



**Fairhaven Select Board
Meeting Minutes
February 28, 2022**

RECEIVED
TOWN CLERK
2022 MAR 15 A 9:23

Present: Chairman Robert Espindola, Vice-Chairwoman Stasia Powers, Clerk Keith Silvia and Interim Town Administrator Wendy Graves and Administrative Assistant Vicki Oliveira

The meeting was videotaped by Cable Access and Zoom meeting application.

Chairman Robert Espindola opened the meeting at 6:32 pm in the Town Hall East Room.

The Board offered a moment of silence for the people of Ukraine.

Swearing in of New Police Officers

Chief Myers introduced the newest members of the Fairhaven Police Department to the Board.

Andrew Dillon and Ethan Horsley were sworn in by the Town Clerk in front of family and friends as their mother's pinned their badges on them.

The Town Clerk also swore in Fairhaven's police dog, K9 Blue, as his handler Officer Jillian Jodoin proudly pinned his badge onto his collar.

Minutes

Ms. Powers made a motion to approve the open session minutes of February 7, 2022. Mr. Silvia seconded. Vote was unanimous. (3-0)

Ms. Powers made a motion to approve the Executive session minutes of January 7, 2022. Mr. Silvia seconded. Vote was unanimous. (3-0)

Ms. Powers made a motion to approve the open session minutes of February 10, 2022. Mr. Silvia seconded. Vote was unanimous. (3-0)

Ms. Powers made a motion to approve the Executive Session minutes of February 10, 2022. Mr. Silvia seconded. Vote was unanimous. (3-0)

Ms. Powers made a motion to release the executive session minutes from August 17, 2020 through June 7, 2021 as recommended by Selectman Silvia and Attorney Crotty as discussed in executive session. Mr. Silvia seconded. Vote was unanimous. (3-0)

Town Administrator Report

Ms. Graves said the Town was awarded a CDBG for the amount of \$686,236 to continue the streetscape improvements (Phase 3) on Hedge Street from Main Street to halfway to Adams Street, also the State has also earmarked \$500,000 for Union Wharf. Harbormaster Tim Cox said

the he, Ms. Graves and the Town Accountant are looking at a list of improvements at Union Wharf for a portion of the ARPA funds.

Ms. Graves proudly told the Board that Recreation Director Warren Rensenhausen recently passed his certification become a Certified Park and Recreation Professional (CPRP) from the National Parks and Recreation Association.

Ms. Graves said Council on Aging Director Anne Silvia has officially retired.

Committee Liaison Reports

Ms. Powers and Mr. Silvia had no meetings recently.

Mr. Espindola met with the consultant from Entry Point and a Financial to discuss a variety of financing options that could be employed for a Fiber build out in Fairhaven

Mr. Espindola said at the SRPEDD Commission meeting, a key focus area for the meeting was about the Division of Local Technical Assistance (DLTA) 2022. In 2022, SRPEDD will once again respond to the needs of our communities by Planning Ahead for Growth and Planning Ahead for Housing, including supporting the Housing Choice Initiative and assisting cities and towns as they meet the Commonwealth's new Multi-Family Zoning Requirements for MBTA communities.

Mr. Espindola said SMMPO met where they discussed the Public Participation Plan (PPP). The (PPP) is developed with the ultimate goal of allowing every person in the region the opportunity to become active participants in the Continuous, Cooperative and Comprehensive (3C) metropolitan planning and decision-making process guiding every issue, project, program or service.

Mr. Espindola attended a SRTA meeting and spoke to Erik Rousseau, the Director of SRTA who reached out to Mr. Foley and Mr. Espindola discuss the Route 11, which runs from New Bedford, into Fairhaven, and loops back into Fairhaven. Mr. Rousseau would like to discuss possible changes to the route that will be the subject of a Board meeting in the next month or two

Mr. Espinodola said the Belonging Committee discussed the idea of a "Human Library" where a person presents their story and allows for Questions and Answers.

Mr. Espindola said the Bikeway Committee will meet on Wednesday to discuss the E-bikes.

Mr. Espindola said the Southcoast Bikeway Alliance is scheduled to meet with the Marion Board of Selectmen to discuss connection the bike path to Marion to review the preferred routing of bicycling infrastructure between the end of the Mattapoisett path as it exists today and through Wareham.

Annual Town Meeting Date Change

Town Moderator, Mark Sylvia met with the Board to discuss the idea of changing the date of this years' town meeting in order to allow for an in-person town meeting this year due to the concerns with the Covid- 19 virus (Attachment A). Mr. Sylvia consulted with the precinct chairs and town counsel and they all agree that postponing would be in the best interest of the safety of our town meeting members. Ms. Graves will update the budget calendar and resend it out to Department Heads.

Ms. Powers made a motion to postpone the Annual Town Meeting to June 18, 2022. Mr. Silvia seconded. Vote was unanimous. (3-0)

Appointment of the New Town Administrator

Mr. Espindola said he received a call from Attorney John Clifford regarding the contract for the new Town Administrator, Angie Lopes Ellison. Attorney Clifford said they are close to having a signed contract and the talks are continuing.

At 7:15pm the Board took a 2 minute recess to read an email that had recently been sent from Clifford and Kenney.

Mr. Espindola said the Attorneys have sent a suggested motion for tonight's meeting.

Ms. Powers made a motion to move to appoint Angeline Lopes Ellison as Town Administrator, effective March 23, 2022. Mr. Silvia seconded. Vote was unanimous. (3-0)

Ms. Powers made a motion to move to approve the employment agreement between the Town of Fairhaven and Angeline Lopes Ellison at a starting salary of \$163,000 per year, effective March 23, 2022, subject to final approval by labor counsel. Mr. Silvia seconded. Vote was unanimous. (3-0)

The Board thanked the Town Administrator Screening Committee and the Town Moderator for all their hard work in the search for a new Town Administrator.

Town Administrator Search Process

Mr. Espindola read a memo (Attachment B) regarding the search process for the new Town Administrator. The Board discussed the process that was done and wanted this to be equal to all involved.

Public Safety Facility and/or Recycling Center

Special Projects Coordinator Mark Rees and Town Planner Paul Foley met with the board via zoom to discuss the possible location for the new Public Safety Facility (PSF). Mr. Rees told the Board, as Special Projects coordinator one of his projects was to look at land on Bridge Street adjacent to the Animal Control building; the old town dump. Mr. Rees reminded the Board; the landfill has not been active in many years. Mr. Foley had a study completed that said the land is suitable and is in the process of getting a proposal from an engineer. (Attachment C & D) Mr. Rees and Mr. Foley are looking for authorization from the Board for Phase II in order to have the land tested and. Ms. Graves will also look into funds for this, as there are monies available through the ARPA funds. Mr. Rees will be placing an article at the annual town meeting for the engineering design.

Ms. Powers made a motion to authorize an amount to not exceed \$50,000 for the purpose of funding the Fuss and O'Neil project outlined in the February 25, 2022 memorandum for a phase II Environmental site assessment for 194 Bridge Street from town ARPA funds. Mr. Silvia seconded. Vote was unanimous. (3-0)

Hazard Mitigation Plan Update Grant Approval

Sustainability Coordinator Whitney McClees met via zoom to discuss a Hazard Mitigation Grant opportunity and is looking for a letter of interest from the Board to MEMA to be included to FEMA.

Ms. Powers made a motion to approve the support letter of interest submission to MEMA for the Hazzard Mitigation plan update. Mr. Silvia seconded. Vote was unanimous. (3-0)

Parking Meter at Hoppy's Landing

Harbormaster Tim Cox and Chairman of the Marine Resources Committee, Mike McNamara met with the Select Board to request to remove the parking meter at Hoppy's Landing for a season. Currently the meter cost more money than it takes in for parking and it is costing the town money to keep it working. Mr. Cox will go back to the old envelope system at Hoppy's for a season to see if this is more feasible. The meter will be kept in storage until it is determined if it should be put back or not and if not, it can be sold to another town who uses the same one.

Ms. Powers made a motion to allow the Harbormaster to decommission the parking meter at Hoppy's Landing and place it in storage and to authorize the expenditure of an electrician for this purpose. Mr. Silvia seconded. Vote was unanimous. (3-0)

Town Electricity at Hoppy's Landing: Blue Stream Shellfish, LLC

Harbormaster Cox said Town Counsel has reviewed the agreement with Blue Stream (Attachment E) for the use of the town's electricity at Hoppy's Landing.

Ms. Powers made a motion to authorize Ms. Graves to sign the agreement with Blue Stream on behalf of the Town. Mr. Silvia seconded. Vote was unanimous. (3-0)

FY23 Goal #2: Objective D (Appointed Committees)

The Board discussed their concerns regarding appointing residents to Boards and Committees with out the chair of the committee having prior knowledge and would like to have more communication with the chairs. Ms. Powers would like to see all committee have alternate membership positions and a provision for non-attendance. Ms. Powers would like to see a written policy regarding Boards and Committees and attendance at these meetings and will be willing to start drafting a policy.

Mr. Espindola made a motion to have Ms. Powers develop a policy for Boards and Committee appointments to be reviewed at a future meeting. Mr. Silvia seconded. Vote was unanimous. (3-0)

Sustainability Committee Appointment

Resident John Pond told the Board he is concerned about the direction of the community and worried about the use of plastic bags so he would like to join the Sustainability committee to try to be part of a solution.

Ms. Powers made a motion to appoint John Pond to the Sustainability Committee. Mr. Silvia seconded. Vote was unanimous. (3-0)

Commission on Disability Appointment

Resident Eleanor Chew told the Board she holds a Bachelor's Degree in special education and feels she would be a good fit to the Commission on Disability.

Ms. Powers made a motion to appoint Eleanor Chew to the Commission on Disability. Mr. Silvia seconded. Vote was unanimous. (3-0)

Broadband Study Committee Appointment

Mr. Espindola said there is currently a full-time membership vacancy on the Broadband Study Committee.

Ms. Powers made a motion to appoint Sean Daly from an associate member to a full member of the Broadband Study Committee. Mr. Silvia seconded. Vote was unanimous. (3-0)

Special One Day Liquor License- Buzzards Bay Coalition

Ms. Powers made a motion to approve a one day all alcohol license to the Buzzards Bay Coalition for June 18, 2022 at Fort Phoenix. Mr. Silvia seconded. Vote was unanimous. (3-0)

The Nemasket Group 5K Walk/Run

Ms. Powers made a motion to approve the Nemasket Group 5K Walk/Run on Saturday, May 7, 2022, 9:00 am contingent on approval of the Police Department. Mr. Silvia seconded. Vote was unanimous. (3-0)

Possible Changes to The Select Board Committee Liaison Appointments

The Board will keep the same liaison appointments until after the election.

FY23-27 Recommended General Fund Capital Improvement Plan

Ms. Graves reviewed the current list of Capital projects and discussed the merits of each project with the Board.

FY23 Recommended Water and Sewer Enterprise Fund Budgets

Ms. Graves reviewed the Water and Sewer Enterprise Fund Budgets with the Board.

FY23 Recommended Cable/Town & School Enterprise Budget

Ms. Graves reviewed the Cable/Town and the School Enterprise budgets with the Board. Ms. Powers has some concerns over the Social Media Specialist position. being dropped from the budget and feel this position should be reevaluated. The Board will review this further at a future meeting. Ms. Graves did not fund the Social Media Specialist position because too much was in retained earnings was being used to fund the position.

Town Meeting Articles for 2022 Annual Town Meeting

Ms. Graves reviewed the current list of articles for this year's annual town meeting. Mr. Espindola had concerns over the citizen petitioned articles and the impact that this has on the Town 's budget.

Mask Mandate Update

There were no changes in Covid cases at this time. The Board did not make any changes to the mask advisory rule.

Public Comment

There were no questions, comments or concerns from the public.

Resignation from Belonging Committee

Mr. Espindola read a resignation letter from Diane Hahn from the Belonging Committee.

Ms. Powers made a motion to accept the resignation of Diane Hahn from the Belonging Committee and to thank her for her service. Mr. Silvia seconded. Vote was unanimous. (3-0)

DOR Financial Management Review

Ms. Graves has received word the Department of Revenue will be in Town Hall for 1 to 2 days to interview town staff for the financial management review sometime in March.

Ms. Powers made a motion to adjourn at 10:05 pm to convene to executive session, not to reconvene to open session to discuss:

- To Discuss Strategy with Respect to Potential Litigation, Personnel- MGL C. 30A, § 21(A)(3)
- To Investigate Charges of Criminal Misconduct – MGL C. 149 § 52C And C.66 §15
- To Discuss Complaints or Charges Brought Against, A Public Officer, Employee, Staff Member or Individual- MGL C. 30A, § 21(A)(1)

Mr. Silvia seconded. Vote was unanimous. (3-0)

Respectfully submitted,



Vicki L. Oliveira
Administrative Assistant
(Approved 3/14/2022)

- A. Mr. Espindola's memo
- B. Town Planner memo regarding site readiness grant phase 2 & map
- C. Fuss & O'Neil Site Assessment
- D. Town Moderator's memo regarding Town Meeting date change
- E. Draft Agreement with Blue Stream Shellfishing LLC

Attachment A

Memorandum

2-28-2022 – Agenda Item E.2

To: Select Board members Stasia Powers and Keith Silvia

From: Bob Espindola

It was brought to my attention, during the TA Screening process, and by our consultant (the Collins Center) that one of the candidates in the most recent round withdrew their candidacy after their name was announced to our Board. Their reason for withdrawal (according to the Collins Center) was, at least in part, because they had been told by someone who works at Town Hall that the Select Board was looking for a candidate of a certain gender (not theirs).

I know my criteria for the next TA was about finding the best candidate for the Town, without bias or discrimination of any sort and I would find it hard to believe that either of my two fellow board members would feel otherwise.

If a false message had any part in a qualified candidate deciding to drop out of contention, after having made it all the way through the many hours of review by the volunteer screening committee, the guidance of our paid consultant and paid background check firm, that would, obviously, be an unfortunate consequence and one that could have proven costly with further delays in the process.

We are fortunate that it did not come to that but I think the seriousness of this should not be ignored. In order to remove doubt in anyone's mind, I ask the Select Board to state publically, here tonight, and for the record, that we pledge to continue governing in a manner that is not discriminatory in any way, shape or form.



Town of Fairhaven
Department of Planning & Economic Development

Town Hall • 40 Center Street • Fairhaven, MA 02719

Telephone (508) 979-4023 • FAX (508)-979-4087

pfoley@fairhaven-ma.gov

Memorandum

Date: February 24, 2022

To: Select Board, Wendy Graves, Mark Rees, Police & Fire Chiefs, DPW Superintendent

From: Paul H. Foley, Director of Planning & Economic Development

RE: Site Readiness Grant Phase 2 ESA for 194 Bridge Street

In November 2020 the Town of Fairhaven was awarded a \$75,000 grant through the MassDevelopment Site Readiness Grant program to look at environmental and other barriers to development in the Route 6/240 Redevelopment Target Area. Through the Site Readiness Grant we hired Fuss & O'Neill to conduct up to ten (10) Phase I Environmental Site Assessments on properties in the Redevelopment Target Area. The purpose of this was to identify environmental issues that are preventing development in the Target Area and take steps to address them and seek funds to clean them up if necessary.

A Phase I Environmental Site Assessment is conducted to determine the presence of contamination or recognized environmental conditions (REC's). It is a desktop study that involves a review of publically available records, a site inspection and an interview with the property owner, all of which helps to form an educated opinion of environmental conditions of the site. A Phase I ESA is required during a real estate transaction to provide disclosure on potential environmental risks at a property.

Through the grant the consultants have conducted five (5) Phase 1 ESA's in Town at the following locations: 194 Bridge Street; 172 Bridge Street (Drive-In property); 180 Bridge Street (Little Peoples College parking); 120 Alden Road (Fairhaven/Koopman Lumber); and 14 Plaza Way.

The Phase I ESA at 194 Bridge, and previous studies done at the property, indicate that the first 100-120 feet of the property along Bridge Street east of the transmission lines may not have any waste buried below the surface. Behind that (north) is an area shown on a 1999 Test Boring Map labelled as "Waste Area A" that extends another 100 to 120 feet into the property east of the regional transmission wires with various waste such as bottles, wood waste, ash, construction and demolition waste and other items. Waste Area A extends to the back of the property on the west side of the property. Behind that is an area labelled Waste Area B.

On Friday February 18, 2022 I met with the consultants and Mark Rees in Town Hall. At this meeting we discussed using the remaining funds in the grant (approximately \$28,000) and approximately \$25,000 in ARPA funds to complete a Phase 2 ESA on a rectangular section of the property east of the transmission lines and 200-225 feet back from Bridge Street to conduct more and deeper soil borings, drilling for monitoring wells and an evaluation of methane migration. The purpose of this is to get a better idea of exactly what kind of waste is located in this area, what it will take to remove the waste, identify sources of funding to remove it and determine whether this is potentially a location to safely locate a public facility upon.



FUSS & O'NEILL

February 25, 2022

Mr. Paul Foley
Director, Department of Planning & Economic Development
Town of Fairhaven
40 Center Street
Fairhaven, MA 02719

RE: Proposal for Phase II Environmental Site Assessment
194 Bridge Street, Fairhaven, MA
Fuss & O'Neill Reference No. Vision No. 20160481.P50

Dear Ms. Cohen:

Fuss & O'Neill, Inc. (Fuss & O'Neill) is pleased to submit this proposal to provide a Phase II Environmental Site Assessment (ESA) for the parcel located at 194 Bridge Street in Fairhaven, Massachusetts (the "subject property" or "Site"). This proposal was prepared following a discussion with the Town of Fairhaven (the Town) and MassDevelopment conducted on February 18, 2022.

Project Understanding

In 2021, the Town received a Site Readiness Program Grant from MassDevelopment to review environmental conditions and development constraints in a 300-acre Target Area. As part of this program, in February 2022, Fuss & O'Neill completed a Phase I ESA for the Site. The parcel is presently occupied by the Fairhaven Animal Shelter, Fairhaven Harbormaster, and a compost/soil storage operation. The February 2022 Phase I ESA identified one (1) recognized environmental condition (REC). Historical records indicated that landfill operations and waste burial associated with the former Fairhaven Landfill were conducted at the Site, despite the final cover system of the landfill being limited to just the adjoining properties to the northwest and not the Site itself. Based on a review of available records for the Site, the horizontal and vertical extents of buried waste were not fully evaluated, and a thorough evaluation of the quality of environmental media (e.g. soil, groundwater, soil gas) has not been conducted for the Site.

We understand that the Town is evaluating the potential redevelopment of the Site for a public safety complex, particularly in the 200-feet of frontage from Bridge Street. The Phase II ESA proposed herein was developed to evaluate the environmental quality of the Site to assist the Town in evaluating the redevelopment potential and constraints.

1550 Main Street
Suite 400
Springfield, MA
01103
t 413.452.0445
800.286.2469
f 860.533.5143

www.fando.com

California
Connecticut
Maine
Massachusetts
New Hampshire
Rhode Island
Vermont

\\private\DFS\ProjectData\P2016\0481\P50\Proposal\Ph II ESA & Addl for 194 Bridge St\Final Proposal for Ph II SOW 194
Bridge St, Fairhaven.docx

©2022 Fuss & O'Neill



Mr. Paul Foley
February 25, 2022
Page 2

Scope of Services

Task 1. Field Activities

Sampling Plan and MassDEP Meeting

Fuss & O'Neill will develop a field sampling plan, field schedule, and health and safety measures prior to mobilization to the Site. This plan will be coordinated with the Town, and we have assumed that the Town will coordinate access to the Site for the proposed activities.

Prior to initiating field activities, we will consult with personnel from the Massachusetts Department of Environmental Protection (MassDEP) Southeast Regional Office. We have budgeted two (2) half-day meetings with the MassDEP and the Town. The purpose of the meetings will be to review the Site status, the proposed Phase II ESA activities, and the potential redevelopment plan for the Site. Activities that may be required by MassDEP (e.g. post-closure use permits), outside the scope of the activities proposed herein, can be conducted under supplemental agreement to the extent that those are required.

Prior to sampling activities, Fuss & O'Neill will mobilize a staff member to stake out proposed sampling locations. As part of utility clearance, and at least 72-hours prior to ground-breaking activities, Fuss & O'Neill will contact Dig Safe System, Inc. (DigSafe), the Massachusetts on-call utility locating service, to mark utilities where they enter the Site.

Soil Gas Survey

Fuss & O'Neill will conduct a one-day soil gas survey at up to 10 soil gas locations throughout the Site for the purpose of evaluating the potential for vapor migration. The survey will be conducted utilizing a hammer drill and soil gas stainless-steel sampling rods, advanced to approximately two feet below grade (fbg), within the soil column. Prior to sampling, each location will be purged for approximately 10-minutes and then screened for the presence of total organic vapors (TOV) using a photoionization detector (PID) and a four-gas meter that measures methane, oxygen, carbon dioxide, and hydrogen sulfide levels.

Test Pit Investigation

Fuss & O'Neill staff will mobilize to the Site to observe test pits and collect soil samples for laboratory analysis. Test pits will be advanced within the first 200-feet of frontage on the northern side of Bridge Street, for the purposes of delineating waste and performing sampling activities, summarized as follows:



Mr. Paul Foley
February 25, 2022
Page 3

- We assume that the Town will provide an excavator and operator for one (1) field day to facilitate advancement of test pits and restoration with the excavated spoils. The test pits will be excavated to a maximum depth of up to 10-ftg.
- For health and safety reasons, utilize a four-gas meter to monitor methane, oxygen, carbon dioxide, and hydrogen sulfide levels.
- Screen soil for TOV using a PID. Classify soil using the Unified Soil Classification System (USCS), and record physical characteristics (color, odor, moisture content, gradation, presence of anthropogenic fill materials).
- Collect up to five (5) soil samples from the shallow soil cover layer. If evidence of contamination is identified in a test pit, multiple soil samples may be collected from different intervals to evaluate vertical extents.
- The five (5) soil samples plus one (1) trip blank for quality control (QC) will be submitted to Pace New England of East Longmeadow, Massachusetts (Pace) for analysis on a seven business-day turnaround. The following analytical parameters are proposed for soil samples:
 - Volatilize organic compounds (VOC) by United States Environmental Protection Agency (USEPA) Method 8260. Note the trip blank will be analyzed for VOCs.
 - Semi-volatile organic compounds (SVOC) by USEPA Method 8270.
 - Total petroleum hydrocarbons (TPHs) by USEPA Method 8100.
 - 14 metals from the MassDEP Compendium of Analytical Methods (CAM).
 - Polychlorinated biphenyls (PCBs) by USEPA Method 8082.
 - Select metals by the Toxicity Characteristic Leaching Procedure (TCLP) (if total metals results are greater than 20 times the hazardous waste value). We have budgeted for analysis for two metals by TCLP in each of five soil samples.

Soil Boring Investigation and Monitoring Well Installation

Fuss & O'Neill staff will mobilize to the Site to observe the advancement of soil borings, installation of monitoring wells, and to collect soil samples for laboratory analysis. Soil borings will be advanced throughout the Site to facilitate collection of soil samples and future collection of groundwater samples, summarized as follows:

- Mobilize a drilling contractor to the Site for two (2) field days.
- Advance up to six (6) soil borings using the hollow-stem auger (HSA) drilling method. Environmental samples will be collected from a stainless-steel split-spoon. The split-spoon will be decontaminated between sampling intervals. Soil borings have been proposed up to 20-ftg.
- For health and safety reasons, utilize a four-gas meter to monitor methane, oxygen, carbon dioxide, and hydrogen sulfide levels.

Mr. Paul Foley
February 25, 2022
Page 4

- Screen soil for TOV using a PID. Classify soil using the USCS and record physical characteristics (color, odor, moisture content, gradation, presence of anthropogenic fill materials).
- Collect up to 12 discrete soil samples, two (2) samples from each boring. One (1) sample from each location will be collected from a shallow interval of soil cover material, and the other sample will be collected from the foundation soil beneath the buried waste, if observed. Samples will be collected based on field indicators of environmental impact (e.g. elevated PID, staining, odor). Sampling of the buried waste material, if observed, for laboratory analysis is not proposed.
- The 12 soil samples plus one (1) trip blank for QC will be submitted to Pace and analyzed for the following analytical parameters on a seven business-day turnaround:
 - VOCs by USEPA Method 8260. Note the trip blank will be analyzed for VOCs.
 - SVOCs by USEPA Method 8270.
 - TPHs by USEPA Method 8100.
 - CAM 14 metals.
 - PCBs by USEPA Method 8082.
 - Select metals by the TCLP (if total metals results are greater than 20 times the hazardous waste value). We have budgeted for analysis for two metals by TCLP in each of six soil samples.
- Complete each of the six (6) borings with a permanent monitoring well, for a total of six (6) monitoring wells. Monitoring wells will be constructed of two-inch diameter schedule 40 polyvinyl chloride (PVC), a 10-foot length well screen flush-threaded to two-inch diameter schedule 40 PVC riser pipe, completed with a flush-mounted road box cover. The screen slot size will be 0.01 inches, or 10-slot size. The well screen will be set at a water-bearing depth, within the waste layer or foundation soil to evaluate conditions of groundwater water quality at these strata.
- If possible, soil cuttings will be replaced in the borehole, and the excess will be stockpiled on the Site. Costs for containerizing cuttings into 55-gallon drums and off-Site disposal are not included herein but can be conducted under supplemental agreement.

Well Development, Sampling, and Survey

Fuss & O'Neill staff will mobilize to the Site to develop previously completed monitoring wells, collect samples for laboratory samples, and to perform an elevation survey. These activities are summarized as follows:

- As part of a well elevation survey, we will survey the elevation of each monitoring well using rod-and-level techniques, and reference elevations to a nearby benchmark previously documented in reference to the landfill, to facilitate the evaluation of the direction of groundwater flow.



Mr. Paul Foley

February 25, 2022

Page 5

- At least three (3) well volumes will be purged from each well to remove fine particles to facilitate collection of samples.
- We will collect groundwater samples from each monitoring well utilizing low flow sampling procedures.
- The six (6) groundwater samples plus one (1) trip blank for QC will be submitted to Pace for analysis of the following analytical parameters on a seven business-day turnaround:
 - VOCs by USEPA Method 8260. Note the trip blank will be analyzed for VOCs.
 - SVOCs by USEPA Method 8270.
 - PCBs by USEPA Method 8082.
 - CAM 14 metals. Prior to collection for metals analysis, samples will be field-filtered using a 0.45-micron filter.
- Purge water recovered from each monitoring well shall be discharged to the ground surface near the point of generation (not directly into the well). Costs for containerization and off-Site disposal are not included herein.

Task 2. Phase II ESA Report

At the conclusion of field activities and laboratory analysis, we will provide a Phase II ESA report to summarize our findings. The summary report will include the following elements:

- Summary of sampling activities, means and methods.
- Soil boring/monitoring well and test pit logs.
- Sample locations figure.
- Summary of analytical results.
- Laboratory analytical reports.
- Comparison of analytical data to the MCP RCS-1 Reportable Concentrations (RCs) in soil (310 CMR 40.0361), MCP RCGW-1 RC in groundwater (310 CMR 40.0362), and applicable soil gas levels as referenced in the MassDEP Solid Waste Facility Regulations (310 CMR 19.000).

Based on historical uses of the Site as a former landfill, the results of the Phase II ESA may trigger reporting obligations to MassDEP and potentially, additional response actions may be required under the Massachusetts Contingency Plan (MCP) and/or the MassDEP Solid Waste Facility Regulations. Regulatory notifications, reporting, and response actions under the MCP (310 CMR 40.0000) would be the responsibility of the property owner (i.e. the Town of Fairhaven). If oil and/or hazardous materials beyond the established thresholds are identified in soil, groundwater, and/or soil gas, additional actions beyond the limits of the overall redevelopment project may be required per the MCP.



Mr. Paul Foley
February 25, 2022
Page 6

Fuss & O'Neill has not included professional services to assist with reporting obligations per the MCP or additional activities based on the results of the Phase II ESA proposed herein. However, the conclusions of the Phase II ESA will identify potential obligations and recommend additional actions, if warranted. Should further services be needed to meet the obligation(s), Fuss & O'Neill can provide these services under a supplemental agreement.

Task 3. Remedial Planning

Based on the results of the Phase II ESA, we will assist the Town in evaluating potential remediation requirements for the Site and their compatibility with the proposed redevelopment plan. We have budgeted 32 hours to conduct activities under this task, as requested by the Town. These activities may include development of a work plan for additional investigation activities that may be warranted, initial reviews of remedial technologies, order-of magnitude remedial cost estimates, and meetings with the Town and project stakeholders.

Task 4. Meetings and On-Call Services

We anticipate that additional meetings and/or additional coordination activities with MassDevelopment, the Town, MassDEP, or other project stakeholders may be warranted throughout the project. Therefore, we have included a total of 16 hours to provide coordination, attend meetings, and conduct other on-call activities, as requested.

Exclusions

The following exclusions apply to our work:

- Fuss & O'Neill will rely on the Town to provide access to the Site for the proposed activities.
- Fuss & O'Neill has not included services to contract a third-party excavator. We have assumed that the Town will provide excavation labor to assist with the test pit investigation.
- The laboratory analytical scope included herein is intended to capture a range of typical contaminants in soil and groundwater associated with landfills and redevelopment sites, to identify the nature and extents of these contaminants, and solid wastes, at the site. This list is not exhaustive of all potential contaminants of concern. Specifically, post-closure groundwater monitoring under the Solid Waste Facilities Regulations (310 CMR 19.132[2]) includes additional groundwater constituents, referenced as "indicator parameters," which are not proposed as part of this sampling program.
- The MassDEP Solid Waste Facilities Management program may require additional information (e.g. work plan submittal for MassDEP approval, a permit application for the



Mr. Paul Foley

February 25, 2022

Page 7

exploratory work, or reporting in the form of a Comprehensive Site Assessment or similar document upon completion) as part of this process. These actions may depend on their review of the project as outlined in Task 1. In the event that such administrative requests occur, we will work with the project team to establish the level of effort for these activities.

- Fuss & O'Neill has not included professional services to assist with reporting obligations per the MCP or additional activities beyond the results of the Phase II ESA.

Schedule

We are prepared to commence the proposed tasks upon receipt of Authorization to Proceed, weather permitting. Fuss & O'Neill will work with you to develop a project schedule commensurate with the scope and sequence of our work.

Fees

We propose a budget be established for professional services in support of this effort as outlined below. We will bill these services on an hourly basis, and this budget would not be exceeded without expressed authorization.

Task	Fee
1. Field Activities	\$52,100
2. Phase II ESA Report	\$9,600
3. Remedial Planning	\$5,000
4. Meetings and On-Call Services	\$2,700
Total	\$69,400

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

General Terms and Conditions

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

Unless expressly instructed by the client to the contrary, Fuss & O'Neill will consider the data provided by organizations that are engaged with respect to mapping current climate conditions and follow the recommendations of applicable municipal, state and/or federal guidelines and standards for design, including consideration of project purpose and location, and future climate conditions relevant to the design life and/or anticipated service life or duration of the project, using applicable available data relevant to the project geography.



FUSS & O'NEILL

Mr. Paul Foley
February 25, 2022
Page 8

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,

Wendy Tram, EIT
Environmental Engineer

Brian E. Kortz, CPG, LSP, CNU-A
Associate

Attachments: Authorization to Proceed
General Terms and Conditions
Rate Schedule

c: Ms. Jennifer Cohen, MassDevelopment

Authorization to Proceed

Brian E. Kortz, CPG, ISP, CNU-A
Fuss & O'Neill, Inc.
108 Myrtle Street
Suite 502
Quincy, MA 02171

RE: Proposal for Phase II Environmental Site Assessment
194 Bridge Street, Fairhaven, MA
Fuss & O'Neill Reference No. Vision No. 20160481.P50

Budget: \$69,400

Dear Mr. Kortz:

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 February 25, 2022.

_____ Printed Name	_____ Date
_____ Signature	_____ Title

Certification as to Availability of Funds:

_____ Finance Director/Town Accountant	_____ Date
---	---------------

*Submit invoice as follows (✓ one →):	____ Mail	____ Email	____ Online
Billing Contact: Name:			
Address:			
Phone/Email:			
Accounts Payable Contact: Name:			
Address:			
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 Fairhaven (Client) and Fuss & O'Neill, Inc. (Consultant) dated February 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:

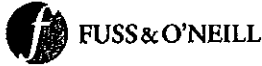
- Provide all criteria and complete information as to Client's requirements for the Project,
- Designate a person to act with authority on the Client's behalf in respect to all aspects of the Project,
- Examine and respond promptly to the Consultant's submissions,
- Give prompt written notice to Consultant 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 Commonwealth of Massachusetts.

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

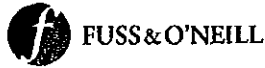
provided. By engaging Consultant to perform services, Client agrees to hold Consultant, its directors, officers, employees, and other agents harmless against any claims, demands, costs, or judgments relating in any way to the performance or non-performance of work by another consultant or subconsultant 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



FUSS & O'NEILL

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 shutdowns, 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 Commonwealth of Massachusetts.

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

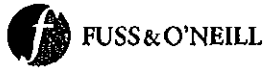
Client recognizes that special risks occur whenever engineering or related disciplines are applied to the testing of hazardous materials which typically require invasive or destructive testing. Even if properly implemented with appropriate equipment and experienced personnel under the direction of a 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.

**2022 BILLING RATE SCHEDULE**

LABOR CATEGORY	HOURLY RATE
Researcher, Clerical	\$ 85
Project Accountant	\$ 95
CAD, Survey, Technician I	\$ 110
CAD, Survey, Technician II	\$ 110
CAD, Survey, Technician III	\$ 110
Engineer, Scientist, Analyst I	\$ 120
Engineer, Scientist, Analyst II	\$ 135
Engineer, Scientist, Analyst III	\$ 150
Senior Engineer, Scientist, Analyst I	\$ 170
Senior Engineer, Scientist, Analyst II	\$ 180
Senior Engineer, Scientist, Analyst III	\$ 195
Associate	\$ 200
Officer	\$ 215
Senior Officer	\$ 240

DIRECT CHARGE SCHEDULE

Subcontractors/Subconsultants	Cost plus 15%
F&O Staff Mileage	At Prevailing IRS Rate
F&O Field Vehicles	\$100/day plus \$0.35/mile
F&O Hybrid Vehicles	At Prevailing IRS Rate
Printing/Reprographics	
Black & White Copy/Print	\$0.065/page
Color Copy/Print	\$0.40/page
Electrostatic Copy/Print	\$0.25/Sq.Ft.
Inkjet Plotter Monochrome	\$0.25/Sq.Ft.
Color Plotting	\$1.00/Sq.Ft.
Inkjet Mylar	\$2.50/Sq.Ft.
Binding Materials	At Cost
Payment Processing (e.g. debit or credit card)	3% fee



2022 FIELD EQUIPMENT RATE SCHEDULE

FIELD EQUIPMENT	DAILY RATE (unless otherwise noted)
Air Sampling Pumps	\$ 15
All Terrain Vehicle	\$ 100
Bladder Pumps	\$ 25
Boat	\$ 50
Combustible Gas Indicator (CGI)	\$ 110
Concrete Coring Machine	\$ 250
Cone Penetrometer	\$ 25
Dissolved Oxygen/Temp/pH Meter (YSI-30)	\$ 15
Generators	\$ 50
Hammer Drill	\$ 50
Hand Auger	\$ 25
Hydrogen Sulfide Sensor & Data Logger	\$ 206 per week
IAQ Meter	\$ 80
Interface Probe	\$ 25
Infiltrometer	\$ 25
Low Flow Controller	\$ 50
Metal Detector	\$ 25
Moisture Meter	\$ 80
Mold Air Pump	\$ 15
Multimeters (YSI-600)	\$ 85
Confined Space Meter (Multi-Gas Meter)	\$ 50
Particulate Monitor	\$ 155
Peristaltic Pumps	\$ 20
Petro Flag Sample	\$ 25
Photoionization Detector (OVM/PID)	\$ 75
Soil Gas Sampling Equipment	\$ 100
Soil/Sediment VOC Supplies (Terra Core)	\$ 2 per sample
Soil/Sediment SPLP/ICLP Supplies (Encore)	\$ 10 per sample
Soil Vapor Extraction (SVE) Pilot Test Equipment	\$ 260
Survey Levels	\$ 30
Survey GPS Submeter Receiver	\$ 50
Survey GPS VRS Subcentimeter	\$ 100
Survey Robotic Total Station	\$ 100
Total Organic Vapor Analyzer	\$ 65
Tracer Dye Flow Dilution Equipment	\$ 1,600
Transit Time Flowmeter	\$ 130 per day \$ 520 per week \$ 1,706 per month
Turbidity Meters	\$ 15
Water Level Indicator	\$ 15
XRF	\$ 250

MEMORANDUM

TO: Select Board
FR: Mark Sylvia, Town Moderator
DT: February 24, 2022
CC: Wendy Graves - Interim Town Administrator, Tom Crotty – Town Counsel, Precinct Town Meeting Chairs
RE: Postponing Town Meeting to June

As preparations for the 2022 Annual Town Meeting quickly approach, it is necessary to discuss whether the proceedings will be held in person or remotely. It is my sense that many town officials would prefer to meet in person in 2022 if it is safe and responsible to do so.

For the past two years, due to unprecedented circumstances surrounding the COVID 19 pandemic, we have safely and responsibly conducted our town meeting business remotely. I recognize that it has not been ideal, as we all prefer to conduct our town meeting business in person. However, we came together as a community and a local government, to continue the work of our legislative branch successfully and in the best way possible.

The conditions today are improving, although vigilance and precaution are still critical practices for us to follow. If town meeting were held in February or March, it appears that a remote town meeting would be the best course of action. Fortunately, our town meeting is held in May and assuming conditions continue to improve, the likelihood of conducting a safe, in person town meeting at that time seems likely although not a guarantee.

That said, if it is our intention to hold our 2022 Annual Town Meeting in person, I believe it is advisable that we postpone the May meeting to a Saturday in June. This will allow more time for conditions to improve and increase the probability of a safe in person meeting. Dates to consider are June 4, 2022, June 11, 2022 and June 18, 2022. I am not aware of any conflicts on those dates but defer to the Select Board, which ultimately has the authority to postpone town meeting.

It is important to note, that we will continue to monitor the situation and follow any updated guidance from the Board of Health, MA Department of Public Health and the Center for Disease Control and Prevention. If it is determined before we convene a postponed town meeting in June that it is no longer safe to meet in person, we have the ability to transition to a remote meeting. Moreover, we can integrate voluntary precautions into any in person meeting including making masks and hand sanitizer readily available.

Finally, I would also like to offer as additional support for postponing the Annual Town Meeting to June, that it will enable the newly appointed Town Administrator time to transition into their new role and prepare for town meeting.

Thank you for your time and consideration. I will be present at your February 28, 2022 meeting to discuss this further.

Agreement

Agreement entered this ____ day of _____ 2022, by the Town of Fairhaven, with a principal place of business at Town Hall, 40 Center Street, Fairhaven, MA 02719, (hereinafter called the “Town”) and Blue Stream Shellfish, LLC, with a principal place of business at 60 East St. Ware, MA 01082, (hereinafter called “Blue Stream”).

Whereas, Blue Stream has been licensed by the Town to operate an aquaculture facility in waters of the Town near Causeway Road in Fairhaven, and

Whereas, Blue Stream will perform activities related to that license on property located on Causeway Road, which activities will require the installation of electric power, and

Whereas the Town owns the adjacent property known as Hoppy’s Landing, which is serviced with metered electric power,

Therefor the parties agree:

1. The term of this agreement shall be six months from the date set forth above, provided that this agreement may be extended for two additional successive periods of six months by written request of Blue Stream to the Town, not to exceed a cumulative period of eighteen months unless otherwise agreed in writing by the parties. Those obligations of Blue Stream not performed during the term of this agreement shall survive its termination.
2. Blue Stream will be allowed during the term of this agreement to acquire electric power by direct (hard-wired) connection to the Town’s electric service at Hoppy’s Landing. Blue Stream shall arrange for, and be solely responsible for all costs, including but not limited to, costs for labor, materials, permitting, and inspections, associated with the

connections necessary to accomplish the direct connection. All work performed in establishing the connection shall be subject to review and approval by the utility company and the Town.

3. No later than sixty days following termination of this agreement Blue Stream will restore the Town's property to its prior condition, including but not limited to the removal of all equipment and materials installed by Blue Stream under this agreement, and the replacement and restoration of any property of the Town that was damaged or altered under this agreement.
4. During the term of this agreement, and so long as Blue Stream is receiving electric power through connection to the Town's electric service, Blue Stream will be responsible to the Town for the full cost for electricity measured at the meter at Hoppy's Landing regardless of the amount of electricity used by Blue Stream, or by the Town or others at that location. Payment shall be due within twenty days of the Town's delivery to Blue Stream of notice of the charges.
5. Except to the degree that a claim arises in part, or in whole, from the acts or omissions of the Town, its officers, employees or agents, Blue Stream shall indemnify and hold harmless the Town from and against any and all claims arising from Blue Stream's use of the Town's property or electric power, and shall further indemnify and hold harmless the Town from and against any and all claims arising from any breach or default in the performance of any obligation on Blue Stream's part to be performed under the terms of this agreement, or arising from any negligence of Blue Stream, or any of Blue Stream's agents, contractors or employees, and from and against all costs, attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding

brought thereon; and in case any action or proceeding be brought against the Town by reason of any such claim, Blue Stream upon notice from the Town shall defend the same at Blue Stream's expense by counsel satisfactory to the Town. Blue Stream, as a material part of the consideration to the Town, hereby assumes all risk of damage to property or injury to persons, arising from Blue Stream's use of the Town's property or electric power, and Blue Stream hereby waives all claims in respect thereof against the Town.

6. Blue Stream shall, at Blue Stream's expense, obtain and keep in force during the term of this Agreement a policy of comprehensive public liability insurance insuring against any liability arising out of the ownership, use, occupancy, or maintenance of the the Town's property or electric power and all areas appurtenant thereof. Such insurance shall be in an amount of not less than One Hundred Thousand and 00/100 dollars for injury to or death of one person in anyone accident or occurrence and in an amount of not less than Five Hundred Thousand and 00/100 (\$500,000.) dollars for injury to or death of more than one person in any one accident or occurrence. Such insurance shall further insure the Town and Blue Stream against liability for property damage of at least Fifty Thousand and 00/100 (\$50,000.) dollars. The limits of said insurance shall not, however, limit the liability of Blue Stream hereunder. If Blue Stream shall fail to procure and maintain such insurance the Town may, but shall not be required to, procure and maintain the same, but at the expense of Blue Stream.

SIGNATURE PAGE FOLLOWS

The Town of Fairhaven, by

_____, its _____

Blue Stream Shellfish, LLC,

_____, its _____

