

AGREEMENT
BETWEEN
TOWN OF LEDYARD, CONNECTICUT
AND
FUSS & O'NEILL, INC.
FOR
PROFESSIONAL ENGINEERING SERVICES
FOR
UPGRADE OF THE WASTEWATER TREATMENT FACILITY AT 82 TOWN FARM
ROAD

THIS AGREEMENT, made and entered into this 23rd day of April, 2015, by and between the Town of Ledyard, CT, acting herein by and through its Water Pollution Control Authority, who is duly authorized so to act, hereinafter called the Town, and Fuss & O'Neill, Inc., with offices in Manchester, Connecticut, hereinafter called the Engineer.

WITNESSETH, in consideration of the mutual promises herein contained, the parties hereto agree, each with each other, as follows:

ARTICLE 1 - EMPLOYMENT OF ENGINEER

1.1 General

The Town hereby employs the Engineer and the Engineer hereby accepts employment to provide professional services related to the Town's purchase and installation of equipment, design and bid of physical improvements and general upgrade of its Wastewater Treatment Facility.

The Engineer will serve as the Town's professional engineering representative on those phases of the project to which this Agreement applies and will consult with and advise the Town during the performance of his services.

1.2 Project Understanding

The project is being pursued in general conformance with a recently completed Wastewater Facilities Study, replacement of equipment in-kind and including:

- Upgrade SCADA and SBR control systems (includes DO monitoring)
- Replace influent and effluent auto-samplers
- Replace SBR decanter actuators to decrease maintenance costs of repeated repairs
- Upgrade headworks: demolish existing screen and comminutor structures and associated equipment; construct pre-fab, pre-engineered headworks building; install new mechanical bar screen; manual bar rack; screenings wash press; influent flow meter and grit chamber. The aerated grit chamber is to be preserved.
- Replace one influent lift pump to maintain "firm" capacity of the station (i.e. largest pump unit out of service). Acquire an extra pump motor and impeller to be kept in storage as critical spare parts



- Replace aeration system membranes which are at or nearing their usable life expectancy
- Replace existing PD blowers with VFD equipped blowers for meeting peak and low demands and increasing energy efficiency
- Install ORP monitoring systems for better process control in the SBRs and increased energy efficiency
- Install submersible mixer in the thickened sludge holding tank and investigate tank geometry for improvements to promote better mixing of tank contents
- Demolish abandoned clarifiers and other unused tanks and structures at the site for liability/safety considerations
- Replace rotary drum thickener and polymer feed system
- Replace the influent flow division box for headworks
- Redo the SBR influent piping for pinch valves
- Conduct a structural evaluation of the SBR tanks

ARTICLE 2 - SCOPE OF SERVICES

2.1 Engineering Services

- 2.1.1 Review existing studies, data and information; meet with WPCA staff and make recommendations to the WPCA as to specific activities and timing of improvements and to lock in the project scope of work.
- 2.1.2 Fuss & O'Neill will coordinate the design and bidding activities with the Town and prepare plans and specifications as necessary for approval by the WPCA. Facility record drawings will be relied upon in preparation of design of the plant improvements. The Town shall distribute invitations to bid, bid sets and any addenda as well as place the legal advertisement in the newspaper. The Town will be the sole source for the distribution of bid documents.
- 2.1.3 Fuss & O'Neill will attend mandatory pre-bid conference for bidders. Fuss & O'Neill will answer inquiries regarding the plans and specifications during the bid process from potential bidders in strict accordance with the requirements of the Bid documents. We anticipate one addendum will be needed during the bid process and will be prepared by Fuss & O'Neill and provided electronically to the Town for distribution.
- 2.1.4 After bid opening, Fuss & O'Neill will review the bids received as well as bidder qualifications and references of the three lowest bidders. Fuss & O'Neill's recommendation regarding the lowest bidders' ability to perform the work and to conform to the standards established in the bid documents will be made. Fuss & O'Neill shall make a written recommendation for award to the WPCA and the Town Purchasing Agent.
- 2.1.5 Equipment will be replaced in-kind. If requested by the WPCA, evaluation of the suitability of any proposed alternate or substituted equipment, material, or methods proposed will be performed as additional work.
- 2.1.6 Structural evaluation will be based upon visual inspection of the SBR tank condition. Special testing or analysis is not anticipated.



2.2 Construction Administration

- 2.2.1 During the construction phase, Fuss & O'Neill will provide limited construction administration services. This will include coordination of and communications with the contractor and on-site periodic project observations. We assume the project will be active in construction for a period of six months. We have budgeted six (6) monthly coordination observation meetings. We will prepare and submit written observation reports and minutes of project coordination meetings with the contractor. The Contractor shall be responsible for the minutes of the regularly scheduled Owner's Meetings.
- 2.2.2 Fuss & O'Neill will promptly review and approve shop drawings, material samples, subcontractor's qualifications, and other relevant submissions for compliance with the specifications. Also, evaluate change orders and Applications for Payment; forward (if appropriate) to the Town for approval and signature. Review and comment on each set of the contractors meeting minutes for the regularly scheduled Owner's Meetings, attend scheduled evening WPCA meetings (six meetings anticipated). Fuss & O'Neill will determine contract completion, recommend project acceptance, and perform other standard engineering services related to this project. Fuss & O'Neill will also document As-Built information provided by the prime contractor on their data files, providing one set of re-plotted tracings and one set of drawing and specification data files on CD-R for the Town's use.
- 2.2.3 Fuss & O'Neill will provide to the WPCA monthly status reports detailing: known Issues (Obstacles) - list of issues such as schedule conflicts, weather impacts on the schedule, operational conflicts, design issues, regulation changes, etc.; proposed Resolutions - options for the WPCA to consider, opportunities for improvements, etc.; present Schedule to date - adjusted based on what is presently known; Cost breakdown to date-by category (agreed upon by both parties) budgeted, committed, spent-to-date; General Communications-relevant information that is not covered above.
- 2.2.4 Engineer shall not be responsible for the acts or omissions of any Contractor, or subcontractor, or any of the Contractor(s) or subcontractors' agents or employees or any other persons (except Engineer's own employees and agents) at the site or otherwise performing any of the Contractor(s)' work; however, nothing contained herein shall be construed to release Engineer from liability for failure to perform properly duties undertaken by Engineer in the Contract Documents. Engineer shall take reasonable steps to insure that contractor(s), subcontractor(s) and their agents fully comply with the Contract Documents.

ARTICLE 3 - RESPONSIBILITIES OF THE TOWN

The Town, without cost to the Engineer, will:

- 3.1 As necessary and relevant, place at the disposal of the Engineer all information in their possession pertinent to the Project including previous reports, existing topographic mapping of the project area in digital (AutoCAD) format, plant record drawings, assessor's parcel mapping, and any other data relative to the Project.



- 3.2 Provide access to and make all provisions for the Engineer to enter upon public and private lands as required for the Engineer to perform his work under this Agreement.
- 3.3 Be responsible for obtaining all necessary state and local permits and approvals, including coordination with CTDEEP.
- 3.4 Arrange for the performance of subsurface investigations, should existing information be deemed insufficient.
- 3.5 Designate in writing a person to act as the Town's representative with respect to the work to be performed under this Agreement, such person to have complete authority to transmit instructions, receive information and advise the Engineer as to the Town's policies and decisions pertinent to the work covered by this Agreement.

ARTICLE 4 - PERIOD OF SERVICE

- 4.1 The Engineer shall proceed with the services under this Agreement promptly and will diligently and faithfully prosecute the work to completion in accordance with applicable engineering standards 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 the Engineer.
- 4.2 The schedule for completion of the services described in Articles 2 will be mutually established with the Town upon completion of the Design of the Approved Plan.

ARTICLE 5 - PAYMENT TO THE ENGINEER

- 5.1 For the services performed, the Engineer shall be paid on a *Lump Sum Fee* basis, as outlined below and shown on Schedule 1, Fee Schedule, attached hereto.
- 5.2 For services performed on a lump sum basis, said lump sum to be payable monthly on the basis of percent complete of each task as determined by the Engineer and approved by the Owner.
- 5.3 If Town fails to make any payment due the Engineer for services and expenses within forty-five (45) days after receipt of the Engineer's statement therefore, the amounts due the Engineer will be increased at the rate of 1% per month from said thirtieth day, and in addition, the Engineer may, after giving seven days written notice to the Town, suspend services under this agreement until the Engineer has been paid in full all amounts due for services, expenses and charges. The Town shall be responsible for the reasonable cost of collection.



ARTICLE 6 - GENERAL PROVISIONS

6.1 Absence of Warranty

All services of the Engineer and its independent professional associates, consultants and subcontractors will be performed in a reasonable and prudent manner in accordance with generally accepted Engineering practice. All estimates, recommendations, opinions and decisions of the Engineer will be on the basis of the information available to the Engineer and the Engineer's experience, technical qualifications, and professional judgment.

There are no warranties of merchantability or fitness for a particular purpose or any other warranties or guarantees whatsoever, express or implied, with respect to any service performed or materials provided under this Agreement.

6.2 Standard of Care

The standard of care applicable to Engineer's services will be the degree of skill and diligence normally employed by professional engineers or consultants performing the same or similar services at the time said services are performed.

6.3 Reuse of Documents

All documents, including Reports, Electronic Media, Drawings and Specifications, prepared or furnished by Engineer and its subsidiaries, independent professional associates, subconsultants and subcontractors pursuant to this Agreement are instruments of service in respect of a particular Project. However, absent project specific adaptation by Engineer, such documents are not intended or represented to be suitable for reuse by Town with respect to any future extensions of the Project or on any other projects.

Copies of documents that may be relied upon by Town are limited to printed copies that are signed or sealed by Engineer, or PDF files prepared, issued, and digitally signed and encrypted by the Engineer. 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, Engineer 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 Engineer at the beginning of this Project.

Any reuse or disbursement of documents to third parties without written verification or project-specific adaptation by the Engineer will be at the Town's sole risk and without liability or legal exposure to Engineer or its subsidiaries, independent professional associates, subconsultants, and subcontractors. Any verification or project-specific adaptation by Engineer will entitle the Engineer to further compensation at rates to be agreed upon by Town and the Engineer. Accordingly, Town shall, to the fullest extent by law, defend, indemnify and hold harmless the Engineer 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 or disbursement.

6.4 Opinions of Cost

Since the Engineer has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, the Engineer's opinions of probable Total Project Costs and Construction Cost are to be made on the basis of the Engineer's experience and qualifications and represent the Engineer's best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but the Engineer cannot and does not guarantee that proposals, bids or actual Total Project or Construction Costs will not vary from opinions of probable cost prepared by the Engineer. If prior to the Bidding or Negotiating phase the Town wishes greater assurance as to Total Project or Construction Costs, the Town shall employ an independent cost estimator. Should this Agreement be amended in the future such that the Engineer will utilize a design-build approach to implement various aspects of the project, then the provisions of this Article 6.4 will be suitably amended.

6.5 Subsurface Investigations

In soil, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. While the Engineer will make reasonable effort to identify underground conditions, the inherent uncertainties in subsurface evaluations, changed, or unanticipated underground conditions may occur that could affect total Project cost and/or execution. These conditions and cost/execution effects are not the responsibility of Engineer.

6.6 Arbitration

Should both parties consent to resolve a claim, counterclaim, dispute or other matter arising out of or relating to this Agreement or the breach thereof through arbitration, such matters will be decided in accordance with the Construction Industry Arbitration rules of the American Arbitration Association then pertaining. Any arbitration will be specifically enforceable under the prevailing law of any court having jurisdiction. No arbitration arising out of, or relating to this Agreement may include, by consolidation, joinder or in any other manner, any person who is not a party to this Agreement. No consent to arbitration in respect of a specifically described claim, counterclaim, dispute or other matter in question will constitute consent to arbitrate any other claim, counterclaim, dispute or other matter in question which is not specifically described in such consent. The award rendered by the arbitrators will be final, judgment may be extended upon it in any court having jurisdiction thereof, and will not be subject to modification or appeal except to the extent permitted.

6.7 Termination

The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other



party to perform in accordance with the terms hereof through no fault of the terminating party. In the event of any termination, the Engineer will be paid for all services rendered to the date of termination, all reimbursable expenses and termination expenses.

6.8 Limitation of Liability

Notwithstanding any other provision of these General Terms and Conditions, and unless otherwise subject to a greater limitation, the Engineer's liability to the Town for any loss or damage, including, but not limited to, special and consequential damages, arising out of or in connection with this Agreement from any cause, including the Engineer's professional negligent errors or omissions, shall not exceed the greater of the amount of the insurance required under Section 6.12, or the amount of professional liability insurance available to indemnify Engineer on the date a final judgment is rendered on damages, and the Town hereby releases the Engineer from any liability above such amount.

6.9 Time Limit on Claims

All claims against Engineer, whether grounded in contract, tort, or otherwise, shall be brought no later than three years from the date of issuance of the invoice relating to the services giving rise to the claim. No claim may be brought unless notice has been given as described below in Section 6.10.

6.10 Notice Requirements

If Town discovers a defect, fault, error, non-compliance or omission in Engineer's services, it shall give written notice to the Engineer within thirty days. Notice shall include a detailed description of the nature of the defect, fault, error, non-compliance or omission. Town agrees that failure to give such notice shall result in Town's waiver of the claim.

6.11 Litigation and Additional Work

In the event the Engineer is to prepare for or appear in any litigation on behalf of the Town or is to make investigations or reports on matters not covered by this Agreement, or is to perform other services not included herein, additional compensation shall be paid the Engineer as is mutually agreed upon in writing.

6.12 Insurance

At all times during the performance of work under this Project, Engineer shall maintain at its sole cost and expense, (a) worker's compensation, occupational, disability benefit and similar employee benefit insurance for each of its employees in the amounts required under the law in the state where the Work is performed; (b) employees liability insurance coverage in the amount of not less than \$500,000; (c) commercial general liability coverage, including products and completed operations, and broad form contractual liability, written on an occurrence form with a minimum combined single limit of \$2,000,000 per occurrence for personal injury, including death, and property damage; (d) commercial automobile liability insurance, including non-owned automobiles, with a minimum combined single limit of \$1,000,000 per occurrence; and (e) professional liability insurance including pollution



coverage on a claims made basis with an aggregate limit of \$5,000,000 and a per occurrence limit of \$3,000,000. Engineer shall furnish to Town certificates of insurance showing such coverage's prior to commencing performance of work under the Project. The Engineer shall name the Town as additional insured on the Engineer's commercial general liability and commercial automobile policies, and such policies shall be reasonably acceptable to Town. With respect to Engineer's negligence, this coverage shall be primary and non-contributory with any insurance coverage Town may have. In the event that Engineer receives notice of cancellation of any coverage's described herein, Engineer shall immediately notify Town in writing and undertake, using its best efforts, to procure replacement coverage(s). The Engineer shall be responsible for ensuring that all of its subcontractors carry insurance of similar types and with similar limits of coverage as required for the Engineer.

6.13 Controlling Law

This Agreement is to be governed by the laws of the State of Connecticut.

6.14 Affirmative Action - Equal Opportunity

The Engineer agrees that in the performance of this Agreement it will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, sex, mental retardation or physical disability, and further agrees to provide the Town with such information requested concerning the employment practices and procedures of the Engineer. The Engineer shall have an active affirmative action program.

6.15 Save Harmless

The Engineer and the Town each agree to indemnify and hold the other harmless, and their respective officers, employees, agents or representatives from and against liability for all claims, losses, damages, and expenses, including reasonable attorneys' fee, to the extent such claims, losses, damages or expenses are caused by the indemnifying party's negligent acts, errors, or omissions. In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligence of the Engineer and Town, they shall be borne by each party in proportion to its negligence.


IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written.

Town of Ledyard, Connecticut

Fuss & O'Neill, Inc.

By: 

John Rodolico
Mayor

By: 

Virgil J. Lloyd, P.E.
Sr. Vice President

PROFESSIONAL ENGINEERING SERVICES
FOR
UPGRADE OF THE WASTEWATER TREATMENT FACILITY AT 82 TOWN FARM
ROAD

SCHEDULE 1
FEE SUMMARY
[April 3, 2015]

<u>Item</u>	<u>Scope Item</u>	<u>Fee Basis</u>	<u>Cost/Budget</u>
2.1	Engineering Services	Lump Sum	\$ 72,300
2.2	Construction Administration	Lump Sum	<u>63,700</u>
TOTAL BUDGET			\$ 136,000