West Newberry Road
Bloomfield, CT 06002

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

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

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

7.5 Commissioning Provider shall indemnify, hold harmless, and at the Owner's option defend the Owner and its respective agents, officers, directors, officials, members, invitees, and employees (collectively, the "Indemnified Parties") from any third party claims, judgments, costs, injuries, damages, liabilities and expenses, including reasonable attorneys' fees, to which the Indemnified Parties may be subject because of any negligence of Commissioning Provider, or its respective agents, officers, directors, and/or employees, arising out of or in connection with this Agreement which causes or results in third party personal injury, property damage, or wrongful death. Owner will indemnify, defend, and save harmless

Commissioning Provider and its affiliated companies, their agents, consultants, principals, officers, representatives, and/or employees from all claims, judgments, costs, injuries, damages, liabilities and/or expenses (including reasonable attorneys' fees incurred in defending claims and/or responding to subpoenas) (but excluding liability that is due to the negligence or willful misconduct of Commissioning Provider or its affiliates and agents) that may occur or may have been alleged to have occurred arising out of or related to the Project, the Services, and/or any written contracts or other agreement that Owner or Commissioning Provider may enter into in connection therewith. In the event of a claim, the indemnified party agrees to: (i) give the indemnifying party prompt notice of the claim; (ii) cooperate with the reasonable request of the indemnifying party in the defense of the claim, at no cost to the indemnified party; (iii) permit the indemnifying party to choose counsel to defend, subject to the reasonable approval of the indemnified party and (iv) not settle any claim without the written consent of the indemnifying party.

7.6 Nothing contained in this Agreement shall be construed to mean that Commissioning Provider and Owner are joint venturers or partners.

7.7 It is expressly agreed that the Commissioning Provider is not responsible for Project design which services shall remain the responsibility of the architect and/or engineer. The parties acknowledge and agree that any suggestions made by Commissioning Provider in connection with the Services must be fully reviewed by the engineer and approved by the engineer prior to incorporation into the final design. Review by the Commissioning Provider in no way relieves the Engineer of Record of its obligation to design a functional system that meets applicable building and energy codes and the Owner's Project requirements, and such review in no instance supersedes decisions of such Engineer. Commissioning Provider shall not be responsible for the actions of the contractor, subcontractors, and/or for any means and methods used for the construction of the Projects. Owner shall secure and pay for all necessary permits, approvals, easements, assessments, and charges required in connection with the Project. All contracts relating to the Project shall be in the name of Owner and shall be executed by Owner.

7.8 This Agreement shall be governed by the laws of the State of Connecticut both as to interpretation and performance. In the event of a dispute, the parties shall negotiate in good faith. Should the dispute remain unresolved after such good faith effort by both parties, the dispute shall be subject to mediation as a condition precedent to litigation. The parties shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. Should the dispute remain unresolved after mediation, either party may pursue their legal remedies in the Superior Court of the State of Connecticut, Judicial District of Stamford/Norwalk at Stamford, for all purposes in connection with any action or proceeding which arises from or relates to this Agreement. Neither party shall be liable to the other for, and each party hereby waives any and all rights to claim against the other, any special, indirect, incidental, consequential, punitive or exemplary damages in connection with this Agreement, including, but not limited to, lost profits, even if the party has knowledge of the possibility of such damages. In the event that any litigation is brought with respect to any dispute between the parties hereto, the non-prevailing party, if any, in such litigation shall reimburse the prevailing party, if any, for all of its reasonable out-of-pocket costs incurred, including reasonable attorney's fees and disbursements, in connection with such litigation and the costs of collection of any settlement or judgment thereon.

7.9 This Agreement is intended to employ Commissioning Provider in a consulting role so that Owner can seek the opinions of the Commissioning Provider as the Owner makes various Project decisions, and for Commissioning Provider to be able to provide its opinions without reservation. More specifically, Owner will engage specialized consultants and vendors (such as engineers, architects, designers, etc.) who will be responsible for all matters related to

their respective specialties. Owner and Commissioning Provider will both rely on the proper performance of and information provided by such specialists, and Owner hereby waives and releases all claims against Commissioning Provider that arise out of or relate to: (1) the failure of others engaged by or through Owner (for example, engineers, designers, architects, construction managers, attorneys, testing and inspection services, and other specialized consultants and vendors) to properly perform their responsibilities; or (2) matters that are not the responsibility of Commissioning Provider as specifically required by this Agreement.

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

7.11 **LIMITATION OF LIABILITY.** The Commissioning Provider's sole remedy for Owner delays shall be an extension of time to complete the Services and the Commissioning Provider hereby waives any claims for consequential damages, including, but not limited to, principal office expense, loss of financing, reputation and/or lost profit.

7.12 **CONTRACT EXTRAS.** Pursuant to the City of Stamford Code of Ordinances, Section 23-18.4 C., all contract extras regarding this Agreement shall be governed by the City of Stamford Charter and/or Code of Ordinances. The Owner shall not be liable for payment of any additional costs, except as otherwise expressly set forth in this Agreement, unless the provisions of the City of Stamford Charter and/or Code of Ordinances are fully complied with. The City of Stamford Charter and Code of Ordinances can be found at www.municode.com.

7.13 **GIFTS.** During the Term of this Agreement, including any extensions, the Commissioning Provider shall refrain from making gifts of money, goods, real or personal property or services to any appointed or elected official or employee of the City of Stamford or the Stamford Board of Education or any appointed or elected official or employee of their Boards, Commissions, Departments, Agencies or Authorities. All references to the Commissioning Provider shall include its members, officers, directors, employees, and owners of more than 5% equity in the Commissioning Provider.

7.14 **CODE OF ETHICS.** The Commissioning Provider is prohibited from using its status as a consultant to the Owner to derive any interest(s) or benefit(s) from other individuals or organizations and the Commissioning Provider shall comply with the prohibitions set forth in the Stamford Municipal Code of Ethics as codified in Chapter 19 of the City of Stamford Code of Ordinances.

7.15 **MORALS CLAUSE.** The Commissioning Provider shall not commit any act or do anything which might reasonably be considered: (i) to be immoral, deceptive, scandalous or obscene; or (ii) to injure, tarnish, damage or otherwise negatively affect the community and/or the reputation and goodwill associated with the Owner. If the Commissioning Provider is accused of any act involving moral or ethical issues, dishonestly, theft or misappropriation, under any law, or any act which casts an unfavorable light upon its association with the community and/or is accused of performing or committing any act which could adversely impact the Commissioning Provider's events, programs, services, or reputation, the Owner may issue a written demand to cure the offense to the Commissioning Provider and the Commissioning Provider shall have fifteen (15) days thereafter to cure the offense. The determination of whether and to what extent the offense is cured shall be made by the Owner at its sole discretion.

7.16 **SETOFF OF PROPERTY TAXES OWED TO THE CITY OF STAMFORD.** Pursuant to the City of Stamford Code of Ordinances Section 23-18.4.1 and Section 12-146b of the Connecticut General Statutes, as amended,

the Owner shall have the right to set-off or withhold any payment, or portion thereof, due to the Commissioning Provider pursuant to this Agreement if any taxes levied by the City of Stamford against any property, both real and personal, owned by the Commissioning Provider are delinquent and have been so delinquent for a period of not less than one year. Any amount withheld from the Commissioning Provider pursuant to this section shall be applied to the Commissioning Provider's delinquent taxes, provided, however, that no such amount withheld shall exceed the amount of tax, plus penalty, lien fees and interest, outstanding at the time of withholding.

7.17 **NON-APPROPRIATION.** The Owner is a municipal corporation and, therefore, the Owner's obligation to make payments under this Agreement is contingent upon the appropriation by the City of Stamford Board of Representatives of funds sufficient for such purposes for each budget year in which this Agreement is in effect.

7.18 **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. The counterparts shall together constitute but one Agreement. Any signature on a copy of this Agreement or any document necessary or convenient thereto sent by facsimile, PDF or other electronic format shall be binding upon such transmission and the facsimile, PDF or other electronic format copy shall be deemed an original for the purposes of this Agreement. Paper copies or "printouts," if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule.

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

Owner: City of Stamford

By: _____
Name: **Caroline Simmons**
Title: **Mayor**

Commissioning Provider: BVH Integrated Services, Inc., a Salas O'Brien Company

By: _____
Name: **Jeffrey S. Cichonski**
Title: **Principal**

EXHIBIT A

REQUEST FOR QUALIFICATIONS AND PROPOSAL FOR COMMISSIONING AGENT (ISSUED NOVEMBER 16, 2023 WITH ALL ADDENDA AND APPENDICES THERETO)

EXHIBIT B

**COMMISSIONING PROVIDER PROPOSAL RESPONSE, FEES, AND HOURLY RATES (Dated on
December 21, 2023)**