

The State of New Hampshire
Department of Environmental Services

Thomas S. Burack, Commissioner

*Celebrating 25 Years of Protecting
New Hampshire's Environment*



October 20, 2012

His Excellency, Governor John H. Lynch
and The Honorable Council
State House
Concord, NH 03301

REQUESTED ACTION

Authorize the Department of Environmental Services to amend an agreement (PO# 1009624) with the Town of Milford, NH (VC #177503), for the *Souhegan River Restoration Project: Phase 1 Feasibility Study* project by changing the completion date to June 30, 2013 from December 31, 2012, effective upon Governor and Council approval. The original agreement was approved by the G&C on July 14, 2010, Item #66. Amendments were approved by the G&C on June 22, 2011 (Item #110), and August 22, 2012 (Item #62). No additional funding is requested in this Amendment. 100% Federal Funds.

EXPLANATION

This project represents the first phase of a larger restoration effort that would ultimately result in water quality restoration through removal of the subject dams. The first phase involves the development of a Feasibility Study, which will provide the Town of Milford and other stakeholders an opportunity to assess the resources and procedures required to remove the dams and allow them to make a well-informed decision relative to removing or retaining the dams. The information contained in the Feasibility Study will not only provide information to the Town and the public, but it will also contain the technical information which would be required to enter into the design and permitting phase of the project.

The ultimate goal of this multi-phase project is to restore this section of the Souhegan River to a free-flowing condition, improve the overall ecology, remove a fish passage barrier, improve recreation opportunities, eliminate liability associated with the aging dams and eliminate the existing water quality impairments within each impoundment. DES is requesting approval of this third amendment to the agreement in order to provide the Town of Milford additional time to complete the agreed upon Scope of Services. Copies of the original Grant Agreement, and Amendments are provided in Attachment A.

Significant work on this project has been completed to date. The dams, surrounding topography, and bathymetry have been surveyed. Relevant wetlands have been delineated, and a site inspection of the Colonel Shepard Bridge and other infrastructure has been completed. Sediment depth measurements at McLane Dam are also complete. During the summer of 2012, the contractor completed hydrologic and

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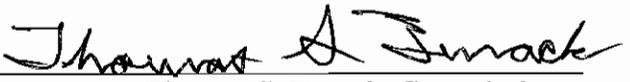
His Excellency John H. Lynch
and The Honorable Council

Page 2

hydraulic models for the project area and a significant portion of the sediment transport and scour analysis for pre and post-dam removal conditions. A Cultural Resources Study and Archeological and Historic Structures Assessment were also completed in the late summer of 2012. At the present time, the draft feasibility study is seventy percent complete.

Additional analyses including spatial averaging and a dilution study to model downstream concentrations of polychlorinated biphenyls (PCBs) below McLane Dam under various scenarios were completed as specified in Amendment 2. Analysis of the findings resulting from those studies will require additional time beyond the completion date of the existing agreement due to complications resulting from a previously unknown source of contamination. Remediation at that site, an oil seep from the riverbank, is currently in progress. Upon completion of that site remediation, further analysis of the spatial averaging and dilution studies, and incorporation of that analysis into the feasibility study will be completed.

The agreement has been approved by the Office of the Attorney General as to form, execution, and content. We respectfully request your approval.


Thomas S. Burack, Commissioner

**Attachment A:
Original Agreement, and Amendments 1 and 2**

Agreement for Services with the Town of Milford
Amendment No. 3

This agreement (hereinafter called "Amendment No. 3") dated this 16th day of October, 2012, is by and between the State of New Hampshire, acting by and through its Department of Environmental Services (hereinafter referred to as the "State") and the Town of Milford, acting by and through its Town Administrator, Guy Scaife (hereinafter referred to as the "Grantee").

WHEREAS, pursuant to a Grant Agreement (hereinafter called the "Agreement") approved by the Governor and Council on July 14, 2010, its first Amendment (hereinafter called "Amendment 1") approved by the Governor and Council on June 22, 2011, and its second Amendment (hereinafter called "Amendment 2") approved by the Governor and Council on August 22, 2012, the Grantee agreed to perform certain services upon the terms and conditions specified in the Agreement and its Amendments, and in consideration of payment by the State of certain sums as specified therein; and

WHEREAS, The Grantee and the State have agreed to amend the Agreement and its Amendments, in certain respects;

NOW THEREFORE, in consideration of the foregoing, and the covenants and conditions contained in the Agreement, Amendment 1, and Amendment 2, and set forth herein, the parties hereto do hereby agree as follows:

1. Amendment and Modification: The Agreement, Amendment 1, and Amendment 2, are hereby amended as follows:

The Completion Date as set forth in Paragraph 1.6 of the Agreement shall be changed to June 30, 2013 from December 31, 2012.

2. Effective Date of Amendment No. 3: This Amendment shall take effect upon the date of approval of this Amendment by the Governor and Executive Council of the State of New Hampshire.
3. Continuance of Agreement: Except as specifically amended and modified by the terms and conditions of this Amendment, the Agreement, and the obligations of the parties thereunder, shall remain in full force and effect in accordance with the terms and conditions set forth therein.

Initial AS
Date 10/16/12

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the day and year first above written.

Town of Milford

By *Guy Scaife*
Guy Scaife, Town Administrator

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

On this the 16th day of October, 2012, before the undersigned officer, personally appeared Guy Scaife, Milford Town Administrator who acknowledged himself to be the person who executed the foregoing instrument for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Dawn A. Griska
Dawn A. Griska, Notary Public

My Commission Expires: June 25, 2013

THE STATE OF NEW HAMPSHIRE
Department of Environmental Services

By *Thomas S. Burack*
Thomas S. Burack, Commissioner



Approved by Attorney General this 29 day of October, 2012

OFFICE OF ATTORNEY GENERAL

By *Evan Melillo*
Evan Melillo

CERTIFICATE OF AUTHORITY

I, Margaret Langell, Town Clerk of the Town of Milford, do hereby certify that:

- (1) at the Town meeting held on 8 March, 1994, the Town of Milford voted to authorize the Town to apply for, accept and expend money from state, federal, and other governmental unit or a private source which becomes available during the year in accordance with the procedures set forth in New Hampshire law;
- (2) at the regular meeting on 12, April, 2010 the Board of Selectmen voted to accept federal Clean Water Act funds and enter into a contract with the New Hampshire Department of Environmental Services. The Board of Selectmen further authorized the Town Administrator to execute any documents which may be necessary to effectuate this contract;
- (3) The Town of Milford warrants that this authorization has not been revoked, annulled, or amended in any manner whatsoever, and remains in full force and effect as of the date hereof; and
- (4) the following person has been appointed to and now occupies the office indicated in (2) above:

Guy Scaife

IN WITNESS WHEREOF, I have hereunto set my hand as the Town Clerk of the Town of Milford, this 16th day of October, 2012.

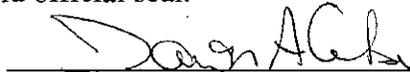


Margaret Langell, Town Clerk

STATE OF NEW HAMPSHIRE
County of Hillsborough

On this the 16th day of October, 2012, before me Dawn A. Griska, Notary Public, the undersigned officer, personally appeared Margaret Langell who acknowledged herself to be the Town Clerk of the Town of Milford being authorized so to do, executed the foregoing instrument for the purpose therein contained.

In witness whereof, I have set my hand and official seal.



Dawn A. Griska, Notary Public

Commission Expiration Date: June 25, 2013
(Seal)





CERTIFICATE OF COVERAGE

The New Hampshire Public Risk Management Exchange (Primex³) is organized under the New Hampshire Revised Statutes Annotated, Chapter 5-B, Pooled Risk Management Programs. In accordance with those statutes, its Trust Agreement and bylaws, Primex³ is authorized to provide pooled risk management programs established for the benefit of political subdivisions in the State of New Hampshire.

Each member of Primex³ is entitled to the categories of coverage set forth below. In addition, Primex³ may extend the same coverage to non-members. However, any coverage extended to a non-member is subject to all of the terms, conditions, exclusions, amendments, rules, policies and procedures that are applicable to the members of Primex³, including but not limited to the final and binding resolution of all claims and coverage disputes before the Primex³ Board of Trustees. The Additional Covered Party's per occurrence limit shall be deemed included in the Member's per occurrence limit, and therefore shall reduce the Member's limit of liability as set forth by the Coverage Documents and Declarations. The limit shown may have been reduced by claims paid on behalf of the member. General Liability coverage is limited to Coverage A (Personal Injury Liability) and Coverage B (Property Damage Liability) only, Coverage's C (Public Officials Errors and Omissions), D (Unfair Employment Practices), E (Employee Benefit Liability) and F (Educator's Legal Liability Claims-Made Coverage) are excluded from this provision of coverage.

The below named entity is a member in good standing of the New Hampshire Public Risk Management Exchange. The coverage provided may, however, be revised at any time by the actions of Primex³. As of the date this certificate is issued, the information set out below accurately reflects the categories of coverage established for the current coverage year.

This Certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend, or alter the coverage afforded by the coverage categories listed below.

<i>Participating Member:</i> Town Of Milford 1 Union Square Milford, NH 03055	<i>Member Number:</i> 239	<i>Company Affording Coverage:</i> NH Public Risk Management Exchange - Primex ³ Bow Brook Place 46 Donovan Street Concord, NH 03301-2624
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Type of Coverage	Effective Date (mm/dd/yyyy)	Expiration Date (mm/dd/yyyy)	Limits - NH Statutory Limits May Apply, If Not	
General Liability (Occurrence Form) Professional Liability (describe) <input type="checkbox"/> Claims Made <input type="checkbox"/> Occurrence			Each Occurrence	\$
			General Aggregate	\$
			Fire Damage (Any one fire)	\$
			Med Exp (Any one person)	\$
Automobile Liability Deductible Comp and Coll: <input type="checkbox"/> Any auto			Combined Single Limit (Each Accident)	
			Aggregate	
<input checked="" type="checkbox"/> Workers' Compensation & Employers' Liability	1/1/2012	1/1/2013	<input checked="" type="checkbox"/> Statutory	
			Each Accident	\$2,000,000
			Disease – Each Employee	\$2,000,000
			Disease – Policy Limit	\$
Property (Special Risk includes Fire and Theft)			Blanket Limit, Replacement Cost (unless otherwise stated)	

Description: Proof of Primex Member coverage only.

CERTIFICATE HOLDER:	Additional Covered Party	Loss Payee	Primex³ – NH Public Risk Management Exchange
NH Dept of Environmental Services PO Box 95 Concord, NH 03302			By: <i>Tammy Denver</i>
			Date: 7/19/2012 tdenver@nhprimex.org
			Please direct inquires to: Primex³ Claims/Coverage Services 603-225-2841 phone 603-228-3833 fax

Attachment A:
Original Agreement, and Amendments 1 and 2



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

Jeff Marsoux



Thomas S. Burack, Commissioner

June 30, 2010

His Excellency, Governor John H. Lynch
and The Honorable Council
State House
Concord, NH 03301

APPROVED G & C
DATE 7/14/10
ITEM # 66

REQUESTED ACTION

Authorize the Department of Environmental Services to enter into an agreement with the Town of Milford, NH, VC #177503, in the amount of \$50,000 to complete the *Souhegan River Restoration Project in Milford: Phase 1 - Feasibility Study* project effective upon Governor and Council approval through December 31, 2012. 100% federal funds.

Funding is available in the account as follows:

03-44-44-442010-2035-072-500574 FY 2011
\$50,000
Dept Environmental Services, NPS Restoration Program, Grants-Federal

EXPLANATION

The Department of Environmental Services issued a Request For Proposals (RFP) for the 2010 Watershed Restoration Grants program. The proposal process is a two-part process involving pre-proposals, and full proposals. Eleven pre-proposals were received. The pre-proposals were ranked based on the criteria included in the RFP: water quality benefits, potential to restore impaired waters, commitment of local support, clarity of project outcomes, tasks matching goals, and overall quality of the proposal. The eight highest ranking organizations were invited to attend an interview with DES staff to further discuss the proposed project, and then invited to submit full proposals. Based on results of the interview, quality of the full proposal submitted, and available federal grant funding, seven projects were selected to receive funding. Please see Attachment B for a list of project rankings and review team members.

The DES Watershed Assistance Section focuses on the reduction of nonpoint source (NPS) pollution. NPS pollution occurs when rainfall, snowmelt, or irrigation water runs over land or through the ground, transporting materials which are then deposited into rivers, lakes, and coastal waters, or introduced into the groundwater. Pollutants can include chemicals, sediments, nutrients, and toxics. These materials can have harmful effects on drinking water supplies, recreation, fisheries, and wildlife. Land development or changes in land use can also cause NPS pollution by disrupting the natural hydrology of a water body, increasing impervious surfaces, and contributing to the loss of aquatic

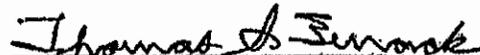
habitat. Watershed Assistance programs address NPS pollution by managing land use and drainage on a watershed scale.

The Souhegan River watershed extends from south-central New Hampshire south-west to headwaters that are located in both Massachusetts and New Hampshire. The Souhegan is a major sub-watershed of the Merrimack River basin with the confluence located in Merrimack, NH. The focus area of this restoration project will be situated at the McLane and Goldman Dams located within the Town of Milford, NH. The impoundments of the Souhegan River behind these dams have insufficient dissolved oxygen concentrations and build up of *e.coli* bacteria which prevent them from meeting designated uses, and cause them to be listed as impaired on the State's 303(d) list of impaired waters.

This project represents the first phase of a larger restoration effort that would ultimately result in water quality improvement through removal of the subject dams. The first phase involves the development of a Feasibility Study, which will provide the Town of Milford and other stakeholders an opportunity to assess the resources and procedures required to remove the dams, and allow them to make a well-informed decision relative to removing or retaining the dams. The information contained in the Feasibility Study will not only provide information to the Town and the public, but it will also contain the technical information which would be required to enter into the design and permitting phase of the project. The ultimate goal of this multi-phase project is to restore this section of the Souhegan River to a free-flowing condition, improve the overall ecology, remove a fish passage barrier, improve recreation opportunities, eliminate liability associated with the aging dams, and eliminate the existing water quality impairments within each impoundment.

The total project costs are budgeted at \$83,500. DES will provide \$50,000 (60%) of the project costs through a federal grant and Town of Milford, NH will provide the remaining costs through cash and in-kind services. A budget breakdown is provided in Attachment A. As required by Section 319 of the Clean Water Act, federal funds provided to this project must be matched by a local, state, or private share of at least 40 percent. In the event that federal funds become no longer available, general funds will not be requested to support this program.

The agreement has been approved by the Office of the Attorney General as to form, execution, and content. We respectfully request your approval.


Thomas S. Burack, Commissioner

GRANT AGREEMENT

Subject: Souhegan River Restoration Project in Milford: Phase 1 – Feasibility Study

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATIONS AND DEFINITIONS

1.1 State Agency Name Department of Environmental Services		1.2 State Agency Address 29 Hazen Drive Concord, NH 03301	
1.3 Grantee Name Town of Milford		1.4 Grantee Address One Union Square Milford, NH 03055-4240	
1.5 Effective Date Upon G&C approval	1.6 Completion Date December 31, 2012	1.7 Audit Date N/A	1.8 Grant Limitation \$50,000
1.9 Grant Officer for State Agency Eric Williams, Watershed Assistance Section Supervisor		1.10 State Agency Telephone Number 603-271-2358	
1.11 Grantee Signature <i>[Signature]</i>		1.12 Name & Title of Grantee Signor Jay Scaife, Town Administrator	
1.13 Acknowledgment: State of New Hampshire, County of Hillsborough On <u>4/13/10</u> , before the undersigned officer, personally appeared the person identified in block 1.12., whom I am satisfactorily proven to be the person whose name is signed in block 1.11., and acknowledged that she executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace (Seal) <i>[Signature]</i>		DAWN A. GRISKA, Notary Public My Commission Expires June 25, 2019	
1.13.2 Name & Title of Notary Public or Justice of the Peace Dawn Griska, Notary Public			
1.14 State Agency Signature(s) <i>[Signature]</i>		1.15 Name/Title of State Agency Signor(s) Thomas S. Barrack, Commissioner	
1.16 Approval by Attorney General's Office (Form, Substance and Execution) By: <i>[Signature]</i> Attorney, On: <u>6/24/10</u>			
1.17 Approval by the Governor and Council By: _____ On: <u>1/1</u>			

2. **SCOPE OF WORK.** In exchange for grant funds provided by the state of New Hampshire, acting through the agency identified in block 1.1 (hereinafter referred to as "the State"), pursuant to RSA 21-O, the Grantee identified in block 1.3 (hereinafter referred to as "the Grantee"), shall perform that work identified and more particularly described in the scope of work attached hereto as EXHIBIT A (the scope of work being referred to as "the Project").

3. **AREA COVERED.** Except as otherwise specifically provided for herein, the Grantee shall perform the Project in, and with respect to, the state of New Hampshire.

4. **EFFECTIVE DATE; COMPLETION OF PROJECT:**

4.1 This Agreement, and all obligations of the parties hereunder, shall become effective on the date in block 1.5 or on the date of approval of this Agreement by the Governor and Council of the State of New Hampshire whichever is later (hereinafter referred to as "the Effective Date").

4.2 Except as otherwise specifically provided for herein, the Project, including all reports required by this Agreement, shall be completed in ITS entirety prior to the date in block 1.6 (hereinafter referred to as "the Completion Date").

5. **GRANT AMOUNT; LIMITATION ON AMOUNT;**

VOUCHERS; PAYMENT:

5.1 The Grant Amount is identified and more particularly described in EXHIBIT B, attached hereto.

5.2 The manner of, and schedule of payment shall be as set forth in EXHIBIT B.

5.3 In accordance with the provisions set forth in EXHIBIT B, and in consideration of the satisfactory performance of the Project, as determined by the State, and as limited by subparagraph 5.5 of these general provisions, the State shall pay the Grantee the Grant Amount. The State shall withhold from the amount otherwise payable to the Grantee under this subparagraph 5.3 those sums required, or permitted, to be withheld pursuant to N.H. RSA 10:7 through 7-c.

5.4 The payment by the State of the Grant amount shall be the only, and the complete, compensation to the Grantee for all expenses, of whatever nature, incurred by the Grantee in the performance hereof, and shall be the only, and the complete, compensation to the Grantee for the Project. The State shall have no liabilities to the Grantee other than the Grant Amount.

5.5 Notwithstanding anything in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made, hereunder exceed the Grant limitation set forth in block 1.8 of these general provisions.

6. **COMPLIANCE BY GRANTEE WITH LAWS AND**

REGULATIONS. In connection with the performance of the Project, the Grantee shall comply with all statutes, laws, regulations, and orders of federal, state, county, or municipal authorities which impose any obligations or duty upon the Grantee, including the acquisition of any and all necessary permits.

7. **RECORDS AND ACCOUNTS:**

7.1 Between the Effective Date and the date seven (7) years after the Completion Date the Grantee shall keep detailed accounts of all expenses incurred in connection with the Project, including, but not limited to, costs of administration, transportation, insurance, telephone calls, and clerical materials and services. Such accounts shall be supported by receipts, invoices, bills and other similar documents.

7.2 Between the Effective Date and the date seven (7) years after the Completion Date, at any time during the Grantee's normal business hours, and as often as the State shall demand, the Grantee shall make available to the State all records pertaining to matters covered by this Agreement. The Grantee shall permit the State to audit, examine, and reproduce such records, and to make audits of all contracts, invoices, materials, payrolls, records or personnel, data (as that term is hereinafter defined), and other information relating to all matters covered by this Agreement. As used in this paragraph, "Grantee" includes all persons, natural or fictional, affiliated with, controlled by, or under common ownership with, the entity identified as the Grantee

in block 1.3 of these general provisions.

8. **PERSONNEL:**

8.1 The Grantee shall, at its own expense, provide all personnel necessary to perform the Project. The Grantee warrants that all personnel engaged in the Project shall be qualified to perform such Project, and shall be properly licensed and authorized to perform such Project under all applicable laws.

8.2 The Grantee shall not hire, and it shall not permit any subcontractor, subgrantee, or other person, firm or corporation with whom it is engaged in a combined effort to perform such Project, to hire any person who has a contractual relationship with the State, or who is a State officer or employee, elected or appointed.

8.3 The Grant officer shall be the representative of the State hereunder. In the event of any dispute hereunder, the interpretation of this Agreement by the Grant Officer, and his/her decision on any dispute, shall be final.

9. **DATA; RETENTION OF DATA; ACCESS:**

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulas, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 Between the Effective Date and the Completion Date the Grantee shall grant to the State, or any person designated by it, unrestricted access to all data for examination, duplication, publication, translation, and use for any other purpose whatsoever.

9.3 No data shall be subject to copyright in the United States or any other country by anyone other than the State.

9.4 On and after the Effective Date all data, and any property which has been received from the State or purchased with funds provided for the purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason, whichever shall first occur.

9.5 The State, and anyone it shall designate, shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, all data.

10. **CONDITIONAL NATURE OF AGREEMENT:**

Notwithstanding anything in this Agreement to the contrary, all obligations of the State hereunder, including without limitation, the continuance of payments hereunder, are contingent upon the availability or continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available or appropriated funds. In the event of a reduction or termination of those funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Grantee notice of such termination.

11. **EVENT OF DEFAULT; REMEDIES:**

11.1 Any one or more of the following acts or omissions of the Grantee shall constitute an event of default hereunder (hereinafter referred to as "Events of Default"):

11.1.1 failure to perform the Project satisfactorily or on schedule; or

11.1.2 failure to submit any report required hereunder; or

11.1.3 failure to maintain, or permit access to, the records required hereunder; or

11.1.4 failure to perform any of the other covenants and conditions of this Agreement.

11.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

11.2.1 give the Grantee a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the

Grantee notice of termination; and
11.2.2 give the Grantee a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the Grant Amount which would otherwise accrue to the grantee during the period from the date of such notice until such time as the State determines that the Grantee has cured the Event of Default shall never be paid to the Grantee; and
11.2.3 set off against any other obligation the State may owe to the Grantee any damages the State suffers by reason of any Event of Default; and

11.2.4 treat the agreement as breached and pursue any of its remedies at law or in equity, or both.

12. TERMINATION.

12.1 In the event of any early termination of this Agreement for any reason other than the completion of the Project, the Grantee shall deliver to the Grant Officer, not later than fifteen (15) days after the date of termination, a report (hereinafter referred to as the "Termination Report") describing in detail all Project Work performed, and the Grant Amount earned, to and including the date of termination.

12.2 In the event of Termination under paragraphs 10 or 12.4 of these general provisions, the approval of such a Termination Report by the State shall entitle the Grantee to receive that portion of the Grant amount earned to and including the date of termination.

12.3 In the event of Termination under paragraphs 10 or 12.4 of these general provisions, the approval of such a Termination Report by the State shall in no event relieve the Grantee from any and all liability for damages sustained or incurred by the State as a result of the Grantee's breach of its obligations hereunder.

12.4 Notwithstanding anything in this Agreement to the contrary, either the State or except where notice default has been given to the Grantee hereunder, the Grantee, may terminate this Agreement without cause upon thirty (30) days written notice.

13. CONFLICT OF INTEREST. No officer, member or employee of the Grantee and no representative, officer or employee of the State of New Hampshire or of the governing body of the locality or localities in which the Project is to be performed, who exercises any functions or responsibilities in the review or approval of the undertaking or any part out of such Project, shall participate in any decision relating to this Agreement which affects his or her personal interests or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested, nor shall he or she have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

14. GRANTEE'S RELATION TO THE STATE. In the performance of this Agreement, the Grantee, its employees, and any subcontractor or subgrantee of the Grantee are in all respects independent contractors, and are neither agents nor employees of the State. Neither the Grantee nor any of its officers, employees, agents, members, subcontractors or subgrantees, shall have authority to bind the State nor are they entitled to any of the benefits, worker's compensation or emoluments provided by the State to its employees.

15. ASSIGNMENT AND SUBCONTRACTS. The Grantee shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the State. None of the Project Work shall be subcontracted or subgranted by the Grantee other than as set forth in Exhibit A without the prior written consent of the State.

16. INDEMNIFICATION. The Grantee shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based on, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Grantee or Subcontractor, or subgrantee or other agent of the Grantee. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall

survive the termination of this agreement.

17. INSURANCE AND BOND.

17.1 The Grantee shall, at its sole expense, obtain and maintain in force, or shall require any subcontractor, subgrantee or assignee performing Project work to obtain and maintain in force, both for the benefit of the State; the following insurance:

17.1.1 statutory worker's compensation and employees liability insurance for all employees engaged in the performance of the Project; and

17.1.2 comprehensive public liability insurance against all claims of bodily injuries, death or property damage, in amounts not less than \$2,000,000 for bodily injury or death any one incident, and \$500,000 for property damage in any one incident; and

17.2 The policies described in subparagraph 17.1 of this paragraph shall be the standard form employed in the State of New Hampshire, issued by underwriters acceptable to the State, and authorized to do business in the State of New Hampshire. Due to limitations in Grantee's insurance provider's process the provider is unable to give advance notification of cancellation. Notification of cancellation will be the responsibility of Town of Milford (Grantee).

18. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event, or any subsequent Event. No express waiver of any Event of Default shall be deemed a waiver of any provisions hereof. No such failure or waiver shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other default on the part of the Grantee.

19. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail postage prepaid, in a United States Post Office addressed to the parties at the addresses first above given.

20. AMENDMENT. This agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Council of the State of New Hampshire.

21. CONSTRUCTION OF AGREEMENT AND TERMS. This Agreement shall be construed in accordance with the law of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assignees. The captions and contents of the "subject" blank are used only as a matter of convenience, and are not to be considered a part of this Agreement or to be used in determining the intent of the parties hereto.

22. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

23. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings relating hereto.

archaeological sensitivity within the project area and the need for Phase IB survey, or not. Review and comment on draft report and provide documents to Project Partners, and Lead Federal Agency representative for review. Submit to NHDHR for review and approval.

Task 9: Coordinate with the consultant to complete Scope of Work for Individual Inventory Forms for each dam if it is deemed a requirement through the Section 106 consultation process. The Determination of Eligibility (DOE) from NHDHR will be referenced in order to develop a scope-of-work. Review and comment on scope of work and provide documents to Project Partners, and Lead Federal Agency representative for review.

Task 10: Coordinate with the consultant to complete Scope of Work for the Phase IB Survey if it is deemed a requirement through the Section 106 consultation process. The Phase IB Survey will be based on Phase IA Survey report and findings noted in the report, and from comments received from the NHDHR relative to any additional work needed. Review and comment on scope of work and provide documents to Project Partners, and Lead Federal Agency representative for review.

Task 11: Coordinate with the consultant to prepare Individual Inventory Forms if it is deemed a requirement through the Section 106 consultation process. Review and comment on draft report and provide documents to Project Partners, and Lead Federal Agency representative for review. Submit to NHDHR for review and approval. Provide any additional information requested by NHDHR.

Task 12: Coordinate with the consultant to prepare Phase IB Survey report with findings if it is deemed a requirement through the Section 106 consultation process. Review and comment on draft report and provide documents to Project Partners, and Lead Federal Agency representative for review. Submit to NHDHR for review and approval. Provide any additional information requested by NHDHR.

Objective 3: By June 2012, the consultant will have completed the final version of the Feasibility Study. Measures of Success: Hard copies and electronic copies of the draft and final Feasibility Study reports submitted to the Town of Milford and Project Partners.

Deliverable 3A: Completed draft and final Feasibility Study reports

Task 13: Coordinate with the consultant to evaluate the ecological resources to determine the impact on the resource(s) as a result of dam removal(s). Evaluation will include, but not be limited to, state and federally-listed endangered species, communities of concern, resident aquatic species and diadromous fish species.

Task 14: Coordinate with the consultant to evaluate socioeconomic resources to determine the impact on the resource(s) as a result of dam removal(s). Evaluation will include, but not be limited to fire suppression and recreational usage.

Task 15: Coordinate with the consultant to prepare a draft Feasibility Study. Provide hard copies and/or electronic copies to the Town of Milford and Project Partners (including DES, and EPA).

Task 16: Review and comment on draft Feasibility Study and provide copies to project partners (including DES and EPA) for review.

Task 17: Coordinate with the consultant to review and consider all comments received and incorporate into the draft Feasibility Study report. This will be considered the final draft version of the Feasibility Study and will be shared with the public prior to the Public Informational Meeting to present the findings contained within. Review and comment on final Feasibility Study and provide copies to project partners (including DES and EPA) for review.

Task 18: Coordinate with the consultant to prepare the final Feasibility Study based on comments received from the public at the Public Informational Meeting and/or other comments received from individuals outside of the meeting.

Task 19: Coordinate with the consultant to distribute hard copies and/or electronic copies of the final Feasibility Study report to representatives from the Town of Milford and Project Partners (including DES and EPA).

Objective 4: By March 2012, hold a Public Informational Meeting to present the findings of the Feasibility Study report.

Measures of Success: Public Notice announcing the Public Informational Meeting including wording to fulfill Section 106 regulations.

Deliverable 4A: Public meeting convened where findings of the Feasibility Study as well as the historic and archeological resources within the project area are presented to the public in order to satisfy a portion of the Section 106 regulations of the National Historic Preservation Act.

Task 20: Coordinate with the consultant and project partners to discuss format and content and prepare a draft Public Informational Meeting presentation. Develop and gather appropriate handouts and documents for public distribution. Provide all outreach materials to DES for review.

Task 21: Coordinate with the consultant to present the findings of the final draft of the Feasibility Study at a Public Informational Meeting as described in Task 19. This meeting will fulfill the requirements of the Section 106 regulations of the National Historic Preservation Act.

Task 22: Coordinate with the consultant to present findings on the historic and archaeological resources within the project area at a Public Informational Meeting. This will fulfill a portion of the Section 106 regulations of the National Historic Preservation Act. This will be part of a larger presentation to present the draft Feasibility Study and findings contained therein.

Objective 5: Complete reporting as required by DES and EPA.

Measures of success: Prepare and submit comprehensive reports to DES which meet reporting requirements.

Deliverable 5A: Semi annual reports and final report submitted to DES

Task 23: Submit electronic semi-annual reports documenting all work performed on the project at the end of each June, and December, of the project period.

Task 24: Submit a comprehensive final report in both electronic and hard-copy to DES on or before the project completion date. The final report shall include lead reduction estimates, photo-documentation of installed system components, and comply with all DES and EPA requirements found in the final report guidance document on the DES Watershed Assistance Section webpage at www.des.state.nh.us/wmb/was/docs/Final_Report_Guidance_Version1.doc.

Additional Provisions of the Agreement

Quality Assurance

All project activities which are to be guided by a Quality Assurance document such as a Quality Assurance Project Plan (QAPP) or Site Specific Project Plan (SSPP) must not begin prior to DES/EPA approval of that QA document. In the event that sampling, modeling, or other such activities precede QA document approval, the data will not be considered valid, and the grantee will forfeit the ability to receive payment for those activities.

Outreach Materials

All materials produced for public distribution shall be reviewed and approved by DES prior to distribution and shall include the DES logo and the following citation: "Funding for this project was provided in part by a Watershed Assistance Grant from the NH Department of Environmental Services with Clean Water Act Section 319 funds from the United States Environmental Protection Agency".

Operations and Maintenance

Management practices implemented as agreed upon in the scope of services of this grant agreement and with funds awarded under the NH 319 Watershed Assistance Grants Program, shall be properly operated and maintained for the intended purposes during the life span of the project. The life span of a project shall be determined by the Grantee, tailored to the types of practices expected to be funded in this project, and agreed upon by DES. The Grantee shall provide DES with an engineering estimate of the design life of the best management practice(s) (BMPs).

Operation includes the administration, management, and performance of non-maintenance actions needed to keep the completed practice safe and functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail. The Grantee shall assure that any sub-award of Section 319 funds similarly include the same condition in the sub-award. Additionally, both EPA and DES reserve the right to periodically inspect a practice during the life span of the project to ensure that operation and maintenance are occurring. If it is determined that the participants are not operating and maintaining these practices in an appropriate manner, DES may request a refund for that practice supported by the grant.

COPY

**Exhibit B
Contract Price and Method of Payment**

All services shall be performed to the satisfaction of DES before payment is made. All payments shall be made upon receipt and approval of stated outputs and upon receipt of an associated invoice. Documentation of match costs (including the value of volunteer labor) shall be provided with each payment request. The final invoice shall include total match cost documentation of \$33,500. Payment shall be made in accordance with the following schedule based upon completion of specific tasks described in Exhibit A:

Upon completion and DES approval of Tasks 1 and 2	\$1,000
Upon completion and DES approval of Tasks 3 through 5	\$12,000
Upon completion and DES approval of Task 6	\$4,000
Upon completion and DES approval of Task 7	\$1,000
Upon completion and DES approval of Task 8	\$1,000
Upon completion and DES approval of Task 9	\$10,000
Upon completion and DES approval of Task 10	\$4,000
Upon completion and DES approval of Task 11	\$1,000
Upon completion and DES approval of Task 12	\$1,000
Upon completion and DES approval of Tasks 13 and 14	\$1,000
Upon completion and DES approval of Task 15	\$5,000
Upon completion and DES approval of Task 16	\$500
Upon completion and DES approval of Task 17	\$1,000
Upon completion and DES approval of Task 18	\$1,000
Upon completion and DES approval of Task 19	\$1,000
Upon completion and DES approval of Task 20	\$2,000
Upon completion and DES approval of Task 21	\$2,000
Upon completion and DES approval of Task 22	\$500
Upon completion and DES approval of Task 23 and 24	\$1,000
Total	\$50,000

**Exhibit C
Special Provisions**

If the date for commencement of Exhibit A precedes the Effective Date all services performed by Grantee between the commencement date and the Effective Date shall be performed at the sole risk of the Grantee and in the event that this Agreement does not become effective, the State shall be under no obligation to pay the Grantee for any costs incurred or services performed.

Subparagraph 1.7 of the General Provisions shall not apply to this Agreement.

COPY

Funding is provided through a Watershed Assistance Grant from the NH Department of Environmental Services with Clean Water Act Section 319 funds from the United States Environmental Protection Agency.

COPY

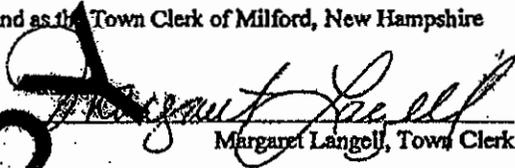
CERTIFICATE OF AUTHORITY

I, Margaret Langell, Town Clerk of Milford, New Hampshire do hereby certify that:

- (1) at the Town Meeting held 8, March, 1994 the Town voted to authorize the Town to apply for, accept and expend money from state, federal, or other governmental unit or a private source which becomes available during the year in accordance with the procedures set forth in New Hampshire law;
- (2) at the regular meeting on 12, April, 2010 the Board of Selectmen voted to accept federal Clean Water Act funds and enter into a contract with the New Hampshire Department of Environmental Services. The Board of Selectmen further authorized the Town Administrator to execute any documents which may be necessary to effectuate this contract;
- (3) The Town of Milford warrants that this authorization has not been revoked, annulled, or amended in any manner whatsoever, and remain in full force and effect as of the date hereof; and
- (4) the following person has been appointed to and now occupies the office indicated under item (2) above:

Guy Scalf

IN WITNESS WHEREOF, I have hereunto set my hand as the Town Clerk of Milford, New Hampshire this 13th day of April, 2010.

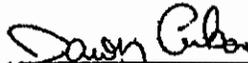

 Margaret Langell, Town Clerk

My Commission expires: March 12, 2013

State of New Hampshire
County of Hillsborough

On this the 13th day of April, 2010, before me, Dawn Griska, the undersigned officer, personally appeared Margaret Langell who acknowledged herself to be the Town Clerk of Milford, New Hampshire, and that she/he as such Town Clerk, being authorized to do so, executed the foregoing instrument for the purpose therein contained.

In witness whereof I hereunto set my hand and official seal.


 Justice of the Peace/Notary Public
 Commission Expiration Date: June 25, 2013

(Seal)

COPY



CERTIFICATE OF COVERAGE

The New Hampshire Public Risk Management Exchange (Primex²) is organized under the New Hampshire Revised Statutes Annotated, Chapter 5-B, Pooled Risk Management Programs. In accordance with those statutes, its Trust Agreement and bylaws, Primex² is authorized to provide pooled risk management programs established for the benefit of political subdivisions in the State of New Hampshire.

Each member of Primex² is entitled to the categories of coverage set forth below. In addition, Primex² may extend the same coverage to non-members. However, any coverage extended to a non-member is subject to all of the terms, conditions, exclusions, amendments, rules, policies and procedures that are applicable to the members of Primex², including but not limited to the final and binding resolution of all claims and coverage disputes before the Primex² Board of Trustees. The Additional Covered Party's per occurrence limit shall be deemed included in the Member's per occurrence limit, and therefore shall reduce the Member's limit of liability as set forth by the Coverage Documents and Declarations. The limit shown may have been reduced by claims paid on behalf of the member.

The below named entity is a member in good standing of the New Hampshire Public Risk Management Exchange. The coverage provided may, however, be revised at any time by the actions of Primex². As of the date this certificate is issued, the information set out below accurately reflects the categories of coverage established for the current coverage year.

This Certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend, or alter the coverage afforded by the coverage categories listed below.

Participating Member: Town Of Milford 1 Union Square Milford, NH 03055		Member Number: 239	Company Affording Coverage: NH Public Risk Management Exchange - Primex ² Bow Brook Place 46 Donovan Street Concord, NH 03301-2824	
<input checked="" type="checkbox"/> General Liability (Occurrence Form) Professional Liability (describe) <input type="checkbox"/> Claims Made <input type="checkbox"/> Occurrence	7/1/2010 7/1/2010	Each Occurrence	\$ 2,000,000	
		General Aggregate	\$ 2,000,000	
		Fire Damage (Any one fire)	\$	
		Med Exp (Any one person)	\$10,000	
<input type="checkbox"/> Automobile Liability Deductible Comp and Coll: <input type="checkbox"/> Any auto	Combined Single Limit (Each Accident)		\$	
	Aggregate			
<input checked="" type="checkbox"/> Workers' Compensation & Employers' Liability	<input checked="" type="checkbox"/> Statutory			
	Each Accident		\$1,000,000	
	Disease - Each Employee		\$1,000,000	
	Disease - Policy Limit		\$	
<input type="checkbox"/> Property (Special Risk Includes Fire and Theft)	Blanket Limit, Replacement Cost (unless otherwise stated)			
Description: Grant for Souhegan River Restoration Project in Milford. Interest of New Hampshire Department of Environmental Services is included as Additional Covered Party for this project. The certificate holder is named as an Additional Covered Party, but only to the extent liability is based on the negligence or wrongful acts of the member, its employees, agents, officials or volunteers. This coverage does not extend to others. Any liability resulting from the negligence or wrongful acts of the Additional Covered Party, or their employees, agents, contractors, members, officers, directors or affiliates is not covered. Notification of cancellation will be the responsibility of Town of Milford.				
CERTIFICATE HOLDER: <input checked="" type="checkbox"/> Additional Covered Party <input type="checkbox"/> Loss Payee		Primex ² - NH Public Risk Management Exchange By: <i>Mona Panek</i> Date: 4/29/2010 mpanek@nhprimex.org Please direct inquiries to: Primex ² Risk Management Services 603-225-2841 phone 603-228-0650 fax		
NH Dept. of Environmental Services 29 Hazen Drive PO Box 95 Concord, NH 03302-0095				

**Attachment A
Budget Estimate**

Budget Item	Grant Funding	Match	Total
Salaries & Wages	\$0.00	\$33,500.00	\$33,500.00
Indirect Costs	\$0.00	\$0.00	\$0.00
Travel	\$0.00	\$0.00	\$0.00
Supplies & Services	\$0.00	\$0.00	\$0.00
Equipment	\$0.00	\$0.00	\$0.00
Contractual	\$50,000.00	\$0.00	\$50,000.00
Construction	\$0.00	\$0.00	\$0.00
Subtotals	\$50,000.00	\$33,500.00	\$83,500.00
Total Project Cost			\$83,500.00

COPY

Attachment B: Watershed Restoration Grant Ranking

Proposal ranking	Project Name	100	87	78	61	86	78	89	80	77	753
Town of Milford	Southern River Restoration Project in Watershed Phase 1 - Feasibility Study	100	87	78	61	86	78	89	80	77	753
Mirror Lake Protective Association	Mirror Lake Community Watershed Plan Implementation of the Farmacia Brook Watershed Restoration Plan - Phase 1	100	71	83	87	81	81	90	86	753	2
Town of New Ipswich	Winnick River Watershed Comprehensive Assessment and Watershed based Plan	81	84	80	87	78	84	78	87	82	729
New Hampshire Rivers Council	Cobbetts Pond Watershed Restoration Plan Implementation Phase 2 - Forest Road BMPs	79	70	77	88	84	73	77	86	77	711
Cobbetts Pond Improvement Association	Winnick Pond Watershed Management Plan Implementation: Phase 1, Stormwater BMP Retrofit	90	81	80	72	77	89	79	74	87	879
City of Dover	Rust Pond, North Hill and Rio 28 Boat Launch Watershed Management Plan and Stormwater BMP Projects, Phase 1	85	88	78	57	71	72	70	70	81	801
Town of Wolfeboro	Watershed Management Plan Implementation Phase 2: School Remediation and In-stream Restoration	80	84	87	73	83	72	83	88	81	585
Tred Unfished	Sherwin Brook/Status Landing Point Source Pollution Discovery	80	78	85	87	88	48	80	83	45	582
Town of Madocborough	Powdermill Pond Restoration	40	38	6	35	20	84	50	37	15	285
Town of Hennipigon - Conservation Commission	Slope Instability and Erosion, Pleasantboro River Catchment	36	36	18	33	0	38	32	10	23	214
McWillye Cooperative, Inc.		47	44	8	8	81	19	15	9	10	199
											Not selected
											Not selected

COPY

Interview ranking	Project Name	264	344	300	308	324	302	284	280
Town of Milford	Southern River Restoration Project in Watershed Phase 1 - Feasibility Study	264	344	300	308	324	302	284	280
Cobbetts Pond Improvement Association	Cobbetts Pond Watershed Restoration Plan Implementation Phase 2 - Forest Road BMPs	264	344	300	308	324	302	284	280
Town of New Ipswich	Winnick River Watershed Comprehensive Assessment and Watershed based Plan	264	344	300	308	324	302	284	280
Rust Pond Association	Rust Pond, North Hill and Rio 28 Boat Launch Watershed Management Plan and Stormwater BMP Projects, Phase 1	264	344	300	308	324	302	284	280
Tred Unfished	Watershed Management Plan Implementation Phase 2: School Remediation and In-stream Restoration	264	344	300	308	324	302	284	280
City of Dover	Winnick Pond Watershed Management Plan Implementation: Phase 1, Stormwater BMP Retrofit	264	344	300	308	324	302	284	280
Mirror Lake Protective Association	Mirror Lake Community Watershed Plan Implementation	264	344	300	308	324	302	284	280
New Hampshire Rivers Council	Winnick River Watershed Comprehensive Assessment and Watershed based Plan	264	344	300	308	324	302	284	280

Review Team Members

Andy Chapman	15 years experience, Clean Lake Program Coordinator, aquatic biologist, project management and coordination, local non-governmental organization
Steve Landry	10 years experience, Merrick Watershed Coordinator, aquatic biologist, project management, research, watershed expertise
Paul Livingston	23 years experience, Newport aquatics pollution specialist, BMP, pollution source investigation expertise, field testing of local municipalities in watershed pollution source tracking and identification
Jeffrey Belmont	7 years experience, Watershed Assessment Specialist, grant and contract expertise
Ellen McOwery	7 years experience, Newport aquatics pollution specialist, grant and contract expertise
Barbara McWhan	12 years watershed assistance Outreach Coordinator, outreach and education expertise
Sally Sacks	21 years experience, Coastal Watershed Coordinator, project management, Coastal watershed expertise
Tracy Walsh	20+ years experience, Watershed Coordinator, biologist, planning expertise
Eric Williams	23 years experience, Watershed Assessment Section Supervisor, environmental planning, permit project management expertise, WAS section and 310 program expertise





The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

Jeff Marcoux



Thomas S. Burack, Commissioner

June 9, 2011

His Excellency, Governor John H. Lynch
and The Honorable Council
State House
Concord, NH 03301

APPROVED G & C

DATE 6/22/11

ITEM # 110

REQUESTED ACTION

Authorize the Department of Environmental Services to amend a sole source agreement (PO# 1009624) with the Town of Milford, VC #177503, for the Souhegan River Restoration Project by modifying the Scope of Services and increasing the grant amount by \$10,000 to \$60,000 from \$50,000; effective upon Governor & Council approval through December 31, 2012. The original agreement was approved by the G&C on July 14, 2010, Item #66. 100% Capital (general) funds.

Funding is available in the account as follows:

03-44-44-442030-0401-034-500161

Department of Environmental Services, 05.269.1. V. Dam Repair and Removal, Capital Projects

FY 2011
\$10,000

EXPLANATION

The Souhegan River Restoration Project consists of the removal of two dams from the Souhegan River in Milford. One of the dams is owned by the Town of Milford. The other dam is essentially an orphaned dam since it is owned by a 17-year-old girl who resides in New Mexico and is the sole heir of the previous owner. DES is requesting approval of this amendment to the agreement in order to revise the Scope of Services for the first phase of the project to include two new tasks and to provide the Town of Milford with additional funding required to complete those tasks. A revised budget is provided as Attachment A. This amendment is considered to be sole source because the additional funding request exceeds 10% of the original agreement amount; the Grantee is the owner of one of the dams and has received permission from the owner of the other dam to administer the feasibility study on their behalf. Therefore, the only organization that could undertake this project is the Town of Milford. A copy of the original Grant Agreement is provided as Attachment B.

The work to be performed under the Scope of Services represents the first phase of a larger restoration effort that would ultimately result in flood reduction and water quality restoration through removal of the subject dams. This work will provide the technical information needed for the design and permitting phase of the project. The ultimate goal of this multi-phase project is to restore this section of the Souhegan River to a free-flowing condition, reduce the risk of damage to upstream properties during floods, improve the overall ecology of the river, remove barriers to fish passage, improve recreation opportunities, eliminate liability associated with the aging dams, and eliminate the existing water quality impairments within each impoundment.

DES Web site: www.des.nh.gov

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

Telephone: (603) 271-3503 • Fax: (603) 271-2867 • TDD Access: Relay NH 1-800-735-2964

His Excellency John H. Lynch
And the Honorable Council

Page 2

Significant work on this project has been completed to date. The dams have been surveyed and the immediate topography around the dams has been cataloged. The bathymetric survey and the wetlands delineation, site inspection of the Colonel Shepard Bridge and other infrastructure, along with sediment depth measurements at McLane Dam, are also complete.

Through consultation with EPA, it was determined that an appropriate level of sediment analysis would necessitate methods and means beyond the typical screening which was anticipated for this project. The analytical parameters will be consistent with the NHDES sediment guidance for dam removal projects. However, soil samples will be collected at determined intervals (rather than a composite) and analyzed. This information is necessary in order to fully understand the human and ecological risks as they pertain to sediment quality concerns at this site. If the river segment is restored through dam removal, this information will be necessary in order to determine an appropriate sediment management plan. A Quality Assurance Project Plan (QAPP) will be required in order to complete the sediment sampling and analysis in compliance with EPA requirements. The funding increase requested in this amendment will offset the cost increase associated with the additional tasks beyond the terms outlined in the original Agreement.

The agreement has been approved by the Office of the Attorney General as to form, execution, and content. We respectfully request your approval.

COPY


Thomas S. Burack, Commissioner

**Agreement for Services with the Town of Milford
Amendment No. 1**

This Agreement (hereinafter called the "Amendment") dated this 17th day of May, 2011, is by and between the State of New Hampshire, acting by and through its Department of Environmental Services (hereinafter referred to as the "State") and the Town of Milford, acting by and through its Town Administrator, Guy Scaife (hereinafter referred to as the "Grantee").

WHEREAS, pursuant to an Agreement (hereinafter called the "Agreement") approved by the Governor and Council on July 14, 2010, the Grantee agreed to perform certain services upon the terms and conditions specified in the Agreement and in consideration of payment by the State of certain sums as specified therein; and

WHEREAS, The Grantee and the State have agreed to amend the Agreement in certain respects;

NOW THEREFORE, in consideration of the foregoing, and the covenants and conditions contained in the Agreement and set forth herein, the parties hereto do hereby agree as follows:

1. Amendment and Modification of Agreement: The Agreement is hereby amended as follows:
 - (A) The Grant Limitation as set forth in sub-paragraph 1.8 of the agreement shall be changed from \$50,000 to \$60,000.
 - (B) The Total Match Cost Documentation as set forth in Exhibit B, Paragraph 1 shall be changed from \$33,500 to \$40,020.
 - (C) The Scope of Services as set forth in Exhibit A shall be changed by adding two new Tasks. The new Tasks (#25 and #26) shall read as follows:

Task 25: Complete and gain EPA approval for a Quality Assurance Project Plan for sediment toxicity testing at the Souhegan River restoration feasibility study site.

Task 26: Coordinate with the consultant, project partners, and other agencies as appropriate to collect and analyze sediments within the Souhegan River to evaluate the potential impact upon ecological resources as a result of dam removal(s) in Milford, NH.
 - (D) The Contract Price and Method of payment as set forth in Exhibit B shall be changed by adding the following payments:

Upon completion and DES approval of Task #25, payment will be issued to the Town of Milford in the amount of \$5,000.

Upon completion and DES approval of Task #26, payment will be issued to the Town of Milford in the amount of \$5,000.
2. Effective Date of Amendment: This Amendment shall take effect upon the date of approval of this Amendment by the Governor and Executive Council of the State of New Hampshire.

Initial GS
Date 5/17/11

3. Continuation of Agreement: Except as specifically amended and modified by the terms and conditions of this Amendment, the Agreement, and the obligations of the parties thereunder, shall remain in full force and effect in accordance with the terms and conditions set forth therein.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the day and year first above written.

Town of Milford

By *Guy Scaife*
Guy Scaife, Town Administrator

STATE OF NEW HAMPSHIRE
COUNTY OF Hillsborough

On this the 17th day of May, 2011, before the undersigned officer, personally appeared Guy Scaife, Milford Town Administrator, who acknowledged him/herself to be the person who executed the foregoing instrument for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Dawn Griska
Dawn Griska, Notary Public

My Commission Expires: June 25, 2013

THE STATE OF NEW HAMPSHIRE
Department of Environmental Services

By *Thomas S. Burack*
Thomas S. Burack, Commissioner

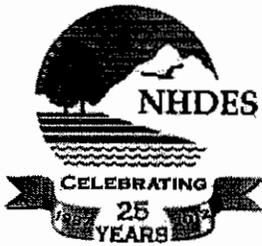
Approved by Attorney General this 8 day of June, 2011

OFFICE OF ATTORNEY GENERAL

By *ES 173*

COPY





The State of New Hampshire
Department of Environmental Services

Thomas S. Burack, Commissioner

Celebrating 25 Years of Protecting
New Hampshire's Environment



July 31, 2012

APPROVED G & C

His Excellency, Governor John H. Lynch
and The Honorable Council
State House
Concord, NH 03301

DATE 8/23/2012
ITEM # 62

REQUESTED ACTION

Authorize the Department of Environmental Services to amend a sole source agreement (PO# 1009624) with the Town of Milford, NH (VC #177503), for the *Souhegan River Restoration Project: Phase I Feasibility Study* project by modifying the Scope of Services, and increasing the grant amount by \$7,500 to \$67,500 from \$60,000 effective upon Governor and Council approval through December 31, 2012. The original agreement was approved by the G&C on July 14, 2010, Item #66. An amendment was approved by the G&C on June 22, 2011, Item #110. 100% Federal Funds.

Funding is available in the account as follows:

03-44-44-442010-2035-072-500574

Department of Environmental Services, NPS Restoration Program, Grants-Federal

FY 2013

\$7,500

COPY

EXPLANATION

DES is requesting approval of this second amendment to the agreement in order to revise the Scope of Services to include three new tasks, and to provide the Town of Milford with additional funding required to complete those tasks. A revised budget is provided as Attachment A. This amendment is considered to be sole source because the additional funding request exceeds 10% of the original Agreement amount; the Grantee is the owner of one of the two affected dams and has received permission from the owner of the other dam to administer the feasibility study on their behalf. Therefore, the Town of Milford is the only organization capable of undertaking this project. Copies of the original Grant Agreement, and Amendment No. 1, are provided in Attachment B.

This project represents the first phase of a larger restoration effort that would ultimately result in water quality restoration through removal of the subject dams. The first phase involves the development of a Feasibility Study, which will provide the Town of Milford and other stakeholders an opportunity to assess the resources and procedures required to remove the dams, and allow them to make a well-informed decision relative to removing or retaining the dams. The information contained in the Feasibility Study will not only provide information to the Town and the public, but it will also contain the technical information which would be required to enter into the design and permitting phase of the project. The ultimate goal of this multi-phase project is to restore this section of the Souhegan River to a free-flowing condition, improve the overall ecology,

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(603) 271-3503 • TDD Access: Relay NH 1-800-735-2964

remove a fish passage barrier, improve recreation opportunities, eliminate liability associated with the aging dams, and eliminate the existing water quality impairments within each impoundment.

Significant work on this project has been completed to date. The Request for Proposals was published, proposals were ranked according to criteria, and a single firm was interviewed based on rankings and recommendations from the technical review committee. The Town of Milford entered into a subcontract to complete the tasks outlined in the RFP. The dams have been surveyed and the immediate topography around the dams has been cataloged. The bathymetric survey and the wetlands delineation, site inspection of the Colonel Shepard Bridge and other infrastructure, along with sediment depth measurements at McLane Dam are also complete.

Through consultation with EPA it was determined that the appropriate level of ecological risk assessment analysis would necessitate methods and means beyond those included in this project's original scope. The additional analysis includes a spatial averaging method and dilution study to model downstream concentrations of polychlorinated biphenyls (PCBs) below McLane Dam under various sediment removal scenarios. DES will then evaluate this information in context to determine what would be acceptable for meeting water quality standards (and preparation of a 401 Water Quality Certificate, if needed). The funding increase requested in this amendment will offset the cost increase associated with the additional tasks beyond the terms outlined in the original Agreement and Amendment No. 1.

The agreement has been approved by the Office of the Attorney General as to form, execution, and content.

We respectfully request your approval.

COPY


Thomas S. Burack, Commissioner

Agreement for Services with the Town of Milford
Amendment No. 2

This agreement (hereinafter called "Amendment No. 2") dated this 26th day of July, 2012, is by and between the State of New Hampshire, acting by and through its Department of Environmental Services (hereinafter referred to as the "State") and the Town of Milford, acting by and through its Town Administrator, Guy Scaife (hereinafter referred to as the "Grantee").

WHEREAS, pursuant to a Grant Agreement (hereinafter called the "Agreement") approved by the Governor and Council on July 14, 2010, and its first Amendment (hereinafter called "Amendment 1") approved by the Governor and Council on June 22, 2011, the Grantee agreed to perform certain services upon the terms and conditions specified in the Agreement, and Amendment 1, and in consideration of payment by the State of certain sums as specified therein; and

WHEREAS, The Grantee and the State have agreed to amend the Agreement, and Amendment 1, in certain respects;

NOW THEREFORE, in consideration of the foregoing, and the covenants and conditions contained in the Agreement, and Amendment 1, and set forth herein, the parties hereto do hereby agree as follows:

1. Amendment and Modification: The Agreement, and Amendment 1, are hereby amended as follows:

- (A) The Grant Limitation as set forth in sub-paragraph 1(A) of Amendment No. 1 shall be increased by \$7,500, from \$60,000 to \$67,500.
- (B) The Total Match Cost Documentation as set forth in sub-paragraph 1(B) of Amendment No. 1 shall be increased by \$5,010, from \$40,020 to \$45,030.
- (C) The Scope of Services as set forth in Exhibit A of the Grant Agreement shall be changed to include three new Tasks. The new Tasks (#27, #28 and #29) shall read as follows:

Task 27: Assess the effects of dilution and attenuation of the PCB concentrations within sediments in the Souhegan River and determine the risk to fish downstream of the dams upon their potential removal and generate Draft Summary Report.

Task 28: Evaluate the risk due to the continuing leak of petroleum into the McLane impoundment on the Souhegan River to evaluate the potential impact upon ecological resources as a result of dam removal(s) in Milford, NH and generate Draft Summary Report

Task 29: Generate Final Summary Report based upon the analyses and findings of the ecological risk assessments completed under Tasks 27 and 28.

- (D) The Contract Price and Method of payment as set forth in Exhibit B of the Agreement shall be changed to include the following payments:

Upon completion and DES approval of Task #27, payment will be issued to the Town of Milford in the amount of \$5,000.

Upon completion and DES approval of Task #28, payment will be issued to the Town of Milford in the amount of \$1,250.

Initial AS
Date 7/26/12

Upon completion and DES approval of Task #29, payment will be issued to the Town of Milford in the amount of \$1,250.

2. Effective Date of Amendment No. 2: This Amendment shall take effect upon the date of approval of this Amendment by the Governor and Executive Council of the State of New Hampshire.
3. Continuance of Agreement: Except as specifically amended and modified by the terms and conditions of this Amendment, the Agreement, and the obligations of the parties thereunder, shall remain in full force and effect in accordance with the terms and conditions set forth therein.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the day and year first above written.

Town of Milford

By


Guy Scaife, Town Administrator

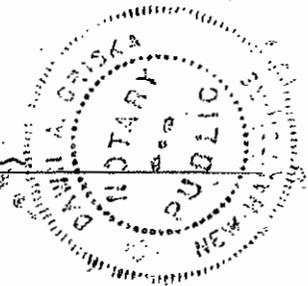
STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

On this the 26th day of July, 2012, before the undersigned officer, personally appeared Guy Scaife, Town Administrator, who acknowledged himself to be the person who executed the foregoing instrument for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.


Dawn A. Griska, Notary Public

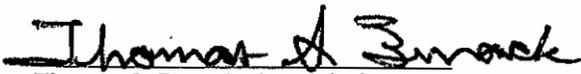
My Commission Expires: June 25, 2013



COPY

THE STATE OF NEW HAMPSHIRE
Department of Environmental Services

By


Thomas S. Burack, Commissioner

Approved by Attorney General this 2nd day of Aug, 2012

OFFICE OF ATTORNEY GENERAL

By 

