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TOWN OF ANDOVER

CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES

DATE:

9/13/22

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 quantify the flood mitigation benefits gained from the potential implementation of flood storage and/or restoration projects on several prioritized parcels identified during the Town's FY22 MVP Action Grant Project. Scope of Services is hereby attached and made part of these Contract Documents. This project is funded through a FY23 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: **\$247,705.00** Two Hundred Forty-Seven Thousand Seven Hundred and Five Dollars and zero cents.
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 June 30, 2023, 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 8/31/2022

Foss & O'Neill, Inc.
 Company Name


 Town Manager Date 9/13/22

 8-29-22
 Signature Date


 Purchasing Agent Date 8/31/22
 Town Accountant

Kevin M. Sullivan Vice President
 Print Name & Title

APPROVED AS TO FORM:

Thuritz 9/13/22
Town Counsel Date

CERTIFICATION AS TO AVAILABILITY OF FUNDS:

531123-4600 - STATE REIMBURSEMENT
531123-5189 - LENCASS PAYROLL
531123-5760 - LENCASS EXP

Thuritz, Paymen 9/12/22
Town Accountant Date
Purchasing Agent



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 June 6, 2022.

“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
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
Jamie Bratt: Vice President

Robert M. Danielson: Vice President
Daniel F. DeLany: Vice President
Christopher J. Ferrero: Vice President
Philip E. Forzley: Vice President
Jenna Krzesicki: Vice President
Elizabeth Landry: Vice President
Kurt A. Mailman: Vice President
Laura R. Marcolini: 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:

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

August 16, 2022

Joyce Losick-Yang, PhD
Sustainability Coordinator
36 Bartlet Street
Andover, MA 01810

RE: Proposal for Professional Services
Town of Andover – Shawsheen River Nature-Based Flood Resilience
FY23 MVP Action Grant – Town of Andover

Dear Dr. Losick-Yang:

Fuss & O'Neill is pleased to provide this proposal for professional services in accordance with the Town's FY23 Municipal Vulnerability Preparedness (MVP) Program Action Grant. The following paragraphs describe our scope of services, schedule, and fees for this project.

Project Understanding

Based on a grant proposal prepared jointly by the Town of Andover and Fuss & O'Neill, the Town of Andover has been awarded an FY23 MVP Action Grant by the Executive Office of Energy and Environmental Affairs (EEA). This grant provides funding to quantify the flood mitigation benefits gained from the potential implementation of flood storage and/or restoration projects on several prioritized parcels identified during the Town's FY 22 MVP Action Grant project.

This project will start by using hydrologic and hydraulic (H&H) modeling to evaluate the existing and projected future flooding conditions on the Shawsheen River within the Town of Andover, and in partnership with the City of Lawrence, continuing downstream into neighboring Lawrence. These H&H models will then be updated to account for the implementation of flood storage and/or nature-based restoration projects on up to five priority sites selected based on the FY22 prioritization and their strategic potential for increasing flood resilience at areas known to experience significant flooding (e.g., the Washington Park Condos). These models will be used to determine the anticipated reduction in flooding and increase in climate resilience at those sites.

Once we have an understanding of the most effective flood reduction project locations, stakeholders and members of the Andover and Lawrence communities will be invited to participate in a visioning workshop and charrette to develop initial conceptual designs for projects at these priority sites that integrate with other community co-benefits. Concurrently, volunteers will apply the site prioritization methodology developed and utilized for sites within Andover during Andover's FY22 Action Grant to identify parcels within Lawrence where acquisitions and restoration projects could be particularly beneficial for improving resilience.

The outcomes of this project will enable the Town to further prioritize acquisitions and provide quantitative information for the Town to effectively pursue funding for both land acquisition and

190 High Street
Floor 3
Boston, MA
02110
† 617.282.4675
800.286.2469

www.fando.com

California
Connecticut
Maine
Massachusetts
New Hampshire
Rhode Island
Vermont



Dr. Joyce Losick-Yang

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the implementation of floodplain reconnection/restoration projects. It will further build a regional partnership with the City of Lawrence and extend the lessons and methods of Andover's previous Action Grant work to systematically begin to develop a watershed approach to flood resilience along the Shawsheen.

Local residents have already been engaged in the prioritization process and citizen science efforts to assess and prioritize parcels as part of the initial project phase. The Town will continue to leverage the partnerships established with local community groups and has also identified champions in the vulnerable neighborhoods along the Shawsheen River and among the youth in both Andover and Lawrence that will serve as liaisons moving forward to engage residents from the most flood-prone areas and ensure that the project is centered in environmental justice. Importantly, this project will coincide with the Town's ongoing Shawsheen River Master Planning project, which will provide additional opportunities to engage community members and groups in the project and strengthen regional partnerships.

Scope of Services

Task 1: Project Kick-off, Management, and Reporting

Sub-task 1.1: Kick-off meeting with Town, EEA, and Consultant

Fuss & O'Neill will hold a project kickoff meeting with Town staff and the MVP Regional Coordinator to launch the project and review timelines and deliverables. We will prepare and circulate a meeting agenda as well as notes of relevant discussion items following the meeting.

Grant Deliverables: Meeting notes and agenda, sign-in sheet

Sub-task 1.2: Monthly Progress Reports FY23 (Town Task)

It is assumed that monthly progress reports required for grant compliance will be completed by the Town using the template provided by EEA. Fuss & O'Neill will provide timely updates regarding completion status of tasks for the Town's use in these reports.

Grant Deliverables: Monthly reports (to be provided by Town, with input from Fuss & O'Neill)

Sub-task 1.3: Project Case Study (Town Task)

It is assumed that the Town will submit a final case study report, along with PowerPoint slides and project photos, to the MVP Regional Coordinator by June 30, 2023 using the template provided by EEA. Fuss & O'Neill will support the development of the final project case study by providing existing text and/or photos/figures from other project deliverables (as requested).

Grant Deliverables: Project Case Study (to be provided by Town, with input from Fuss & O'Neill)



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Sub-task 1.4: Project Management

Fuss & O'Neill will provide up to 60 hours of project management support to participate in regular progress meetings with members of Town staff and the consultant team, coordinate public involvement and community engagement tasks, and manage the development of project tasks and activities throughout the yearlong project period, including coordination of the Gonzaga student design team supporting Task 3.

Grant Deliverables: Participation in regular progress meetings with members of the project team (meetings to be organized by the Town), coordination of community engagement activities, management of other project tasks and activities

Task 2: Public Involvement and Community Engagement

Sub-task 2.1: Print, Digital, and In-Person Community Engagement Activities

In partnership with the Town, Fuss & O'Neill will provide up to 40 hours of support to develop and implement the following:

- Digital distribution of project updates via partner organizations (e.g., guest posting on newsletters, etc.)
- Public web portal/digital billboard and regular updates to project website, including public participation/surveys
- Two (2) project update/coordination meetings with local watershed organizations
- One (1) regional event/get-together with inclusion of youth groups from Andover/Lawrence high schools (see Sub-task 2.3)
- Two (2) progress meetings with project steering committee

The specific distribution of support hours across each of the above tasks will be determined in collaboration with Town staff.

Grant Deliverables: Copies of print and digital materials (flyers, survey, email updates), photos and summary memo documenting events, public meeting presentations, website updates (responsibility for deliverables between Town and Fuss & O'Neill to be determined based on the agreed upon allocation of support hours)

Sub-task 2.2: Community Liaison (Town Task)

It is understood that the Town will be partnering with the Greater Lawrence Technical School to sponsor one co-op student who will serve as a community liaison to engage vulnerable residents from the most flood-prone areas of Andover and Lawrence in the development of this project and related activities. The co-op student will shadow various professionals through the project to learn more about flood modeling, nature-based solutions, and climate resilience, while also spending time promoting community awareness and involvement in the project (especially the regional event).



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Grant Deliverables: Summaries of community liaison activities and lessons learned from professional shadowing (to be provided by Town)

Sub-task 2.3: Youth Climate Action (Town Task)

It is understood that the Town has allotted budgets within the grant funds to youth environment and climate groups from four local high schools (Andover High School, Phillips Academy, Abbott Lawrence Academy, and Brooks School) to build upon their work in connection to the Andover Climate Summit and develop additional climate actions that help promote awareness, involvement, and climate adaptation among community youth and the community at large. In recognition of the value of youth perspectives and ideas and the fact that they may differ from our own, the Town has given the students freedom to develop their own specific ideas and actions as to how best to apply this budget once awarded. Fuss & O'Neill may assist with coordination of these groups within the scope and hours allocated to Sub-Task 2.1. Fuss & O'Neill has not budgeted any additional hours specific to this task, and it is understood that the primary responsibility for this task will fall to the Town.

Grant Deliverables: Action summaries of activities and expenditures (to be coordinated by the Town and provided by the youth from each school), participation (by youth from each school) in a regional community event in follow-up to the 2022 Andover Climate Summit

Sub-task 2.4: Equitable Engagement Enhancement (Town Task)

The Town will continue its regional collaboration with the City of Lawrence, in addition to planning a regional community meeting as a follow-up event to the 2022 Andover Climate Summit. The meeting will be held at a location in the community that will be accessible to those from the Andover and Lawrence community (e.g., Greater Lawrence Community Boathouse), and childcare and food will be provided during the meeting to ease the burden of attendance. Translation of print/digital materials and live translation at the regional community meeting will also be provided by the Town. The Town will be responsible for this grant task; Fuss & O'Neill can support this task as part of the Sub-Task 2.1 scope and hours. Fuss & O'Neill has not budgeted any additional hours specific to this task.

Grant Deliverables: Receipts for expenditures, event photo documentation, and copies of translated deliverables (to be provided by Town)

Task 3. Modeling Nature-Based Solutions on the Shawsheen River

Sub-task 3.1: HEC-RAS Model Development

Fuss & O'Neill will develop a base-condition HEC-RAS hydraulic model for the reach of the Shawsheen River that passes through Andover and neighboring Lawrence to evaluate flooding



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conditions and potential flood mitigation solutions on up to five priority sites under current and future climatic conditions. Fuss & O'Neill will also engage with the Gonzaga University senior design studio team, including 4th year civil engineering students and their university faculty supervisor, Sue Niezgoda, PhD, to help model the heavily urbanized reach that spans across several flood-prone environmental justice communities in Lawrence. Expanding the model to include the reach of the Shawsheen River in neighboring Lawrence will allow us to develop a more regional approach to examining flood mitigation measures along the Shawsheen in partnership with community groups and municipal staff from the City of Lawrence. A duplicate effective HEC-RAS hydraulic model will be developed based on the current FEMA Flood Insurance Study (FIS) model datasets, including hydrologic peak flows reported in the current FIS.

The duplicate effective model will be refined using bridge and culvert geometries obtained from field assessments of river crossings along the reach; it is assumed that these field assessments will be conducted by Town staff as part of the in-kind grant match. Approximately 130 hours of Town staff effort are anticipated during the period September 2022 to October 2022 in order to maintain the project schedule and meet grant deadlines. The data collected from these assessments will also be compared to information obtained from infrastructure improvement plans on record supplied by the Town Engineer (Art Martineau) and his staff. Contour information generated from the most recent LiDAR data will be used to update/define cross section geometry for portions of the river sections that are located outside of the river channel. Sub-watersheds draining to the Shawsheen River within the limits of analysis will be delineated, and hydrographs will be developed for each using a HEC-HMS hydrologic model. Watersheds draining to priority site locations (where flood mitigation measures will potentially be considered) will be subdivided, allowing for potential flood mitigation measures to be quantified. This refined HEC-HMS and HEC-RAS model will be utilized to define the floodplain extent and depth for this reach of the Shawsheen River for the 2, 10, 50, 100, and 500-year flood events.

Consistent with RMAT guidelines and the aims of this project, future precipitation conditions will be incorporated in accordance with the Tier 2 methodology and a late-century scenario. Given the ongoing concerns and discussions by community members regarding the potential removal of the Ballardvale Dam, an additional model will be developed that assumes the removal of the dam. Proposed projects will be analyzed in a proposed conditions HEC-RAS model to evaluate their flood reduction effectiveness with and without the dam.

Grant Deliverables: Flood impact assessment outcomes (reported via the project website) that will document areas of flooding and quantify flood impacts under current and future climate conditions (with and without the Ballardvale Dam), including supporting figures

Sub-task 3.2: Modeling of Nature-Based Solutions



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Fuss & O'Neill will develop proof-of-concept level assessments of nature-based solutions that will include HEC-RAS modeling of up to five priority sites identified during the Town's FY22 MVP Action Grant project. A conceptual graphic will be developed for each proposed project to include approximation of rough grading and key restoration elements. In tandem with Task 4.1, graphics will be developed to demonstrate the predicted change in flood elevation and extent for each project site. Order of magnitude engineer's estimates of cost will be developed by Fuss & O'Neill for any of the sites deemed to have significant positive benefits (e.g., increased flood storage capacity, reduced flow rates, etc.).

Alternatives will be evaluated both with and without the Ballardvale Dam to evaluate how dam removal would affect (positively or negatively) the impacts of proposed flood storage/restoration projects.

Grant Deliverables: Concept outlines (graphic with rough grading and key restoration elements) and modeling output for each project site; order of magnitude cost estimates

Sub-task 3.3: Lawrence Desktop Site Screening (Senior Design Studio Task)

Per the grant award, no specific budget has been allocated for this task. This sub-task is being supported by the Town's in-kind match via the work on the senior design studio student volunteers, and it is assumed that the Town will assist in coordinating between the City of Lawrence and the student group. If requested, Fuss & O'Neill can provide additional oversight and support to this sub-task as part of the 60 hours of project management support allocated to Sub-Task 1.4. The approach and methodology developed for Andover by Fuss & O'Neill during the FY22 MVP Action Grant project will be utilized by the Gonazaga senior design studio student volunteers to screen sites along the Shawsheen in Lawrence for potential priority preservation/restoration projects. As a reminder, the methodology incorporates the following data sources:

- MassGIS
- FEMA National Flood Hazard Layer (NFHL)
- The Nature Conservancy "Terrestrial Resilience" dataset
- The Nature Conservancy "Resilient Land Mapping Tool"
- Designing Sustainable Landscapes (DSL) "Index of Ecological Integrity" database
- University of Massachusetts Amherst "Conservation Assessment and Prioritization System" (CAPS) data
- Centers for Disease Control and Prevention Social Vulnerability Index (SVI)

These data sources will be used to evaluate metrics related to physical diversity (including geodiversity and landform diversity), connectedness, and broad-scale biological condition. Existing preserved open space parcels will also be screened relative to areas of expected flooding or climate impacts to identify potential locations for climate adaptation projects.



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Grant Deliverables: Maps visualizing screening results (to be provided by Town via the student volunteer group)

Task 4. Visioning Workshop and Design Charrette

Sub-Task 4.1. Visioning Workshop and Design Charrette

Members of the community will be invited to participate in a multi-day visioning workshop and design charrette to co-create conceptual visions for up to five priority sites along the Shawsheen River in the Town of Andover. The workshop/charrette will focus on improving flood resilience and developing a holistic understanding of how flood storage and restoration projects might improve the overall vision for the Shawsheen River.

In partnership with the Town, Fuss & O'Neill will complete a visioning workshop over the course of 3 days that will engage both the Andover and Lawrence communities and public stakeholder groups (e.g., business owners, residential abutters, Town boards and commissions, watershed groups, etc.) in site tours/walk-and-talks, visioning focus groups, and public design review meetings. The site tours/walk-and-talk sessions will include tours of the potential project sites with members of the community (and key stakeholders) to experience the context of the area firsthand and brainstorm about challenges and possibilities for the proposed restoration and/or flood storage projects. Input from people with local knowledge will help the design team to consider how different opportunities and constraints may influence the programming and site design, and inform some of the findings from the initial site analysis.

Immediately following each group site tour/walk-and-talk, Fuss & O'Neill will engage participants in a visioning focus group session that will help the design team interpret elements of the design, including how the project area will be used and programmed, community needs and wants, and the project site opportunities and constraints. The design team will outline key design considerations and facilitate a highly interactive brainstorming session.

Following the site tours/walk-and-talks and visioning focus groups, Fuss & O'Neill's design team will coordinate additional public design review meetings to review designs, proposed alternatives, and solicit additional feedback.

By the end of the three days, a conceptual plan will be developed based on the community's input and will be supplemented with corresponding cost estimates.

Note that the budget and approach for this task assumes a workshop/charrette format that requires 3 consecutive days. Deviations from this approach may not be able to be accommodated within the allotted fee and may require additional budget.



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Grant Deliverables: Illustrative conceptual plan with detailed enlargements of priority project areas (these may include illustrations, cross sections, 3-D renderings); a workshop document package that summarizes the workshop process, incorporates findings from community input, stakeholder and focus group engagement, and outlines the proposed vision with cost estimates for implementation

Assumptions

Given the ever-changing conditions around the COVID-19 pandemic, some adjustment to meeting formats or planned activities may be necessary to complete project tasks safely. We will work with the Town as necessary to adapt engagement activities as needed to work within the various safety protocols in place (within Fuss & O'Neill and/or at the Town, State, or Federal level) at the time activities are to take place.

Additionally, the following assumptions were noted above in the scope of services and reiterated here for reference:

- **Sub-task 1.2: Monthly Progress Reports FY23 (Town Task)** – “It is assumed that monthly progress reports required for grant compliance will be completed by the Town using the template provided by EEA. Fuss & O'Neill will provide timely updates regarding completion status of tasks for the Town's use in these reports.”
- **Sub-task 1.3: Project Case Study (Town Task)** – “It is assumed that the Town will submit a final case study report, along with PowerPoint slides and project photos, to the MVP Regional Coordinator by June 30, 2023 using the template provided by EEA. Fuss & O'Neill will support the development of the final project case study by providing existing text and/or photos/figures from other project deliverables (as requested).”
- **Sub-task 2.2: Community Liaison (Town Task)** – “It is understood that the Town will be partnering with the Greater Lawrence Technical School to sponsor one co-op student who will serve as a community liaison to engage vulnerable residents from the most flood-prone areas of Andover and Lawrence in the development of this project and related activities.”
- **Sub-task 2.3: Youth Climate Action (Town Task)** – “It is understood that the Town has allotted budgets within the grant funds to youth environment and climate groups from four local high schools (Andover High School, Phillips Academy, Abbott Lawrence Academy, and Brooks School) to build upon their work in connection to the Andover Climate Summit and develop additional climate actions that help promote awareness, involvement, and climate adaptation among community youth and the community at large. . . Fuss & O'Neill may assist with coordination of these groups within the scope and hours allocated to Sub-Task 2.1. Fuss & O'Neill has not budgeted any additional hours specific to this task, and it is understood that the primary responsibility for this task will fall to the Town.”



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- **Sub-task 2.4: Equitable Engagement Enhancement (Town Task)** – “The Town will continue its regional collaboration with the City of Lawrence, in addition to planning a regional community meeting as a follow-up event to the 2022 Andover Climate Summit... Translation of print/digital materials and live translation at regional community meeting will also be provided by the Town. The Town will be responsible for this grant task; Fuss & O’Neill can support this task as part of the Sub-Task 2.1 scope and hours. Fuss & O’Neill has not budgeted any additional hours specific to this task.”
- **Sub-task 3.1: HEC-RAS Model Development** – “The duplicate effective model will be refined using bridge and culvert geometries obtained from field assessments of river crossings along the reach; it is assumed that these field assessments will be conducted by Town staff as part of the in-kind grant match. Approximately 130 hours of Town staff effort are anticipated during the period September 2022 to October 2022 in order to maintain the project schedule and meet grant deadlines. The data collected from these assessments will also be compared to information obtained from infrastructure improvement plans on record supplied by the Town Engineer (Art Martineau) and his staff.”
- **Sub-task 3.3: Lawrence Desktop Site Screening (Senior Design Studio Task)** – “Per the grant award, no specific budget has been allocated for this task. This sub-task is being supported by the Town’s in-kind match via the work on the senior design studio student volunteers, and it is assumed that the Town will assist in coordinating between the City of Lawrence and the student group. If requested, Fuss & O’Neill can provide additional oversight and support to this sub-task as part of the 60 hours of project management support allocated to Sub-Task 1.4.”
- **Sub-Task 4.1. Visioning Workshop and Design Charrette** – “Note that the budget and approach for this task assumes a workshop/charrette format that requires 3 consecutive days. Deviations from this approach may not be able to be accommodated within the allotted fee and may require additional budget.”

Schedule

We are prepared to begin work on this project within 1 week of written authorization to proceed. We understand that, pursuant to the Town’s Grant Agreement, the entire project must be completed by June 30, 2023. Assuming authorization to proceed by September 1, 2022, a tentative schedule for completion of the project tasks is outlined below.

Task	Tentative Timeline for Completion
Task 1: Project Kick-off, Management, and Reporting	
Sub-task 1.1: Kick-off meeting with Town, EEA, and Consultant	September 30, 2022
Sub-task 1.2: Monthly Progress Reports FY23	June 30, 2023



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Task	Tentative Timeline for Completion
Sub-task 1.3: Project Case Study	June 30, 2023
Sub-task 1.4: Project Management	June 30, 2023
Task 2: Public Involvement and Community Engagement	
Sub-task 2.1: Print, Digital, and In-Person Community Engagement Activities	June 15, 2023
Sub-task 2.2: Community Liaison	June 15, 2023
Sub-task 2.3: Youth Climate Action	June 15, 2023
Sub-task 2.4: Equitable Engagement Enhancement	June 15, 2023
Task 3: Modeling Nature-Based Solutions on the Shawsheen River	
Sub-task 3.1: HEC-RAS Model Development	May 1, 2023
Sub-task 3.2: Modeling of Nature-Based Solutions	May 1, 2023
Sub-task 3.3: Lawrence Desktop Site Screening	December 21, 2022
Task 4: Visioning Workshop and Design Charrette	
Sub-task 4.1: Visioning Workshop and Design Charrette	June 30, 2023

Fees

Fuss & O'Neill proposes to provide these professional services on a lump sum basis, 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.

Task	Fee
Task 1: Project Kick-off, Management, and Reporting	\$12,700
Sub-task 1.1: Kick-off meeting with Town, EEA, and Consultant	\$1,500
Sub-task 1.2: Monthly Progress Reports FY23	-
Sub-task 1.3: Project Case Study	-
Sub-task 1.4: Project Management	\$11,200
Task 2: Public Involvement and Community Engagement	\$8,020
Sub-task 2.1: Print, Digital, and In-Person Community Engagement Activities	\$8,020
Sub-task 2.2: Community Liaison	-
Sub-task 2.3: Youth Climate Action	-
Sub-task 2.4: Equitable Engagement Enhancement	-
Task 3: Modeling Nature-Based Solutions on the Shawsheen River	\$190,155
Sub-task 3.1: HEC-RAS Model Development	\$97,840
Sub-task 3.2: Modeling of Nature-Based Solutions	\$92,315
Sub-task 3.3: Lawrence Desktop Site Screening	-



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Task	Fee
Task 4: Visioning Workshop and Design Charrette	\$36,830
Sub-task 4.1: Visioning Workshop and Design Charrette	\$36,830
Grand Total	247,705

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

We look forward to assisting you with this effort. Please call me at (617) 379-5876 if you have any questions.

Sincerely,

Alex Maxwell, PhD
Resilience Planner

Dan DeLany, PE
Vice President | Office Manager

