

# **CIVILWORKS NEW ENGLAND**

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March 12, 2020

Mr. Wes Smith  
Rear Commodore  
Portsmouth Yacht Club  
76 Piscataqua Street  
New Castle, NH 03854

Re: Portsmouth Yacht Club – Pier Engineering Proposal  
New Castle, NH  
Our Reference No. 200012

Dear Mr. Smith:

Civilworks New England is pleased to present this proposal to provide consulting engineering services at the Portsmouth Yacht Club facility in New Castle.

We understand the project is visual inspection of the seawalls, stone revetment, patio and club building underdeck supports, summarized in a letter report.

## **TASK I: FIELD OBSERVATIONS**

A general overall condition assessment performed above low water for observation of the stone revetment and seawall on three side of the club building, observation of the patio for signs of differential settlement, and observation of the accessible building support posts. This level of effort for the building supports is limited to overall condition assessment and not intended to be sufficient to document in detail the conditions needed for design and bidding of repair work.

Typical measurements of the posts and timber pile caps (size and typical span) will be taken for a basic estimate support capacity using visually assumed timber species and grade. Limited probing of the cap and post timbers will be performed to check for timber softness (rot) and visual observation for signs of overload or decay, such as timber cap crushing over support posts.

We have heard prior reports of high tide debris blocking access to some areas under the building and this level of effort does not include debris removal or access into spaces too small for crawling access. Partially destructive testing, such as timber coring is not proposed at this time. Topographic survey is not proposed at this time.

**ESTIMATED FEE = \$ 1,800**

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## **TASK II: LIMITED ANALYSIS & SUMMARY**

Observations and repair recommendations from the revetment, seawall and patio will be summarized in the letter report. Limited typical beam span assessment calculations will be performed for a basic estimate support capacity using visually assumed timber species and grade. This will be an order of magnitude type of evaluation to help flag if pile cap timbers and posts might be overstressed. The findings will be summarized in the letter report. In consideration of sea level rise, the letter report will include an opinion based on the observations about the potential suitability of the foundation timber framing for jacking up the club building to a somewhat higher first floor elevation.

**ESTIMATED FEE = \$ 2,600**

## **TASK III MEETINGS AND FOLLOW-ON TASKS IF REQUESTED**

If requested we can attend meetings and this task establishes a limited budget for requested follow-on services.

**ESTIMATED FEE = \$1,400**

## **FEES FOR CONSULTING SERVICES**

Our total fee for the tasks I – II is **\$4,400**

Although we have attempted to anticipate all the work necessary to accomplish the tasks outlined above, we cannot anticipate other issues and concerns/requirements that may arise and/or site conditions that are unknown at this time.

We will not exceed the budget amount established above without your prior authorization. Work will be billed on an hourly basis for the actual number of hours spent by CNE staff on the project, as applicable, plus reimbursable expenses. The attached Exhibit A outlines our standard hourly rate schedule.

The fee quotations contained herein remain valid for 60 days from the date of this proposal. Prompt payment of invoices is necessary for us to maintain schedule and provide responsive services.

## **SCHEDULE OF WORK**

We will commenced work on this project after receiving a verbal Authorization to Proceed.

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## ASSUMPTIONS/CONDITIONS/TERMS

The following assumptions, exclusions, and conditions apply to the scope of services and estimated fees described in this proposal:

1. Geotechnical investigation, testing, and monitoring services excluded.
2. Assessment of the building structure above pile cap level is excluded.
3. Assessment will not include areas we cannot access.
4. The foundation soil conditions below the support post are not know and will not be investigated within this scope of work. Based on the recent pier pile driving, it does appear the existing clay layer is about 10 feet thick and if it extends under the building footings, there may be potential for soil settlement over time.

Should you wish to proceed with the above outlined scope of services, we ask that you please sign a copy of this proposal and return same to us as our authorization to proceed. A deposit will not be required to initiate the work specified herein.

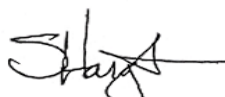
Please feel free to contact me if you should have any questions regarding this proposal.

'Very truly yours,

## **CIVILWORKS NEW ENGLAND**



Duncan Mellor, PE  
Principal Coastal Engineer



Stephen J. Haight, PE  
President

DCM

This proposal has hereby been reviewed and accepted:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
For Portsmouth Yacht Club.

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## **EXHIBIT A**

### **CIVILWORKS NEW ENGLAND/HAIGHT ENGINEERING, PLLC**

<b><u>TITLE</u></b>	<b><u>RATE/HOUR</u></b>
Principal Engineer	\$170.00
Principal Coastal Engineer	\$170.00
Project Manager	\$148.00
Project Engineer	\$110.00
Staff Engineer	\$ 95.00
Sr. CADD Technician	\$ 90.00
Engineering Technician	\$ 55.00
Administrative	\$ 55.00
Land Surveyor	\$ 148.00
2-Man Field Crew	\$ 150.00
3-Man Field Crew	\$ 175.00

Meetings (billed hourly and are portal to portal)  
Mileage, Prints, Photographs, postage  
Application Fees

Hourly  
Cost +15%  
by Client

Fees for pretrial conferences, preparation and expert testimony will be billed at 2 times the rates detailed in the proposal. Travel time to and from meetings will be billed at the standard rates.

We will bill you monthly for our fees, plus reimbursable expenses. Payment will be due within ten (10) days of date of invoice. A service charge of 1.5% (or the legal rate) per month will be applied to the unpaid balance after 30 days.

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## **GENERAL PROVISIONS**

### **CIVILWORKS NEW ENGLAND A DIVISION OF HAIGHT ENGINEERING, PLLC**

#### **SCOPE OF SERVICES**

**1.1** Services not set forth within the Scope of Services of this Agreement are specifically excluded from the scope of our consulting services. Haight Engineering, PLLC (Consultant) assumes no responsibility to perform any services not specifically listed in the Scope of Services.

#### **FEES FOR SERVICES**

##### **2.1 Fees for Consulting Services**

Fees for consulting services are based on the fees detailed in the proposal, unless otherwise noted.

##### **2.2 Reimbursable Expenses**

Reimbursable expenses when applicable will be billed at our cost plus fifteen (15%) percent for overhead. As reimbursable expenses paid by Haight Engineering, PLLC (Consultant) do increase our insurance premiums, payment of such fees by Haight Engineering, PLLC will be subject to a 15% overhead charge.

Reimbursable expenses include:

1. Transportation and living expenses incurred for assignments outside the seacoast New Hampshire area, which are not suited to daily travel.
2. Automobile expenses for vehicles at the standard mileage rate per IRS for travel from our Stratham office to the Project and return and for travel at the job in conduct of work.
3. Printing, reproduction and shipping charges for reports, specification, drawings, equipment, cell phone charges, etc.

4. Rental of specialized equipment, if required and approved by the Client.

5. Photographs, video supplies and electronic media for submission of drawings, specifications or reports.

##### **2.3 Services of Others**

If we engage the services of sub consultants or other companies to participate in a project, these firms or other consultants will be used subject to your approval, at actual cost plus a 15% overhead charge.

##### **2.4 Permit Fees**

Permit application fees shall be paid directly by the applicant, unless specifically included in the proposal, or otherwise requested by the Client. As permit fees paid by Haight Engineering, PLLC do increase our insurance premiums, payment of such fees by Haight Engineering, PLLC will be subject to a 15% overhead charge.

#### **PAYMENT TERMS**

##### **3.1 Invoices**

Invoices for professional engineering services will be submitted monthly or upon task completion. Payment will be due within ten (10) days of invoice. If Client objects to all or any portion of an invoice, Client shall notify Haight Engineering, PLLC in writing within seven (7) calendar days of the invoice date, to identify the cause of disagreement, and pay when due that portion of the invoice not in dispute.

Interest will be added to accounts in arrears at the rate of one and one-half (1.5%) percent per month (18% per annum) or the maximum rate allowed by law, whichever is less, of the

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outstanding balance. In the event that it is necessary for Haight Engineering PLLC to maintain a collection action against Client, and Haight Engineering prevails in such action, then, Client shall pay all reasonable attorneys' fees and costs of collection.

## **3.2 Payment**

If payment is not made within ten (10) days of payment due date, we may, after giving seven (7) days written notice, suspend services under this Agreement until we have been paid in full for services and expense charges. Suspension of work will cause an adjustment in the schedule of work.

## **PRETRIAL, TRIAL & EXPERT TESTIMONY SERVICES**

### **4.1 Pretrial and Expert Testimony**

Fees for pretrial conferences and expert testimony will be billed at two (2.0) times the rates detailed in the proposal.

## **INSURANCE**

### **5.1 Insurance Coverage**

A certificate of insurance will be provided by Haight Engineering, PLLC upon written request for:

General Liability	\$1,000,000/ \$1,000,000
Automobile Liability	\$1,000,000
Umbrella Liability	\$1,000,000
Professional Liability, Errors & Omissions	\$1,000,000

The Consultant agrees to attempt to maintain professional liability coverage for the period of the service, if such coverage is reasonably available at commercially affordable premiums. For the purposes of this Agreement,

"*reasonably available*" and "*commercially affordable*" shall mean that more than half the consultants practicing the same professional discipline in the state where the project is located are able to obtain such coverage.

## **ON-SITE CONSTRUCTION OBSERVATION SERVICES**

### **6.1 On-Site Services During Project Construction**

Should our services be provided on the job site during project construction, it is understood that, in accordance with generally accepted construction practices, the Construction Contractor is solely and completely responsible for working conditions on the job site, including safety of all persons and property during the performance of the work and compliance with OSHA and other applicable regulations and that these requirements will apply continuously and not be limited to normal working hours. Any monitoring of the Contractor's performance conducted by our personnel does not include review of the adequacy of the Contractor's safety measures in, on, or near the construction site. It is further understood that field services provided by our personnel will not relieve the Contractor of its responsibilities of performing the work in accordance with applicable laws and regulations, and with the construction contract, drawings and specifications.

## **RIGHT OF ENTRY**

### **7.1 Rights of Entry**

Unless otherwise agreed, the Client will furnish right of entry on the land/facility for us to make the planned investigations. If the Client does not own the site, the Client shall provide evidence that the owner grants permission for Haight Engineering, PLLC to enter the site and perform the work requested. We will take reasonable precautions to minimize damage to the land/facility from our operations, but have not included in our fee the cost of restoration of damage that may result from our operations. Any expense associated with damage restoration will be borne by the Client.

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## **MISCELLANEOUS**

### **8.1 Reuse of Documents**

All documents, including Drawings and Specifications prepared or furnished by Haight Engineering, PLLC and its independent professional associates and consultants pursuant to this Agreement, are instruments of service in respect to retain ownership and property interest therein whether or not the Project is completed. The Client may make and retain copies for information and reference in connection with the use and occupancy of the Project by You and others; however, such documents are not intended or represented to be suitable for reuse by the Client or others on extensions of the Project or any other project. Any reuse without written verification or adaptation by Haight Engineering, PLLC for the specific purpose intended will be at your sole risk and without liability or legal exposure to Haight Engineering, PLLC or to independent professional associates and consultants of Haight Engineering, PLLC. The Client agrees to indemnify and hold harmless Haight Engineering, PLLC and/or its independent professional associates and consultants from all claims, damages, losses and expenses including attorney's fees arising out of or resulting there from. Any such verification or adaptation will entitle Haight Engineering, PLLC to further compensation at rates to be agreed upon by the Client and Haight Engineering, PLLC.

### **8.2 Opinions of Cost**

Since Haight Engineering, PLLC has no control over the cost of labor, materials, equipment or services furnished by others or over the Contractor(s) methods of determining prices or over competitive bidding or market conditions, Haight Engineering, PLLC opinions of probable Project Costs and Estimated Construction Costs, provided for herein, are made on the basis of the best judgment of experienced and qualified professional engineers, familiar with the construction industry; but Haight Engineering, PLLC cannot and does not guarantee that proposals, bids or actual Project

or Construction Costs will not vary from opinions of probable cost prepared by Haight Engineering, PLLC. If prior to the Bidding or Negotiating Phase, the Client wishes greater assurance as to Project or Construction Costs, the Client shall employ an independent cost estimator.

### **8.3 Termination**

The obligation to provide further service under this Agreement may be terminated by either party upon 24 hours written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. In the event of any termination, Haight Engineering, PLLC will be paid for all services rendered to the date of termination, including all reimbursable expenses and termination expenses.

### **8.4 Controlling Law**

This Agreement is to be governed by the laws of the State where the work is performed.

### **8.5 Successors and Assigns**

8.5.1 This Agreement binds you and your partners, successors, and assigns, executors, administrators, and legal representatives.

8.5.2 Neither the Client nor Haight Engineering, PLLC shall assign, sublet or transfer any rights under or interest in (including, but without limitations, 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 Haight Engineering, PLLC from employing such independent professional associates and consultants at Haight Engineering, PLLC may

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deem appropriate to assist in the performance of services hereunder.

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

## **8.6 Mediation**

In an effort to resolve any conflicts that arise during the design and construction of the Project or following the completion of the Project, the Client and the Consultant agree that all disputes between them arising out of or relating to this Agreement or the Project shall be submitted to nonbinding mediation unless the parties mutually agree otherwise.

The Client and the Consultant further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with their subcontractors, subconsultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution between the parties to all those agreements.

## **8.7 Arbitration**

8.7.1 All claims, counterclaims, disputes and other matters in question between the parties hereto arising out of or relating to this Agreement or the breach thereof which cannot be decided by mediation will be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then existing subject to restrictions and limitations stated in paragraphs 8.7.3 and 8.7.4 below. Other than provided in paragraph 8.7.3, this agreement or consent to arbitrate shall be the sole remedy for any disputes, claims or questions, which arise under this Agreement.

8.7.2 Notice of demand for arbitration must be filed in writing with the other parties to this Agreement and with the American Arbitration Association. The demand must be made within a reasonable time after the claim; dispute or other matter in question has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

8.7.3 All demands for arbitration and all answering statements thereto which include any monetary claim must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than the contract amount. The arbitrators will not have jurisdiction, power or authority to consider or make findings (except in denial of their own jurisdiction) concerning any claim, counterclaim, dispute or other matter in question where the amount of controversy of any such claim, counter claim, dispute or matter is more than the contract amount.

8.7.4 No arbitration arising out of or relating to this Agreement may include, by consolidation, joinder or in any other manner, any person or entity, who is not a party to this Agreement.

8.7.5 By written consent signed by all parties to this Agreement and containing a specific reference hereto, the limitations and restrictions contained in paragraphs 8.7.3 and 8.7.4 may be waived in whole or in part as to any claim, counterclaim, dispute or other matter specifically described in such consent. No consent to arbitration in respect of a specifically described claim, counterclaim, dispute or other claim, counterclaim, dispute or other matter in question which is not specifically described in such consent or in which the sum or value in controversy exceed \$20,000.00 or which is with any party not specifically described therein.

## **8.8 Limitation of Design Professional's Liability**

The Client hereby agrees that to the fullest extent permitted by law, Design Professional's

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total liability to owner/client for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the project or this Agreement from any cause or causes including but not limited to Design Professional's negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not exceed the total amount of \$20,000.00 or the total fee for the services rendered on the Project, whichever is greater. Any claim will be deemed waived unless received by Haight Engineering, PLLC within three years of substantial completion of services or the applicable statute of limitations period, if shorter. Haight Engineering, PLLC will not be liable for lost profits, loss of use of property, delays or other special, indirect, incidental, consequential, punitive, exemplary or multiple damages.

You agree to hold personally harmless and to release any and all claims against any director, officer, employee, or agent of Haight Engineering, PLLC arising from any negligent act, error or omission now existing or hereinafter arising. You agree that any and all claims for damages from any negligent act, error or omission shall be made against Haight Engineering, PLLC directly and shall not be made personally against any of its directors, officers, employees, or agents. You covenant not to sue personally any of its directors, officers, employees, or agents of Haight Engineering, PLLC for any cause of action arising from any negligent act, error or omission now existing or hereinafter arising.

The Client recognizes that unanticipated or changed conditions are likely to be encountered during construction. The Client agrees to indemnify Haight Engineering, PLLC from any claims arising from unanticipated or changed conditions.

## **8.9 Severability and Reformation**

Any provision or part thereof of this Agreement held to be void or unenforceable under any law shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the parties. The parties agree

that this Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.

## **9.0 Standard of Care**

Service performed by Haight Engineering, PLLC under this Agreement will be conducted in a manner consistent with that level of care and skill that is ordinarily exercised by members of the engineering profession. No other representation to the Client, expressed or implied, and no warranty or guarantee is included or intended in this agreement, or in any correspondence, report, document, or other communications.

## **10.0 Fiduciary Responsibility**

The Client confirms that neither Haight Engineering, PLLC nor any of their sub consultants or subcontractors has offered any fiduciary service to the Client and no fiduciary responsibility shall be owed to the Client by Haight Engineering, PLLC or any of its sub consultants or subcontractors, as a consequence of Haight Engineering, PLLC entering into this agreement with the Client.

## **11.0 Procurement Services**

If Haight Engineering, PLLC is required to perform procurement services, procurement of products, materials and/or equipment, or the coordination of such items on behalf of the Client, then Haight Engineering, PLLC shall not, under any circumstance, be responsible for material or product quality, the correction of any defective workmanship or material in connection with said items, nor be responsible for any consequential or incidental damages, including but not limited to loss of use or anticipated profits, for any reason, resulting from any said defect in material or workmanship.

## **12.0 Indemnifications**

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The Consultant and Client mutually agree, to the fullest extent permitted by law, to indemnify and hold each other harmless from any and all damage, liability or cost (including reasonable attorneys' fees and defense costs) to the extent caused by their own negligent acts, errors or omissions and those of anyone for whom they are legally liable, and arising from the project that is subject to this agreement. Neither party is obligated to indemnify the other in any manner whatsoever for the other's negligence.

## **13.0 Delays**

Neither party shall hold the other responsible for damages or delays in performance caused by acts of God or other circumstances beyond the control of the other party, and which could not reasonably have been prevented or anticipated. Should such circumstances occur, the Client and the Consultant shall utilize their best efforts to overcome the resulting difficulties and resume conduct of services called for herein as soon as reasonably possible. Delays within the scope of this provision that cumulatively exceed forty-five (45) calendar days shall, at the option of either party, make this Agreement subject to renegotiation or termination.

## **14.0 Codes and Design Standards**

The Consultant's professional services shall be consistent with sound engineering practices and shall incorporate regulations, codes, policies and standards that are apparent at the time of the Consultant agreement. If there is a change in laws, regulations, codes, policies or standards; or a demand for different standards by the Client or regulatory agencies, which influence this project, then the Consultant shall inform the Client of the change and its impact on work already done or to be done, the additional fees and costs and schedule modifications required. If the Consultant believes the change requires a renegotiation of this agreement, then a good faith fee and or schedule adjustment may be requested to maintain this agreement.