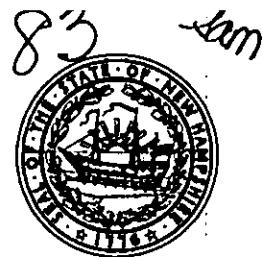




The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

JAN 10 '19 PM 1:34 DAS

January 8, 2019

His Excellency, Governor Christopher T. Sununu
 and the Honorable Council
 State House
 Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Environmental Services (NHDES) and the Department of Transportation (NHDOT) to **retroactively** amend the Memorandum of Agreement (MOA) for construction monitoring, permit amendment review, and coordination of the streamlining of work under Wetlands and Non-site Specific Permits #2002-02033 and #2014-03446, and to continue NHDOT funding of the Environmentalist IV position at NHDES for the amount of \$237,655.00 to provide funding for the period of July 1, 2018 through September 30, 2020. The MOA was last amended by Governor and Council on June 20, 2012 (Item #173). Funding is 38% Federal funds and 62% Agency Income (Non-Par).

Funding is provided as follows by the Department of Transportation in State FY 2019, and is contingent upon the availability and continued appropriation of funds in FY 2020 and FY 2021, with the ability to adjust encumbrances in each of the State Fiscal Years through the Budget Office if needed and justified.

	<u>FY 2019</u>	<u>FY 2020</u>	<u>FY 2021</u>
04-096-096-963515-3054 Consolidated Federal Aid 046-500464 Gen Consultants Non-Benefit	\$40,698.00	\$105,614.00	\$26,238.00
04-096-096-963515-3311 Non Par I-93 046-500463 Gen Consultants Non-Benefit	\$65,105.00	\$0.00	\$0.00

EXPLANATION

Unlike the original permit, and the prior amendments, the US Federal Highway Administration (FHWA) has reduced allowable charges under the agreement eliminating items such as current expenses, longevity pay, OIT, telecommunication, general services, and additional fringe costs. These changes in funding is a **retroactive** request because of considerable discussions and negotiations between FHWA, NHDES and NHDOT to ensure the Environmentalist IV position was adequately and properly funded throughout the duration of the project, thus delaying the execution of this amended MOA.


On May 2, 2006, the NHDES Wetlands Bureau issued permit #2002-2033 ("the Permit") to the NHDOT for the Interstate 93 (I-93) project in Salem, Manchester, Windham, Derry, and Londonderry. The Permit authorized the "dredge and/or fill of approximately 76 acres of palustrine and riverine wetlands to improve the capacity,

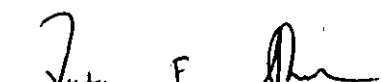
efficiency and safety along 19.8 miles of Interstate 93 (I-93).” Condition 11 of the Permit states “this permit is contingent on NHDOT providing funding for the establishment of an additional Environmentalist position with NHDES...” The concept of funding this position dedicated to I-93 was agreed to in concept by NHDOT and NHDES prior to the issuance of the Permit due to the size, complexity and duration of construction of the I-93 project. This Permit, and subsequent amendments, was extended until June 30, 2018 and has expired, hence this retroactive request.

The Environmentalist IV position is currently carrying out the construction monitoring of the Permit. The FHWA funding for the construction of I-93 is authorized through Federal Fiscal Year 2020 (September 30, 2020), and the requested amendment of the MOA will maintain funding, provided by FHWA, for the position through the completion of construction under the Permit noted above. This will provide for continued coordination between NHDES and NHDOT to ensure important construction milestones are met.

In addition, NHDES and NHDOT have a companion MOA, which was amended by Governor and Council on June 20, 2018 (Item #104), related to implementation of the chloride TMDL throughout the same project area. Additional assistance for chloride reduction activities are needed. To this end, the scope-of-work for this position is being amended to provide assistance to the Salt Reduction Coordinator at NHDES. This change in scope-of-work can be accomplished by the Environmentalist IV under this requested action.

We respectfully request your approval.


Robert R. Scott
Commissioner
Department of Environmental Services


Victoria F. Sheehan
Commissioner
Department of Transportation

MEMORANDUM OF AGREEMENT BETWEEN THE NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES AND THE NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION RELATIVE TO THE INTERSTATE 93 PROJECT WETLANDS PERMITS AND CHLOIDE REDUCTION ACTIVITIES

Amendment No. 2

This Agreement (hereinafter called "Amendment 2") dated this 4th day of December, 2018, is by and between the New Hampshire Department of Environmental Services (hereinafter referred to as "NHDES") and the New Hampshire Department of Transportation (hereinafter referred to as "NHDOT").

WHEREAS, pursuant to a Memorandum of Agreement (MOA) (hereinafter called the "Wetlands Permit Agreement") approved by the Governor and Council on January 14, 2009 (Item #37), and first amendment (hereinafter called "Wetlands Permit Amendment #1") approved on June 20, 2012 (Item # 173), NHDES agreed to perform certain services upon the terms and conditions specified in the Wetlands Permit Agreement & Wetlands Permit Amendment #1, and in consideration of payment by NHDOT of certain sums as specified therein; and

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

- 1. Amendment of the Wetlands Permit Agreement: The Agreement is hereby amended to read as follows:**

MEMORANDUM OF AGREEMENT BETWEEN THE NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES AND THE NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION RELATIVE TO THE INTERSTATE 93 PROJECT WETLANDS PERMITS AND CHLORIDE REDUCTION ACTIVITIES

I. PURPOSE AND INTRODUCTION:

The purpose of this MOA is to outline the responsibility of the NHDES and the NHDOT with respect to the Interstate 93 Project (hereinafter, the "I-93 Project") and in compliance with Wetlands and Non-site Specific Permit #2002-02033 (expired), and Wetlands and Non-site Specific Permit #2014-03446 for the I-93 Project (hereinafter, the "I-93 Wetlands Permits"). The MOA is intended to ensure the ability of both agencies to respond in a timely fashion to NHDOT permitting needs, and to changes in the field conditions, as the I-93 Project proceeds through construction.

The I-93 Project is under construction to improve highway capacity, efficiency and safety along 19.8 miles of Interstate 93 by widening the existing two-lane highway to create a four-lane highway starting at the New Hampshire state line in Salem and ending just north of the I-93/I-293 interchange in Manchester. This includes improvements to five existing interchanges and cross roads, construction of three new Park and Rides facilities at Exits 2, 3 and 5, expanded bus service at Exit 4, and space to accommodate a future rail corridor between the Massachusetts/New Hampshire state line northerly to the Exit 5 interchange. In order to complete this project, approximately 86 acres of mostly palustrine and riverine wetlands must be dredged and/or filled.

For New Hampshire, the I-93 Project is unique in size, complexity and project duration. The I-93 Wetlands Permits provide approval for wetlands dredge and filling for the I-93 Project, but also

recognize that the NHDOT and NHDES work out many details for specific sections of the I-93 Project as it proceeds in phases through final design and construction. This requires the issuance by NHDES of permit amendments, and other modifications. While project construction continues, substantial costs can be saved if permit amendments and other reviews can be processed expeditiously. In addition, NHDES and NHDOT have a companion MOA related to Implementation of the Chloride TMDL throughout the same project area. Additional assistance for chloride reduction activities are needed. To this end, NHDOT and NHDES have entered into this MOA to provide one additional staff position at NHDES for the sole purpose of addressing the permitting and chloride reduction needs of the I-93 Project.

II. AUTHORITY

This agreement is entered into pursuant to the I-93 Wetlands Permits issued by NHDES to NHDOT under RSA 482-A. Wetlands Permit #2002-02033 in part states: *"This Permit is contingent on NHDOT providing funding for establishment of an additional Environmentalist IV position within NHDES to provide for construction monitoring, minor modifications during final design and minor permitting changes due to unanticipated obstacles and conflicts during construction."* Wetlands Permit #2002-02033 further states: *"This position shall be funded continuously through the completion of the project to ensure that all permit conditions are satisfied, including monitoring of all mitigation areas."* In addition, Wetlands Permit #2014-03446 in part states: *"This permit is contingent on NHDOT continuing funding for an Environmentalist IV position within NHDES..."*

III. SCOPE OF WORK

Attachment A to this MOA provides a detailed scope of work that describes the responsibilities of the NHDOT and NHDES under this agreement. In general, NHDES agrees to continue to provide one full-time Environmentalist IV position in the Wetlands Bureau whose work shall be dedicated to the performance of the services described in Attachment A related to implementation of the I-93 Wetlands Permits, and chloride reduction needs. The NHDOT agrees to provide funding for this position (see Section IV below), through regular interagency transfer of funds to the NHDES Wetlands Bureau to perform permit amendments and other reviews, including assistance to the Salt Reduction Coordinator (see Attachment B). NHDES and NHDOT also agree to certain joint responsibilities for project management and coordination.

IV. FUNDING

The NHDOT agrees to provide funding through the Salem-Manchester, 10418X project to NHDES to support an Environmentalist IV position in the NHDES Wetlands Bureau for the duration of the I-93 Project covered by the I-93 Wetlands Permits. Estimated funding levels by classification required to support this position for State Fiscal Years 2019 through 2021 (partial) are provided in Attachment B of this agreement.

V. TERMINATION

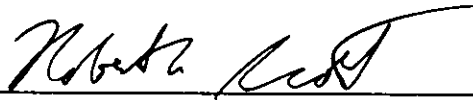
This agreement may only be terminated at such time as agreed upon by both the NHDOT and the NHDES and upon providing written notice to the other at least sixty (60) days prior to termination.

VI. DURATION

This agreement shall continue in effect until the completion of the I-93 Project, which is estimated for this MOA to be on or about September 30, 2020, unless terminated earlier by agreement of both parties, or extended in writing by subsequent agreement of the parties.

- 2. **Effective Date of Amendment:** This Amendment shall take effect as of July 1, 2018, upon the approval of the Governor and Executive Council.
- 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.


For the Department of Environmental Services:



 Robert R. Scott
 Commissioner

12-11-18
 Date

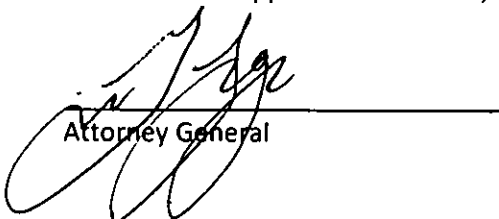
For the Department of Transportation:



 Victoria F. Sheehan
 Commissioner

12/20/18
 Date

Reviewed and approved as to form, substance, and execution



 Attorney General

12/21/18
 Date

I hereby certify that the foregoing contract was approved by the Governor and Executive Council of the State of New Hampshire at the meeting on

 Secretary of State

 Date

ATTACHMENT A

SCOPE OF WORK

December 2018

The New Hampshire Department of Transportation (NHDOT) agrees to:

- A. Provide the New Hampshire Department of Environmental Services (NHDES) with funding for one full time position, an Environmentalist IV, Labor Grade 27. The responsibilities of this position will be divided into the primary role of the NHDES Wetland Public Highway Specialist, and a secondary role assisting the Salt Reduction Coordinator.
 - 1. The NHDES Wetland Public Highway Specialist component entails performing permitting, compliance and other State-level regulatory oversight activities for the duration of construction of the Interstate 93 Project (the "I-93 Project") under Wetlands Permit #2002-2033 (expired), and Wetlands Permit #2014-03446 (the "I-93 Wetlands Permits").
 - 2. Assistance to the Salt Reduction Coordinator component entails continuing water quality monitoring in the I-93 watersheds for chlorides, and advancement of the Green SnowPro Program.
- B. Regularly provide the NHDES with a prioritized list of construction activities that require permit review or other related regulatory activities required for implementation of the I-93 Wetlands Permits.
- C. Provide complete applications and other required information to ensure that technical reviews by the NHDES of State-level I-93 Project-related environmental documentation can be performed in an efficient manner.
- D. On an annual basis, provide NHDES with salt application rates and totals for the I-93 corridor.

The NHDES agrees to:

- A. Dedicate one full time position, an Environmentalist IV, in implementation of the I-93 Wetlands Permits, and related regulatory activities, as well as assisting the Salt Reduction Coordinator. This staff person will act as the primary NHDES point of contact with NHDOT to ensure that regulatory reviews, inspections and other compliance activities pertaining to the I-93 Wetlands Permits are done in a coordinated and efficient manner.
- B. Perform permitting, inspection and other review functions based on priorities established in conjunction with NHDOT. NHDES review priorities will be adjusted as necessary based on discussions with NHDOT to accommodate needs such as emergencies, other unexpected changes in conditions or project phases where time constraints due to funding or construction deadlines exist.

- C. Meet on-site with NHDOT as necessary to resolve site-specific problems related to the potential impact of design and/or construction on natural resources and NHDES permitting under the I-93 Wetlands Permits.
- D. Provide training to NHDOT personnel as necessary to promote consistency in the understanding of the I-93 Wetlands Permits and related environmental regulations. This may include the preparation of written guidelines on permit application procedures and the environmental review process for implementation of the I-93 Wetlands Permits.
- E. Analyze water quality information related to the I-93 Projects, and other environmental data to support regulatory decisions concerning the Section 401 Water Quality Certificate issued for the I-93 Project (WCQ #2002-007).
- F. Work with the municipalities and private sector in the I-93 corridor to continue to stress the importance of salt reduction and to transfer best management practices and lessons learned with those sectors.
- G. Be the lead agency for tracking salt loadings and chloride concentrations in TMDL watersheds.

The NHDES and NHDOT agree to jointly:

- A. Meet as needed to review preliminary and/or final design for compliance and consistency with applicable statutes and rules to minimize costly delays, discuss the status of the I-93 Project, and priorities for work.
- B. Meet as needed to review salt reduction progress and to address issues as they emerge.
- C. Participate in joint public hearings with federal agencies when required for a specific component of the I-93 Project, or I-93 Wetlands Permits.
- D. Communicate progress regarding chlorides to stakeholders and the public.
- E. Work to resolve compliance issues, citizen concerns, and comments from other agencies, pertaining to the I-93 Wetlands Permits or chloride implementation issues in a timely fashion.

ATTACHMENT B

November 2018

Estimated Costs for New Hampshire Department of Transportation to Support an Environmentalist IV in the New Hampshire Department of Environmental Services for State Fiscal Years 2019-2021.

		FY 2019	FY 2020	FY 2021
Description	Class	7/1/18-6/30/19	7/1/19-6/30/20	7/1/20-9/30/20
Personnel	010	\$ 68,427.00	\$ 68,952.00	\$ 17,238.00
Longevity Pay	010	\$ 600.00	\$ 600.00	0.00
Overtime Salary	018	\$ 2,000.00	\$ 2,000.00	\$ 500.00
Current Expenses	020	0.00	0.00	0.00
Transfers to OIT	027	0.00	0.00	0.00
Transfers to Gen Services	028	0.00	0.00	0.00
Telecommunications	039	0.00	0.00	0.00
Indirect & Admin Costs (10%)	040	\$ 9,482.00	\$ 9,565.00	\$ 2,351.00
Additional Fringe	042	0.00	0.00	0.00
Benefits	060	\$ 23,794.00	\$ 24,097.00	\$ 5,774.00
In State Travel	070	\$ 1,500.00	\$ 1,500.00	\$ 375.00
Total Expenses		\$ 105,803.00	\$ 106,714.00	\$ 26,238.00