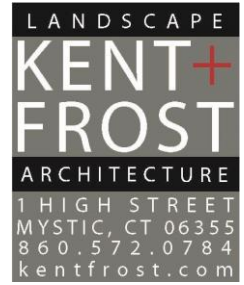


**CHANGE OF SCOPE and FEE ADJUSTMENT for the
MYSTIC RIVER BOATHOUSE PARK MASTER PLAN CONTRACT**

**SUPPLEMENTAL SERVICES REQUEST
CONSTRUCTION DOCUMENTS AND PERMITTING**



**Susan Cullen, Director of Planning
Town of Stonington Connecticut**

Date, May 8, 2020

Dear Susan & Members of the Mystic River Boathouse Park Implementation Committee,

The primary scope of work from our original contract (Contract Tasks 1-9, Exhibit A) is substantially complete. In accordance with Contract Exhibit E the next portion of work shall be:

1. Preparation and submission for Local, State and Federal Permits
2. Construction Documents and Specifications
3. Bidding/Award/Construction Contract Assistance
4. Construction Observation

Kent + Frost has assembled a team to meet the needs of the project, including:

- Fuss & O'Neil – Environmental Engineering
- Docko Engineering – Dock Design
- First Water Engineering – Living Shoreline/Coastal Engineering
- Stadia Engineering – Civil Engineering
- Fuss & O'Neil – Traffic Engineering

Scope of Service:

TASK 1 Local, State and Federal Permitting:

The Design Team will submit to local, State and Federal agencies for all necessary permits for approval. Attendance at all meetings, hearings and walkthroughs will be included. Application fees, printing/copies, postage & mileage will be billed at cost.

Permits include:

Coastal Permits – we anticipate being in the **Individual Permit** process from CTDEEP OLISP:

- Structures, Dredging & Fill Permit – DEEP (Docks, Pier, Coastal remediation, Fill)
- Harbor Management Commission (Local & DEEP)
- Shellfish Commission (Local & Department of Ag / Aquaculture)
- 401 Water Quality – Army Corps
- Natural Diversity Database Review
- Coastal Area Management permit DEEP
- Stormwater management permit and permit to discharge from CTDEEP
- CEPA/NEPA review unknown

Brian Kent, PLA

Chad Frost, PLA

Landscape Architecture

Urban Planning

Sustainable Design

Project Management

Brownfield Permits - CTDEEP/CTDECD OBRD:

- Environmental Condition Assessment Form
- Remedial Action Plan & Engineered Control Variance Request (2 Parts)
- Hazardous Material Abatement Report & Remedial Action Report
- Environmental Land Use Restriction (ELUR)
- Groundwater Monitoring and Reporting?
- LEP Verification & Report

Site Permitting:

- Master Plan / Zone Change (PZC/ARB/BOPC)
- Site Plan (PZC/ARB/BOPC)
- Encroachment and Driveway Permits from CTDOT
- On-street Parking Permits from Stonington BOPC/LTA and CTDOT
- Historic preservation permits from CTSHPO
- Building Permits from Stonington Building Official
- Hazardous Materials removal permits from LLHD

TASK 2 Phase One Construction Documents including Drawings and Technical Specifications:

A full set of construction plans and specifications showing all work for construction will be prepared for use in negotiating/bidding and for project construction. The design team shall prepare drawings and technical specifications necessary for a complete and high-quality installation of site related improvements. The plans shall include but may not be limited to:

1. Demolition Plan. Indicates site elements to be removed, and to be protected and preserved
2. Grading, Drainage and Staking Plan. Ensures accurate location of fields, amenities, walls, steps, paving, and all hardscape elements relative to landscape construction. Determines grading - sets finish elevations of hardscape and landscape features, determines drainage - surface and subsurface
3. Paving Plan. Clearly depicts paving materials, patterns and borders
4. Planting Plan, Specifications and Plant List. Identifies, shows locations of, and quantifies plantings. Specifications include requirements for soil preparation, plant material quality, plant installation and warranty
5. Landscape Utilities Plan. Shows locations of electrical receptacles, light fixtures, hose bibs, irrigation equipment, relocation of electric service (if needed) etc.
6. Construction Details and Specifications. Includes detail drawings of walls, steps, paving, fencing and gates, and other specific landscape features
7. Other drawings and specifications as deemed necessary
8. Cost Estimate. Throughout the construction document process the cost estimate will be refined to reflect current plans to help make educated decisions through the process.

TASK 3 Bidding/Award/Construction Contract Assistance:

1. Conduct a Pre-Bid Meeting on site. Review and evaluate bids, and provide recommendation for award by the TOWN.
2. CONSULTANT will assist the Town in preparing bid documents, identifying skilled and reliable local contractors & craftsmen to be included in the bid process, and selecting & negotiating with contractors.

TASK 4 Construction Observation Services during the Phase One Construction Period:

K+F shall serve as an independent third party throughout the construction process to assure contractor performance and quality of workmanship. CONSULTANT responsibilities shall include:

1. Answer RFI's, and review payment requests
2. Attend job meetings/site inspections throughout the construction period and conduct periodic inspection of the work of Contractors involved in site related construction: Mason, electrician, plumber, landscaper, etc. Frequency of inspections shall be variable. When site work is ongoing, inspections shall occur at least once per week
3. Prepare supplemental drawings if needed during construction due to unforeseen subsurface conditions, Owner initiated changes, etc.
4. Confirm availability and cost of specified plants at nurseries, tagging specimen plants at nurseries, inspection and placement of plants prior to planting
5. Other miscellaneous coordination.

Scope of services shall be defined by the J Dempsey Associates proposal dated November 22, 2017 attached.

Fee adjustment for Kent + Frost shall be:	\$183,500
Fee adjustment for Docko Inc. shall be:	\$12,500
Fee adjustment for First Water Engineering shall be:	\$57,500
Fee adjustment for Stadia Engineering shall be:	\$22,000
Fee adjustment for F&O Traffic Engineering shall be:	\$16,200
Fee adjustment for F&O Environmental shall be:	\$179,000 - \$228,000

The net change to the contract is an additional \$475,700 - \$519,700.

If the above request for **Change of Scope and Fee Adjustment** is acceptable, please sign below.

This AGREEMENT, made this _____ day of May, 2020 by and between the Town of Stonington, acting through the Department of Planning and Development, and Kent and Frost, LLC, an LLC under the laws of Connecticut, and having its principal office in the Town of Groton, Connecticut.

IN WITNESS WHEREOF, the TOWN has caused these presents to be signed by its duly authorized agent for the purpose and CONSULTANT has caused these presents to be signed by its Principal, its duly authorized agent for the purpose on the day and year written above.

In the presence of:

TOWN OF STONINGTON

In the presence of:

KENT AND FROST, LLC

Chad Frost, Principal

Exhibits

The following attachments are Exhibits which are incorporated and made part of this AGREEMENT:

- EXHIBIT A Fuss & O’Neil Order of Magnitude Opinion of Cost Environmental Engineering Services
- Error! Reference source not found.** Fuss & O’Neil Traffic Engineering Proposal
- Error! Reference source not found.** First Water Engineering Proposal for Living Shoreline and Coastal Permitting

EXHIBIT A

**Fuss & O'Neil Order of Magnitude Opinion of Cost Environmental Engineering Services
(Descriptions of services forthcoming)**

ORDER OF MAGNITUDE OPINION OF COST
 ENVIRONMENTAL ENGINEERING SERVICES
 MYSTIC BOATHOUSE PARK PROJECT
 123 GREENMANVILLE AVENUE
 STONINGTON, CT
 FEBRUARY 2020

ORDER OF MAGNITUDE OPINION OF COST		DATE :	2/5/220	SHEET	1	OF	1
PROJECT :	Mystic River Boathouse Park	BASIS : Contractor rates from other projects. Engineering experience. ConnDOT weighted average unit prices.					
LOCATION :	Stonington, CT						
DESCRIPTION :	Environmental Engineering Services						
DRAWING NO. :	N/A	ESTIMATOR :	DRJ	CHECKED BY :			
<p>Since Fuss & O'Neill has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, Fuss & O'Neill's opinion of probable Total Project Costs and Construction Cost are made on the basis of Fuss & O'Neill's experience and qualifications and represent Fuss & O'Neill's best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but Fuss & O'Neill cannot and does not guarantee that proposals, bids or actual Total Project or Construction Costs will not vary from opinions of probable cost prepared by Fuss & O'Neill. If prior to the bidding or negotiating Phase the Owner wishes greater assurance as to Total Project or Construction Costs, the Owner shall employ an independent cost estimator.</p> <p>Costs estimated on an order-of-magnitude basis are generally accurate to within a range of -30% to +50% of the final project cost.</p>							
ITEM NUMBER	ITEM DESCRIPTION	UNIT OF MEASURE	QUANTITY	ITEM COST	TOTAL COST		
Remedial Engineering Design, Procurement, Implementation							
1	Permitting for State & Local Approvals						
a	State Voluntary Remediation Program 22a-133x	EA	1	\$5,500	\$5,500		
2	Design						
a	Part 2 ECVR preparation, filing and 1 round of DEEP Comments	EA	1	\$6,000	\$6,000		
b	Remediation Contractor Plans and Specifications for Procurement	EA	1	\$5,000	\$5,000		
c	Hazmat Abatement Specification	EA	1	\$2,500	\$2,500		
3	Hazardous Building Materials Field Oversight						
a	Hazmat Abatement Oversight and Sampling	day	8 to 15	\$1,500	\$12,000 - \$22,500		
4	Soil Excavation and Construction of Engineered Controls						
a	Field Oversight and Sampling	day	8 to 15	\$1,500	\$12,000 - \$22,500		
5	Deliverables						
a	Hazmat Abatement Report	LS	1	\$1,500	\$1,500		
b	Remedial Action Report	LS	1	\$8,000	\$8,000		
6	Post Remediation Obligations						
a	Environmental Land Use Restriction (ELUR) and ELUR Survey	EA	1	\$25,000	\$25,000		
b	Monitoring Well Installation	EA	4	\$1,200	\$4,800		
c	Groundwater Sampling & Reporting	EA	8	\$3,500	\$28,000		
d	LEP Verification Report and LEP Verification	EA	1	\$16,000	\$16,000		
e	Surety for Engineering Controls	YR	30	\$1,200	\$36,000		
Project Subtotal					\$162,300 - \$207,300		
10% Contingency					\$16,230 - \$20,730		
Total Estimated Cost (Rounded)					\$179,000 - \$228,000		

Notes

Orange highlighted rows indicated required components if the site is subject to formal compliance with the cleanup regulations through participation in a state cleanup program.

- 1a) Services for entry into State Voluntary Program 133x consists of completion of Environmental Condition Assessment Form and Filing Fee
- 2a) Part 2 ECVR will consist of the application preparation and address 1 round of DEEP comments. Assumes design plans will be prepared by others.
- 2b) Preparation of technical specifications for remedial earthwork excavation, notice to contractors, soil management plan, and bid form. Assume front end bid documents and procurement services will be performed by others.
- 2c) Preparation of technical specifications for hazardous building material abatement services. Assume front end bid documents and procurement services will be performed by others.
- 3a, 4a) Abatement, Excavation, and Engineered Control Oversight and associated sampling estimated based on an 8 to 15 day period on-site.
- 5a, 5b) Preparation of abatement and remediation activities closeout reports.
- 6a) Preparation of an environmental land use restriction application and A-2 survey for ELUR application. Does not include legal fees.
- 6b, 6c) Assumes post remediation groundwater monitoring required for AOC 2 and AOC 3 soil excavation areas to remediate GB PMC releases.
- 6d) Preparation and filing of an LEP Verification Report and LEP Verification Form.
- 6e) Establish 30 year surety for operation, maintenance, monitoring of the engineered controls.

EXHIBIT B

Fuss & O'Neil Traffic Engineering Proposal



FUSS & O'NEILL

March 11, 2020

Chad Frost
Kent + Frost Landscape Architecture
1 High Street
Mystic, CT 06355

Re: Agreement for Transportation Engineering Services
Mystic Boathouse Park Improvements
Mystic, Connecticut
Fuss & O'Neill Reference No. 20050139.T20

Dear Mr. Frost:

We are pleased to provide this agreement for transportation engineering support services for the proposed redevelopment and beautification of the Mystic Boathouse Park on Route 27 adjacent to the northernmost parcel of the Mystic Seaport. The Park will share site access and a small parking lot with the recently approved Delamar Hotel and restaurant/banquet facility on the northernmost Seaport parcel.

We will prepare a Traffic Impact Statement for the proposed Park enhancements and anticipated additional traffic volumes as well as provide design support for the proposed site access, circulation, and complete street improvements on Route 27 (Greenmanville Road) including potential on street parking. In addition, we will provide Town permitting support and prepare a submission to the Office of the State Traffic Administration (OSTA) for Administrative Decision Review. As OSTA submission is required given the site will share access with the Mystic Seaport's northernmost parcel and be considered an "expansion" to the OSTA certifiable area for the Seaport campus. The project is not anticipated to require off-site roadway improvements on Route 27, therefore it is assumed that OSTA can review this project administratively. Following Town and OSTA approval, we will prepare a submission to the Connecticut Department of Transportation (CTDOT) District 2 office for Encroachment Permit review of the proposed work in the State right of way.

Scope of Services

Traffic Impact Statement

Fuss & O'Neill will prepare a Traffic Impact Statement in support of the project's local land use applications. In accordance with the Town of Stonington and CTDOT requirements, we will complete the tasks shown on the following pages.

\\Private\Dfs\Projectdata\P2005\0139\T20\Proposal\MGV_Mystic Boathouse Park Traffic Proposal_20200310.Docx

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Manchester, CT
06040
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www.fando.com

California
Connecticut
Maine
Massachusetts
New Hampshire
Rhode Island
Vermont

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Mr. Chad Frost

March 11, 2020

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1. Conduct a site visit to observe existing traffic conditions in the vicinity of the site. Make field observations of operational efficiency and potential roadway improvements during the peak hours. Measure intersection sight distances from any additional driveways proposed on Route 27.
2. Utilize weekday morning, weekday afternoon, and Saturday midday peak hour manual turning movement traffic counts previously conducted at the following study area intersection:

- Route 27 at Rossie Pentway (Mystic Seaport Peaking Lot driveway)

This intersection will be studied in order to determine any impact from traffic generated by the proposed park. This intersection, along with the proposed shared park access driveways on Route 27, will be considered the study intersections.

3. Contact the CTDOT Bureau of Planning and the Town of Stonington and Groton Planning staffs to determine if any other developments in the area have been recently approved or are pending approval, which may affect traffic within the study area.
4. Apply the CTDOT approved background growth rate on an annual basis to the existing traffic volumes utilized in this study. Background traffic volumes will be derived to reflect conditions at the study area intersections at a time just prior to the planned completion of the proposed park (assumed to be 2021).
5. Obtain the latest three years of crash data available from the UConn Crash Data Repository for Route 27 along the site frontage, including the signalized intersection with Rossie Pentway, to confirm there are no existing crash patterns that may be exacerbated by the traffic generated from the proposed development.
6. Calculate the additional traffic expected to be generated by the proposed park during the weekday morning, weekday afternoon, and Saturday midday peak hours of traffic. Trip generation will be based on the latest Institute of Transportation Engineers (ITE), Trip Generation Manual (10th edition) as well as data on park travel patterns provided by the Town and/or your office.
7. Distribute the site generated traffic to the adjacent roadway network based on the layout of the existing road network in the area and existing traffic patterns.



Mr. Chad Frost

March 11, 2020

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8. Conduct capacity analyses for the weekday morning, weekday afternoon, and Saturday midday peak traffic hours for the background and combined traffic conditions at the study area intersections listed above to determine the potential traffic impacts associated with the proposed park on the adjacent roadway network. Analyses will be conducted using Synchro Professional software, version 10.
9. Determine the queue lengths for critical lanes within the study area, which will be affected by the anticipated site traffic. Queue lengths will be evaluated using Synchro Professional and Simtraffic software, version 10.
10. Prepare a traffic impact statement including computer drafted traffic volume figures, study methodologies, analyses, conclusions, and recommendations in accordance with Town and CTDOT traffic impact study requirements.
11. Submit the traffic impact statement to the Town of Stonington in support of the local approval process.

Design Support

1. Review and provide input on the proposed Park site plan layout including parking lot access drives and circulation.
2. Review and provide design input on the layout of the proposed streetscape enhancements along the Route 27 site frontage including the provision of on street parking. Provide justification of the benefits and safety of the complete street improvements and on street parking, including any available documentation on the effectiveness of these improvements in reducing vehicle travel speeds.

OSTA Administrative Decision Review

1. Prepare a submission to OSTA requesting an Administrative Decision review of the proposed “expansion” of the Mystic Seaport certifiable area. This submission will include:
 - a. Cover Letter
 - b. Traffic Impact Statement
 - c. Updated OSTA Overall Site Plan for Mystic Seaport development
 - d. Completed OSTA AD Submission checklist
 - e. Stormwater Management Report (provided by your site engineer)
 - f. Copy of Town Approval Letter
 - g. Stonington Town Engineer Flood History Statement

Mr. Chad Frost

March 11, 2020

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- h. DOT District 2 Drainage Engineer Flood History Statement
- i. Concurrence correspondence from the Town's Legal Traffic Authority

CTDOT Encroachment Permit Submission

1. Prepare a submission to the CTDOT District 2 office for Encroachment Permit review of all work proposed in the State Route 27 right of way including curb cut construction, new sidewalk construction, provision of on street parking, and other streetscape enhancements.

Meetings and Response to Comments

1. Respond to comments from the Town, OSTA, and CTDOT District 2 on an hourly basis, as required. We have assumed that response to one round of comments from each agency will be required.
2. Attend meetings/hearings in the Town of Stonington on an hourly basis to present the findings of the traffic statement. It is assumed that up to two meetings will be required.

Assumptions

1. No new traffic counts will be conducted. Existing traffic counts recently performed for the adjacent Delamar hotel and restaurant project will be utilized.
2. Drainage information required to be submitted to CTDOT in support of the OSTA Administrative Decision review will be provided by your civil engineer.
3. CAD files of the site layout plans will be provided to Fuss & O'Neill by your civil engineer.
4. Offsite improvements on Route 27 are assumed not to be warranted, and as such a full Major Traffic Generator Certificate Application will not be required. Should the Town or CTDOT/OSTA require physical off-site improvements on Route 27 (such as widening for turn lanes, bypass width, traffic signal revisions, or pavement marking/signage revisions), a full Certificate application may be required and an amendment to this agreement would be necessary.
5. Design of off-site improvements such as traffic signal design, new or extended turn lanes, left turn bypass widening, or pavement marking and signing plans is not included. Should such improvements be required, a separate agreement will be provided for these design services.

Mr. Chad Frost

March 11, 2020

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6. Attendance at project meetings, Town hearings, and response to comments if required will be billed on an hourly basis in accordance with the attached General Terms and Conditions and Rate Schedule.

Fees

Fuss & O'Neill proposes to provide these professional services for an estimated fee of **\$16,200** broken down as follows:

Task	Description	Fee	Basis
1.	Traffic Impact Statement	\$5,000	Lump Sum
2.	Design Support	\$1,500	Lump Sum
3.	OSTA Administrative Decision Review Submission	\$3,700	Lump Sum
4.	CTDOT Encroachment Permit Submission	\$1,500	Lump Sum
5.	Meetings (2)/Response to Comments (3 rounds)	\$4,500	Hourly (estimate)
	Total	\$16,200	

Attendance at project meetings, Town hearings, and response to comments will be billed on an hourly basis, as required, in accordance with the attached General Terms and Conditions and Rate Schedule.

Direct costs for mileage, mailings, and reproductions are included in the above fees.

Terms and Conditions

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

We appreciate the opportunity to submit this agreement to you and look forward to working with you on this project. Please contact me if you have any questions regarding this agreement.



Mr. Chad Frost
March 11, 2020
Page 6

Your execution and return of this agreement along with receipt of your retainer check constitutes your authorization for Fuss & O'Neill to proceed with the above described services in accordance with the attached General Terms and Conditions.

Sincerely,

Mark G. Vertucci, PE, PTOE
Associate

Attachment: Authorization to Proceed
General Terms and Conditions
Rate Schedule

Authorization to Proceed

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 11, 2020. 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 Kent + Frost Landscape Architecture 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 Kent + Frost Landscape Architecture (Client) and Fuss & O'Neill, Inc. (Consultant) dated March 11, 2020 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 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, 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 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/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.

2020 BILLING RATE SCHEDULE

LABOR CATEGORY	HOURLY RATE
Researcher, Clerical	\$ 80
Project Accountant	\$ 90
CADD, Survey, Technician I	\$ 95
CADD, Survey, Technician II	\$ 100
CADD, Survey, Technician III	\$ 105
Engineer, Scientist, Analyst I	\$ 115
Engineer, Scientist, Analyst II	\$ 125
Engineer, Scientist, Analyst III	\$ 140
Senior Engineer, Scientist, Analyst I	\$ 155
Senior Engineer, Scientist, Analyst II	\$ 170
Senior Engineer, Scientist, Analyst III	\$ 185
Associate	\$ 195
Officer	\$ 200
Senior Officer	\$ 200

DIRECT CHARGE SCHEDULE

Subcontractors/Subconsultants	Cost plus 15%
F&O Staff Mileage	At Prevailing IRS Rate
F&O Field Vehicles	\$100/day plus \$0.35/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 (e.g. debit or credit card)	3% fee

2020 FIELD EQUIPMENT RATE SCHEDULE

FIELD EQUIPMENT	DAILY RATE (unless otherwise noted)
Air Sampling Pumps	\$ 15
All Terrain Vehicle	\$ 100
Bladder Pumps	\$ 25
Boat	\$ 50
Combustible Gas Indicator (CGI)	\$ 110
Concrete Coring Machine	\$ 250
Cone Penetrometer	\$ 25
Dissolved Oxygen/Temp/pH Meter (YSI-30)	\$ 15
Generators	\$ 50
Hammer Drill	\$ 50
Hand Auger	\$ 25
Hydrogen Sulfide Sensor & Data Logger	\$ 206 per week
IAQ Meter	\$ 80
Interface Probe	\$ 25
Infiltrometer	\$ 25
Low Flow Controller	\$ 50
Metal Detector	\$ 25
Moisture Meter	\$ 80
Mold Air Pump	\$ 15
Multimeters (YSI-600)	\$ 85
Confined Space Meter (Multi-Gas Meter)	\$ 30
Particulate Monitor	\$ 155
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
Transit Time Flowmeter	\$ 130 per day \$ 520 per week \$ 1,706 per month
Turbidity Meters	\$ 15
Water Level Indicator	\$ 15
XRF	\$ 250

EXHIBIT C

First Water Engineering Proposal for Living Shoreline and Coastal Permitting

FWE

FIRST WATER ENGINEERING

March 19, 2020

Mr. Chad Frost
Kent + Frost Landscape Architecture
1 High Street
Mystic, CT 06355

Re: Proposal for *Living Shoreline Feasibility Study and Basic Site Exposure Study* (“Project”) at the Mystic River Boathouse Park

Dear Mr. Frost,

In response to your request, *First Water Engineering, LLC* (“FWE”) is pleased to provide this proposal to *Kent + Frost Landscape Architecture* (“Client”). The proposed tasks are in support of the improvements to the Mystic Boathouse Park at 125 Greenmanville Avenue; Mystic, CT 06355.

Scope of Services

The waterfront components of the design proposed by the Client include the installation of a new dock system, a boat ramp, and a living shoreline adjacent to a capped site. To facilitate the design, planning, and permitting of these waterfront components of the Project, FWE will provide the following services:

Task 1: Site Exposure Letter Report (Budget: \$3,000)

The Site Exposure Letter Report will provide information to aid the understanding of site-specific environmental factors. The document will be used in the Engineering Report, a required component of the permit application. Additionally, it will support the design of various living shoreline alternatives and may later be incorporated into performance specifications for the dock system. The Site Exposure Letter Report will include:

- Wind climate summary
- Wind driven wave analysis using ACES or Simulating WAVes Nearshore (SWAN)
- Summary/analysis of astronomical tides
- Flow within the Mystic River near the Site based on regional regression equations for CT and local stream gauge data

Wind, wave, and current data will be presented in terms of return periods (i.e. 10-year, 50-year, and 100-year events).

Task 2: Ecological Studies (Budget: \$2,500)

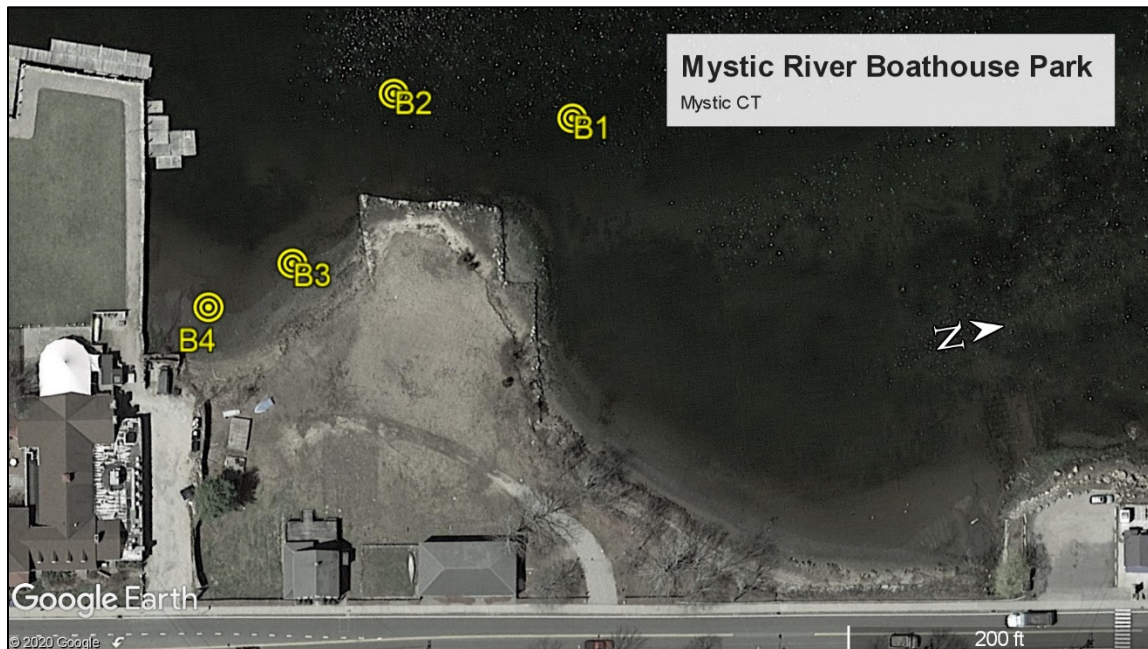
FWE will work with a wetland scientist to obtain mapping of the flora found at the Site. The proposed work will include mapping of the Submerged Aquatic Vegetation (SAV) and the intertidal vegetation. This information will be used to support typical regulatory requirements and to inform the design of the living shoreline.

The ecological studies must take place during the growing season consistent with CT-DEEP policy.

Task 3: Geotechnical Investigation and Letter Report (Budget: \$22,000)

Understanding the geotechnical properties of the soil within the river will aid the design of the float anchor system, break water/oyster castle foundation, and boat ramp. A geotechnical investigation can reduce uncertainty of both the design and installation of the waterfront structures, which reduces the likelihood of justifiable change orders and ad hoc modifications. While a geotechnical

investigation is limited and does not reveal all possible issues, it does provide a reasonable basis for planning.



Approximate Locations of the proposed borings.

FWE will coordinate with a driller to conduct a geotechnical investigation within the river and produce the associated letter report. The budget accounts for two (2) days of drilling in the vicinity of the proposed floats, living shoreline, and boat ramp with a goal of completing three (3) to four (4) borings (shown above). FWE will then produce a letter report to support the proposed improvements in and along the waterfront.

Task 4: Living Shoreline Feasibility Study

(Budget \$4,500)

FWE will contact CT-DEEP during the alternative development. The goal of these discussions will be to identify and address regulatory obstacles early in the design and permitting process. The results will be communicated within the Living Shoreline Feasibility Study, or as a separate transmittal.

The study will consider a minimum of three (3) living shoreline alternatives based on:

- Available studies
- Previously permitted living shorelines in the northeast identified in a document review
- Feedback from permitting officials
- Other readily available information

The feasibility of the following living shoreline approaches will be analyzed:

- Coir log plantings
- Oyster Castle Sill
- Rock Sill

A conventional non-engineered armor slope will also be considered as a basis for comparison.

FWE will also investigate the typical salinity at the site. Based on this information, and observed conditions at the site, the suitability of the site for various plant and shellfish species will be considered.

A typical cross section will be produced for each alternative based on the available survey and hydrographic data provided to FWE. To reduce uncertainty and address regulatory concerns, the

final design may require additional studies and investigations not included in this proposal (see “Exclusions”).

Task 5: State Permitting

(Budget: \$13,500)

FWE will complete the following tasks in support of the permitting of the proposed dock system, boat ramp, breakwater/oyster castles and living shoreline.

- Permit plans based on the design selected during the feasibility study.
- Submission of LWRD License Application Form C (Structures, Dredging and Fill & Tidal Wetlands) for the floats, boat ramp, breakwater/oyster castles, and living shoreline.
 - Calculations of areas impacted, habitat changed, fill etc.
 - Alternatives analysis considering (scope reduction, proposed locations, proposed designs) and discussing the project conformance with regulatory standards
 - Discussion of flood and erosion control structures including rationale, level of protection, likely erosional and depositional impacts.
 - Living Shoreline *Maintenance Plan*
 - Preliminary *Construction Sequencing and Methodology Plan* to be completed by the selected contractor.
 - Harbor Management Commission and Shellfish Commission signoffs will be required. To coordinate with these commissions and attend the meetings in support of the State Permits time will be charged at the hourly rate (estimated to be 10hours total - \$1,350 included in Task 5 total)
- Meetings and coordination with dock manufacturer and upland design team including the Client and Fuss and O’Neal (estimated to be 8 hours - \$1,080 included in Task 5 total)
- FWE will coordinate with the town and attend a coastal site plan review. Note, zoning and other local reviews are not included in this scope.

Task 6: Federal Permitting

(Budget: \$2,500)

FWE will complete the following tasks in support of the submission of a General Permit (GP) to the USACE:

- Coordinate prior to with USACE analyst prior to submitting permit application.
- Prepare a set of plans for an application for a General Permit from USACE.
- Submit an application for a USACE General for the floats, boat ramp, breakwater/oyster castles, and living shoreline.

Task 7: Boat Ramp Design

(Budget: \$2,500)

Design of the proposed boat ramp including the preparation of details, notes and performance specifications. The design will consider:

- Slope and existing water depths
- Geotechnical conditions
- Sedimentation

Task 8: Final Design and Construction Plans

(Budget: \$9,500)

The final calculations and construction plans task will include:

- Incorporating recommendations from the regulatory agencies
- Breakwater/oyster castle and foundation
- Coir log sizing and anchoring
- Design of living shoreline returns and closures
- Buried armor stones
- Shoreline plantings
- Construction level plans and specifications

Exclusions:

Sediment transport studies, 2d wave modeling, dye studies, upland hydraulic and hydraulic design, BMP design and analysis, Stormwater Management Reports addressing the upland, groundwater reports and studies, soil contamination reports and studies, environmental testing, design of containment systems and other environmental engineering tasks, surveys, geotechnical testing and borings beyond the what is specified above, additional environmental studies not included above, upland flooding, local regulatory review beyond what is specified above, additional site visits, float, pier, and anchor system design, bid support, construction administration and observation of work in progress.

Compensation

Fee Arrangements: Additional services requested by the Client will be billed at \$135/hour

Retainer: \$10,000

Other Terms and Conditions

See attached Schedule of Terms and Conditions.

If this proposal, including the attached Schedule of Terms and Conditions, is acceptable to you, please indicate your acceptance by countersigning below.

FIRST WATER ENGINEERING, LLC

By: _____

Mark Georgian
Principal

Agreed to:

Name:

Date:

FIRST WATER ENGINEERING, LLC
SCHEDULE OF TERMS AND CONDITIONS

The following Terms and Conditions are hereby incorporated by reference in the letter, proposal, or agreement (collectively, the "Agreement") to which they are attached. As used herein, the term "Client" refers to the individual(s) or entity(ies) described as such in the Agreement, and "FWE" refers to First Water Engineering, LLC.

1. **FEE AND PAYMENTS.** Payments are due within thirty days of receipt of an invoice. Unpaid invoices shall bear interest at two points above the prime rate as established by FWE's bank, and FWE shall be entitled to reimbursement of all collection costs, including legal fees. FWE shall also be entitled to suspend services if payment is overdue, and the Client shall release, indemnify, hold harmless and defend FWE from all claims arising from such suspension. FWE's compensation as described in the Agreement and in these Terms and Conditions shall be equitably adjusted if FWE's services are suspended, delayed, extended, or otherwise materially changed due to causes outside of FWE's control. Client shall not withhold amounts from FWE's compensation on account of allegedly negligent acts, errors or omissions but shall instead pursue any claim as set forth in Section 7 (Dispute Resolution) below.

2. **ADDITIONAL SERVICES.** The Client shall pay FWE an agreed upon fixed fee or at the hourly rates of its own personnel set forth in the Agreement or attached hereto, and at 1.1 times the amount billed to FWE by its Client-approved consultants, for services performed at the Client's request which are outside of the scope of basic services described in the Agreement ("Additional Services"), including, without limitation, services in connection with changes made at the Client's request that are inconsistent with prior approvals by the Client; and time spent in preparation for, and participating in, litigation, arbitration or mediation on behalf of the Client. Email or other forms of electronic communication can be used by the Client to authorize FWE to undertake Additional Services.

3. **REIMBURSABLE EXPENSES.** The Client shall reimburse FWE for (i) printing, photography, and non-routine duplication; (ii) delivery charges; (iii) travel (including meals, lodging, mileage, and other ground transportation) in connection with the project, (iv) soil tests, (v) the fees of consultants engaged by FWE at the Client's request other than those included in the Agreement as a basic service, (vi) expense of overtime work requiring higher than regular rates, if authorized by Client in advance; (vii) renderings and models requested by Client; and (viii) expenses of additional insurance coverage or limits requested by Client in excess of that normally carried by FWE, and (ix) other reimbursable expenses, if any, identified in the Agreement.

4. **STANDARD OF CARE.** FWE shall perform its services in accordance with generally accepted standards of skill and care applicable to engineers performing similar services at the same time, in the same locale, and under similar circumstances. No warranty, express or implied, shall apply to such services. FWE shall be responsible for meeting mutually agreed schedules, provided that FWE shall not be responsible for delays due to causes beyond its reasonable control and without its negligence or fault.

5. **TERMINATION.** The Agreement may be terminated by either party upon 7 days' written notice. The Client shall pay FWE for services performed and reimbursable expenses incurred to the date of termination in accordance with the Agreement and these Terms and Conditions, and reasonable costs and expenses incurred by FWE as a result of such termination.

6. **LIABILITY OF PARTIES.** FWE shall be liable to the Client for negligent errors or omissions in the provision of services, and for other breaches by FWE of the Agreement, provided that the aggregate amount of such liability shall in no event exceed the available proceeds of FWE's insurance coverages or FWE's fees under the Agreement, whichever is less. Neither party shall be liable to the other for any indirect, special, or consequential damages. Causes of action between the parties pertaining to acts or failures to act shall be deemed to have accrued and the applicable statute of limitations shall commence to run no later than the date when FWE's services are substantially completed or terminated.

7. **DISPUTE RESOLUTION.** The parties shall in good faith attempt to resolve any dispute. A dispute that cannot be resolved through negotiations shall be mediated under the Construction Industry Mediation Rules of the American Arbitration Association (“AAA”) then in effect. A dispute not resolved through mediation shall be finally decided by binding arbitration in Boston, Massachusetts, by a single arbitrator under the AAA’s Construction Industry Arbitration Rules then in effect. No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder, or in any other manner, an additional person or entity not a party to this Agreement, except by written consent of FWE, the Client, and such third party.
8. **HAZARDOUS MATERIALS.** Professional services relating to the existence, identification, removal, containment, abatement or disposal of asbestos, lead paint, toxic substances, or hazardous waste are not included in the scope of FWE’s services. The Client shall be solely responsible for, and shall release, indemnify, and defend FWE from and against all liability arising out of the existence, identification, removal, containment, and/or abatement of such substances in connection with the project.
9. **INSURANCE.** FWE shall, at its own expense, obtain and maintain insurance which in its sole judgment is sufficient to protect itself from claims resulting from the performance of the services described in this Agreement.
10. **CLIENT’S RESPONSIBILITIES.** The Client shall furnish in a timely manner such legal, accounting, and insurance counseling services as may be required for the project and such surveys, geotechnical investigations, and information relating to existing conditions at the project site as FWE may reasonably request. FWE shall be entitled to rely upon the completeness and accuracy of services and information provided by the Client and the Client’s consultants. If the Client becomes aware of any fault or default in the project, the Client shall promptly notify FWE.
11. **CONSTRUCTION PHASE SERVICES.** If so provided in the Agreement, FWE shall make periodic visits to the site during the construction phase of the project, to become generally familiar with the progress and quality of the work, and to determine in general if the work is proceeding in accordance with the drawings and specifications furnished by FWE. However, it is understood that the contractor, not FWE, is solely responsible for the construction means, methods, techniques and sequences of the project, for safety programs and procedures at the site, and for its own acts or omissions and those of any subcontractor. All changes, substitutions, and deviations from the drawings and specifications furnished by FWE shall be subject to the FWE’s approval.
12. **CORPORATE ACTOR.** Client acknowledges that FWE is a limited liability company and agrees that any claim made by the Client arising out of any negligent act, error or omission of any member, manager, officer or employee of FWE in the execution or performance of this Agreement shall be made against the company and not against any member, manager, officer or employee.
13. **HIDDEN CONDITIONS.** A condition is hidden if concealed by existing finishes or is not capable of investigation by reasonable visual observation. If FWE has reason to believe that such a condition may exist, the Client shall authorize and pay for all costs associated with the investigation of such a condition. If (1) the Client fails to authorize such investigation after due notification, or (2) FWE has no reason to believe that such a condition exists, FWE shall not be responsible for the existing condition nor any resulting damages to persons or property.
14. **MISCELLANEOUS PROVISIONS.** The Agreement, including these Terms and Conditions, represents the complete and integrated agreement between the parties; supersedes all prior agreements between the parties relating to the Project; may be amended only in writing; may not be assigned by either party without the written permission of the other; is binding upon the parties, their successors, permitted assigns, and legal representatives; and shall be interpreted and governed in accordance with the laws of the Commonwealth of Massachusetts.