

The State of New Hampshire
Department of Environmental Services

Thomas S. Burack, Commissioner

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

October 16, 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 a **sole source** agreement (PO# 1008607) with the Town of Exeter, NH, (VC #177386), for the *Exeter River Restoration Project: Evaluating the Impacts of Dam Removal for the Great Dam* project by extending the completion date to June 30, 2013 from December 31, 2012 effective upon Governor and Council approval through June 30, 2013. The original agreement was approved by G&C on June 23, 2010, Item # 78, and amendment 1 was approved by G&C on May 23, 2012, Item #70. No additional funding is requested in this amendment. 100% Federal Funds.

EXPLANATION

This agreement is due to expire on December 31, 2012. We are requesting approval of this amendment to the agreement in order to provide the Town of Exeter additional time to complete the project. The amendment is requested **sole source** as was the original Agreement. The Town of Exeter is the sole owner and operator of the Great Dam. Therefore, the town is responsible for making all decisions relative to the dam. Because this project is instrumental in providing information relative to the decision to retain or remove the dam, the Town of Exeter is the only organization qualified to conduct this project. Please see Attachment A for a copy of the original grant agreement and amendment 1.

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 toxins. 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 *Exeter River Watershed-based Plan* identifies the Great Dam, which is owned and operated by the Town of Exeter, as an obstruction to fish passage and a potential contributor to documented water quality impairments (low dissolved oxygen) in the impoundment upstream of the dam. This project will result in a feasibility study, which will provide the Town of Exeter and other stakeholders with an

www.des.nh.gov

29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095
(603) 271-3503 • TDD Access: Relay NH 1-800-735-2964



options, and identify the resources and procedures required to remove the dam. This will enable the town to make a well-informed decision relative to removing or retaining the dam. The information contained in the feasibility study will be valuable to the Town and the public, and will be essential to the design and permitting process if the Town decides to remove the dam. The feasibility study is currently underway.

Initial data collection and sediment transport modeling have been completed at this time. The results of those analyses indicate the presence of contaminated sediment in some areas of the impoundment. DES has determined that additional sediment transport analysis is necessary to further characterize the contamination, and its potential for transport, in order to provide the best possible information for the dam removal feasibility study. This amendment requests approval to extend the project completion date to provide more time to complete further sediment analysis, and then incorporate those results into the final feasibility study.

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

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

This Agreement (hereinafter called the "Amendment") dated this 12th 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 Exeter, acting by and through its Town Manager, Russell Dean (hereinafter referred to as the "Grantee").

WHEREAS, pursuant to an Agreement (hereinafter called the "Agreement") approved by the Governor and Council on June 23, 2010, and its first Amendment approved by the Governor and Council on May 23, 2012, 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:

The Completion Date as set forth in sub-paragraph 1.6 of the agreement, and amended in Amendment 1, shall be changed from December 31, 2012 to June 30, 2013.

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.
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.

Grantee Initials

RD

Date: 10/15/12

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

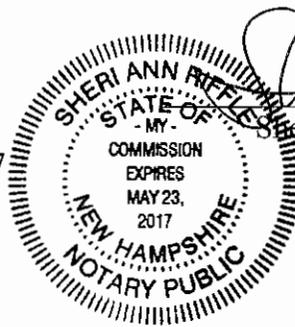
Town of Exeter

By *Russell Dean*
Russell Dean, Town Manager

STATE OF NEW HAMPSHIRE
COUNTY OF Rockingham

On this the 15 day of October, 2012, before the undersigned officer, personally appeared Russell Dean, Town Manager, 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.



Sheri Riffle
Sheri Riffle, Administrative Assistant

My Commission Expires: May 23, 2017

THE STATE OF NEW HAMPSHIRE
Department of Environmental Services

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

Approved by Attorney General this 15th day of November, 2012

OFFICE OF ATTORNEY GENERAL

By *Evan Mulholland*
Evan Mulholland

Grantee Initials MOD

Date: 10/15/12

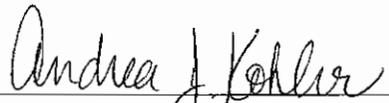
CERTIFICATE OF AUTHORITY

I, Andrea Kohler, Town Clerk of Exeter, New Hampshire do hereby certify that:

- (1) at the Town Meeting held 13, 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 17, May, 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 Manager to execute any documents which may be necessary to effectuate this contract;
- (3) the Town of Exeter 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:

Russell Dean, Town Manager

IN WITNESS WHEREOF, I have hereunto set my hand as the Town Clerk of Exeter, New Hampshire this 15 day of October, 2012.



 Andrea Kohler, Town Clerk

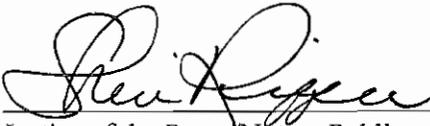
My Commission expires: 5-23-2017

State of New Hampshire
County of Rockingham

On this the 15 day of October, 2012, before me Sheri Riffle, the undersigned officer, personally appeared Andrea Kohler who acknowledged herself/himself to be the Town Clerk of Exeter, 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: May 23, 2017

Exeter



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.

Participating Member: Town Of Exeter 10 Front Street Exeter, NH 03833	Member Number: 170	Company Affording Coverage: NH Public Risk Management Exchange - Primex ³ Bow Brook Place 46 Donovan Street Concord, NH 03301-2624
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X	General Liability (Occurrence Form) Professional Liability (describe) <input type="checkbox"/> Claims Made <input type="checkbox"/> Occurrence	1/1/2012	1/1/2013	NH Statutory Limits (if any)	
				Each Occurrence	\$ 2,000,000
				General Aggregate	\$ 2,000,000
				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	
	Workers' Compensation & Employers' Liability			Statutory	
Each Accident					
Disease - Each Employee					
Disease - Policy Limit				\$	
	Property (Special Risk includes Fire and Theft)			Blanket Limit, Replacement Cost (unless otherwise stated)	Deductible:

Description: For NH DES Grant. Interest of NH DES is included as Additional Covered Party for this project only. The certificate holder is named as Additional Covered Party, but only to the extent liability is based solely 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.

CERTIFICATE HOLDER:	<input checked="" type="checkbox"/> Additional Covered Party	<input type="checkbox"/> Loss Payee	Primex ³ - NH Public Risk Management Exchange By: <i>Tammy Denver</i> Date: 4/10/2012 tdenver@nhprimex.org Please direct inquires to: Primex ³ Claims/Coverage Services 603-225-2841 phone 603-228-3833 fax
Department of Environmental Services 29 Hazen Dr. Concord, NH 03301			



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.

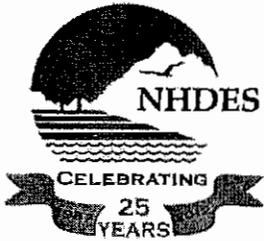
The below named entity is a member in good standing of the New Hampshire Public Risk Management Exchange. The coverage provided may, however, be revised at any time by the actions of Primex³. As of the date this certificate is issued, the information set out below accurately reflects the categories of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

Participating Member: Town Of Exeter 10 Front Street Exeter, NH 03833	Member Number: 170	Company Affording Coverage: NH Public Risk Management Exchange - Primex ³ Bow Brook Place 46 Donovan Street Concord, NH 03301-2624		
<small> (NH RSA 359:12) (NH RSA 359:13) (NH RSA 359:14) </small>				
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	\$
<input type="checkbox"/> 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
Department of Environmental Services 29 Hazen Dr. Concord, NH 03301			By: <i>Tammy Denver</i>
			Date: 4/10/2012 tdenver@nhprimex.org
			Please direct inquires to: Primex³ Claims/Coverage Services 603-225-2841 phone 603-228-3833 fax

Attachment A
Copy of Original Grant Agreement and Amendment 1



The State of New Hampshire
Department of Environmental Services

Thomas S. Burack, Commissioner

Celebrating 25 Years of Protecting
New Hampshire's Environment

Jeff Marcoux



April 26, 2012

APPROVED G&C

DATE 5/23/2012

ITEM # 70

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 a **sole source** agreement (PO# 1008607) with the Town of Exeter, NH, (VC #177386), for the *Exeter River Restoration Project: Evaluating the Impacts of Dam Removal for the Great Dam* project by extending the completion date to December 31, 2012 from June 30, 2012 and by increasing the grant award amount by \$12,000 from \$60,000 to \$72,000, effective upon Governor and Council approval through December 31, 2012. The original agreement was approved by G&C on June 23, 2010, Item # 78. 100% Federal Funds.

Funding is available in the account as follows

	<u>FY 2012</u>
03-44-44-442010-2035-072-500-74	\$12,000
Dept, Environmental Services, NPS Restoration Program, Grants-Federal	

COPY

EXPLANATION

DES is requesting approval of this amendment in order to provide the Town of Exeter additional time and funding with which to complete supplemental project tasks as explained in more detail below. The amendment is categorized as **sole source** because the original agreement was a sole source agreement. The Town of Exeter is the sole owner and operator of the Great Dam. Therefore, the town is responsible for making all decisions relative to the dam. Because this project is instrumental in providing information relative to the decision of retaining or removing the dam, the Town of Exeter is the only organization qualified to conduct this project.

The *Exeter River Watershed-based Plan* identifies the Great Dam, which is owned and operated by the Town of Exeter, as an obstruction to fish passage and a potential contributor to documented water quality impairments (low dissolved oxygen) in the impoundment upstream of the dam. This project will result in a feasibility study, which will provide the Town of Exeter and other stakeholders with an opportunity to assess dam removal options, and identify the resources and procedures required to remove the dam. This will enable the town to make a well-informed decision relative to removing or retaining the dam. The information contained in the feasibility study will not only provide information to the Town and the public, but it will also contain information required to enter into the dam removal

design and permitting phase if that is the selected option. The feasibility study is currently underway. Please see Attachment B for a copy of the original grant agreement.

As the study has progressed, results of data collection and public comment have indicated that additional tasks are necessary to provide the best information possible for decision-making. The additional tasks include creation of visual renderings to respond to residents' questions regarding what the various scenarios would look like, and additional technical analyses to determine what management measures may be needed to address the sediment that has accumulated in the impoundment. This amendment will fund the supplemental tasks, and extend the project completion date to accommodate that work.

The revised total project costs are budgeted at \$120,025. DES will provide \$72,000 (60%) of the project costs through a federal grant and the Town of Exeter 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. To date, \$26,750 of the original grant agreement has been spent. In the event that Federal Funds become no longer available, General Funds will not be requested to support this program. This amendment 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 Exeter
Amendment No. 1

This Agreement (hereinafter called the "Amendment") dated this 5th day of April, 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 Exeter, acting by and through its Town Manager, Russell Dean (hereinafter referred to as the "Grantee").

WHEREAS, pursuant to an Agreement (hereinafter called the "Agreement") approved by the Governor and Council on June 23, 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 Completion Date as set forth in sub-paragraph 1.6 of the agreement shall be changed from June 30, 2012 to December 31, 2012.
 - (B) The Grant Limitation as set forth in sub-paragraph 1.8 of the agreement shall be changed from \$60,000 to \$72,000.
 - (C) The Total Match Cost Documentation as set forth in Exhibit B, Paragraph 1 shall be changed from \$40,000 to \$48,025.
 - (D) The Scope of Services shall be changed to add the following additional Tasks

Task Number	Task Description
19	Coordinate with the consultant and project partners to choose up to 3 points from which to create photomontages of the proposed alternatives. Digital images of the three locations will be recorded for each viewpoint and each alternative and the predicted water levels that would result from implementation of the alternative will be shown for each location.
20	Coordinate with the consultant to develop a brief discussion document describing the potential impacts to the visual environment resulting from the dam removal alternative considering sensitivity of viewpoints, assessment of visual impacts, and conclusions.
21	Conduct additional sediment, hydrologic, and hydraulics analyses following procedures outlined in the project QAPP and through coordination with NHDES personnel and project partners.

Grantee Initials RD
Date: 4/3/12

- (E) The Contract Price and Method of payment as set forth in Exhibit B shall be changed as follows:

Task Description	Original Payment	Revised Payment	Difference
Upon completion and DES approval of Tasks 1 and 2	\$8,500	\$8,500	\$0
Upon completion and DES approval of Task 3	\$14,250	\$14,250	\$0
Upon completion and DES approval of Tasks 4 and 5	\$2,000	\$2,000	\$0
Upon completion and DES approval of Task 6	\$9,000	\$9,000	\$0
Upon completion and DES approval of Task 7	\$14,250	\$14,250	\$0
Upon completion and DES approval of Tasks 8 and 9	\$2,000	\$2,000	\$0
Upon completion and DES approval of Task 10	\$2,000	\$2,000	\$0
Upon completion and DES approval of Task 11	\$1,500	\$1,500	\$0
Upon completion and DES approval of Task 12	\$2,000	\$2,000	\$0
Upon completion and DES approval of Tasks 13 and 14	\$3,000	\$3,000	\$0
Upon completion and DES approval of Tasks 15 and 16	\$750	\$750	\$0
Upon completion and DES approval of Tasks 17 and 18	\$750	\$750	\$0
Upon completion and DES approval of Task 19	New Task	\$4,290	+ \$4,290
Upon completion and DES approval of Task 20	New Task	\$2,000	+ \$2,000
Upon completion and DES approval of Task 21	New Task	\$5,710	+ \$5,710
TOTALS	\$60,000	\$72,000	+ \$12,000

- 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.
- 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.

Grantee Initials

Date: 4/3/12

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

Town of Exeter

By *Russell Dean*
Russell Dean, Town Manager

STATE OF NEW HAMPSHIRE
COUNTY OF Rockingham

On this 3 April day of 2012, before the undersigned officer, personally appeared Russell Dean, Town Manager name and office of signee 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.

My Commission Expires: date

COPY

Debra J. Unger
enter name notary public / JOP, select title
DEBRA J. UNGER
★ NOTARY PUBLIC - NEW HAMPSHIRE ★
My Commission Expires March 7, 2017



THE STATE OF NEW HAMPSHIRE
Department of Environmental Services

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

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

OFFICE OF ATTORNEY GENERAL

By *Evan Melholland*
Evan Melholland, AAG

CERTIFICATE OF AUTHORITY

I, Andrea Kohler, Town Clerk of Exeter, New Hampshire do hereby certify that:

- (1) at the Town Meeting held 13, 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 17, May, 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 Manager to execute any documents which may be necessary to effectuate this contract;
- (3) The Town of Exeter 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:

Russell Dean, Town Manager

IN WITNESS WHEREOF, I have hereunto set my hand as the Town Clerk of Exeter, New Hampshire this ~~date day of month, year.~~

3 April, 2012

Andrea Kohler

Andrea Kohler, Town Clerk

My Commission expires: date

State of New Hampshire

County of Rockingham

3 April, 2012

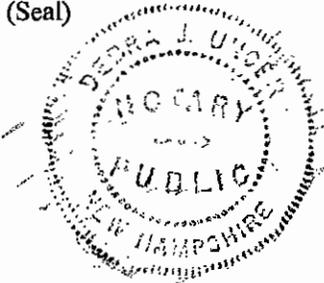
Debra Unger

On this the ~~date day of month, year,~~ before me, ~~the enter name of notary public/JOP,~~ the undersigned officer, personally appeared ~~enter name of town clerk~~ *Andrea Kohler* who acknowledged herself/himself to be the Town Clerk of ~~enter town,~~ *Exeter*, 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.

Debra Unger
Justice of the Peace/Notary Public
Commission Expiration Date: date

(Seal)



Exeter



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.

Participating Member: Town Of Exeter 10 Front Street Exeter, NH 03833	Member Number: 170	Company Affording Coverage: 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)	Limit	NH Statutory Limits May Apply
<input checked="" type="checkbox"/> General Liability (Occurrence Form) Professional Liability (describe) <input type="checkbox"/> Claims Made <input type="checkbox"/> Occurrence	1/1/2012	1/1/2013	Each Occurrence	\$ 2,000,000
			General Aggregate	\$ 2,000,000
			Fire Damage (Any one fire)	\$
			Med Exp (Any one person)	
<input type="checkbox"/> Automobile Liability Deductible Comp and Coll: <input type="checkbox"/> Any auto			Combined Single Limit (Each Accident)	
			Aggregate	
<input type="checkbox"/> Workers' Compensation & Employers' Liability			Statutory	
			Each Accident	
			Disease -- Each Employee	
			Disease -- Policy Limit	\$
<input type="checkbox"/> Property (Special Risk Includes Fire and Theft)			Blanket Limit, Replacement Cost (unless otherwise stated)	Deductible:

Description: For NH DES Grant. Interest of NH DES is included as Additional Covered Party for this project only. The certificate holder is named as Additional Covered Party, but only to the extent liability is based solely 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.

CERTIFICATE HOLDER:	<input checked="" type="checkbox"/> Additional Covered Party	<input type="checkbox"/> Loss Payee	Primex³ - NH Public Risk Management Exchange
			By: <i>Tammy Deaver</i>
Department of Environmental Services 29 Hazen Dr. Concord, NH 03301			Date: 4/10/2012 tdenver@nhprimex.org Please direct inquiries to: Primex³ Claims/Coverage Services 603-225-2841 phone 603-228-3833 fax



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.

Participating Member: Town Of Exeter 10 Front Street Exeter, NH 03833		Member Number: 170		Company Affording Coverage: NH Public Risk Management Exchange - Primex ³ Bow Brook Place 46 Donovan Street Concord, NH 03301-2624	
Type of Coverage	Effective Date (mm/dd/yyyy)	Expiration Date (mm/dd/yyyy)	NH Statutory Limits May Apply (N/A)		
<input type="checkbox"/> General Liability (Occurrence Form) <input type="checkbox"/> 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)	\$	
<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	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	\$	
<input type="checkbox"/> 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
Department of Environmental Services 29 Hazen Dr. Concord, NH 03301			By: <i>Tammy Deaver</i>
			Date: 4/10/2012 tdenver@nhprimex.org Please direct inquiries to: Primex³ Claims/Coverage Services 603-225-2841 phone 603-228-3833 fax

**Attachment A
Budget Estimate (Revised)**

Budget Item	Grant Funding	Match	Total
Salaries & Wages	\$0.00	\$8,025.00	\$8,025.00
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	\$72,000.00	\$40,000.00	\$112,000.00
Construction	\$0.00	\$0.00	\$0.00
Subtotals	\$72,000.00	\$48,025.00	\$120,025.00
Total Project Cost			\$120,025.00

COPY

Attachment B
Copy of Original Agreement

COPY



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

Jeff Marcoux

Thomas S. Burack, Commissioner

June 10, 2010

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

18
APPROVED G & C
DATE 6/23/10
ITEM # 78

REQUESTED ACTION

Authorize the Department of Environmental Services to enter into a sole-source agreement with the Town of Exeter, NH, VC #177386, in the amount of \$60,000 to complete the *Exeter River Restoration Project: Evaluating the Impacts of Dam Removal for the Great Dam* project effective upon Governor and Council approval through June 30, 2012. 100% Federal Funds.

Funding is available in the account as follows:

03-44-44-442010-2035-072-500731 FY 2010
\$60,000
Dept Environmental Services, NPS Restoration Program, Contracts for Program Services

EXPLANATION

In the Department of Environmental Services (DES) workplan and application for FY05 Section 319 incremental funds, DES proposed working with communities in the Exeter River watershed to implement water quality improvement projects identified in the *Exeter River Watershed-based Plan*. The *Exeter River Restoration Project: Evaluating the Impacts of Dam Removal for the Great Dam* is identified in the Plan as a key action item for providing information to assist the Town of Exeter and other river management stakeholders in determining the how dam removal would affect river management and water quality. Following approval of the work plan and application by the Environmental Protection Agency, the Exeter River Local Advisory Committee and DES met with the Town of Exeter to request a proposal from the town to evaluate the impacts of dam removal. On May 17, 2010 the town submitted a proposal for the impact analysis.

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 toxins. 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

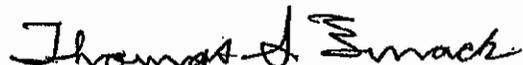
habitat. Watershed Assistance programs address NPS pollution by managing land use and drainage on a watershed scale.

The *Exeter River Watershed-based Plan* identifies the Great Dam, which is owned and operated by the Town of Exeter, as an obstruction to fish passage and a potential contributor to documented water quality impairments (low dissolved oxygen) in the impoundment upstream of the dam. Through the impacts analysis, the Town of Exeter will evaluate the impacts of dam removal on the river system. This project will result in an impacts analysis study, which will provide the Town of Exeter and other stakeholders an opportunity to assess the resources and procedures required to remove the dam, and will enable the town to make a well-informed decision relative to removing or retaining the dam. The ultimate goal of this project is to provide information to the town relative to how dam removal would affect water quality in the impoundment upstream of the dam, fish passage, recreation opportunities, and liability associated with the aging dams.

DES would like to enter into a Sole Source agreement with the Town of Exeter for completion of this project. The Town of Exeter is the sole owner and operator of the Great Dam. Therefore, the town is responsible for making all decisions relative to the dam. Because this study will be instrumental in providing information relative to the decision of retaining or removing the dam, the Town of Exeter is the only organization qualified to conduct this project

The total project costs are budgeted at \$100,000. DES will provide \$60,000 (60%) of the project costs through a federal grant and the Town of Exeter 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

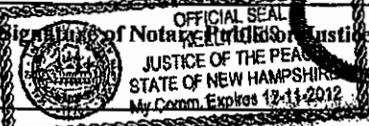
GRANT AGREEMENT

Subject: Exeter River Restoration Project: Evaluating the Impacts of Dam Removal for the Great Dam

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

GENERAL PROVISIONS

I. 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 Exeter		1.4 Grantee Address 10 Front Street Exeter, NH 030833	
1.5 Effective Date Upon G&C approval	1.6 Completion Date June 30, 2012	1.7 Audit Date N/A	1.8 Grant Limitation \$60,000
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>Russell Dean</i>		1.12 Name & Title of Grantee Signor Russell Dean, Town Manager	
1.13 Acknowledgment: State of New Hampshire, County of <u>Rockingham</u> On <u>5/18/10</u> , before the undersigned officer, personally appeared the person identified in block 1.12., or satisfactorily proven to be the person whose name is signed in block 1.11., and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace (Seal) 		1.13.2 Name & Title of Notary Public or Justice of the Peace <i>Kelly Geis</i>	
1.14 State Agency Signature(s) <i>Thomas S. Burack</i>		1.15 Name/Title of State Agency Signor(s) Thomas S. Burack, Commissioner	
1.16 Approval by Attorney General's Office (Form, Substance and Execution) By: <i>Erin McAllen</i> Attorney, On: <u>11 June 9, 2010</u>			
1.17 Approval by the Governor and Council By: _____ On: <u>11</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 80:7 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 shall 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, formulae, 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 the data for examination, duplication, publication, translation, or 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 that 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 of 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, responsibilities in the review or approval of the undertaking or carrying 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. Each policy shall contain a clause prohibiting cancellation or modification of the policy earlier than ten (10) days after written notice has been received by the State.

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.

Exhibit A
Scope of Services

The Town of Exeter, NH shall complete the tasks described in the following Scope of Services:

Objective 1: By September 2010, the Town of Exeter will enter into a contract with a consultant to perform the scope of work outlined in the Request for Proposals (RFP) or Request for Qualifications (RFQ).

Measures of Success: The Town of Exeter will have a signed contract with the selected consultant to perform the agreed upon scope of work.

Deliverable 1A: Signed contract between the Town of Exeter and consultant.

Task 1: Coordinate with project partners to develop a scope of work for the project and complete a RFP/RFQ in compliance with federal requirements. Submit RFP/RFQ documents to DES for review and approval prior to publication.

Task 2: Coordinate with project partners to convene interviews with candidate firms and select the most qualified to complete the scope of work as outlined in the RFP/RFQ. The Town of Exeter and selected firm will negotiate a contract for services and enter into an agreement to complete the scope of work. Submit contract documents to DES for review and approval prior to signature.

Objective 2: By January 2012, complete historic and archaeological resource consultation and review according to Section 106 of the National Historic Preservation Act.

Measures of Success: This information will be used to determine sensitivity of both the historic and archaeological resources within the project area, if any; and appropriate measures to avoid, minimize or mitigate the impacts of the removal of the Great Dam.

Deliverable 2A: Completion of all necessary research, survey and reports specific to historical and archaeological resources so that the NH Division of Historical Resources (NHDHR) can make a determination on the eligibility (or not) to the State and/or National Register of Historic Resources. Provide copies of documentation to DES.

Task 3: Convene meeting with the project partner and NHDHR to determine requirements for requested research and surveys for both architectural and archaeological surveys as it pertains to the Section 106 regulations of the National Historic Preservation Act.

Task 4: Develop a Scope of Work for Completing Project Area/Historic District Form based on the meeting with NHDHR. Review and comment on scope of work and submit to NHDHR for review and approval.

Task 5: Develop a Scope of Work for Completing the Phase IA Archeological Survey based on the meeting with NHDHR. Review and comment on scope of work and submit to NHDHR for review and approval.

Task 6: Issue a Project Area/Historic District Form Report based on the findings and research. Review and comment on draft report and submit to NHDHR for review and approval.

Task 7: Issue Phase IA Archeological Survey Report and Recommendations based on the findings and research. Report will include a recommendation as to whether or not there is archaeological sensitivity within the project area and the need for Phase IB survey, or not. Review and comment on draft report and submit to NHDHR for review and approval.

Task 8: Complete Scope of Work for Individual Inventory Forms for the 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.

Task 9: Complete a 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.

Task 10: Prepare Individual Inventory Forms if it is deemed a requirement through the Section 106 consultation process. Review and comment on draft report and submit to NHDHR for review and approval. Provide any additional information requested by NHDHR.

Task 11: 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 submit to NHDHR for review and approval. Provide any additional information requested by NHDHR.

Objective 3: Conduct sediment contaminant screening and engineering assessment of structures likely to be affected if the dam is removed.

Measures of success: This information will be used to develop conceptual plans for sediment management and scour mitigation.

Deliverable 3:

Task 12: Develop QAPP following EPA guidelines and facilitate QAPP review process with NHDES and EPA; address all NHDES and EPA comments and provide final approved QAPP to DES

Task 13: Conduct sediment contaminant screening and sediment transport modeling of sediments in the study area following methods outlined in the QAPP; collect and analyze sediment samples for contaminants of concern and conduct sub-bottom assessment and model sediment transport, develop conceptual plan for sediment management, and longitudinal profile of channel throughout the impoundment. Identify upstream and downstream impacted structures likely to be affected if dam is removed and conduct scour analysis of structures and develop conceptual plan to mitigate scour.

Objective 4: Conduct three regular project coordination meetings and hold one public informational meeting.

Measures of Success: Three coordination meetings and a public informational meeting to present the results of the Feasibility Study/Impact Analysis are held and the final meeting fulfills Section 106 requirements of the National Historic Preservation Act.

Deliverable 4A: Conduct three project coordination meetings with project partners

Task 14: Develop meeting agendas and conduct three project coordination meetings with the project partners during the course of the project to assess project progress.

Deliverable 3B: Conduct final public meeting to present results of the Impact Analysis 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 15: Coordinate with the 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. Present the findings of the final draft of the Feasibility Study/Impact Analysis at a Public Informational Meeting. This meeting will fulfill the requirements of the Section 106 regulations of the National Historic Preservation Act.

Task 16: 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/Impact Analysis and findings contained therein.

Objective 4: Complete reporting as required by DES and EPA.

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

Deliverable 4A: Semi annual reports and final report submitted to DES

Task 17: 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 18: 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 load reduction estimates, photo-documentation of installed system components, and comply with the 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.

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 \$40,000. 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 through 4	\$8,500
Upon completion and DES approval of Task 3	\$14,250
Upon completion and DES approval of Tasks 4 and 5	\$2,000
Upon completion and DES approval of Task 6	\$9,000
Upon completion and DES approval of Task 7	\$14,250
Upon completion and DES approval of Tasks 8 and 9	\$2,000
Upon completion and DES approval of Task 10	\$2,000
Upon completion of DES approval of Task 11	\$1,500
Upon completion and DES approval of Task 12	\$2,000
Upon completion and DES approval of Tasks 13 and 14	\$3,000
Upon completion and DES approval of Tasks 15 and 16	\$750
Upon completion and DES approval of Tasks 17 and 18	\$750
Total	<u>\$60,000</u>

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.

**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.

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NH Local Government Center
Property Liability Trust
Membership as of 7/1/2009

Academy for Science & Design
Acworth
Albany
Alexandria
Allentown
Allentown School District
Alton
Amherst School District
Andover
Androscoggin Valley Regional RDD
Antrim
Ashland
Ashuelot Pond Dam Village Dist
Auburn School District
Barnstead
Barrington
Bartlett
Bartlett Village Water Precinct
Bartlett-Jackson Ambulance
Bath
BCEP Solid Waste
Bedford
Beebe River Village District
Belknap County Conserv Dist
Belmont
Belmont Sewer
Bennington
Benton
Bethlehem
Bethlehem Village District
Bow
Bradford
Brentwood
Brentwood School District
Bristol
Brookfield
Brookline
Brookline School District
Campton
Campton School District
Campton Thornton Fire Dept
Campton Village Precinct
Canaan
Candia School District
Canterbury
Capital Area Fire Mutual Aid
Carroll
Center Harbor
Center Ossipee Fire Precinct
Central NH SPEC Operations Un
Charlestown
Chatham
Chester
Chesterfield

Chesterfield Fire Precinct
Chesterfield School District
Chichester
Chichester School District
Claremont School District
Clarksville
Colebrook
Colebrook Village Fire Precinct
Columbia
Concord
Concord Regional Solid Waste
Contoocook Village Precinct
Conway
Conway Village Fire District
Coop Alliance for Seacoast Trans
Coppie Crown Village District
Cornish
Cornish School District
Croydon School District
Dalton
Danbury
Danville
Deerfield
Deerfield School District
Deering
Dorchester
Dover
Dublin
Dunbarton
Dunbarton School District
East Kingdon
East Kingdon School District
Easton
Eaton
Economic Corp of Newport
Effingham
Ellsworth School District
Emerald Lake Village District
Enfield
Epping
Epsom
Epsom School District
Epsom Village District
Equestrian Academy
Errol
Errol Rescue Squad, Inc.
Exeter
Exeter Region Cooperative
Exeter School District
Fitzwilliam
Fitzwilliam Village Water District
Franklin
Fremont
Gilford

Gilmanton
Goffstown
Goffstown School District
Goffstown Sewer Commission
Goffstown Village Precinct
Goshen
Grafton
Grafton County
Grafton County Cons District
Granite Lake Village District
Grasmere Village Water Precinct
Great Bay eLearning Charter
Grealer Derry-Salem Cooperative
Greenfield
Greenland
Greenville
Greenville Estates Village District
Groton
Groveton Village Precinct
Hampstead
Hampton
Hancock
Hanover
Harrisville School District
Haverhill
Haverhill Corner Precinct
Hebron
Henniker
Hill
Hillsboro-Deering School District
Hillsborough
Hinsdale
Hinsdale School District
Holderness School District
Hollis
Hollis School District
Hollis-Brookline Cooperative
Hooksett
Hooksett School District
Hopkinton
Hopkinton Village Precinct
Howe Library
Hudson
Jackson
Jackson Water Precinct
Jefferson
Kearsarge Lighting Precinct
Keene School District
Kensington
Kensington School District
Lake Todd Village District
Lakes Region Mutual Fire Aid
Lamprey Regional Cooperative
Lancaster

**Attachment A
Budget Estimate**

Budget Item	Grant Funding	Match	Total
Salaries & Wages	\$0.00	\$0.00	\$0.00
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	\$60,000.00	\$40,000.00	\$100,000.00
Construction	\$0.00	\$0.00	\$0.00
Subtotals	\$60,000.00	\$40,000.00	\$100,000.00
Total Project Cost			\$100,000.00

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CERTIFICATE OF AUTHORITY

I, Eve Quinn, Assistant Town Clerk of Exeter, New Hampshire do hereby certify that:

- (1) at the Town Meeting held March 13, 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 May 17, 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 Manager to execute any documents which may be necessary to effectuate this contract;
- (3) The Town of Exeter 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:

Russell Dean, Town Manager

IN WITNESS WHEREOF, I have hereunto set my hand as the Assistant Town Clerk of Exeter; New Hampshire this 18 day of May, 2010.

Eve Quinn

Eve Quinn, Assistant Town Clerk

EVE M. QUINN, Notary Public
My Commission Expires August 20, 2012

My Commission expires:

State of New Hampshire
County of Rockingham

On this the 18 day of May, 2010, before me Kelly Geis, the undersigned officer, personally appeared Eve Quinn who acknowledged herself to be the Assistant Town Clerk of Exeter, New Hampshire, and that she as such Assistant 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.

Kelly A. Geis

Justice of the Peace

Commission Expiration Date: December 11, 2012

(Seal)

COPY

CERTIFICATE OF COVERAGE

This certificate evidences the limits of liability in effect at the inception of the Member Agreement(s) described below. This certificate is issued as a matter of information only and confers no rights on the certificate holder and does not amend, extend or alter the coverage afforded by the Member Agreement(s); except to the extent provided in the additional covered party box or loss payee box below, if checked.

THIS IS TO CERTIFY THAT THE MEMBER NAMED BELOW IS A PARTICIPATING MEMBER OF EITHER OR BOTH OF THE COMPANIES AND THAT A MEMBER AGREEMENT(S) HAS BEEN ISSUED TO THE MEMBER FOR THE AGREEMENT TERM(S) INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE COVERAGE AFFORDED BY THE MEMBER AGREEMENT(S) IS SUBJECT TO ALL THE EXCLUSIONS, EXTENSIONS, TERMS AND CONDITIONS OF SUCH MEMBER AGREEMENT(S). AGGREGATE LIMITS MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Participating Member: Member Number:	All Members (List Attached)	Companies Affording Coverage (the "Companies"): Company A: Local Government Center Property-Liability Trust, LLC Company B: Local Government Center Workers' Compensation Trust, LLC P.O. Box 617, Concord, NH 03302-0617	
Coverage (Optional Description)	Effective Date (mm/dd/yyyy)	Expiration Date (mm/dd/yyyy)	Limits (subject to applicable state statutory limits)
<input checked="" type="checkbox"/> General Liability (Member Agreement Section III.A)	7/1/2009	6/30/2010	Each Occurrence - \$5,000,000 General Aggregate \$ Personal & Adv Injury \$ Med Exp (any one person) \$ Products - Comp/Op Agg \$ Fire Damage (each fire) \$
<input checked="" type="checkbox"/> Automobile Liability (Member Agreement Section III.A) <input type="checkbox"/> Any Auto <input type="checkbox"/> All Owned Autos <input type="checkbox"/> Scheduled Autos <input type="checkbox"/> Hired Autos <input type="checkbox"/> Non-Owned Autos <input type="checkbox"/> Other _____	7/1/2009	6/30/2010	Each Occurrence \$5,000,000 Bodily Injury (per person) \$ Bodily Injury (per accident) \$ Property Damage (per accident) \$
<input type="checkbox"/> Excess Liability			Each Occurrence \$ N/A Aggregate \$ N/A
<input checked="" type="checkbox"/> Property (All Risk including Theft) (Member Agreement Section I) Deductible: \$ 000	7/1/2009	6/30/2010	\$Per scheduled limits and Member Agreement
<input type="checkbox"/> Workers Compensation (Coverage A) Employers' Liability (Coverage B)			<input type="checkbox"/> Statutory / Cov. A Each Accident / Cov. B \$ 2,000,000 Disease - Each Employee \$ 2,000,000 Disease - Policy Limit \$ 2,000,000
Description: The State of New Hampshire is named as Additional Covered Party relative to the Grant Agreements between the State of New Hampshire, Department of Environmental Services and Members on the attached list.			

CANCELLATION: If any of the above coverages under the Member Agreement are cancelled before the expiration date, the Company will endeavor to mail 30 days written notice to the Certificate Holder named below, but failure to mail such notice shall impose no obligation or liability of any kind upon the Company.

	<input checked="" type="checkbox"/> Additional Covered Party	<input type="checkbox"/> Loss Payee, as his, her or its interests appear
Coverage for the Additional Covered Party is limited to "bodily injury" or "property damage" caused by, and only to the extent of, the sole negligence of the "Member," and no protection is available for the negligence of others, including the Additional Covered Party and its directors, officers, employees or agents. Available limits of coverage are shared between the "Member" and the Additional Covered Party.*		
Certificate Holder: State of New Hampshire Department of Environmental Services ATTN: Jeffrey Marcoux, Watershed Asst. Specialist 29 Hazen Drive PO Box 95 Concord, NH 03302-0095	Companies By: <u>Debra A. Lewis</u> Authorized Representative Date Issued: <u>7/1/2009</u>	Please direct inquiries to: Debra A. Lewis 603.226.4481

*Terms in quotes are defined in the Member Agreement.