



# FUSS & O'NEILL

March 6, 2019

Mr. Thomas Deller, AICP  
Director of Planning  
City of Central Falls  
580 Broad Street  
Central Falls, RI 02863

RE: Proposal for Professional Services  
Jenks Park Site Improvements  
Central Falls, RI  
Fuss & O'Neill Reference No. 20170811.A50

Dear Mr. Deller:

This revised proposal has been prepared at your request to include an approach with two distinct phases to provide design services for Jenks Park Site Improvements. This revised proposal supersedes our initial proposal (dated February 15, 2019), which was prepared in response to the City's request for proposals.

## Project Understanding

It is our understanding that the City wishes to contract for design services for Jenks Park Site Improvements through City funds. Site improvements will include restoration of the fountain, Cogswell Tower and large umbrella structures; installation of new lighting and associated wiring; installation of a new playground; installation of security/safety fence; and, reseeding the lawn areas. Bid documents are currently planned to be completed by May 6, 2019 and construction is planned to commence by June 3, 2019. The physical rehabilitation work is planned to be carried out over a two-year construction period.

As the plans are developed and construction implemented, it will be vital to maintain coordination with City agencies. Therefore the following tasks will be completed to maintain an efficient project:

1. Evaluate condition of existing facilities and prepare a park master plan with a phased approach to complete the proposed improvements.
2. Prepare bid documents and opinion of construction cost.
3. Review contractor bids and recommend a contractor to the city to perform the work.
4. Provide construction administration services over two construction seasons.
5. Review and approve contractor invoices

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## Project Approach

We begin with a deep understanding of the history and importance of Jenks Park as the heart of Central Falls, both geographically and symbolically. Our approach brings a team of professionals with extensive experience in all of the mandatory elements required by the scope. But beyond those core competencies, our team will contribute extra value to the process of design through our deep understanding of the history of Jenks Park and its role in a resurgent Central Falls.

We believe that the team preparing the master plan and designing the improvements for Jenks Park should be acutely conscious of the history of the park and the existing historic design elements. However, participants must also be aware that improvements do not need to be a pure “restoration”, but can instead balance the historical elements in the park with the needs of 21<sup>st</sup> century Central Falls and its residents to redevelop a beautiful, durable and sustainable asset for the City.

Jenks Park has been recognized as one of the most important designed historical landscapes in Rhode Island through its listing on the National Register of Historic Places in 1979. It possesses many of the elements that typify the designs of late 19<sup>th</sup> century parks; urban green spaces that were created as American cities were rapidly developing during industrialization. Jenks Park was designed and built to serve as an oasis in the midst of noisy and crowded urban life, where natural elements like trees, flowers, tranquil pools, bubbling fountains and curving walks could provide as escape from crowded neighborhoods and mill workshops.

Our team is composed of professionals with deep expertise in projects similar to the Jenks Park rehabilitation effort. Resumes for some of our staff have been provided in our on-call qualifications package, but we will be happy to provide resumes for all project team members upon request. Key team members include:

- **Arnold Robinson, AICP**, is our proposed Project Manager and is Fuss & O'Neill's Regional Director of Planning. Arnold is an experienced historic preservationist and has collaborated with the Rhode Island Historical Society in researching details of the development, design and history of Jenks Park as part of his work with Roger Williams University's Community Partnerships Center. Arnold is an experienced and project manager responsible for directing multi-disciplinary teams while actively and collaboratively engaging with clients and stakeholders.

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- **Stephanie White, RLA**, is a landscape architect with experience in park master planning and design, with credits including: Filley Park in Bloomfield, CT and Hamden Center Town Park, Hamden, CT; assessment of 14 of the 30 parks in the city Everett, MA for four key elements: Image, Safety, Functionality, and Sustainability; and landscape architecture for green infrastructure in the Olneyville neighborhood and at the Waterfire Art Center in Providence and the on-going Pine Street complete street in Pawtucket.
- **Charles Waskiewicz** is an electrical engineer and will lead the design associated with the site lighting and pumps for the water fountain. Charlie has 47 years of experience primarily working on public infrastructure for state agency, municipal, higher education, and renewable energy projects. The electrical engineering design will be stamped by a RI-licensed professional engineer.
- **Stuart Harris, PE**, has almost 40 years of structural engineering experience and has an extensive background with the assessment and rehabilitation of historic structures.
- **Andrew Glines, PE**, is a civil engineer with seven years of experience on private and public development and infrastructure projects, including Festival Pier Park, Pawtucket, campus-wide low-impact stormwater practices at Providence College, and the redevelopment of 78 Fountain Street in Providence. Prior to joining Fuss & O'Neill, Andy was a Lead Estimator and Project Manager for a Boston-based landscape contractor with projects including the historic park and playground at DeFilippo Park in Boston.

#### **Key Project Elements within Site Master Planning**

- Rehabilitation of the masonry and ornamental metalwork of Cogswell Tower. The tower is a magnificent symbol for the City of Central Falls and seventy feet tall – a graceful square tower set atop and imposing semi-circular bastion of stonework which seems to rise from the natural rock outcroppings. Cogswell Tower is a unique historic structure designed by Pawtucket architect Albert H. Humes and built in 1904 as a bequest of Caroline Cogswell to the City. Fittingly, it has been the symbol of the City of Central Falls since its construction. The tower is supported by a brick barrel vault resting atop the historic Dexter's Ledge.
- Rehabilitation of the large fountain/water pool that sits atop one of the rises in the park to a functional condition so that it can become an active element in the park.
- Rehabilitation of the unique iron “umbrella” shelters that provide protection from sun and rain for park visitors.
- Selection of appropriate, yet affordable, site lighting that provides for a safe environment that can be used for events and citizens after dark, but also respects the existing historic elements of the park.



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- Selection of appropriate, yet affordable, site fencing that meets modern safety standards and meshes with the park's historic elements.
- Selection of durable, safe, accessible and appropriate playground equipment in the most appropriate location within the park.

Fuss & O'Neill's team will consult existing historic resources to guide park master plan recommendations and specific selection of elements to best mesh with existing elements that define the character of Jenks Park. We will also work closely with City officials and appropriate stakeholders (as indicated by the City) to assure that the design will meet broad community needs and receive support from future users.

## Phase 1 Scope of Services

### Task 1: Project Initiation and Site Assessment

Under this phase of the project, the team will initiate the project in a meeting with City Staff and site assessments, creation of base site plan and field assessments of key Park elements. The specific work items under this phase of the project will include the following:

- Attend one (1) project kick off meeting with the City Staff to discuss project goals, scope of work and schedule. Two (2) Fuss & O'Neill staff members to attend the meeting
- Visit the site to photograph and observe existing site conditions, including the masonry of the tower, fountain, and umbrella structures, and the playground, lighting and walkways.
- Collect and compile readily available historical mapping, photographs and documents.
- Review and compile information for the City's GIS-based mapping of the project area. The approximate boundary lines of properties will be depicted from the City's parcel database.
- Perform a topographic survey based on NAVD 1988 vertical datum, NAD 1983 horizontal datum, and compiled property boundary information.
- Evaluate surface water runoff conditions of the park.
- Provide engineer's condition assessment of existing fountain, stone masonry tower, and umbrella structures.
- Prepare site analysis diagram depicting observations and areas of improvement.

### Task 1 Deliverables:

- Topographic survey mapping
- Existing Conditions Assessment Memorandum
- Site Analysis Diagram

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## **Task 2: Master Plan**

The specific work items under this phase of the project will include the following:

- Prepare rendered master plan and recommendations of the park. The master plan will depict and describe restoration improvements to historical structures, depict new improvements such as site lighting, fencing, new playground and amenities.
- Prepare a conceptual stormwater management plan to address known areas of flooding or poor drainage. Evaluate the potential for incorporating low-impact stormwater management into the landscape.
- Prepare (1) site materials and product board new materials for the site including: fencing, lighting and playground equipment and plantings.
- Evaluate existing playground location and explore possible relocation opportunities to share with the City.
- Prepare an Order of Magnitude Opinion of Cost for the master plan improvements.
- Prepare phasing plan based upon order of magnitude cost estimate.
- Attend one (1) meeting with City Staff to review Master Plan recommendations and conditions assessment of historical structures. At the conclusion of this meeting (or shortly thereafter), the City will communicate the selected site improvements that it wishes to implement based on program priorities and available construction funding. This will become the basis for Fuss & O'Neill's Phase Two Design Scope of Services and Fee.

### **Task 2 Deliverables:**

- Rendered Master Plan
- Phasing Plan of park improvements
- Order of Magnitude Opinion of Cost

## **Phase 2 Scope of Services**

### **Task 3: Design Development**

This phase of the project will advance the concept design of the approved Master Plan to set of design development documents to approximately 50% of the level of detail required for construction. The final Scope of Work for park improvements will determine the consultant's scope. Key task items may include:

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- **Playground Design:** This task will include concluding on the location, sizing, equipment and materials for the playground. We will work with City Staff for a preferred playground vendor as well as age groups, types of equipment, fencing and surfacing. A playground layout plan will be prepared during the design development phase. The playground layout plan will depict: approved playground equipment, fall zones, playground surfacing, fencing, picnic areas, and shade structure, if any. Construction details and specifications for the playground and associated materials will be provided during in the bid documentation phase.
- **Landscape Plan:** This task will include the preparation of a landscape plan which will include lawn restoration areas, new tree plantings, park fencing, as well as site lighting. We will work with the City in the selection of a contextually appropriate light fixture. If determined in the master planning process walkway realignment are warranted, the landscape plan will include a walkway layout, dimensioning, and materials. Plant species callouts and quantifies will be provided for new plant material. Construction details and specifications for the fencing, lighting, planting and walkways will be provided in the bid documentation phase.
- **Structural Design:** Prepare illustrative plans for the structural repair components identified in Task 1. The plans will comprise of existing photos and annotations to identify and describe repairs and in kind replacements required. Prepare technical specifications associated with the structural in kind replacement and repairs.
- **Lighting and Electrical Design:** Incorporate pedestrian scale lighting along walkways and public areas. We will assist with the selection of a light pole with LED fixture and prepare an electrical site plan, specification and electrical details. We have assumed a pedestal service meter with a connection to the existing overhead National Grid infrastructure. We will also coordinate the service request with National Grid.
- **Stormwater Management:** Evaluate the potential for incorporating low-impact stormwater management into the landscape.
- **Design Development Submission:** The Design Development submission will be submitted electronically to the City via FTP in PDF format. If hardcopies are required, we will provide them at the agreed upon fee per plan set.
- **Meetings:** Attend one (1) meeting with city staff to review the Design Development documents.

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### **Task 3 Deliverables:**

- Playground Layout and Materials Plan
- Landscape Plan
- Design Development Plans and specifications for landscaping, playground, electrical design, stormwater management.
- Design Development structural repair illustrative plans and specifications.
- Updated Opinion of Cost.

### **Task 4: Bid Documents**

Finalize the project design to include incorporation of Design Development comments from the city. The city will provide all Design Development comments at one time prior to the initiation of preparation of bid documents.

- **Bid Package**
  - The City will provide Fuss & O'Neill with its standard front end documents for the solicitation of construction services (e.g. form of contract, bid notification, etc.). We will provide a unit cost bid tabulation form, and make minor modifications to the design documents. We have assumed one round of comments from the City on the bid package.
  - The bid package will include final drawings and technical specifications for the scope of work of the proposed improvements.
- **Final Opinion of Construction Cost:** Update and submit quantity computations and the anticipated Opinion of Construction.
- **Final Design Submission:** The Bid Package will be submitted electronically to the City via FTP in PDF format. If hardcopies are required, we will provide them at the agreed upon fee per plan set.

### **Task 4 Deliverables:**

- Bid Package
- Final Opinion of Construction Cost

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### **Task 5: Bidding Support**

We have budgeted 56 hours for this task, which will include:

- Attend the construction pre-bid meeting and assist the City in preparing addenda to the construction documents.
- Prepare a bid analysis to assist the City in selecting a contractor. We will review conformance with the bid requirements and comparison of unit prices between the lowest three (3) bidders and Fuss & O'Neill's Opinion of Cost.

### **Task 6: Construction Administration**

Due to the uncertainty of the extent and duration of the improvements, we have prepared a budget to provide support on a time and materials basis. Should additional effort be necessary, revisions to this task fee will be required

- Consultation During Construction
  - We will provide consulting services during construction. Our fee includes up to 120 hours of staff time.
  - Review contractor submittals, applications for payment, responding to requests for information, and attending field meetings to solve problems associated with unexpected field conditions or utility conflicts.
- Construction Inspection
  - We will provide consulting inspection services during construction. Our fee include up to 130 hours of staff time.

### **Additional/Alternate Tasks**

#### **1. Informational Meeting**

Coordinate and attend one (1) informational meeting for design-related discussions and status updates.



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## 2. Value Engineering

If the preliminary opinion of construction cost exceeds the amount in the budget, we will prepare a memorandum for City approval indicating possible cost-saving measures that may be included in the Final design, subject to City approval. We have allocated 20 total hours for this task.

## Fees

### Phase 1 Fees

Fuss & O'Neill proposes to provide these professional services on a lump sum basis. Our policy is to invoice monthly as a percentage complete for each of the lump sum tasks.

<b>Tasks</b>	<b>Fee</b>
1. Project Initiation and Site Assessment	\$24,000
2. Master Plan	\$16,000
<b>Total</b>	<b>\$40,000</b>
<b>Add/Alt Tasks</b>	
1. Informational Meeting	\$1,500

Direct costs for mileage, mailings, and reproductions that are not listed in this proposal will be provided according to our Direct Charge Schedule.

### Phase 2 Fees

Based on the City's Initial Request for Proposals, a preliminary estimate of Phase Two Fees is listed in the table below. Upon completion of the Phase 1 services, Fuss & O'Neill will prepare a revised proposal for Phase 2 that includes a scope of services, fees, and schedule based on the City's selected site improvements identified in the Master Plan.

<b>Tasks</b>	<b>Estimated Fee</b>
3. Design Development	\$24,000
4. Bid Documents	\$22,000
5. Bidding Support	\$8,000
6. Construction Administration	\$38,000

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<b>Tasks</b>	<b>Estimated Fee</b>
<b>Total</b>	<b>\$92,000</b>
<b>Add/Alt Tasks</b>	
<b>2. Informational Meeting</b>	<b>\$1,500</b>
<b>3. Value Engineering</b>	<b>\$3,500</b>

Direct costs for mileage, mailings, and reproductions that are not listed in this proposal will be provided according to our Direct Charge Schedule.

## Assumptions

1. RIDOT Standard Specifications for Road and Bridge design will be utilized.
2. Environmental hazardous materials evaluations and remediation design is not included.
3. No structural drawings or details will be provided. All structural repair work will utilize existing and historical photos to describe work required.
4. The City will provide police details for traffic control during all field work within public streets for this project, if required.
5. The City will waive permit and/or bond fees needed for work within city streets.
6. Design submission reviews will be completed by City within one week of submission date.
7. Meeting attendance is limited to the meetings expressly detailed in the scope of services. Additional meetings shall be charged at the attached hourly rates.
8. No warranty, or guarantee, is expressed, or implied concerning the granting of permits or approvals required for this project, or timelines for review and action, by regulatory agencies within the desired project schedule.
9. Survey, evaluation, design upgrades and design of underground infrastructure and utilities are not included in this scope.
10. Geotechnical borings will not be made part of this scope.



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## 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. We look forward to working with you on this project.

Sincerely,

Arnold N. Robinson, AICP  
Associate | Regional Planning Director

Shawn M. Martin, PE  
Vice President | Regional Office Manager

/rlz

Attachments: Authorization to Proceed  
General Terms and Conditions

## Authorization to Proceed

Shawn M. Martin, PE  
Fuss & O'Neill, Inc.  
317 Iron Horse Way  
Suite 204  
Providence, RI 02908

RE: Authorization to Proceed  
Proposal for Professional Services  
Jenks Park Site Improvements  
Central Falls, RI  
Fuss & O'Neill Reference No. 20170811.A50

Authorized Budget: \$ \_\_\_\_\_

Dear Mr. Martin:

I hereby authorize Fuss & O'Neill to proceed with the above-referenced project in accordance with the General Terms and Conditions and proposal dated March 6, 2019.

<u>James A. Diossa</u>	<u>4/24/19</u>
Printed Name	Date
<u></u>	<u>Mayor</u>
Signature	Title

Approved as to form and correctness:

Irina M. Gorman  
Acting Finance Director



### GENERAL TERMS AND CONDITIONS

Attached to and incorporated into the Proposal that, as executed, shall serve as an agreement between City of Central Falls (Client) and Fuss & O'Neill, Inc. (Consultant) dated March 6, 2019 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 complete 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 ownership and property interests 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 by Client of Consultant's documents to third parties without written consent of Consultant including, but not limited to, any corruption or alteration arising out of the transmission of electronic files or occurring to 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 request by Client for 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, advance notice 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, if any, are 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. 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 litigation in a court of competent jurisdiction, 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 Rhode Island

#### **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, delete or supersede 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 may advise Client with respect to selecting other consultants, and may assist Client in coordinating and monitoring the performance of other consultants as an additional service for which Consultant is entitled to an agreed fee. 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. 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 solely 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 damages, including reasonable attorneys' fees, to the extent such damages are caused by the indemnifying party's negligent acts, errors, or omissions, as ultimately adjudicated. In the event damages 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 shall notify Client and 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 Client warrants to Consultant 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, representatives and employees harmless from and against claims, losses, damages and expenses including, but not limited to, defense costs and the time expended by Consultant, its employees, agents and representatives, 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 limitations or statute of repose.

#### **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 those for whom it is legally liable 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.

#### **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 and fees may be accomplished as required. If such change, additional services, or delay in commencement of the project, unanticipated delay in construction of the project 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. No work shall commence until the Parties have mutually agreed upon and memorialized any changes in writing signed by both Parties.

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 to which Consultant is entitled to payment.

#### **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, Client shall pay Consultant 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 Rhode Island.

#### **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/subconsultants 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 a sales tax 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 provide Consultant with such an exemption certificate within that time period, 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 two (2) 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.

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