



August 23, 2017

**VIA EMAIL**

Scott Anderson  
Verrill Dana, LLP  
PO Box 586  
Portland, Maine 04112-0586

Proposed Revised Scope for Regulatory and Engineering Services 3412001.00

Dear Mr. Anderson:

Kleinschmidt Associates (Kleinschmidt) provides this proposed revised scope for regulatory and engineering services to assist the Town of Kennebunk (Town) regarding the license for Kennebunk Light & Power's Lower Mousam River Project (FERC No. 5362) (Project). On July 21, 2017 Kleinschmidt submitted a proposal to potentially assist the Town with reviewing earlier documentation of the Project and submitting a Notice of Intent (NOI) to acquire the license for the Project.

Subsequently, we understand that the Town has decided not to submit an NOI but remains interested in understanding what options are available regarding the Project. On August 9 Kleinschmidt staff held a conference call with Mr. Michael W. Pardue, the Town Manager and on August 23, 2017 we had a follow-up discussion. Based on those discussions we provide the following revised scope of work. While we are approaching the tasks as time and materials to accommodate changes as we gather additional information and input from the Town, we estimate that the cost of the described services will not exceed \$14,000.

**REVISED PROPOSED SCOPE OF WORK**

As part of the Town's due diligence, you earlier had requested a proposal and estimate for 1) reviewing previous studies related to the economics of the Project including the 'Wright-Pierce Report' and a related review/revision of that report, and providing updated or revised costs associated with acquiring and operating the Project (the review); 2) preparing a NOI & PAD on or before September 11, 2017.

As noted, we understand that the second task (preparing a NOI & PAD) is no longer applicable and based on our recent discussion with Mr. Pardue, we do not believe an additional review of the Wright-Pierce Report would be valuable or informative for the Town. Based on our professional experience, we believe that the energy benefits of the Project would be very unlikely to justify the cost of a relicensing that resulted in new fish passage measures at the three dams.

In our experience, the successful decommissioning and removal of dams associated with a FERC project requires three separate elements:

1. Clear and substantial benefit to critical natural resources
2. Broad public support
3. Economic incentive for the owner

The Penobscot River Restoration Project (PRRT), which has become a national example of a successful removal project, demonstrates all three of these elements: (1) the project restored substantial habitat for the federally listed Atlantic salmon; (2) was supported by a broad coalition of interests, including state and federal agencies, non-governmental organizations, the Penobscot Tribe, municipalities around the removed projects, and the owning utility; and (3) the project allowed the owner to increase generation at other sites to offset the loss of the removed hydroelectric stations.

A license surrender and removal of the Mousam River Project, in contrast, would not likely meet these three elements. And in our experience removal projects that lack one or more of these key elements generally face significant resistance with resulting delays and additional costs for all concerned parties.

If neither relicensing nor surrender and removal of all three developments are satisfactory options, we propose an investigation of additional alternatives. Surrender of a FERC license does not require dam removal; several projects have been “surrendered in place,” meaning the dam remains but the generating facilities are decommissioned. An example of this would be the Howland Project, one of the three dams subject to the PRRT. Similarly, under a license surrender the three Mousam River dams could have different dispositions: for example, one dam might be retained in place while two are removed or any other combination.

We propose three separate tasks for our revised scope:

1. **Regulatory Option Review.** Given that Kennebunk Light & Power is currently an applicant in an ongoing FERC surrender process, this task would outline potential options available to the Town for participating in this process.
2. **Alternatives Overview.** This task would provide an overview of additional potential outcomes for a surrender process including surrender in place or partial surrenders.
3. **Meeting Facilitation.** Kleinschmidt staff would facilitate a meeting between Kennebunk Light & Power trustees and Town selectmen to discuss the alternatives and develop a path forward that might enable all three criteria.

## SCHEDULE

Kleinschmidt will prepare a memo report with the deliverables of Task 1 and 2 within two weeks of receiving your notice to proceed. We would then be prepared to facilitate a meeting under Task 3 within two weeks of submitting the memo report.

## TERMS AND CONDITIONS

Kleinschmidt proposes to complete these tasks using an hourly rate basis in which you are only charged for actual work performed. We propose to perform this work in accordance with Kleinschmidt’s Standard Terms and Conditions (attached), and will invoice you in accordance with the attached Method of Payment using Kleinschmidt’s standard 2017 rates (attached). Kleinschmidt estimates the cost of the described services at less than \$14,000. Kleinschmidt will not exceed the estimate for the work described. Kleinschmidt will provide Verrill Dana and the Town regular reports on the progress of the work and the incurred costs. Work will begin for the proposed scope upon receipt of your countersignature below.

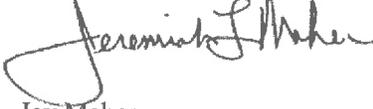
Scott Anderson  
August 23, 2017

3.

Please return a countersigned copy of this proposal as your acknowledgement and concurrence with the Proposed Scope of Work, Schedule, and Terms & Conditions. Receipt of the countersigned copy will be our Notice to Proceed. If you issue a purchase order as means of authorization of the work, please reference Kleinschmidt Proposal No. 3412001.00 in the purchase order, and note in the purchase order that any terms and conditions on the purchase order are null and void.

Sincerely,

**KLEINSCHMIDT ASSOCIATES**



Jay Maher  
Vice President

JLM:TMJ

Attachments: Standard Terms & Conditions  
Method of Payment  
2017 Rates

cc: Michael W. Pardue, Town Manager,  
Town of Kennebunk  
Proposal Distribution

*Accepted By:*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Printed Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Date*

**KLEINSCHMIDT ASSOCIATES  
(A MAINE CORPORATION)  
STANDARD TERMS AND CONDITIONS**

1. **Purpose:** These Standard Terms and Conditions when combined with a Proposal are intended to form a complete Agreement between Kleinschmidt Associates (Kleinschmidt) and the Client to whom the Proposal is addressed. When Kleinschmidt's signed Proposal has been accepted by the Client, the resulting Agreement shall take the place of all other agreements and representations concerning the subject of the Proposal. This Agreement may be amended only by a writing signed by both parties. Terms and Conditions of any purchase order issued by Client shall not be part of this Agreement unless separately signed by Kleinschmidt.

2. **Payment:** In consideration for Kleinschmidt's performance of the proposed work, Client shall pay Kleinschmidt as stated in the Proposal. Client agrees to pay promptly Kleinschmidt's fees and expenses as submitted on monthly invoices. If any balance remains unpaid thirty days from the date of the invoice, Client shall pay interest on the unpaid balance at the rate of one and one-half percent per month from said thirtieth day and shall, in addition, pay Kleinschmidt's costs of collection including reasonable legal fees.

3. **Client's Duties:** At no cost to Kleinschmidt, Client shall:

Promptly provide to Kleinschmidt the information required by Kleinschmidt for performance of its services.

Provide Kleinschmidt personnel with access to the work site so that they may perform their work without interference.

Designate a Client's representative with authority to transmit instructions, receive information, and define Client's policies concerning this Agreement.

Promptly notify Kleinschmidt of any defect in Kleinschmidt's services as soon as Client becomes aware of it.

Prior to commencement of Kleinschmidt's work, furnish Kleinschmidt with any special design or construction standards, which Client may require Kleinschmidt to follow.

4. **Kleinschmidt's Liability:** Kleinschmidt's services will be performed with that degree of reasonable care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

The total liability by Kleinschmidt and its agents for all claims relating to the work outlined in the Proposal shall not exceed the compensation received by Kleinschmidt or \$50,000, whichever is greater.

Kleinschmidt shall not be liable for any losses resulting from deficiencies in its services if those deficiencies arise from a cause beyond Kleinschmidt's reasonable control.

5. **Betterment:** If Kleinschmidt omits a required element of the project, Kleinschmidt shall not be responsible for paying the cost to add such item to the extent that it would have been necessary to the project or otherwise adds value or betterment. Kleinschmidt will not be responsible for any added cost or expense that provides betterment, upgrade or enhancement of the project.

6. **Shop Drawing Review:** When authorized by Client, Kleinschmidt shall review contractor submittals, such as shop drawings, product descriptions, samples, and other data, but only for determining that it conforms to the design concept and that it appears consistent with the contract documents. This shall not include checking the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction methods, coordination of the work with other trades, or construction safety issues, all of which are the sole responsibility of the Contractor.

Kleinschmidt's review shall be conducted with reasonable promptness while allowing sufficient time to permit a review that is adequate in Kleinschmidt's judgment. Review of a specific item does not mean that Kleinschmidt has reviewed the entire assembly of which the item is a part.

Kleinschmidt shall not be responsible for any deviation from the contract documents unless the deviation is brought specifically to Kleinschmidt's attention by the Contractor in writing. Kleinschmidt shall not be required to review partial submissions or those for which correlated items have not been received.

7. **Ownership of Documents**: Any drawings, specifications, or reports prepared by Kleinschmidt under this Agreement shall be the property of Client; however, Kleinschmidt shall have the unlimited right to use such drawings, specifications, and reports and the intellectual property therein. Client's use of such drawings, specifications, and reports shall be limited to the project or purpose for which they were prepared. Any use other than that purpose will be at Client's sole risk and without liability to Kleinschmidt and Client shall indemnify and hold harmless Kleinschmidt from all claims, damages, losses, and expenses resulting therefrom.
8. **Opinions of Probable Cost**: Opinions of Probable Cost prepared by Kleinschmidt are merely expressions of Kleinschmidt's judgment based on its experience as a design professional familiar with the industry. Kleinschmidt has no control over market prices, construction methods, or competitive conditions and therefore cannot represent that actual bids or negotiated prices will not vary from Kleinschmidt's Opinions of Probable Cost.
9. **Patents**: Kleinschmidt's work under this Agreement shall not include patent or copyright searches; and Kleinschmidt assumes no responsibility for any patent or copyright searches; and Kleinschmidt assumes no responsibility for any patent or copyright infringement that may arise from its work. Kleinschmidt makes no representation that anything made, used, or sold in connection with its services will be free from such infringement.
10. **Termination or Suspension**: Either party may terminate this Agreement upon reasonable notice to the other. Kleinschmidt shall be paid for the services provided and expenses incurred through the date of termination.

If the Agreement is terminated by the Client without breach by Kleinschmidt or if Kleinschmidt terminates for Client's breach, Kleinschmidt shall also be paid its reasonable and necessary termination costs which may include layoff and demobilization expenses as well as costs of terminating contracts, leases, and other obligations incurred by Kleinschmidt in reliance upon this Agreement. If Client suspends the work, Kleinschmidt shall be reimbursed by Client for such added fees and costs which arise from the suspension and remobilization.

Kleinschmidt shall not be liable to Client for losses resulting from Kleinschmidt's termination or suspension caused by Client's non-payment or other material breach of this Agreement.

11. **Assignment**: Neither party shall assign its rights, interests, or obligations under this Agreement without prior written consent from the other party; but such consent shall not unreasonably be withheld.
12. **No Waiver**: The failure of either party to enforce a provision of this Agreement shall not prevent that party from later enforcing it or from pursuing the remedies that may be available for breach of the provision.
13. **Indemnification**: Within its limit of liability Kleinschmidt shall indemnify and hold harmless the Client and its agents from any and all claims and losses caused solely by the negligent acts or omissions of Kleinschmidt or its agents in the performance of services under this Agreement.  
  
Client shall indemnify and hold harmless Kleinschmidt and its agents from any and all claims and losses caused solely by the negligent acts or omissions of Client or its agents with respect to this Agreement.
14. **Governing Law**: This Agreement shall be governed by the laws of the State of Maine, provided that nothing contained in the Agreement shall be interpreted in such a way as to render the Agreement unenforceable under any law of the United States or the law of the place in which the Client is located.
15. **Time for Acceptance**: Kleinschmidt's proposal shall remain firm for no longer than 60 days unless another period is specified in the proposal or the time is specifically extended by Kleinschmidt.

**KLEINSCHMIDT ASSOCIATES**  
**METHOD OF PAYMENT**

1. Client may pay Kleinschmidt either on a negotiated Lump Sum basis or Hourly Rate basis, as defined in the Work Authorization and agreed by the *Client* and Kleinschmidt in writing.
2. Client agrees to pay Kleinschmidt for Services the amounts quoted in the Proposal or Work Authorization, in accordance with the compensation terms laid out in the contract. Kleinschmidt agrees not to exceed the estimated consulting costs as stated in the proposal without explaining the need to the Client and obtaining the Client's authorization to proceed.
3. For Lump Sum projects, Kleinschmidt will invoice monthly as a percent complete of the project or Work Authorization, unless otherwise defined in the Work Authorization.
4. For Time and Materials, or Hourly Rate projects, Kleinschmidt will invoice monthly for all employee time at the hourly billing rate currently in effect, times a number of hours worked on the project plus subconsultant fees and expenses as described below. Client agrees to pay for expert testimony and direct preparation for testimony in any litigation, arbitration, or other legal or administrative proceeding at 150% of the standard billing rates with a minimum daily charge based upon an 8- hour day, plus Reimbursable Expenses.
5. For any projects where expenses are invoiced separately from labor, the following apply:
  - a. Client agrees to pay Kleinschmidt a 15% markup for subconsultant services.
  - b. Client agrees to pay 3% of labor costs for telecommunications (e.g., phone, data transmission and storage, fax, conference and video conference, data security).
  - c. Client agrees to pay for specialized computer programs, field equipment, and other unit charges (e.g., photocopies, mileage, photos, drawing reproductions, CD preparation, Sharepoint hosting) according to the current rates in effect.
  - d. Client agrees to pay any other reimbursable expenses actually incurred by Kleinschmidt at cost.

**KLEINSCHMIDT ASSOCIATES  
2017 RATES (USD)**

| <b>CATEGORY</b>                               | <b>HOURLY BILLING RATE</b> |
|-----------------------------------------------|----------------------------|
| <b>SENIOR MANAGERS/CONSULTANTS</b>            |                            |
| President M3                                  | \$235.00                   |
| Department Manager M2                         | \$225.00                   |
| Principal Consultant F1                       | \$200.00                   |
| Senior Manager M1G                            | \$190.00                   |
| Team Leader M1T                               | \$165.00                   |
| <b>ENGINEERS</b>                              |                            |
| Senior Engineering Consultant E6              | \$180.00                   |
| Senior Engineer E5                            | \$150.00                   |
| Project Engineer E4                           | \$135.00                   |
| Engineer E3                                   | \$125.00                   |
| Staff Engineer E2                             | \$115.00                   |
| Engineer Technician E1                        | \$93.00                    |
| <b>LICENSING COORDINATORS/PLANNERS</b>        |                            |
| Senior Regulatory/Planner Advisor L/P7        | \$195.00                   |
| Senior Licensing Coordinator/Planner L/P6     | \$155.00                   |
| Project Licensing Coordinator/Planner L/P5    | \$130.00                   |
| Licensing Coordinator/Planner L/P4            | \$115.00                   |
| Staff Licensing Coordinator/Planner L/P3      | \$100.00                   |
| Associate Licensing Coordinator/Planner L/P2  | \$85.00                    |
| Licensing Coordinator/Planner Technician L/P1 | \$68.00                    |
| <b>SCIENTISTS</b>                             |                            |
| Senior Science Advisor S7                     | \$196.00                   |
| Senior Scientist S6                           | \$155.00                   |
| Project Scientist S5                          | \$128.00                   |
| Scientist S4                                  | \$113.00                   |
| Staff Scientist S3                            | \$98.00                    |
| Associate Scientist S2                        | \$78.00                    |
| Scientist Technician S1                       | \$68.00                    |
| <b>DESIGNERS/DRAFTERS</b>                     |                            |
| Senior Designer D4                            | \$120.00                   |
| Designer D3                                   | \$105.00                   |
| Senior Drafter D2                             | \$90.00                    |
| Drafter D1                                    | \$80.00                    |
| <b>GIS</b>                                    |                            |
| GIS Senior Coordinator G5                     | \$145.00                   |
| GIS Project Coordinator G4                    | \$130.00                   |
| GIS Developer G3                              | \$110.00                   |
| GIS Analyst G2                                | \$89.00                    |
| GIS Technician G1                             | \$80.00                    |
| <b>ADMINISTRATIVE SUPPORT</b>                 |                            |
| Senior Administrative Manager A7              | \$135.00                   |
| Administrative Manager A6                     | \$110.00                   |
| Administrative Coordinator A5                 | \$100.00                   |
| Senior Administrative Staff A4                | \$90.00                    |
| Administrative Staff A3                       | \$81.00                    |
| Associate Administrative Staff A2             | \$67.00                    |
| Office Assistant A1                           | \$62.00                    |