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TOWN OF ANDOVER

CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES

DATE: 12/23/21

This Contract is entered into on, or as of, this date by and between the Town of Andover (the “Town”), and

Fuss & O’Neill
1550 Main Street
Suite 400
Springfield, MA 01103
413-452-0445

1. This is a Contract for the procurement of the following: To provide an assessment of properties along the Shawsheen River to identify and prioritize parcels for future land acquisition, with the goal of increasing climate and flood resiliency. Scope of Services is hereby attached and made part of these Contract Documents. This project is funded through a FY22 Municipal Vulnerability Preparedness Program Action Grant awarded to the Town of Andover.
2. The Contract price to be paid to the Contractor by the Town of Andover is: **\$63,700.00**
Sixty three thousand and seven hundred dollars.
3. Payment will be made as follows: within 30 days of detailed invoice, monthly based on percent of the project completed.
4. Definitions:
 - 4.1 Acceptance: All Contracts require proper acceptance of the described deliverables or services by the Town of Andover. Proper acceptance shall be understood to include inspection of deliverables and certification of acceptable performance for services by authorized representatives of the Town to ensure that the deliverables or services are complete and are as specified in the Contract.
 - 4.2 Contract Documents: All documents relative to the Contract including (where used) Instructions to Bidders, Proposal Form, General Conditions, Supplementary General Conditions, General Specifications, Other Specifications included in Project Manual, Drawings, Request for Qualifications, Scope of Services, and all Addenda. The Contract documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intention of this Contract is to include all labor and materials, equipment and transportation necessary for the proper performance of the Contract.

- 4.3 The Contractor: The “other party” to any Contract with the Town. This term shall (as the sense and particular Contract so require) include Vendor, Contractor, Engineer, or other label used to identify the other party in the particular Contract. Use of the term “Contractor” shall be understood to refer to any other such label used. In the performance of service under this Agreement, the Contractor acts at all times as an independent contractor. There is no relationship of employment or agency between the Town, on the one hand, and the Contractor on the other, and neither party shall have or exercise any control or direction over the method by which the other performs its work or functions aside from such control or directions as provided in this Contract which the parties view as consistent with their independent contractor relationship.
- 4.4 Date of Substantial Performance: The date when the work is sufficiently complete, the services are performed, or the goods delivered, in accordance with Contract documents, as modified by approved Amendments and Change Orders.
- 4.5 Goods: Goods, Supplies, Materials or other Deliverables.
- 4.6 SubContractor: Those having a direct Contract with the Contractor. The term includes one who furnished material worked to a special design according to the Drawings or Specifications of this work, but does not include one who merely furnishes material not so worked.
- 4.7 Work: The services or materials contracted for, or both.

5. Term of Contract and Time for Performance:

This Contract shall be fully performed by the Contractor in accordance with the provisions of the Contract Documents on or before August 31, 2022, unless extended pursuant to a provision for extension contained in the Contract documents at the sole discretion of the Town, and not subject to assent by the Contractor, and subject to the availability and appropriation of funds as certified by the Town Accountant. The time limits stated in the Contract documents are of the essence of the Contract.

6. Subject to Appropriation:

Notwithstanding anything in the Contract documents to the contrary, any and all payments which the Town is required to make under this Contract shall be subject to appropriation or other availability of funds as certified by the Town Accountant. In the absence of appropriation, this Contract shall be immediately terminated without liability for damages, penalties or other charges. When the amount of the Accountant’s certification of available funds is less than the face amount of the Contract, the Town shall not be liable for any claims or requests for payment by the Contractor which would cause total claims or payments under this Contract to exceed the amount so certified.

7. Permits and Approvals:

Permits, Licenses, Approvals and all other legal or administrative prerequisites to its performance of the Contract shall be secured and paid for by the Contractor.

8. Termination:

a. Without Cause. The Town may terminate this Contract on seven (7) calendar days' notice when in the best interests of the Town by providing notice to the Contractor, which shall be in writing and shall be deemed delivered and received when given in person to the Contractor, or when received by fax, express mail, certified mail return receipt requested, regular mail postage prepaid or delivered by any other appropriate method evidencing actual receipt by the Contractor. Upon termination without cause, Contractor will be paid for services rendered to the date of termination.

b. For Cause. If the Contractor is determined by the Town to be in default of any term or condition of Contract, the Town may terminate this Contract on seven (7) days' notice by providing notice to the Contractor, which shall be in writing and shall be deemed delivered and received when given in person to the Contractor, or when received by fax, express mail, certified mail return receipt requested, regular mail postage prepaid or delivered by any other appropriate method evidencing actual receipt by the Contractor.

c. Default. The following shall constitute events of a default under the Contract:

- 1) any material misrepresentation made by the Contractor to the Town; 2) any failure to perform any of its obligations under this Contract including, but not limited to the following: (i) failure to commence performance of this Contract at the time specified in this Contract due to a reason or circumstance within the Contractor's reasonable control, (ii) failure to perform this Contract with sufficient personnel and equipment or with sufficient material to ensure the completion of this Contract within the specified time due to a reason or circumstance within the Contractor's reasonable control, (iii) failure to perform this Contract in a manner reasonably satisfactory to the Town, (iv) failure to promptly re-perform within a reasonable time the services that were rejected by the Town as unsatisfactory, or erroneous, (v) discontinuance of the services for reasons not beyond the Contractor's reasonable control, (vi) failure to comply with a material term of this Contract, including, but not limited to, the provision of insurance and non-discrimination, (vii) any other acts specifically and expressly stated in this Contract as constituting a basis for termination of this Contract, and (viii) failure to comply with any and all requirements of federal and/or state law and/or regulations, and Town bylaw and/or regulations.

9. The Contractor's Breach and the Town's Remedies:

Failure of the Contractor to comply with any of the terms or conditions of this Contract shall be deemed a material breach of this Contract, and the Town of Andover shall have all the rights and remedies provided in the Contract documents, the right to cancel, terminate, or suspend the Contract in whole or in part, the right to maintain any and all actions at law or in equity or other proceedings with respect to a breach of this Contract, including damages and specific performance, and the right to select among the remedies available to it by all of the above.

From any sums due to the Contractor for services, the Town may keep the whole or any part of the amount for expenses, losses and damages incurred by the Town as a consequence of procuring services as a result of any failure, omission or mistake of the Contractor in providing services as provided in this Contract.

10. Statutory Compliance:

10.1 This Contract will be construed and governed by the provisions of applicable federal, state and local laws and regulations; and wherever any provision of the Contract or Contract documents shall conflict with any provision or requirement of federal, state or local law or regulation, then the provisions of law and regulation shall control. Where applicable to the Contract, the provisions of General Laws are incorporated by reference into this Contract, including, but not limited to, the following:

General Laws Chapter 30B – Procurement of Goods and Services.

General Laws Chapter 30, Sec. 39, *et seq*: - Public Works Contracts.

General Laws Chapter 149, Section 44A, *et seq*: Public Buildings Contracts.

General Laws Chapter 7, Sections 38A ½ - O: Designer Selection

10.2 Wherever applicable law mandates the inclusion of any term and provision into a municipal contract, this Section shall be understood to import such term or provision into this Contract. To whatever extent any provision of this Contract shall be inconsistent with any law or regulation limiting the power or liability of cities and Towns, such law or regulation shall control.

10.3 The Contractor shall give all notices and comply with all laws and regulations bearing on the performance of the Contract. If the Contractor performs the Contract in violation of any applicable law or regulation, the Contractor shall bear all costs arising therefrom.

10.4 The Contractor shall keep itself fully informed of all existing and future State and National Laws and Municipal By-laws and Regulations and of all orders and decrees of any bodies or tribunals having jurisdiction in any manner affecting those engaged or employed in the work, of the materials used in the work or in any way affecting the conduct of the work. If any discrepancy or inconsistency is discovered in the Drawings, Specifications or Contract for this work in violation of any such law, by-law, regulation, order or decree, the Contractor shall forthwith report the same in writing to the Town. It shall, at all times, itself observe and comply with all such existing and future laws, by-laws, regulations, orders and decrees; and shall protect and indemnify the Town of Andover, and its duly appointed agents against any claim or liability arising from or based on any violation whether by him or its agents, employees or subcontractors of any such law, by-law, regulation or decree.

10.5 Any changes to the Scope of Services or contract price shall be made only by a written contract amendment executed by the Town and the Contractor.

11. Conflict of Interest:

Both the Town and the Contractor acknowledge the provisions of the State Conflict of Interest Law (General Laws Chapter 268A), and this Contract expressly prohibits any activity which shall constitute a violation of that law. The Contractor shall be deemed to have investigated the application of M.G.L. c. 268A to the performance of this Contract; and by executing the Contract documents the Contractor certifies to the Town that neither it nor its agents, employees, or subcontractors are thereby in violation of General Laws Chapter 268A.

12. Certification of Tax Compliance

This Contract must include a certification of tax compliance by the Contractor, as required by General Laws Chapter 62C, 49A (Requirement of Tax Compliance by All Contractors Providing Goods, Services, or Real Estate Space to the Commonwealth or Subdivision).

13. Discrimination

The Contractor will carry out the obligations of this Contract in full compliance with all of the requirements imposed by or pursuant to General Laws Chapter 151B (Law Against Discrimination) and any executive orders, rules, regulations, and requirements of the Commonwealth of Massachusetts as they may from time to time be amended. The Contractor shall comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation or for exercising any rights afforded by law.

14. Assignment:

Assignment of this Contract is prohibited, unless and only to the extent that assignment is provided for expressly in the Contract documents.

15. Condition of Enforceability Against the Town:

This Contract is only binding upon, and enforceable against, the Town if: (1) the Contract is signed by the Town Manager or its designee; and (2) endorsed with approval by the Town Accountant as to appropriation or availability of funds; and (3) endorsed with approval by the Town Counsel as to form.

16. Corporate Contractor:

If the Contractor is a corporation, it shall endorse upon this Contract (or attach hereto) its Clerk's Certificate certifying the corporate capacity and authority of the party signing this Contract for the corporation. Such certificate shall be accompanied by a letter or other instrument stating that such authority continues in full force and effect as of the date the Contract is executed by the Contractor. This Contract shall not be enforceable against the Town of Andover unless and until the Contractor complies with this section.

The Contractor, if a foreign corporation, shall comply with the provisions of the General Laws, Chapter 181, Section 3, and any Acts and Amendments thereof, and in addition thereto, relating to the appointment of the Commissioner of Corporations as its attorney, shall file with the Commissioner of Corporations a Power of Attorney and duly authenticated copies of its Charter or Certificate of Incorporation; and said Contractor shall comply with all the laws of the Commonwealth.

17. Liability of Public Officials:

To the full extent permitted by law, no official, employee, agent or representative of the Town of Andover shall be individually or personally liable on any obligation of the Town under this Contract.

18. Indemnification:

The Contractor shall indemnify, defend, and save harmless the Town, the Town's officers, agents and employees, from and against any and all damages, liabilities, actions, suits, proceedings, claims, demands, losses, costs, expenses, recoveries and judgments of every nature and description (including reasonable attorneys' fees) incurred by, brought or recovered against them that may arise in whole or in part out of or in connection with the services being performed or to be performed, and out of any negligent act or omission by the Contractor, its employees, agents, subcontractors, material men, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by any party indemnified hereunder. The existence of insurance shall in no way limit the scope of the Contractor's indemnification under this contract. The duty to defend shall immediately accrue and be owing upon the utterance of such a claim by any person or entity regardless of merit and shall not be dependent upon a finding of negligence or any other finding of fact at trial. The duty to defend shall be absolute and will include and shall not be defeated or in any way undermined by the utterance of claims not covered by this Contract.

19. Documents, Materials, Etc.

Any materials, reports, information, data, etc. given to or prepared or assembled by the Contractor under this Contract are to be kept confidential and shall not be made available to any individual or organization by the Contractor (except agents, servants, or employees of the Contractor) without the prior written approval of the Town, except as otherwise required by law. The Contractor shall comply with the provisions Chapter 66A of the General Laws of Massachusetts as it relates to public documents, and all other state and federal laws and regulations relating to confidentiality, security, privacy and use of confidential data.

A hard copy and an electronic copy (if requested by the Town) of Contractor's drawings, plans, specifications and other similar documents, whether in written, graphic or electronic form, shall be delivered to the Town. If there is a discrepancy between the electronic files and the hard copies, the hard copies shall govern.

The Town shall have unlimited rights, for the benefit of the Town, in all drawings, designs, specifications, notes and other work developed in the performance of this contract including the right to use same on any other Town projects without additional cost to the Town; and with respect thereto the Contractor agrees and hereby grants to the Town an irrevocable royalty-free license to all such data which the Contractor may cover by copyright and to all designs as to which it may assert any rights or establish any claim under any patent or copyright laws. The Contractor shall not be responsible for changes made in the documents by others without the Contractor's authorization, nor for the Town's use of the document on projects other than the project which is the subject of this Contract, unless this is a contract for design services for a master plan or prototype.

20. Confidentiality

The Contractor shall comply with M.G.L. ch. 66A if the Contractor becomes a “holder” of “personal data”. The Contractor shall also protect the physical security and restrict any access to personal or other Town data in the Contractor’s possession, or used by the Contractor in the performance of this Contract, which shall include, but is not limited to the Town’s public records, documents, files, software, equipment or systems.

21. Record-Keeping and Retention, Inspection of Records

The Contractor shall maintain records, books, files and other data as specified in this Contract and in such detail as shall properly substantiate claims for payment under this Contract, for a minimum retention period of seven (7) years beginning on the first day after the final payment under this Contract, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving this Contract. The Town shall have access during the Contractor’s regular business hours and upon reasonable prior notice, to such records, including on-site reviews and reproduction of such records at a reasonable expense.

22. Subcontracting By Contractor

Any subcontract entered into by the Contractor for the purposes of fulfilling the obligations under this Contract must be in writing, authorized in advance by the Town and shall be consistent with and subject to the provisions of this Contract. Subcontracts will not relieve or discharge the Contractor from any duty, obligation, responsibility or liability arising under this Contract. The Town is entitled to copies of all subcontracts and shall not be bound by any provisions contained in a subcontract to which it is not a party.

23. Risk of Loss

The Contractor shall bear the risk of loss for any Contractor materials used for this Contract and for all deliveries, Town personal or other data which is in the possession of the Contractor or used by the Contractor in the performance of this Contract until possession, ownership and full legal title to the deliverables are transferred to and accepted by the Town.

24. Minimum Wage/Prevailing Wage

The Contractor will carry out the obligations of this Contract in full compliance with all of the requirements imposed by or pursuant to General Laws Chapter 151, §1, *et seq.* (Minimum Wage Law) and any executive orders, rules, regulations, and requirements of the Commonwealth of Massachusetts as they may from time to time be amended. The Contractor will at all times comply with the wage rates as determined by the Commission of the Department of Labor and Industries, under the provisions of General Laws Chapter 149, 26 to 27D (Prevailing Wage Law), as shall be in force and as amended. The Contractor will, in addition to any other submissions required by the Prevailing Wage Law, submit certified weekly payrolls to the Town with the information described in General Laws Chapter 149, §27B.

25. Audit, Inspection and Recordkeeping

At any time during normal business hours, and as often as the Town may deem it reasonably necessary, there shall be available in the office of the Contractor for the purpose of audit, examination, and/or to make excerpts or transcript all records, contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.

26. Payment

The Town agrees to make all reasonable efforts to pay to the Contractor the sum set forth in the Contractor's bid or proposal within thirty (30) days of receipt of an invoice detailing the work completed and acceptance from the Town of the work completed.

27. Waiver and Amendment

Amendments, or waivers of any additional term, condition, covenant, duty or obligation contained in this Contract may be made only by written amendment executed by all signatories to the original Agreement, prior to the effective date of the amendment.

To the extent allowed by law, any conditions, duties, and obligations contained in this Contract may be waived only by written Agreement by both parties.

Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any manner limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach of a similar or different matter.

28. Forum and Choice of Law

This Contract and any performance herein shall be governed by and be construed in accordance with the laws of the Commonwealth of Massachusetts. Any and all proceedings or actions relating to subject matter herein shall be brought and maintained in the courts of the Commonwealth or the federal district court sitting in the Commonwealth, which shall have exclusive jurisdiction thereof. This paragraph shall not be construed to limit any other legal rights of the parties.

29. Notices

Any notice permitted or required under the provisions of this Contract to be given or served by either of the parties hereto upon the other party hereto shall be in writing and signed in the name or on the behalf of the party giving or serving the same. Notice shall be deemed to have been received at the time of actual service or three (3) business days after the date of a certified or registered mailing properly addressed. Notice to the Contractor shall be deemed sufficient if sent to the address set forth in the Contract and to the Town of Andover by being sent to the Town Manager, Town Hall, 36 Bartlet Street, Andover, Massachusetts 01810.

30. Binding on Successors:

This Contract shall be binding upon the Contractor, its assigns, transferees, and/or successors in interest (and where not corporate, the heirs and estate of the Contractor).

31. Complete Contract:

This instrument, together with its endorsed supplements, and the other components of the contract documents, constitutes the entire contract between the parties, with no agreements other than those incorporated herein.

32. Contractor Certifications

32.1 By signing this contract, the Contractor certifies under the penalties of perjury that pursuant to General Laws Chapter 62C sec. 49A, the Contractor has filed all state tax returns, paid all taxes and complied with all laws of the Commonwealth relating to taxes; and that pursuant to General Laws Chapter 151A, sec. 19A, the Contractor has complied with all laws of the Commonwealth relating to contributions and payments in lieu of contributions.

32.2 By signing this contract, the Contractor certifies under the penalties of perjury that this contract has been obtained in good faith and without collusion or fraud with any other person. As such in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, client or other organization, entity or group of individuals.

32.3 Qualifications. The Contractor certifies it is qualified and shall at all times remain qualified to perform this Contract, that performance shall be timely and meet or exceed industry standards for the performance required, including obtaining requisite licenses, registrations, permits, resources for performance, and sufficient professional, liability, and other appropriate insurance to cover the performance. If the Contractor is a business, the Contractor certifies that it is listed under the Secretary of State's website as licensed to do business in Massachusetts, as required by law.

32.4 Business Ethics and Fraud, Waste and Abuse Prevention. The Contractor certifies that performance under this Contract, in addition to meeting the terms of the Contract, will be made using ethical business standards and good stewardship of taxpayer and other public funding and resources to prevent fraud, waste and abuse.

32.5 Debarment. The Contractor certifies that neither it nor any of its subcontractors are currently debarred or suspended by the federal or state government under any law or regulations including, Executive Order 147, M.G.L. ch. 29, §29F, M.G.L. ch. 30, §39R, M.G.L. ch. 149, §27C, M.G.L. ch. 149, §44C, M.G.L. ch. 149, §148B and M.G.L. ch. 152, §25C.

33. Contract Amendments:

Any change in the scope of services or contract price shall be made only by a written contract amendment executed by the Town and the Contractor.

34. Minimum Wage:

The Contractor will carry out the obligations of this Contract in full compliance with all of the requirements imposed by or pursuant to General Laws Chapter 151, §1, *et seq.* (Minimum Wage Law) and any executive orders, rules, regulations, and requirements of the Commonwealth of Massachusetts as they may from time to time be amended.

35. Insurance:

The Contractor shall obtain and maintain the following insurance:

- 35.1 Workers Compensation Insurance of the scope and amount required by the laws of the Commonwealth of Massachusetts.
- 35.2 Broad Form Commercial General Liability insurance with limits of at least \$1 Million per occurrence and \$2 Million aggregate, or such higher amount as the Town may require, and which shall cover bodily injury, death, or property damage arising out of the work.
- 35.3 Automobile Liability Insurance, including coverage for owned, hired or borrowed vehicles with limits of at least \$1 Million each person/each occurrence or a combined single limit of \$1 Million.
- 35.4 Professional Liability Insurance covering errors, omissions and acts of the Contractor or of any person or business entity for whose performance the Contractor is legally liable arising out of the performance of the contract. The total amount of such insurance shall at a minimum equal one million dollars or such larger amounts as the Town may require for the applicable period of limitations, which coverage shall be maintained for a period of at least three (3) years after the date of the final payment by the Town. The Contractor shall obtain such insurance coverage at its own expense and provide certificates of insurance to the Town at least 7 days prior to the execution of the Contract by the Town.
- 35.5 The intent of the Contract provisions regarding insurance is to specify minimum coverage and minimum limits of liability acceptable under the Contract. However, it shall be the Contractor's responsibility to purchase and maintain insurance of such character and in such amounts as will adequately protect it and the Town from and against all claims, damages, losses and expenses resulting from exposure to any casualty liability in the performance of the work.
- 35.6 All required insurance shall be certified by a duly authorized representative of the insurers on the Certificate of Insurance form incorporated into and made a part of this Agreement. Properly executed certificates and endorsements acceptable to the Town signifying adequate coverage in effect in accordance with the requirements of this contract for the duration of the contract must be submitted to the Town at least 7 days prior to execution of this Contract by the Town with renewal certificates and endorsements issued not less than 30 days prior to expiration of a policy period. The Contractor shall submit certified copies of all policies to the Town within 7 days of such a request. All insurance companies shall be authorized by the Massachusetts Commissioner of Insurance to do business in the Commonwealth of Massachusetts.
- 35.7 The Town and its employees and officials shall be named as an additional insured on the above-referenced liability policies with the exception of the Professional Liability policy and the Contractor's insurance coverage shall be primary and non-contributory with

respect to any other coverage available to additional insureds. The certificate of insurance shall so state the foregoing. The cost of such insurance, including required endorsements or amendments, shall be the sole responsibility of the Contractor.

35.8 The above referenced Liability policies (General Liability, Auto Liability, and Workers Compensation) shall include a Waiver of Subrogation endorsement in favor of the Town. The certificate of insurance shall so state the foregoing.

36.9 The General Liability and Automobile Liability shall be written on an occurrence basis.

36.10 The Contractor shall maintain all required insurance in full force and effect as required by this Contract or the Contractor shall be in material breach hereof.

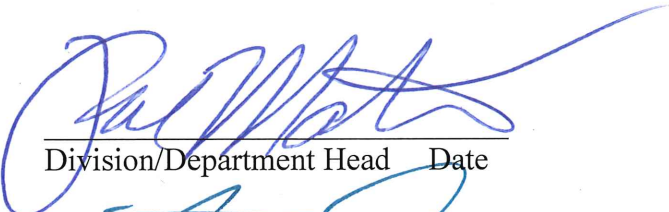
36.11 Coverages are to be maintained for a period of 3 years after final payment.

36.12 Contractual liability must recognize the indemnity contained in this Agreement.


IN WITNESS WHEREOF the parties have hereto and to two other identical instruments set forth their hands the day and year first above written.

THE TOWN

THE CONTRACTOR




Division/Department Head Date



Town Manager Date 12/23/21

Fuss & O'NEILL, INC.
Company Name

 12-14-21

Signature Date


Theresa Reynolds 12/21/22

Purchasing Agent Date

Kevin M. Sullivan - Vice President

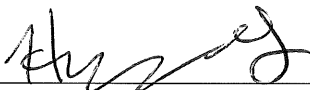
Print Name & Title

APPROVED AS TO FORM:



Town Counsel Date 12/21/2021

CERTIFICATION AS TO AVAILABILITY OF FUNDS: 623303-5700


Town Accountant

12/22/21
Date

see Attached

CORPORATE VOTE

At a duly authorized meeting of the Board of Directors of _____
held on _____ at which all the
Directors were present or waived notice, it was voted that _____,
_____ of this company, be and he/she hereby is authorized to execute
contracts and bonds in the name and behalf of said company, and affix its Corporate Seal thereto, and
such execution of any contract or obligation in this company's name on its behalf by
_____, shall be binding upon this company.

A TRUE COPY ATTEST:

Clerk,

Date of this Contract

I hereby certify that I am the Clerk of _____, that
_____ is duly elected _____ of said
company, and the above vote has not been amended or rescinded and remains in full force and
effect as of the date of this contract.

Clerk Corporate Seal

SWORN TO AND SUBSCRIBED BEFORE ME THIS _____ DAY OF _____,

Notary Public

If a corporation, complete above or attach to each signed copy of the bid/written request/quotation, a
notarized copy of vote of corporation authorizing the signatory to sign this bid/written
request/quotation form. If attesting clerk is the same person as the individual executing this contract,
have signature notarized above.



Certification of Corporate Resolution

I, Amy C. Jagodowski, the undersigned, do hereby certify that I am the Corporate Secretary of Fuss & O'Neill, Inc., a Connecticut Corporation, and that the following resolution was duly adopted by the Board of Directors of Fuss & O'Neill, Inc. on July 27, 2021.

"It is hereby resolved that the officers of the Corporation listed below be authorized and directed to execute any and all contracts, documents and any other pertinent instruments in connection with the Corporation subject to Fuss & O'Neill's internal policies regarding delegation of authority.

Officers of the Corporation:

Kevin J. Grigg: CEO, President
Amy C. Jagodowski: Secretary
John A. Chambers: Executive Vice President
Kevin W. Johnson: Executive Vice President
Dean E. Audet: Senior Vice President
Ted J. DeSantos: Senior Vice President
Gregory M. Dorosh: Senior Vice President
JoAnn Fryer: Senior Vice President
Craig M. Lapinski: Senior Vice President
Virgil J. Lloyd: Senior Vice President
Robert L. May, Jr.: Senior Vice President
Timothy J. St. Germain: Senior Vice President
Charles Ahles: Vice President
Sudip D. Bafna: Vice President
Adam M. Barbash: Vice President
Eric M. Bernardin: Vice President

Robert M. Danielson: Vice President
Daniel F. DeLany: Vice President
Christopher J. Ferrero: Vice President
Phillip E. Forzley: Vice President
Jenna Krzesicki: Vice President
Elizabeth Landry: Vice President
Kurt A. Mailman: Vice President
Shawn M. Martin: Vice President
Diane Mas: Vice President
Erik Mas: Vice President
Katherine Nanowski: Vice President
Margaret K. Snape: Vice President
Kristen E. Solloway: Vice President
Kevin M. Sullivan: Vice President
Mark Vertucci: Vice President"

I do further certify that the above Resolution has not been amended and is now in full force and effect.

ATTEST:

Amy C. Jagodowski

Amy C. Jagodowski
Corporate Secretary

Date: 12/14/2021

A TRUE AND ATTESTED COPY



CERTIFICATION OF GOOD FAITH & NON-COLLUSION

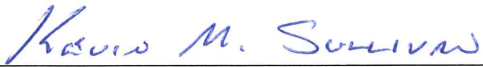
The undersigned certifies under pains and penalties of perjury that this bid has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

CERTIFICATE OF STATE TAX COMPLIANCE

Pursuant to M.G.L. c. 62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.



Signature of authorized individual submitting bid/proposal



Printed Name



Name of Business (if applicable)



Social Security or Federal Tax Identification Number



FUSS & O'NEILL

November 22, 2021

Robert Douglas
Director of Conservation
36 Bartlet Street
Andover, MA 01810

RE: Proposal for Professional Services
Shawsheen River Master Plan—Town of Andover

Dear Mr. Douglas:

Fuss & O'Neill is pleased to provide this proposal to conduct a planning and public engagement process with the Town and develop a Shawsheen River Master Plan. The following paragraphs describe our scope of services, schedule, and fees for this project.

Project Understanding

The Shawsheen River is a vital element of Andover's identity. The Town's industrial heritage is closely tied to the Shawsheen River, as is the community's ability to adapt to future climate impacts. Flooding along the Shawsheen has caused significant damage at least four times since 2007, but the River also provides significant recreational, social, and aesthetic benefits to the Town. As Andover approaches its 375th Anniversary, the time is right to develop a vision for the river corridor that will enable the Town to capitalize on the River's value and improve access to and engagement with the River's many beneficial services, while simultaneously planning for future resiliency to protect the Town's natural resources and prevent flood damage to the built environment.

The proposed Shawsheen River Master Plan is intended to provide a higher-level planning document and vision for the Shawsheen River that will build public momentum and develop a road-map for future projects. The master planning process would focus on four main goals:

- 1) Collect and present existing information about the River and its relationship to the Town
- 2) Gather public input from the community to inform a conceptual design vision for the river corridor
- 3) Develop a graphically-rich plan geared toward communicating the master plan to municipal staff, elected officials, and the public, in addition to facilitating community buy-in for future implementation
- 4) Outline projects and next steps for moving the Town toward implementation of that vision

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The planning process will build upon existing available information and input from the community. The master plan is also intended to integrate with the high-priority climate resilience actions identified through the Town's MVP planning process, including a the FY22 MVP Action Grant project that will assess and prioritize properties for strategic land acquisition and preservation to improve resiliency of the Town and the larger Shawsheen and Merrimack watersheds.

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Proposal(minus terms).doc



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Scope of Services

Task 1. Information Gathering

Information gathering to inform the plan will be a collaborative effort between Town staff and active stakeholder groups (AVIS, Shawsheen River Watershed Association, Merrimack River Watershed Council, etc.).

The primary objectives of the information gathering phase will be to:

- Assess the benefits provided by the River, including current use patterns for recreation, education, etc.
- Detail risks associated with current/past flood events and future climate projections
- Describe connections with the Historic Mill District and Shawsheen Village neighborhood
- Summarize existing information on the River's health and water quality, including information on recent dam removals, remaining restrictions, known status of fisheries and wildlife, etc.

This effort will be focused on compiling existing data, rather than developing new data. It is assumed that the Town will be responsible for working with community stakeholders to collect and summarize this data, including providing the necessary editorial services needed. Polished text will be provided by the Town and be able to be placed directly into the report without additional editing services needed by Fuss & O'Neill.

Fuss & O'Neill will attend a project kickoff meeting with Town staff to outline a collaborative strategy for data gathering and compilation.

Task 2. Public Involvement and Community Engagement

A robust public process is key to the proposed master planning effort. Fuss & O'Neill's team of ecologists, water resources specialists, planners, and landscape architects will lead residents and stakeholders through a series of facilitated opportunities to collect input about known risks and current needs associated with the River, as well as goals and desired future uses and potential project ideas. This process will center around a design and planning charrette process and facilitated sessions similar to those utilized during the Town's MVP climate resiliency planning process. It is intended that the Master Plan will focus on the Shawsheen River corridor within Andover, but the public process will include stakeholders from neighboring communities within the larger Shawsheen River watershed, including Lawrence, Billerica, and Tewksbury.

Task 2.1 Public Portal

The Town will develop a project website to serve as a public portal and digital billboard to advertise the project and solicit broad public feedback. The website will be populated with summary



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information from the information gathering phase of the project (Task 1) to encourage residents to consider challenges associated with the River and contribute their own ideas regarding both concerns and visions for the future. A GIS-based mapping/public comment tool will be set up to receive input from residents, business owners, civic organizations, elected officials and other interested citizens to inform the planning process and build consensus around important issues, themes, and locations of focus.

Fuss & O'Neill can provide up to four (4) hours of input and feedback to the Town (as needed) on how to set up the public portal and solicit comments from community members.

The public portal will open to the public shortly after the completion of Task 1. We recommend allowing 5-6 weeks for public comment in advance of the stakeholder workshop so that input can be considered during Task 2.2. The public portal will be closed for comment prior to the design charrette (Task 2.3).

Note that this digital format is an effective means of involving the public considering the ongoing impacts of COVID-19.

Task 2.2 Stakeholder Workshop

Fuss & O'Neill will support the Town in developing a list of stakeholders and will host a stakeholder workshop that will guide participants through a process of identifying strengths/benefits that the Shawsheen River offers the community, as well as challenges and specific problem areas and potential priority projects for inclusion in the Master Plan.

Fuss & O'Neill will conduct a one-day, 6-hour workshop for up to 30-40 invited participants. Stakeholders are expected to include Town staff and board members, representatives from AVIS, Shawsheen River Watershed Association, Merrimack River Watershed Council, Andover Community Trust, and other local organizations, other engaged citizens, and representatives of neighboring communities (Tewksbury, Billerica, and Lawrence). Fuss & O'Neill has experience conducting stakeholder workshops in both in-person and remote formats. While an in-person workshop is preferred, this task can be adapted as necessary to fit a remote format and comply with ongoing COVID-19 guidance.

Workshop participants will be presented with summary information compiled during Task 1, as well as compiled public input from the website and GIS map/comment portal. Stakeholders will then work through a series of large and small group discussions, similar in format to the Town's recent MVP Community Resilience Building workshop. We will provide all printed materials for the workshop. Lunch and refreshments will be provided for all participants.

Workshop outcomes will be summarized in a project ideas/workshop outcomes matrix and will feed into the plan development task (Task 3). One goal of the workshop will be to identify 3-5 specific ideas or locations to be explored in greater depth during the design charrette (Task 2.3).



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Task 2.3 Design and Planning Charrette

Following the Stakeholder Workshop, Fuss & O'Neill will host a design and planning charrette—an intensive effort by professionals, discipline experts and engaged stakeholders to solve a design or planning problem that has been identified by the community.

The goals of a charrette process are to provide detailed information to participants on major issues, to engage a multi-disciplinary team of professionals with feedback from stakeholders and leaders, and to solicit collaborative input on potential solutions that are technically feasible and enjoy broad community support.

Frequent outcomes of a charrette process include the development of detailed pre-analysis and research around major issues, generation of a wide range of potential solutions with integrated input from participants, and selection of a preferred alternative and a set of documented recommendations with site-specific solutions/designs for future implementation. Secondary benefits are the creation of a group of highly committed stakeholders among those who advise the professional team and involvement by a broad group of committed participants throughout the charrette. This involvement can later be used to advance projects to implementation and build community buy-in.

As part of the Master Plan process, Fuss & O'Neill will host a 6-hour design and planning charrette event for up to 30-35 invited participants. In advance of the event, Fuss & O'Neill will prepare site maps and a vision book of related project ideas based on the discussions during the Stakeholder Workshop. The format of the charrette will include multiple sessions, from large group briefings/presentations in an auditorium setting, to small group sessions with stakeholder affinity groups and workshop sessions for collaborative work between stakeholders and Fuss & O'Neill's team of professionals. During the charrette process, our landscape architecture and planning team will create sketch diagrams and cross sections to aid in visualizing the ideas generated and foster further brainstorming. By the end of the charrette, preferred design ideas will be selected to advance forward for further development and inclusion in the Master Plan. We will provide all printed materials for the charrette. Lunch and refreshments will be provided for all participants.

Because of the hands-on, visual nature of the design charrette process, it is recommended that this event be conducted in-person to be effective. Assuming that the Town can secure appropriate and sufficient space, Fuss & O'Neill can structure the design charrette to ensure that group sizes, spacing, safety protocols and activities are designed to comply with state COVID-19 guidance and provide a safe environment for participants. The event could also be feasibly conducted outdoors.

Task 3. Development of Shawsheen River Master Plan

Fuss & O'Neill will compile the information and ideas generated during the information gathering and public process stages (Tasks 1 and 2) to develop a graphics-oriented plan that is geared toward



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a broad public and municipal audience. The format for the deliverables will be agreed upon between the Town and Fuss & O'Neill with the intent of creating materials that are accessible to a broad public audience and that will aid the Town in facilitating community buy-in for projects and pursuing implementation funding. For the purposes of this proposal, it is assumed that the plan will offer concise summary information and background for a public audience on each of the four focus areas outlined in Task 1, with a primary goal of showcasing and contextualizing the project ideas and designs that emerge out of the public process. A series of graphics will be provided in the Master Plan documentation. The graphics will depict the overall vision and conceptual design for the 3 core areas selected during the design charette. This proposal assumes a suite of graphics to include:

- Overall Master Plan Rendering with annotation summarizing and displaying the vision
- Two (2) plan overlay extractions. One comprised of the Flood and Climate Resiliency initiatives. The second would depict the connectivity, open spaces, and recreational areas proposed
- Three (3) Plan Enlargements for each of the three core areas showing design ideas proposed
- Three (3) 3D perspective renderings. One perspective rendering for each of the three core areas.

As the public process progresses, if the Town would like to include additional design sites or additional graphic representations, these can be negotiated through a contract amendment for additional fee.

Drawing on the outcomes of each phase of the public process, the plan will outline a road map of projects to move the Town toward realization of the Master Plan vision. Proposed implementation projects are expected to include elements such as: future recreation access points/kayak put-ins, pedestrian bridges for improved connectivity, trail system development, land acquisition and restoration recommendations for increased open space and flood resiliency, recommendations for the Ballardvale Dam, review of the Town's existing by-laws and regulations and/or creation of no-build zones, enhanced attention to the river's history, water quality projects, etc.

Planning level costs and a summary of potential required permits/approvals will be included for each of the 3 core design concepts.

The draft plan will be provided in PDF form and will be finalized based on one round of review comments from the Town. The final Master Plan document will be provided as a PDF.

Task 4. Public Presentation of Shawsheen River Master Plan

The Master Plan is intended to be a document that the Town can leverage to support additional funding requests and to build public momentum toward implementation. Fuss & O'Neill staff will present the final plan in a public forum for Town staff, elected leaders, stakeholders, and other interested citizens to continue the process of establishing public buy-in. This forum can be



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conducted in-person or virtually, in accordance with safety guidance in effect at the time of the event.

Schedule

We are prepared to begin work on this project within 2 weeks of written authorization to proceed. A target schedule for completion of the project tasks is outlined below. We are currently assuming a January 2022 start date and expect an approximately 6- to 8-month project duration. The timeline can be adjusted to allow for enhanced integration of this project with the proposed FY22 MVP Action Grant if mutually agreed upon by both parties.

Task	Timeline for Completion
Task 1: Information Gathering	3-5 weeks after kickoff
Task 2: Public Involvement and Community Engagement	
2.1 Public Portal	Open portal: 5-6 weeks after kickoff Close portal to comment prior to Task 2.3
2.2 Stakeholder Workshop	10-12 weeks after kickoff
2.3 Design Charrette	4 months after kickoff
Task 3: Development of Shawsheen River Master Plan	6-8 months after kickoff
Task 4: Public Presentation of the Plan	6-8 months after kickoff

Fees

Fuss & O'Neill proposes to provide these professional services on a lump sum basis for a total of \$63,700, as indicated in the following table. Our policy is to invoice monthly based on the percentage of the project completed. Pricing is good for 90 days, and the attached General Terms and Conditions will apply.

Task	Fee
Task 1: Information Gathering	\$2,600
Task 2: Public Involvement and Community Engagement	\$26,600
2.1 Public Portal	\$600
2.2 Stakeholder Workshop	\$13,000
2.3 Design Charrette	\$13,000
Task 3: Development of Shawsheen River Master Plan	\$33,500
Task 4: Public Presentation of the Plan	\$1,000
TOTAL	\$63,700

Receipt of a purchase order referencing this proposal will serve to authorize the work outlined in the Scope of Services.



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We look forward to assisting you with this effort. Please call me at (617) 282-4675 x4723 if you have any questions.

Sincerely,

J. Alexander Maxwell, Ph.D.
Resilience Planner

Kevin Sullivan, P.E., LEEP-AP
Office Manager | Vice President

Attachment: General Terms and Conditions

