

SUNAPEE BOARD OF SELECTMEN
MEETING AGENDA
6:30PM Town Office Meeting Room
Monday, July 11, 2022

1. REVIEW OF ITEMS FOR SIGNATURE:

CZC's:

LAND DISTURBANCE BOND:

Parcel ID: 0146-0065-0000 15 Bay Point Lane, Gordon Greenfield

DRIVEWAY PERMIT:

Parcel ID: 0238-0077-0000 Nutting Road, James Woodley

2. APPOINTMENTS

7:00PM-Scott Hazelton-Authorization to Use Funds From

Building Maintenance Capital Reserve-Safety Services Building Exterior Painting Project

Bridges Maintenance Capital Reserve-Sargent Road Bridge Replacement Design

3. PUBLIC COMMENTS:

4. SELECTMEN ACTION

- Adopted Sunapee Hazardous Mitigation Plan

- Authorize Chairman to sign Proposal for Design & Permitting for Replacement of Water Main on Lower Main Street

5. CHAIRMAN'S REPORT

6. TOWN MANAGER REPORTS

- Updated Trustees Investment Policy

- Updated Standard Power Agreement

- Short-Term Rentals Update

- Harbor Parking

- Staffing Update

- Financials Reports

7. UPCOMING MEETINGS:

07/12-5:30pm-Recreation Committee, Town Meeting Room

07/13-5:00PM-Energy Committee, Town Meeting Room

07/14-7:00PM-Planning Board, Town Meeting Room

07/18-5:00PM-Short-Term Rentals Task Force Meeting, Town Meeting Room

07/19-6:30PM-Zoning Board, Town Meeting Room

07/20-4:00PM-Crowther Chapel Meeting, Dexter's Inn

NONPUBLIC: The Board of Selectmen may enter a nonpublic session, if so voted, to discuss items listed under RSA 91-A:3, II




SUNAPEE HIGHWAY DEPARTMENT

621 Route 11

Sunapee, New Hampshire 03782

Phone: (603) 763-5060 Fax: (603) 763-4337

MEMORANDUM

FROM: Scott A. Hazelton, Highway Director 
TO: Board of Selectmen
DATE: July 6, 2022
RE: Authorization to use Funds from the Building Maintenance Capital Reserve for Safety Service Building Exterior Painting Project

Many defective pieces of clapboard and wood shingle siding were discovered on the Safety Service Building in 2018 during a routine building inspection that was conducted by Craig Heino, Building Maintenance Foreman. We reported the results of our inspection to the James Hardie Building Products (JHBP) company, and filed a warranty claim with them at that time. Subsequently, JHBP provided replacement siding, shingles and miscellaneous materials at no cost to the Town, and Town staff removed the defective siding and installed the new Hardie Plank clapboard siding and wood shingle on the building in 2019 and 2020.

During the last week of May 2022, we formally solicited bid proposals from contractors to supply all necessary labor, equipment, and materials for painting the exterior of the Safety Service Building. The request for proposal (RFP) was advertised in the Union Leader, the New Hampshire Municipal Association's website, and on the Town's website. We also left messages with six local painting companies to inform them of the project. A mandatory pre-bid meeting was held on Wednesday, June 1st, 2022. A representative from CertaPro Painters attended the meeting. CertaPro submitted a bid proposal for the project. Their bid was publicly opened by the Highway Director assisted by the Building Maintenance Foreman, and then reviewed by the both following the bid opening.

CertaPro responded to the Town's RFP in accordance with all of the items that were requested and is the only bidder for the project. CertaPro's proposed price to power wash, prep, and paint exterior surfaces of the building with 2-coats of paint is \$42,992. We are seeking authorization from the Board of Selectmen to spend \$42,992 from the Buildings Maintenance Capital Reserve Fund to cover CertaPro's total project cost. If approved, the Building Maintenance Capital Reserve Fund will be revised to reflect the cost of this project in 2022.

Thank you for your consideration.

cc: File




SUNAPEE HIGHWAY DEPARTMENT

621 Route 11

Sunapee, New Hampshire 03782

Phone: (603) 763-5060 Fax: (603) 763-4337

MEMORANDUM

FROM: Scott A. Hazelton, Highway Director 
TO: Board of Selectmen
DATE: July 6, 2022
RE: Authorization to use Funds from the Bridges Maintenance Capital Reserve for the Sargent Road Bridge Replacement Design

The Sargent Road Bridge is scheduled to be replaced in 2024 provided that there are sufficient funds in the Bridge Maintenance Capital Reserve fund to cover the replacement costs.

During the week of April 11th, 2022, we solicited bid proposals from engineering consultants for a replacement design for the Sargent Road Bridge. The request for proposal (RFP) was advertised in the Union Leader, the New Hampshire Municipal Association's website, and on the Town's website. I also e-mailed the RFP to six engineering firms that I have worked with in the past to inform them of the project. A mandatory pre-bid meeting was held on Monday, April 18th, 2022. Representatives from HEB Engineers, GM2 Associates, and Quantum Construction Consultants attended the pre-bid meeting and each of them submitted a bid proposal for the bridge replacement design project.

The engineering bid proposals were not opened publicly due to the many different scopes of services that might have been included in each consultant's proposal, and because it is very difficult to determine if proposals are similar in scope without a full review. That said, the proposals were reviewed and were graded using a weighted scale method by the Highway Director and the Highway Foreman, and the results of the review were discussed with the Town Manager.

HEB Engineers responded to the Town's RFP in accordance with all of the items that were requested and received the highest-ranking score of the three proposal responses that were received. HEB Engineer's proposed price to design a replacement bridge for the Sargent Road Bridge is \$78,434. We are seeking authorization from the Board of Selectmen to spend \$78,434 from the Bridges Maintenance Capital Reserve fund to cover HEB Engineer's total project fee. If approved, the Bridges Maintenance Capital Reserve fund will be revised to reflect the cost of this project in 2022. Additionally, a goal of this project is to develop plans to be "shovel ready" should federal and/or state funding be available and be an option for the construction of this project in the future.

Thank you for your consideration.

cc: File



FUSS & O'NEILL

June 29, 2022

Sunapee Water and Sewer Commission
Town of Sunapee
23 Edgemont Road
Sunapee, NH 03782

RE: Proposal for Design and Permitting for Replacement of Water Main on Lower Main Street
Fuss & O'Neill Reference No. 20211335.A20

Dear Commissioners:

Sunapee's Asset Management Program has identified several streets which contain aged cast iron water main. These mains have been categorized as having 0 to 20 years of useful life remaining. Water mains and services on Lower Main Street have been prioritized for replacement. The Water Department responds to frequent leak repairs in this area.

The Water and Sewer Commission has requested that Fuss & O'Neill provide a proposal for the design and permitting of water main replacements. Work will impact the Department of Environmental Services (DES) Shoreland Protection zone. Fuss & O'Neill will survey, review geotechnical data, provide draft and bid ready design plans, submit a State Shoreland Permit and will coordinate design work with the Town and DES for these utilities.

Scope of Services

Engineering Services

1. Field Investigation:

Fuss & O'Neill will pre-mark the street and request a DigSafe ticket for the locations of buried utilities within the work areas. Work areas for survey and design will include all of Lower Main Street, it intersects Route 11 on the west and east ends. The total project length is approximately 4,250 feet.

We will utilize our inhouse surveyor and survey team to provide base mapping information within the roadway and approximately 20' either side of the edge of road. The front faces of houses and buildings will be located along the road also. This information will include topography, existing utilities visible on the ground surface, structures, bridges, edges of pavement, elements required for shoreland permitting. We will not conduct a certified boundary survey. Temporary benchmarks will be set approximately every 500' along the project.

Fuss & O'Neill obtained design plans and specifications from the 1970's showing geotechnical borings and boring logs within the proposed work areas. This data will be reviewed by Fuss & O'Neill and used for quantity takeoffs and design considerations. The

205 Billings Farm Road
Suite 6B
White River Junction, VT
05001
802.698.0370

www.fando.com

California
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Main St.Doc

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approximate location of these borings will be shown on the plans and referenced. We do not anticipate that a geotechnical program will be necessary given that this data exists and is usable.

We will schedule and run a pre-application meeting with the NH DES Shoreland Department and discuss the project virtually with a State Reviewer. This meeting will allow the State to provide any initial recommendations.

Fuss & O'Neill will perform a site walk with the existing conditions plans to ground truth plans before beginning design.

2. Design and Permitting

- A. Fuss & O'Neill will begin schematic design and draft plans for permitting purposes. Plans will include the locations for proposed water main, water services, hydrants, size and material of piping, profiles of the proposed main showing crossing locations of other found utilities, limits of impacts, and elements required for permitting. Construction details and erosion control details will be included as well as a schedule of items for bidding purposes. Services will be designed to connect to existing service lines at the curbstop or to face of building. We have excluded interior plumbing design and meter design/location. We have budgeted for one meeting with the Sewer and Water Commission to discuss the schematic design and address any comments.
- B. Based on the proximity to the Sugar River we anticipate that a shoreland permit will be required. This permit will be submitted to NH DES by Fuss & O'Neill and will include the application form, Natural Heritage Bureau Review, USGS maps, tax maps, and photos. We will submit this permit on behalf of the Town and have budgeted up to 10 hours for response to NH DES comments, if provided. The permit fees are related to disturbance areas impacted by the work and will be paid directly by the Town. The shoreland fee could be up to \$3,750. If disturbance areas are outside of the ROW, abutter/owner permissions are required for permitting, we have assumed that Town staff will notify the residents and obtain authorizations and or permissions necessary.
- C. Fuss & O'Neill will coordinate with District 2 of the NH DOT. We have budgeted for one virtual meeting with NH DOT and will keep written minutes from the meeting. If work is within the ROW of Route 11 we will prepare an excavation permit and provide materials to the Town to be used when construction is scheduled. Excavation permits need to be signed by the selected Contractor in order to be submitted. We have budgeted a total of 6 hours to respond to potential DOT review comments during design, and we will notify you if significant additional hours are necessary.
- D. After addressing DES and DOT comments received during the permitting effort, Fuss & O'Neill will advance the plans from draft to Bid ready plans. We will finalize the plans and profiles, construction details, sequencing, traffic control, erosion control, and include an updated schedule of items. We will also provide a temporary water design, if required, to maintain services during construction. We will attend a

meeting with the Water and Sewer Commission and Water Department to discuss the plans. We have budgeted for up to 10 hours to address any Town comments and complete the plans for bidding purposes.

3. Specifications and Opinions of Probable Cost

We will prepare a technical specifications document. The contract or front end documents are not included in this proposal. We assume the front end documents will either be Sunapee's typical contract format or the latest version of the EJCDC format for small projects and will need to incorporate funding source specific requirements once determined.

We will provide an itemized opinion of probable cost for the work at both the Schematic Design and the Bid Set phases of the project. This cost will be provided to the Town and to NHDOT to allow for calculation of potential bonding values.

Assumptions

The following tasks are not included in our scope of services, but can be provided under a contract amendment:

- Additional field work or surveys including boundary survey and ROW surveying;
- Town of Sunapee hearings or public engagement;
- Additional meetings not listed above;
- Application fees;
- Geotechnical investigation will not be required due to existing data;
- Obtaining easements or obtaining approvals for work on private property;
- Interior plumbing design or meter location/design;
- Bid or Construction Administration.

Schedule

We estimate the completion of design and permitting in March of 2023 upon receipt of Authorization to Proceed within 30 days.

Fees

Fuss & O'Neill proposes to provide these professional services on a lump sum basis for a fee of **\$109,000.00**. Our policy is to invoice on a monthly basis using a percent complete for each of the project tasks shown below.

Individual costs that comprise the lump sum fee are approximated according to the table below.

Task	Fee
1. Field Investigation & Survey	\$48,400
2. Design & Permitting	
A. Schematic Design	\$18,400
B. Shoreland Permitting	\$7,300
C. NH DOT Coordination/Excavation Permit	\$4,300
D. Bid Plans	\$18,500
3. Specifications & Opinions of Cost	\$12,100
Total:	\$109,000

Billing will be monthly according to our current Rate Schedule in effect at the time services are provided. A typical copy is attached.

Fees are valid for 90 days and the project duration is assumed to be as shown above. If authorization or project schedule extend beyond these durations, Fuss & O'Neill reserves the right to renegotiate the fee.

General Terms and Conditions

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

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

Thank you for requesting engineering services from Fuss & O'Neill. We look forward to working with you on this project.

Sincerely,



Daniel Monette, PE
Project Manager



JoAnn Fryer, PE
Regional Manager | Senior Vice President

DM/km

Attachments: Authorization to Proceed
General Terms and Conditions

Authorization to Proceed

Daniel Monette, P.E.
Fuss & O'Neill, Inc.
205 Billings Farm Road
Suite 6B
White River Junction, VT 05001

RE: Authorization to Proceed
Proposal for Engineering Services
Sunapee Lower Main Street
Fuss & O'Neill Opportunity No. 20211335.A20

Budget: \$109,000

Dear Mr. Monette:

I hereby authorize Fuss & O'Neill Inc. to proceed with the above-referenced project in accordance with the General Terms and Conditions and proposal dated 6/29/2022.

Printed Name

Date

Signature

Title

For Municipal Contracts – remove this line and the box below if not needed for your project.

Certification as to Availability of Funds:

Finance Director/Town Accountant

Date

Town of Sunapee – please complete information below.

*Submit invoice as follows (✓ one →):	_____ Mail	_____ Email	_____ Online
Billing Contact:			
Phone/Email:			
Accounts Payable Contact:			
Phone/Email:			
Purchase Order Number:			

*** Indicate address, email address and website link if different than already provided.**

GENERAL TERMS AND CONDITIONS

Attached to and incorporated into the Proposal that, as executed, shall serve as an agreement between Town of Sunapee (Client) and Fuss & O'Neill, Inc. (Consultant) dated June 29, 2022 in respect of the Project described therein.

1.0 GENERAL

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

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

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

2.0 MEANING OF TERMS

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

3.0 CLIENT'S RESPONSIBILITIES

Client shall:

- Provide all criteria and complete information as to Client's requirements for the Project,
- Designate a person to act with authority on the Client's behalf in respect to all aspects of the Project,
- Examine and respond promptly to the Consultant's submissions,
- Give prompt written notice to Consultant whenever Client observes or otherwise becomes aware of any perceived defect in the work,
- Guarantee access to and make all provisions for the Consultant to enter lawfully upon public and private property,
- As appropriate and required by law, bear responsibility for reporting significant and/or material environmental hazards of contaminated property.

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

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

4.0 REUSE OF DOCUMENTS

All documents, including reports, electronic media, drawings and specifications, prepared or furnished by Consultant and its subsidiaries, independent professional associates, subconsultants and subcontractors pursuant to this Agreement are instruments of service in respect of a particular Project and Consultant shall retain ownership and property interests therein whether or not the Project is completed. Client may make and retain copies of such documents for information and reference in connection with the Project, However, such documents are not intended or represented to

be suitable for reuse by Client, including extensions of the Project or on any other project; nor are they to be relied upon by anyone other than Client.

Copies of documents that may be relied upon by Client are limited to printed copies that are signed or sealed by Consultant, or PDF files prepared, issued, and digitally signed and encrypted by the Consultant. Other files in electronic media, including but not limited to CAD or other similar electronic drawings, other electronic media, text, data and graphics files will be made available solely as a convenience and any conclusion or information obtained or derived from such other electronic files will be at the user's sole risk. When transferring documents in electronic media format, Consultant makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems or computer hardware differing from those in use by Consultant at the beginning of this Project.

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

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

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

5.0 OPINIONS OF COST

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

Since Consultant has no control over the cost of labor, materials, equipment or services furnished by others, or over Contractor's methods of determining prices, its means, methods and sequencing, or over competitive bidding or market conditions, Consultant's opinions of probable total project costs and construction cost, if any, are made based solely upon the Consultant's experience and qualifications, and represent Consultant's best judgment as an experienced and qualified professional familiar with the construction industry. Consultant cannot, and does not, guarantee or warrant that proposals, bids or actual total project or construction costs will not vary from opinions of probable cost prepared by Consultant. If prior to the bidding or negotiating phase the Client wishes greater assurance as to total project or construction costs, Client shall employ an independent cost estimator.

6.0 SUCCESSORS AND ASSIGNS

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

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

7.0 MEDIATION

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

8.0 PURCHASE ORDERS

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

9.0 SUBCONSULTANTS

Except as expressly agreed, Client will directly retain other consultants whose services are required in connection with the Project. As a service, Consultant may advise Client with respect to selecting other consultants, and may assist Client in coordinating and monitoring the performance of other consultants as an additional service for which Consultant is entitled to an agreed fee. However, in no event will Consultant assume any liability or responsibility for the work performed by other consultants, or for their failure to perform any work, regardless of whether Consultant retains them directly or as subconsultants, or only coordinates and monitors their work. When Consultant does engage a subconsultant on behalf of Client, the expenses incurred, including rental of special equipment necessary for the work will be billed as they are incurred, subject to an administrative markup of 15 percent, or as specified in the rate table or billing terms in effect at the time the services are

provided. By engaging Consultant to perform services, Client agrees to hold Consultant, its directors, officers, employees, and other agents harmless against any claims, demands, costs, or judgments relating in any way to the performance or non-performance of work by another consultant or subconsultant for which Consultant is not legally liable and which Consultant does not control, except claims for personal injury, death, or personal property damage caused solely by the negligence of Consultant's employees.

10.0 INDEMNIFICATION

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

10.2 Consultant shall under no circumstances be considered the generator of any hazardous substances, pollutants or contaminants encountered or handled in the performance of Consultant's services. In the event that the Consultant or any other party encounters asbestos or toxic materials at the job site which was previously unknown or had not been disclosed to Consultant, or should it become known that certain materials may be present at the job site or any adjacent areas that may affect the performance of the Consultant's services, Consultant shall notify Client and may, at its option and without liability for consequential or any other damages, suspend performance of service on the Project until Client retains appropriate specialist consultants to identify, abate and/or remove the asbestos or hazardous or toxic material, and Client warrants to Consultant that the job site is in full compliance with applicable laws and regulations with regard to said substances.

10.3 Neither party shall have liability for loss of product, loss of profit, loss of use, or any other indirect, incidental, special, or consequential damages incurred by the other party, whether brought as an action for breach of contract, breach of warranty, tort, or strict liability, and irrespective of whether caused or allegedly caused by either party's negligence; and Client agrees to defend, indemnify and hold Consultant harmless with

respect to any such claims. Client and Consultant agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors, and other entities involved in this Project to carry out the intent of this provision.

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

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

11.0 LIMITATION OF LIABILITY

Notwithstanding any other provision of these General Terms and Conditions, to the extent Consultant is adjudicated liable, Consultant's liability to Client for any loss or damage arising out of or in connection with the accompanying Proposal or any related Agreement from any cause, including Consultant's professional negligent errors or omissions, shall not exceed the greater of \$50,000 or the total compensation received by Consultant hereunder, and the Client expressly releases the Consultant from any liability above such amount.

12.0 STANDARD OF CARE

All services of Consultant and those for whom it is legally liable will be performed in a manner consistent with that degree of skill and care ordinarily exercised by practicing professionals performing similar services in the same locality, at the same site and under the same or similar circumstances and conditions. Consultant expressly

disclaims any and all other warranties, whether express or implied, with respect to the services rendered hereunder.

13.0 CHANGES OR DELAYS

Unless the accompanying Agreement/Proposal provides otherwise, the proposed fees constitute Consultant's estimate to perform the services required to complete the Project as Consultant understands it to be defined, and subject to the accuracy of information provided to the Consultant at that time. For those projects involving conceptual or process development work, activities often are not fully definable in the initial planning. In any event, as the project progresses, the facts developed may dictate a change in the services to be performed, which may alter the scope, timeframe or cost. Consultant will inform Client of such situations so that negotiation of change in scope and adjustment to the time of performance and fees may be accomplished as required. If such change, additional services, or delay in commencement of the project, unanticipated delay in construction of the project or suspension of services results in an increase or decrease in the cost of or time required for performance of the services, regardless of the reason or cause, an equitable adjustment shall be made and the Agreement modified accordingly. No work shall commence until the Parties have mutually agreed upon and memorialized any changes in writing signed by both Parties.

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

14.0 PAYMENT

Consultant shall typically invoice Client for services performed under this Agreement on a monthly basis, and Client shall pay Consultant's invoices within thirty (30) days of receipt. Payment shall be delivered to: Fuss & O'Neill, Inc. at P.O. Box

412889, Boston, MA 02241-2889 or by EFT/ACH transfer to Bank of America, Account # 385016029253, ABA #011900254. Client agrees to bring to Consultant's attention in writing any questions regarding Consultant's invoice within ten (10) days of receipt. In the event that Client does not provide Consultant with written questions within ten (10) days, the invoice shall be deemed accurate and acceptable to Client. If Client fails to make any payment due Consultant for services, expenses or other charges within thirty (30) days after receipt of Consultant's invoice therefor, the amounts due Consultant will be increased at the rate of one and one half (1.5%) percent per month from the thirtieth day after the invoice was received and, additionally, Consultant may, after giving a minimum of seven (7) days' written notice to Client, suspend services under this Agreement until Consultant has been paid in full all amounts due for services, expenses and charges. Consultant may at its sole discretion suspend services on any or all other projects being performed by Consultant for Client under any other agreements until Consultant has been paid in full for all amounts due for services, expenses and any other charges under this Agreement. Client shall be responsible for the reasonable cost of collection including reasonable attorneys' fees and costs.

15.0 TERMINATION

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

16.0 CONTROLLING LAW

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

17.0 SUBSURFACE INVESTIGATIONS

Client recognizes that special risks occur whenever engineering or related disciplines are applied to identify subsurface conditions. Even a

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

18.0 HAZARDOUS MATERIALS TESTING

Client recognizes that special risks occur whenever engineering or related disciplines are applied to the testing of hazardous materials which typically require invasive or destructive testing. Even if properly implemented with appropriate equipment and experienced personnel under the direction of a trained professional who renders services in accordance with the professional standard of care, damage may occur to the area subject to the testing including, but not limited to, invasive or destructive sampling methods. In no event shall Consultant be liable to Client, or any other person or entity, for any damage caused to any real or personal property during the course of such invasive or destructive sampling methods as set forth in this request. Any liability for such damages shall be allocated to and remain the sole responsibility of Client. In the event a claim is asserted against Consultant alleging damages arising from its services under this request, Client shall defend and indemnify Consultant with respect to any such claims or resulting damages.

19.0 LITIGATION AND ADDITIONAL WORK

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

20.0 INSURANCE

Consultant will secure and maintain such insurance as will protect Consultant from claims under the

Workmen's Compensation Act and from claims for bodily injury, death or property damage that may arise from the performance of Consultant's services under this Agreement.

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

21.0 SALES TAX EXEMPTION CERTIFICATE

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

22.0 PERIOD OF SERVICE

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

23.0 NOTICE REQUIREMENTS

If Client alleges that it has discovered a negligent defect, fault, error, non-compliance or omission in Consultant's services, it shall give written notice to the Consultant within thirty (30) days of the date it identifies any negligent defect, fault, error, non-compliance or omission in Consultant's services. Notice shall include a detailed description of the

nature of the alleged negligent defect, fault, error, non-compliance or omission. Client agrees that failure to give such notice shall result in Client's waiver of the claim. Additionally, Client agrees that failure to give such notice from the time it reasonably should have discovered any alleged defect, fault, error, non-compliance or omission in Consultant's services, and failed to give proper notice, shall result in Client's waiver of the claim. All claims against Consultant, whether grounded in contract, tort, or otherwise, shall be brought no later than two (2) years from the date of issuance of the invoice relating to the services giving rise to the claim. Client expressly waives any applicable discovery rule or applicable statute of repose for any services provided under this Agreement.

24.0 PROPRIETARY RIGHTS OF CONSULTANT

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

25.0 PHOTOGRAPHIC/ARTISTIC REPRESENTATIONS

Consultant shall have the right to use photographic and artistic representations of the Project for promotional or professional purposes. Consultant shall make its best effort to exclude proprietary or confidential information. Client agrees to notify Consultant in writing of specific proprietary or confidential information to be excluded.

TRUSTEES OF THE TRUST FUNDS

**Town of Sunapee
25 Edgemont Road**

INVESTMENT POLICY

Effective JULY, 2022

General:

The overall portfolio Of the Town of Sunapee will be managed in accordance with New Hampshire RSA 31:25-b and all asset allocations shall follow such guidelines.

1. Statement of Policy:

It is the policy of the Sunapee Trustees of the Trust Funds (hereinafter called “the Trustees”) that all funds relegated to their fiduciary oversight shall be maintained and invested under the State’s ‘Prudent Man Rule’, in a professional manner. The town trusts fall into three categories, Capital Reserve Trusts, Expendable Trusts and Non-Expendable Trusts. All expenditures from Trust subaccounts must comply with the original intent for which the Trust was created as well as any applicable State laws and regulations. Disbursement requests are initiated by the Town on an as needed basis in accordance with the purpose of the Trust. Therefore, both the timing of disbursement requests and the amounts requested may be unpredictable. Since it is the overriding goal that such monies be readily available when and if the need arises, the management thereof shall adhere to the following principles:

- Safety – preserving the value of principle through conservative, risk averse investments.
- Liquidity – maintaining the ability to convert investment assets into cash when and as needed with minimal loss of value or other financial penalty.
- Investment Return – obtaining the highest possible yield consistent with the above stated constraints of safety and liquidity.

These principles set the priority of fiduciary oversight: First preservation of capital, second access to said capital, third growth through, interest, dividends and capital appreciation.

2. Investment Approach:

Assets of all Trust Funds will be invested with and managed by a professional, reputable financial institution domiciled in the State of New Hampshire contracted by the Town to serve as the depository and investment manager The institution shall provide specialized expertise in the field of municipal trust management. The contracted firm shall have national and international reach. The Trustees have the duty to select, oversee and evaluate such investment manager on an annual basis and may remove and replace said firm as they so determine.

3. Asset Allocation:

Asset allocation shall be as follows:

- Cash or cash equivalents up to 100%
- Fixed income up to 50%, if not limited by cash level
- Equities up to 20%, if not limited by cash or fixed income

These classes fill ordinarily: Thus, if assets are 100% in cash, the remaining classes are 0%. If cash is 80%, fixed income can be up to 20% and equities would be 0%. If cash was 80% and fixed income 15%, equities would be 5%.

- Cash or cash equivalents may include:
 - FDIC insured bank deposits, short term bank CDs up to 3 months
 - U.S. Treasury bills up to 3 months
 - Co-mingled bank deposits if insured by the FDIC and if over the current FDIC limit, collateralized by a Letter-of-Credit by a AAA rated financial institution
- Fixed Income securities must be investment grade or higher and may include:
 - U.S. Treasury bills up to one year
 - U.S. Treasury notes up to 5 years
 - U.S. Agency securities up to 5 years
 - GSE debt up to 5 years
 - Corporate debt up to 5 years, if AA rated or higher
- Equities must be from:
 - U.S. companies or funds traded on the NYSE, AMEX or NASDAQ
 - Companies with a market capitalization over \$10 billion (large cap) or mutual funds with similar characteristics.
 - No derivative securities will be permitted including, but not limited to such as puts, calls, straddles, corridors or any other equity option or derivative.

4. Performance Management:

The performance results of this policy and of the investment manager shall be reviewed annually and a decision made as to the continuance of said manager. The Trustees shall receive an annual attestation from the investment manager(s) that they have successfully fulfilled their fiduciary duties under this policy and in accordance with requirements under New Hampshire RSA 31:25-b.

5. Meetings:

The Trustees shall meet at least four (4) times per year to review the status of the funds under its auspices as well as to conduct the business of any activity requiring either deposits or withdrawals to the individual funds, or to set up new funds established by the town or dissolve those whose purpose has expired.

Meetings of a majority of the Trustees shall constitute a quorum.

6. Adherence to Rules and Regulations:

It is the intent of the Trustees to discharge their fiduciary duties under this Investment Policy and the requirements of New Hampshire RSA 31:25-b. Any dispute arising from the administration of these funds which appears to be in conflict with any and all requirements of New Hampshire RSA 31:25-b will be referred for resolution to the Charitable Trust Unit, Department of the Attorney General, State of New Hampshire.

7. Conduct:

The conduct of the Trustees shall be governed by the Town of Sunapee Code of Ethics at all times.



Shannon,

We are still enduring a continued Worldwide Energy Crisis. The Eversource Default Service Rate will be 22.566 cents per kWh on August 1st. We would like to amend our payment arrangement on August 1, 2022, to reflect a fairer distribution of the expected revenue. Currently any amount over 8.5 cents we split. After August 1, 2022, we would like to change the split to 25% for Standard Power and 75% for you the host.

Please see the following replacement language for the six months starting August 1st for Schedule B section (i) of our agreement.

Starting August 1st, 2022, and for 6 months we would like to amend our agreement as follows. Within ten (10) days of receiving Surplus Generation Payment from the Utility, the Host shall pay to the Administrator the Default Service rate minus 7.5 cents per kwh for every kwh of Surplus Generation associated with that Surplus Generation Payment. If the Eversource Default Service rate falls below 8.5 cents the host shall pay the Administrator 1.0 cents per kwh. If the Eversource Default Service Rate is above 8.5 cents per kWh that amount over 8.5 shall be shared between the Host and Administrator at a rate of 75% for the Host and 25% for the administrator.

$22.566 \text{ cents per kWh} - 8.5 \text{ cents per kWh} = 14.066$
 $14.066 \times .75 = 10.55$
 $14.066 \times .25 = 3.516$

Host will retain $7.5 + 10.55 = 18.05$ cents per kWh stating August 1st.

Host will pay Standard Power $1 + 3.516 = 4.516$ cents per kWh starting August 1st.

Robert Hayden – President

Standard Power Ph# 603-325-1749

b.hayden@standardpower.com

Standard Power of America Inc.

Nashua, NH 03060 877-877-1670 standardpower.com