



FUSS & O'NEILL

August 11, 2017

Martin Seifert  
West Hill Pond Association  
P.O. Box 1057  
New Hartford, CT 06057

RE: **Revised** Proposal for Engineering Services  
West Hill Pond Dam Repairs  
Barkhamsted, Connecticut

Dear Mr. Seifert:

Fuss & O'Neill is pleased to provide this proposal to provide engineering services to West Hill Pond Association (WHPA) for repairs to the masonry training walls at West Hill Pond Dam.

## Project Understanding and Project Approach

West Hill Pond Dam was reviewed with you in the field on June 19, 2017. We observed that the top stones of both the left and right masonry training walls are overhanging and the walls are leaning inward. In discussions with you, we believe this is caused or exacerbated by movement of the gate house as snow is piled up against it during the winter plowing season. Although the West Hill Pond Association (WHPA) originally intended to keep the gate house, they now wish to remove it and replace it with an at-grade structure to better protect the masonry walls and gate.

We are reasonably certain that movement of the gate house has put strain on the gate stem, and although the WHPA has been able to lower the pond and exercise the gate on a regular basis, this strain should be relieved before damage occurs or the gate becomes difficult to operate.

You indicated ongoing loss of soil adjacent to the top of the right (looking downstream) training wall, and we suspect that soil is making its way through the masonry into the pond and gate area and being washed through the outlet pipe.

It is our understanding that you wish Fuss & O'Neill to design repairs to the masonry training walls and help the WHPA obtain permits to repair the dam. We have spoken to the CTDEEP dam safety office and determined the repair activities could be authorized under Dam Safety General Permit GP-016, activity 3(a)7. This permit authorizes repointing and repairing up to 250 square feet of masonry using unlimited volume of mortar and partial demolition and reconstruction of walls

146 Hartford Road  
Manchester, CT  
06040  
t 860.646.2469  
800.286.2469  
f 860.533.5143

[www.fando.com](http://www.fando.com)

Connecticut  
Massachusetts  
Rhode Island  
South Carolina

less than 6 feet in height with sound footings. A general permit from the US Army Corps of Engineers will be required. CTDEEP Dam Safety indicated that because they will authorize the activity under a general permit, a local inland wetland permit will not be required.

## Scope of Services

### Task 1 – Wetland Delineation, Mapping and Report

A Fuss & O'Neill soil scientist, registered with the Society of Soil Scientists of Southern New England, will delineate the limits of Federal and State jurisdictional wetlands and watercourses located in the vicinity of the dam. Wetlands and watercourses will be delineated (identified, classified, and flagged) in accordance with State of Connecticut Inland Wetland and Watercourses Act (CGS §§ 22a-36 to 22a-42 inclusive). In addition, Federal jurisdictional wetlands and watercourses will be delineated in accordance with the prescribed methodology of the U.S. Army Corps of Engineers' 1987 *Wetland Delineation Manual (Technical Report Y-87-1)* and the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region*. Wetland flags will be located by hand-held GPS and the locations added to our base mapping. A Soil Scientist Report will be completed to support the permit applications described herein. This report will summarize the wetland and upland soils mapped on site and any watercourses on or immediately adjacent to the site.

### Task 2 – Diving Survey

To facilitate design plan preparation and permitting we need to clarify the arrangement of the gate and mounting frame, the masonry culvert and headwall, the weir boards and the masonry training walls. We will subcontract Shoreline Diving Services, Inc. (Noank, CT) to perform a dive inspection of these structures, take still photographs if conditions allow and prepare a sketch of their findings. Fuss & O'Neill has teamed with Shoreline Diving to perform design and repairs of many dams in southern New England. One day of diving services has been budgeted and will be adequate.

### Task 3 – Engineering Design

Based on the assumed level of permitting of the project under the CTDEEP general permit, no survey will be required for the contemplated repairs. An AutoCAD sketch based on field observations and measurements will be prepared and will function as the base mapping. We may use available aerial photographs or other readily available information to enhance the plan. The base map will be used to convey the critical aspects of the repairs for to your contractor and the DEEP Dam Safety office for permitting.

Martin Seiffert  
August 11, 2017  
Page 3

We will develop a design plan and details, and construction specifications will be included as notes on the plan sheets. At this time we anticipate the repair method will include:

- Removal of the gate house
- Remove and reset stones that have shifted out of alignment
- New removable grate set in a cast in place concrete frame on top of the masonry walls
- Reinforcement of the left and right masonry walls by placing concrete behind them down to firm subsoil or a stable portion of the masonry walls, whichever is deeper. The concrete will be connected to the new concrete frame using steel reinforcement or will be poured monolithically. Steel will also be used to strengthen the combined structure.
- Backfill material gradation that will minimize soil loss through the walls and minimize the potential for settlement or movement.
- Repointing of masonry
- New trash rack
- Modify existing or specify new gate and stem

At this time it is assumed that the design plans will consist of the following sheets:

- Title Sheet
- Existing Conditions Base Map (aerial photogrammetry and sketches)
- Proposed Improvements - Plan View sheet
  - Dewatering and flood protection
  - Selective demolition
  - Masonry wall repairs
  - New frame and grate
  - Trash rack, gate, stem, weir board modifications or replacement
  - Sediment & Erosion Controls
  - Wetland Impact Areas
- Proposed Improvements – Sections and Details
  - Concrete reinforcement and connections
  - Trash rack, gate, stem, weir boards
  - Earthwork, backfill for masonry walls
  - Cross sections through masonry training walls and outlet structures
  - In general, specifications for all improvements will be provided as notes on the plans, and a separate specifications document will not be prepared. Certain specifications may be developed and provided as separate document, depending on the complexity of the design.
- Sequence of Construction Narrative and Construction Notes Sheet
  - Water Control Narrative
  - Construction Sequence

Martin Seiffert  
August 11, 2017  
Page 4

Fuss & O'Neill will develop draft documents for review by WHPA and address revisions.

Fuss & O'Neill will submit the final documents to CTDEEP for their review and approval. We assume minor modifications will need to be made to the documents based upon comments from CTDEEP during the permitting process and re-submit them for issuance of the general permit.

We will make minor modifications and prepare final documents for use by the contractor during construction activities. These documents are not being developed for competitive bidding, rather are being developed for use by a pre-selected contractor.

We assume the WHPA will conduct a significant drawdown after permitting and prior to construction, so that the base of the masonry wall and the gate are visible for inspection and not submerged. We will perform one field inspection to corroborate the findings of the dive inspection and to inspect the masonry walls, the gate and gate stem. We will update our base map based on this information. We assume any updates to our design plan will be minor and not affect permits already received for the construction.

#### **Task 4 - Permitting**

CTDEEP Dam Safety and US Army Corps of Engineers (USACE) general permits will be required.

We spoke with the CTDEEP about this project on June 30, 2017 and we anticipate the work will be covered under the CTDEEP's "Dam Safety General Permit to Conduct Repairs and Alterations to Dams, GP-016: Approval of Filing Categories section 3(a)7 based on the masonry wall face to be repaired (up to 250 square feet of wall face) using an unlimited amount of mortar, and partial demolition and re-construction of walls less than 6 feet in height that have sound footings. A Registered Professional Engineer signature is required since the dam is larger than 15 feet in structural height. Accordingly, Fuss & O'Neill will prepare the GP-016 general permit application form, including all required attachments for the general permit registration. As required, the application and site plans will be stamped and signed by a Registered Professional Engineer. Fuss & O'Neill will complete and submit the Notice to Municipality form which informs the municipality of the proposed maintenance work and a copy of the form will be forwarded to CTDEEP.

Coordination with the CTDEEP Inland Fisheries Division will not be necessary since the work will take place during the normal pond draw down period.

Martin Seiffert  
August 11, 2017  
Page 5

A USACE 404 Permit Self-Verification General Permit will be required for the proposed repairs. The project is eligible under Category 1 for dam repair where there is no change in the permanent water surface elevation of the impoundment and the drawdown of impoundment for construction not to exceed 18 months or one growing season.

### **Task 5 – Response to Regulatory Review Comments**

We will review regulatory review comments and modify application documents as appropriate. We will respond to agency review comments in written correspondence. Since we cannot anticipate what comments regulatory staff may have, it is difficult to determine the level of effort. Therefore, we propose to invoice this task on an hourly basis with the indicated budget not to be exceeded without permission from WHPA. We have budgeted 8 hours for response to regulatory comments.

### **Task 6 – Construction Close-Out**

When construction is complete Fuss & O'Neill will make one site visit to document the work was conducted in accordance with the design plans and intent. We will prepare an As-Built drawing signed and stamped by a Connecticut licensed professional engineer and submit it to the CTDEEP as required by the dam safety general permit.

### **Task 7 – Construction Services (Optional)**

Fuss & O'Neill will provide construction administration services on a time and materials basis which may include construction visits, review of materials submittals, review of payment requests, and permit closeout.

For purposes of an estimated budget we assume a 3 week construction period for the repairs described herein. We will attend a pre-construction meeting and perform two 4-hour construction visits per week (exclusive of travel). A brief email will be distributed following each construction visit to document our findings and make necessary recommendations.

## **Assumptions**

1. The WHPA will pay any fees necessary to apply for and obtain regulatory permits including the state dam safety general permit. Fees can be added to our contract upon request.
2. Bid services are not included in this contract but can be added upon request.

Martin Seiffert  
 August 11, 2017  
 Page 6

3. Because there are no proposed changes to the geometry of the spillway or the embankment, the following services are not necessary and therefore not included in our proposal:
  - a. Topographic survey
  - b. Hydraulic and hydrologic analyses
  - c. Geotechnical evaluations (Seepage and slope stability)
4. Construction Management (CM) services are not included. These services can be added to our contract upon request. CM services may include review of contractor's pay requisitions, coordination with the Town of Barkhamsted, adjacent property owners and WHPA, review of site safety and other services. We assume the WHPA will coordinate construction activities on a daily basis at the site.

## Schedule

A site visit will be conducted upon authorization. We will complete a draft engineering design within 5 weeks of authorization and submit to WHPA for review and comment. Final engineering documents will be completed within 1 week of the receipt of comments. Draft permitting documents will be prepared 2 weeks following draft engineering design and submitted to WHPA for review.

## Fees

Fuss & O'Neill proposes that the following budgets be established for professional services in support of this effort. These budgets would not be exceeded without expressed authorization.

<b>Task Fee Summary</b>	<b>Fee</b>
1. Wetland Delineation, Mapping, Report (Lump Sum)	\$ 2,600
2. Diving Survey (Lump Sum)	\$ 4,000
3. Engineering Design (Lump Sum)	\$ 14,500
4. Permitting (Lump Sum)	\$ 5,300
5. Response to Regulatory Review Comments (Hourly)	\$ 1,000 (Estimate)
6. Construction Close-Out (Lump Sum)	\$ 1,800
<b>Subtotal</b>	<b>\$ 29,200</b>
7. Construction Services (Optional, Hourly)	\$ 6,600

Additional services requested can be provided on a time and materials basis in accordance with the attached rate schedule.



FUSS & O'NEILL

Martin Seiffert  
August 11, 2017  
Page 7

## General Terms and Conditions

The attached General Terms and Conditions will apply to the services described above.

Receipt of a signed copy of the Authorization to Proceed enclosed with this proposal or issuance of a purchase order referencing this proposal will serve to authorize the work outlined in the Scope of Services.

Thank you for requesting engineering services from Fuss & O'Neill, Inc. We look forward to this opportunity to serve West Hill Pond Association on this project.

Sincerely,

Christopher J. Cullen, PE  
Project Manager

Philip E. Forzley, P.E.  
Vice President

/ndt

Enclosures: Authorization to Proceed  
General Terms and Conditions  
Rate Schedule

## Authorization to Proceed

Philip E. Forzley, PE  
Fuss & O'Neill, Inc.  
146 Hartford Road  
Manchester, CT 06040

RE: Authorization to Proceed  
**Revised** Proposal for Engineering Services  
West Hill Pond Dam Repairs  
Barkhamsted, Connecticut

Dear Mr. Forzley:

I hereby authorize Fuss & O'Neill, Inc. to proceed with the above-referenced project in accordance with the General Terms and Conditions and proposal dated August 11, 2017. I understand that billing will be monthly, payable within thirty (30) days of date of invoice with interest accruing at the rate of 1.5% per month thereafter. A 15% administration charge will be added to subcontract services that are billed through Fuss & O'Neill. I further understand that West Hill Pond Association will be responsible for the reasonable cost of collection.

---

Printed Name

---

Date

---

Signature

---

Title



## GENERAL TERMS AND CONDITIONS

Attached to and incorporated into the Proposal that, as executed, shall serve as an agreement between West Hill Pond Association (Client) and Fuss & O'Neill, Inc. (Consultant) dated August 11, 2017 in respect of the Project described therein.

### 1.0 GENERAL

Consultant shall perform for Client professional consulting services in all phases of the Project to which this Agreement applies as hereinafter provided. These services will include serving as Client's professional consulting representative for the Project.

Any provisions of this Agreement held in violation of any law or ordinance shall be deemed stricken and all remaining provisions shall continue valid and binding upon the parties. Client and Consultant shall attempt in good faith to replace any invalid or unenforceable provisions of this Agreement with provisions which are valid and enforceable and which express the intention of the original provisions.

Client shall reimburse Consultant for all costs of modifications and any additional services required to comply with laws, rules or regulations first coming into effect after the signing of this Agreement, charges for which will be based on Consultant's fee schedule at the time the additional services are performed. It is understood that various codes and regulations are subject to varying and sometimes contradictory interpretation. Consultant will exercise its professional skill and care consistent with the generally accepted standard of care applicable to the geographical locale to provide a work product that complies with such regulations and codes. Consultant does not warrant that all documents issued by it shall comply with said regulations and codes.

### 2.0 MEANING OF TERMS

As used herein the term "Agreement" refers to the Proposal Letter or Agreement to which these General Terms and Conditions are attached and in which they are incorporated as if they were part of one and the same document.

### 3.0 CLIENT'S RESPONSIBILITIES

Client shall:

- Provide all criteria and full information as to Client's requirements for the Project,
- Designate a person to act with authority on the Client's behalf in respect to all aspects of the Project,

- Examine and respond promptly to the Consultant's submissions,
- Give prompt written notice to Consultant whenever Client observes or otherwise becomes aware of any perceived defect in the work,
- Guarantee access to and make all provisions for the Consultant to enter lawfully upon public and private property,
- As appropriate and required by law, bear responsibility for reporting significant and/or material environmental hazards of contaminated property.

Unless otherwise specifically indicated in writing, Consultant shall be entitled to rely unconditionally and without liability on the accuracy and completeness of information provided by Client, Client's consultants and contractors, and information from public records, without the need for independent verification.

Client acknowledges that if Consultant's professional services involve the use of vehicles or other equipment as part of Project, some damage to the project site could occur. Client understands that unless specifically stated in the Agreement, and provided Consultant uses reasonable care, correction of such damage shall not be the responsibility of Consultant.

### 4.0 REUSE OF DOCUMENTS

All documents, including reports, electronic media, drawings and specifications, prepared or furnished by Consultant and its subsidiaries, independent professional associates, subconsultants and subcontractors pursuant to this Agreement are instruments of service in respect of a particular Project and Consultant shall retain an ownership and property interest therein whether or not the Project is completed. Client may make and retain copies of such documents for information and reference in connection with the Project, However, such documents are not intended or represented to be suitable for reuse by Client, including extensions of the Project or on any other project, nor are they to be relied upon by anyone other than Client.

Copies of documents that may be relied upon by Client are limited to printed copies that are signed or sealed by Consultant, or PDF files prepared, issued, and digitally signed and encrypted by the Consultant. Other files in electronic media, including but not limited to CAD or other similar electronic drawings, other electronic media, text, data and graphics files will be made available solely as a convenience and any conclusion or information obtained or derived from such other electronic files will be at the user's sole risk. When

transferring documents in electronic media format, Consultant makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems or computer hardware differing from those in use by Consultant at the beginning of this Project.

Any reuse, modification or disbursement of documents to third parties without written consent and project-specific adaptation including, but not limited to, any corruption or alteration arising out of the transmission of electronic files or occurring on such electronic files once leaving the custody of Consultant will be at Client's sole risk and without any liability or legal exposure to Consultant or its subsidiaries, independent professional associates, subconsultants, and subcontractors. Accordingly, Client shall, to the fullest extent permitted by law, defend, indemnify and hold Consultant harmless from and against any and all costs, expenses, fees, losses, claims, demands, liabilities, suits, actions and damages whatsoever arising out of or resulting from such unauthorized reuse, modification or disbursement

Any Project-specific adaptation by Consultant will entitle the Consultant to further compensation at rates to be agreed upon by Client and Consultant.

Consultant shall retain all records in its custody and control that are pertinent to performance under this Agreement in accordance with its record retention policy, as amended from time to time. Consultant shall make such records available to Client for inspection and reproduction upon Client's reasonable request and at Client's expense.

## **5.0 OPINIONS OF COST**

Unless expressly stipulated in the Proposal, Consultant's services do not include any express or implied endorsement or evaluation of, or comment upon, the relationship of the Project's development, construction, operational, and maintenance costs to the financial value or viability of the Project.

Since Consultant has no control over the cost of labor, materials, equipment or services furnished by others, or over Contractor's methods of determining prices, its means, methods and sequencing, or over competitive bidding or market conditions, Consultant's opinions of probable total project costs and construction cost are to be made based solely upon the Consultant's experience and qualifications, and represent Consultant's best judgment as an experienced and qualified professional familiar with the construction industry; but the Consultant cannot, and does not, guarantee or warrant that proposals, bids or actual total

project or construction costs will not vary from opinions of probable cost prepared by Consultant. If prior to the bidding or negotiating phase the Client wishes greater assurance as to total project or construction costs, Client shall employ an independent cost estimator.

## **6.0 SUCCESSORS AND ASSIGNS**

6.1 Neither Client nor Consultant shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Consultant from retaining such independent professional associates and consultants, as the Consultant may deem appropriate to assist in the performance of services hereunder.

6.2 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than Client and Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Client and Consultant and not for the benefit of any other party.

## **7.0 MEDIATION**

Prior to the initiation of any legal proceedings, the parties to this Agreement agree to submit all claims, disputes or controversies arising out of or in relation to the interpretation, application or enforcement of this Agreement to non-binding mediation. Such mediation shall be conducted under the auspices of the American Arbitration Association or such other mediation service or mediator upon which the parties agree. The party seeking to initiate mediation shall do so by submitting a formal, written request to the other party to this Agreement. This section shall survive completion or termination of this Agreement, but under no circumstances shall either party call for mediation of any claim or dispute arising out of this Agreement after such period of time as would normally bar the initiation of legal proceedings to litigate such claim or dispute under the laws of the State of Connecticut.

## **8.0 PURCHASE ORDERS**

In the event Client issues a purchase order or other instrument related to Consultant's services, it is understood and agreed that such document is for

Client's internal accounting purposes only and shall in no way modify, add to, or delete any of the terms and conditions of this Agreement and these Terms and Conditions incorporated therein. If Client does issue a purchase order or other similar instrument, it is understood and agreed that Consultant shall indicate the purchase order number on the invoices sent to Client.

## **9.0 SUBCONSULTANTS**

Except as expressly agreed, Client will directly retain other consultants whose services are required in connection with the Project. As a service, Consultant will advise Client with respect to selecting other consultants, and will assist Client in coordinating and monitoring the performance of other consultants. However, in no event will Consultant assume any liability or responsibility for the work performed by other consultants, or for their failure to perform any work, regardless of whether Consultant retains them directly or as subconsultants, or only coordinates and monitors their work as a convenience to Client. When Consultant does engage a subconsultant on behalf of Client, the expenses incurred, including rental of special equipment necessary for the work will be billed as they are incurred, subject to an administrative markup of 15 percent or as specified in the rate table or billing terms in effect at the time the services are provided. By engaging Consultant to perform services, Client agrees to hold Consultant, its directors, officers, employees, and other agents harmless against any claims, demands, costs, or judgments relating in any way to the performance or non-performance of work by another consultant or subconsultant for which Consultant is not legally liable and which Consultant does not control, except claims for personal injury, death, or personal property damage caused by the negligence of Consultant's employees.

## **10.0 INDEMNIFICATION**

10.1 Client and Consultant each agree to indemnify and hold the other harmless, and their respective officers, employees, agents, and representatives from and against liability for all claims, losses, damages, and expenses, including reasonable attorneys' fees, to the extent such claims, losses, damages or expenses are caused by the indemnifying party's negligent acts, errors, or omissions, as ultimately adjudicated. In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligence of Client and Consultant, they shall be borne by each party in proportion to its negligence, as ultimately adjudicated.

10.2 Consultant shall under no circumstances be considered the generator of any hazardous substances, pollutants or contaminants encountered or handled in the performance of Consultant's services. In the event

that the Consultant or any other party encounters asbestos or toxic materials at the job site which was previously unknown or had not been disclosed to Consultant, or should it become known that certain materials may be present at the job site or any adjacent areas that may affect the performance of the Consultant's services, Consultant may, at its option and without liability for consequential or any other damages, suspend performance of service on the Project until Client retains appropriate specialist consultants to identify, abate and/or remove the asbestos or hazardous or toxic material, and warrant that the job site is in full compliance with applicable laws and regulations with regard to said substances.

10.3 Neither party shall have liability for loss of product, loss of profit, loss of use, or any other indirect, incidental, special, or consequential damages incurred by the other party, whether brought as an action for breach of contract, breach of warranty, tort, or strict liability, and irrespective of whether caused or allegedly caused by either party's negligence; and Client agrees to defend, indemnify and hold Consultant harmless with respect to any such claims. Client and Consultant agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors, and other entities involved in this Project to carry out the intent of this provision.

10.4 Consultant and Client agree that should Consultant's services not include construction phase services, Client shall be solely responsible for interpreting any contract documents and observing the work of Contractor to discover, correct or mitigate errors, inconsistencies or omissions. If Client authorizes deviations, recorded or unrecorded, from the documents prepared by Consultant, Client shall not bring any claim against Consultant and shall indemnify and hold Consultant, its agents and employees harmless from and against claims, losses, damages and expenses including, but not limited to, defense costs and the time of Consultant, to the extent such claim, loss, damage or expense arises out of or results in whole or in part from such deviations, regardless of whether or not such claim, loss, damage or expense is caused in part by a party indemnified under this provision.

10.5 In no event shall the indemnification obligation extend beyond the date when the institution of legal or equitable proceedings for professional negligence would be barred by an applicable statute of repose or statute of limitations.

## **11.0 LIMITATION OF LIABILITY**

Notwithstanding any other provision of these General Terms and Conditions, to the extent Consultant is adjudicated liable, Consultant's liability to Client for any

loss or damage arising out of or in connection with the accompanying Proposal or any related Agreement from any cause, including Consultant's professional negligent errors or omissions, shall not exceed the greater of \$50,000 or the total compensation received by Consultant hereunder, and the Client expressly releases the Consultant from any liability above such amount.

## **12.0 STANDARD OF CARE**

All services of Consultant and its independent professional associates, consultants and subcontractors will 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, at the same site and under the same or similar circumstances and conditions. Consultant expressly disclaims any and all other warranties, whether express or implied, with respect to the services rendered hereunder.

If Consultant's services include Connecticut Licensed Environmental Professional (LEP) verification or Massachusetts Licensed Site Professional (LSP) opinion, Client acknowledges that such services are subject to regulatory audit. In rendering an LEP verification or LSP opinion Consultant is providing a professional opinion consistent with the standard of care for LEPs/LSPs in the industry. However, regulatory agencies may require response actions beyond those that were the basis for the LEP verification or LSP opinion. Services associated with such audits or response actions may be provided by Consultant at an additional cost not included in the Agreement, to be mutually agreed upon between Client and Consultant.

If LSP services are provided, they will be rendered consistent with 309 CMR, the "Regulations of the Board of Registration of Hazardous Waste Site Cleanup Professionals." LSP Opinions will be provided with consideration of the assumptions, limitations and qualifications of the MCP (310 CMR 40.0000) and relevant final guidance and interpretation published by the Commonwealth of Massachusetts.

## **13.0 CHANGES OR DELAYS**

Unless the accompanying Agreement/Proposal provides otherwise, the proposed fees constitute Consultant's estimate to perform the services required to complete the Project, as Consultant understands it to be defined, and subject to the accuracy of information provided to the Consultant at that time. For those projects involving conceptual or process development work, activities often are not fully definable in the initial planning. In any event, as the project progresses, the facts developed may dictate a change in the services to be performed, which may alter the scope, timeframe

or cost. Consultant will inform Client of such situations so that negotiation of change in scope and adjustment to the time of performance may be accomplished as required. If such change, additional services, or suspension of services results in an increase or decrease in the cost of or time required for performance of the services, regardless of the reason or cause, , an equitable adjustment shall be made and the Agreement modified accordingly.

Costs and schedule commitments shall be subject to renegotiation for unreasonable delays caused by Client's failure to provide specified facilities or information, Client's failure to make payment in accordance with its obligations under this Agreement, or for delays caused by unpredictable occurrences or force majeure including, but not limited to, fires, floods, riots, strikes, unavailability of labor or materials, delays or defaults by suppliers of materials or services, process shutdown, acts of God or of the public enemy, or acts or regulations of any governmental agency. Temporary work stoppage caused by any of the above will result in additional cost (reflecting a change in scope) beyond that outlined in the Agreement.

## **14.0 PAYMENT**

Consultant shall typically invoice Client for services performed under this Agreement on a monthly basis, and Client shall pay Consultant's invoices within thirty (30) days of receipt. Payment shall be delivered to: Fuss & O'Neill, Inc. at 146 Hartford Road, Manchester, CT 06040 or by EFT/ACH transfer to Bank of America, Account # 385016029253, ABA #011900254. Client agrees to bring to Consultant's attention in writing any questions regarding Consultant's invoice within ten (10) days of receipt. In the event that Client does not provide Consultant with written questions within ten (10) days, the invoice shall be deemed accurate and acceptable to Client. If Client fails to make any payment due Consultant for services, expenses or other charges within thirty (30) days after receipt of Consultant's invoice therefor, the amounts due Consultant will be increased at the rate of one and one half (1.5%) percent per month from the thirtieth day after the invoice was received and, additionally, Consultant may, after giving a minimum of seven (7) days written notice to Client, suspend services under this Agreement until Consultant has been paid in full all amounts due for services, expenses and charges. Consultant may at its sole discretion suspend services on any or all other projects being performed by Consultant for Client under any other agreements until Consultant has been paid in full for all amounts due for services, expenses and any other charges under this Agreement. Client shall be responsible for the reasonable cost of collection including reasonable attorneys' fees and costs.

## **15.0 TERMINATION**

The obligation to provide services under this Agreement may be terminated by either party upon seven (7) days' written notice in the event either party fails to substantially perform in accordance with the terms of this Agreement, and these incorporated Terms and Conditions, through no fault of the terminating party. In the event of any termination, for whatever reason, Consultant will be paid for all services rendered to the date of termination, all reimbursable expenses and termination expenses. Failure to make payments in accordance herewith shall constitute substantial nonperformance. This Agreement shall automatically terminate if payments are not brought current within seven (7) days of notice of termination.

## **16.0 CONTROLLING LAW**

This Agreement is to be governed by the law of the State of Connecticut.

## **17.0 SUBSURFACE INVESTIGATIONS**

Client 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 experienced personnel under the direction of a trained professional which functions in accordance with a professional standard of practice may fail to detect certain hidden conditions. The passage of time also must be considered, and Client recognizes that due to natural occurrences or direct or indirect human intervention at the Site or a distance from it, actual conditions may quickly change. Consultant shall not be liable for such alteration or damage or for damage to, or interference with any subterranean structure, pipe, tank, cable, or other element or condition whose nature and location are not called to Consultant's attention in writing before exploration commences.

## **18.0 LITIGATION AND ADDITIONAL WORK**

In the event Consultant is to prepare for or appear in any litigation on behalf of Client, or is to make investigations of reports on matters not covered by this Agreement, or is to perform other services not included herein, additional compensation shall be paid to Consultant, charges for which will be based upon Consultant's fee schedule at the time the additional services are performed.

## **19.0 INSURANCE**

Consultant will secure and maintain such insurance as will protect Consultant from claims under the Workmen's Compensation Act and from claims for

bodily injury, death or property damage that may arise from the performance of Consultant's services under this Agreement.

Consultant will secure and maintain professional liability insurance for protection against claims arising out of the performance of professional services under this Agreement caused by negligent errors or omissions for which Consultant is adjudicated liable, and further subject to the indemnification and limitation of liability provisions contained in this Agreement and the incorporated Terms & Conditions. Consultant shall request that all of its subcontractors carry insurance of similar types and with similar limits of coverage as required for Consultant.

## **20.0 SALES TAX EXEMPTION CERTIFICATE**

Client must provide Consultant an exemption certificate within fifteen (15) days after the effective date of this Agreement for any exemptions claimed by Client from the sales tax for any services performed or for any tangible personal property purchased under this Agreement. In the event that Client fails to timely provide Consultant with such an exemption certificate within such time, Client shall be solely responsible for obtaining a refund for any and all sales tax collected or paid by Consultant in connection with the performance of this Agreement before Client provides Consultant with such exemption certificate, including any sales tax paid by Consultant to subcontractors, engineers, suppliers or any other individual entity.

## **21.0 PERIOD OF SERVICE**

Consultant shall proceed with the services under this Agreement promptly and will diligently prosecute the work to completion subject to any delays due to strikes, action of the elements, act of any government, civil disturbances or any other cause beyond the reasonable control of Consultant.

## **22.0 NOTICE REQUIREMENTS**

If Client alleges that it has discovered a negligent defect, fault, error, non-compliance or omission in Consultant's services, it shall give written notice to the Consultant within thirty (30) days of the date it identifies any negligent defect, fault, error, non-compliance or omission in Consultant's services. Notice shall include a detailed description of the nature of the alleged negligent defect, fault, error, non-compliance or omission. Client agrees that failure to give such notice shall result in Client's waiver of the claim. Additionally, Client agrees that failure to give such notice from the time it reasonably should have discovered any alleged defect, fault, error, non-compliance or omission in Consultant's services, and

failed to give proper notice, shall result in Client's waiver of the claim. All claims against Consultant, whether grounded in contract, tort, or otherwise, shall be brought no later than three (3) years from the date of issuance of the invoice relating to the services giving rise to the claim. Client expressly waives any applicable discovery rule or applicable statute of repose for any services provided under this Agreement.

effort to exclude proprietary or confidential information. Client agrees to notify Consultant in writing of specific proprietary or confidential information to be excluded.

### **23.0 PROPRIETARY RIGHTS OF CONSULTANT**

Client acknowledges that Consultant has developed systems, processes, apparatus, analytical tools and methods which are proprietary to Consultant and which are used in its business. Such systems, processes, apparatus, analytical tools and methods (including software, patents, copyrights and other intellectual property), and all derivations, enhancements or modifications thereof made by Consultant including those as a result of work performed by Consultant hereunder, shall be and remain the property of Consultant.

### **24.0 PHOTOGRAPHIC/ARTISTIC REPRESENTATIONS**

Consultant shall have the right to use photographic and artistic representations of the Project for promotional or professional purposes. Consultant shall make its best



**2017 BILLING RATES**

<b><u>BILLING CATEGORY</u></b>	<b><u>HOURLY RATE</u></b>
Researcher, Clerical	\$ 67
Project Administrator	\$ 78
CADD, Survey, Technician I	\$ 78
CADD, Survey, Technician II	\$ 84
CADD, Survey, Technician III	\$ 94
Engineer, Scientist, Analyst I	\$ 97
Engineer, Scientist, Analyst II	\$ 105
Engineer, Scientist, Analyst III	\$ 124
Senior Engineer, Scientist, Analyst I	\$ 141
Senior Engineer, Scientist, Analyst II	\$ 158
Senior Engineer, Scientist, Analyst III	\$ 180
Associate	\$ 196
Officer	\$ 205
Senior Officer	\$ 215

**DIRECT CHARGE SCHEDULE**

Subcontractors/Subconsultants	Cost plus 15%
F&O Staff Mileage	At Prevailing IRS Rate
F&O Field Vehicles	\$100/day plus \$.35/mile
Geoprobe Box Truck	\$.85/mile
F&O Hybrid Vehicles	At Prevailing IRS Rate
Printing/Reprographics	
Black & White Copy/Print	\$0.065/page
Color Copy/Print	\$0.40/page
Electrostatic Copy/Print	\$0.25/Sq. ft.
Inkjet Plotter monochrome	\$0.25/Sq. ft.
Color Plotting	\$1.00/Sq. ft.
Inkjet Mylar	\$2.50/Sq. ft.
Binding Materials	At Cost
Payment processing fees (e.g. debit or credit cards)	At Cost (minimum 3%)

### 2017 BILLING RATES

FIELD EQUIPMENT SCHEDULE	PER DAY (unless noted)
Air Sampling Pumps	\$15
All Terrain Vehicle	\$100
Bladder Pumps	\$25
Boat	\$50
Combustible Gas Indicator (CGI)	\$20
Concrete Coring Machine	\$250
Cone Penetrometer	\$25
Dissolved Oxygen/Temp/pH Meter (YSI-30)	\$15
Generators	\$50
Geoprobe Sampling Rig	\$600 <sup>(a)(b)</sup>
Ground-Penetrating Radar	\$250 <sup>(a)</sup>
Hammer Drill	\$50
Hand Auger	\$25
Interface Probe	\$25
Infiltrometer	\$25
Low Flow Controller	\$50
Metal Detector	\$25
Multimeters (YSI-600)	\$85
Confined Space Meter (Multi-Gas Meter)	\$30
Peristaltic Pumps	\$20
Petro Flag Sample	\$25
Photoionization Detector (OVM/PID)	\$75
Soil Gas Sampling Equipment	\$100
Soil/Sediment VOC Supplies (Terra Core)	\$2 per sample
Soil/Sediment SPLP/TCLP Supplies (Encore)	\$ 10 per sample
Soil Vapor Extraction (SVE) Pilot Test Equipment	\$260
Survey Levels	\$30
Survey GPS Submeter Receiver	\$50
Survey GPS VRS Subcentimeter	\$100
Survey Robotic Total Station	\$100
Total Organic Vapor Analyzer	\$65
Tracer Dye Flow Dilution Equipment	\$1,600 a day
Transit Time Flowmeter	\$130 per day, \$520 per week, \$1,706 per month
Turbidity Meters	\$15
Water Level Indicator	\$15

(a) Plus expendables and standard hourly rate for operator.

(b) CT State sales tax may apply