



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

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Robert R. Scott, Commissioner

April 29, 2019

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

REQUESTED ACTION

Authorize the New Hampshire Department of Environmental Services (DES) to enter into grant agreements with the following entities, totaling \$16,122, to fund exotic aquatic plant control activities, effective upon Governor and Council approval, through December 31, 2019. 100% Lake Restoration Funds.

Vendor Name	Waterbody/Town/State	Vendor #	Grant Amount
Town of Derry	Beaver Lake / Derry / NH	177379-B003	\$3,195
Town of Merrimack	Horseshoe, Naticook Ponds / Merrimack / NH	177436-B002	\$4,437
Town of Sandown	Philips Pond / Sandown / NH	177520-B001	\$8,490
Grand Total			\$16,122

Funding is available in the account as follows:

03-44-44-442010-1430-073-500580 FY 2019
 Dept. Environmental Services, Lakes Restoration Program, Grants-Nonfederal \$16,122

EXPLANATION

Exotic aquatic plants have been a problem in the above-listed waterbodies for several years. NHDES grant funds in the amounts outlined in the table above are earmarked for management activities to control these exotic aquatic plants in 2019.

The primary purpose of New Hampshire's Exotic Aquatic Plant Program is to "prevent the introduction and further dispersal of exotic aquatic weeds and to manage or eradicate exotic aquatic weed infestations in the surface waters of the state" (RSA 487:17, II).

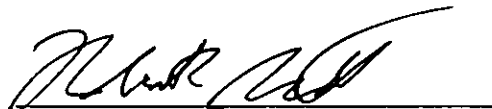
The program, initiated in 1981, has five focus areas: 1) Prevention of new infestations; 2) Monitoring for early detection of new infestations to facilitate rapid control activities; 3) Control of new and established

infestations; 4) Research towards new control methods with the goal of reducing or eliminating infested areas; and 5) Regional cooperation.

DES received 44 requests for funding to control exotic aquatic plant growth in 2019. Each project was selected to receive a grant. The budget estimate for each entity is included as Attachment A in the agreements. Please refer to Attachment B of each agreement for a listing of projects that are identified to receive funding, as well as information on the grant request reviewer. Some of these grant awards while less than the \$10,000 threshold, require G&C approval as the entities have received funds in excess of the threshold for this fiscal year.

The program is 100% fee funded through the Lake Restoration Fund. In the event that fee funds become no longer available, General Funds will not be requested to support this program. This agreement was approved by the Office of the Attorney General as to form, execution, and content.

We respectfully request your approval.



Robert R. Scott, Commissioner

Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name Department of Environmental Services		1.2 State Agency Address 29 Hazen Drive Concord, NH 03301	
1.3 Contractor Name Town of Derry		1.4 Contractor Address 14 Manning Street Derry, NH 03038	
1.5 Contractor Phone Number 603-432-6100	1.6 Account Number 03-44-44-14300000-073	1.7 Completion Date December 31, 2019	1.8 Price Limitation \$3,195.00
1.9 Contracting Officer for State Agency Amy P. Smagula		1.10 State Agency Telephone Number 603-271-2248	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory DAVID R. CARON, Town Administrator	
1.13 Acknowledgement: State of <u>NH</u> , County of <u>Rockingham</u> On <u>3-13-19</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 <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> [Seal]  </div> <div style="width: 50%; text-align: center;"> SHEILA M. BODENRADER Notary Public - New Hampshire My Commission Expires July 19, 2022 </div> </div>			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory Robert R. Scott, Commissioner, NHDES	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By:  On: <u>5/9/19</u>			
1.18 Approval by the Governor and Executive Council (if applicable) By:  On: _____			

2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.18, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.14 ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated 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 Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision 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 Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. This may include the requirement to utilize auxiliary aids and services to ensure that persons with communication disabilities, including vision, hearing and speech, can communicate with, receive information from, and convey information to the Contractor. In addition, the Contractor shall comply with all applicable copyright laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this

Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

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

8.2.1 give the Contractor 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 Contractor notice of termination;

8.2.2 give the Contractor 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 contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

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

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

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 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 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.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. TERMINATION. In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

11. CONTRACTOR'S RELATION TO THE STATE. In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice and consent of the State. None of the Services shall be subcontracted by the Contractor without the prior written notice and consent of the State.

13. INDEMNIFICATION. The Contractor 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 or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. 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 in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate ; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than thirty (30) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than thirty (30) days prior written notice of cancellation or modification of the policy.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. 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 of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default 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 Event of Default on the part of the Contractor.

17. 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 given in blocks 1.2 and 1.4, herein.

18. 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 Executive Council of the State of New Hampshire unless no

such approval is required under the circumstances pursuant to State law, rule or policy.

19. CONSTRUCTION OF AGREEMENT AND TERMS.

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

20. 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.

21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. SPECIAL PROVISIONS. Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

23. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. 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

1. The Town of Derry is the grantee for this project. The New Hampshire Department of Environmental Services (NHDES) is referred to as the "state." Amy P. Smagula of the Watershed Management Bureau is the grant officer for the state.
2. Variable milfoil, an invasive aquatic plant, has become a nuisance problem in various portions of the Meadows area downstream of Beaver Lake, and the grantee is seeking grant funds to assist in control efforts in 2019.
3. The grantee shall ensure that the contractors adhere to the following project-specific tasks:

For herbicide treatment in 2019, the grantee will ensure that SÔLitude Lake Management performs the following tasks:

- Task 1 Prepare and file Special Permit application with NH DPC (inclusive of the required abutter notifications, publication of newspaper notices and all costs associated with advertising and attending a public hearing, if required).
 - Task 2 Perform chemical treatment of the subject waterbody per the bid specifications, inclusive of all labor, chemical, and equipment costs.
 - Task 3 Conduct pre- and post-treatment surveys, perform post-treatment herbicide residue sample collection as required by permit, and submit the required written reporting to the State per the bid specifications.
4. NHDES will provide monetary support as outlined in the project bid and Exhibit B, up to the amount specified in this document.

Should the cost of the herbicide treatment be lower than the bid for that project, remaining grant funds may be used match costs associated with other NHDES approved milfoil control projects in the above referenced waterbody.

Initials: AS
Date: 3/13/19

Exhibit B
Grant Amount and Payment Schedule

Payments shall be made by NHDES to the grantee upon approval of stated outputs and verification of the value of completed work through submittal of invoices for services rendered. NHDES will pay the Town of Derry up to \$3,195.00, within 30 days of receiving a copy of the contractor's invoice(s) for completion of the tasks outlined in #3 above.

The grantee is responsible for paying the contractor, and submitting invoices to NHDES as soon as feasible upon receipt from the contractor.

The billing address shall be as follows:

NH Department of Environmental Services
29 Hazen Drive, PO Box 95
Concord, NH 03302-0095
Attn: Amy Smagula, Watershed Management Bureau
E-mail: Amy.Smagula@des.nh.gov

Invoices shall be approved by the Grant Officer before payment is processed.

Initials: AS
Date: 3/13/14

Exhibit C
Special Provisions

Paragraph 14 is waived with respect to the Grantee. However, the Grantee shall ensure that the contractor or subcontractor hired by the Grantee to perform the work shall meet the insurance requirements of Paragraph 14.

Initials: DR
Date: 3/13/19

CERTIFICATE OF AUTHORITY

I, Daniel Healey, Town Clerk of the Town of Derry, do
(Printed Name of Certifying Officer) (Office) (Grantee)

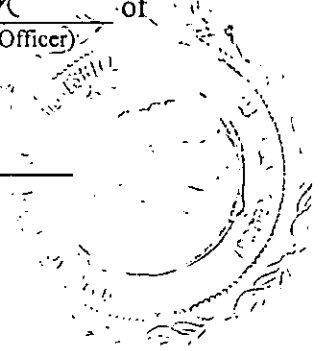
hereby certify that:

- (1) I am the duly elected Town Clerk ;
(Office)
- (2) at the meeting held on 2-5-19, the Town Council voted to accept
(Date) (Organization)
DES funds and to enter into a contract with the Department of Environmental Services;
- (3) the Town Council further authorized the Town Administrator to execute any
(Organization) (Office of Person Authorized to Sign Grant Agreement)
documents which may be necessary for this contract;
- (4) this authorization has not been revoked, annulled, or amended in any manner whatsoever, and remains in full force and effect as of the date hereof; and
- (5) the following person has been appointed to and now occupies the office indicated in (3) above:

David Caron
(Printed name of person who signed Grant Agreement)

IN WITNESS WHEREOF, I have hereunto set my hand as the Town Clerk of
(Office of Certifying Officer)
the Town of Derry, this 13 day of March 2019
(Organization)

[Signature]
(Signature of Certifying Officer)



STATE OF New Hampshire
County of Rockingham

On this the 13 day of MARCH, before me Sheila M. Bodenrader
(Notary Public)

the undersigned officer, personally appeared Daniel Healey who acknowledged
(Printed Name of Certifying Officer)
him/herself to be the TOWN CLERK of the Organization being authorized so to do,
(Office)
executed the foregoing instrument for the purpose therein contained.

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

[Signature]
(Notary Public Signature)

Commission Expiration Date:
(Seal)

SHEILA M. BODENRADER
Notary Public - New Hampshire
My Commission Expires July 19, 2022



RESOLUTION Number 2019-003

To Enter into an Agreement with Beaver Lake Improvement Association
and to authorize the Town to apply, receive and expend a grant from the
New Hampshire Department of Environmental Services for Milfoil
Treatment

WHEREAS, Section 5.1 of the Town Charter designates the Town Council as the governing and legislative body of the Town, and

WHEREAS, Section 9.15 of the Town Charter authorizes the Town Council to accept grant funding; and

WHEREAS, milfoil is an invasive aquatic weed which has been introduced in Beaver Lake; and

WHEREAS, left untreated, milfoil will continue to grow, damaging the Lake and potentially negatively impacting property values; and

WHEREAS, it is in the best interest of the Beaver Lake Improvement Association and the Town of Derry to eradicate milfoil from Beaver Lake;

NOW, THEREFORE, BE IT RESOLVED IN COUNCIL that the Town Administrator is hereby authorized to apply for, accept and expend grant funds derived from the Department of Environmental Services; to execute all necessary documents to provide for milfoil treatment on Beaver Lake; and to execute an agreement with the Beaver Lake Improvement Association to receive their financial contribution of 25% of the cost of eradication.

This Resolution shall take effect immediately upon its passage.

Adopted: February 5, 2019

Attest:

x 

James P. Morgan, Council Chair

Date: 2-5-19

x 

Daniel Healey, Town Clerk

Date: 2-5-19

**Attachment A
Budget Estimates**

HERBICIDE

Item/Service	Cost
Permitting	\$1,350
Treatment (labor, herbicide & posting)	\$8,530
Biological Surveys/Reporting/Sampling	\$2,900
Total	\$12,780*

*DES will pay up to 25% of the total project cost amounting to \$3,195.

Attachment B

Waterbody Name	Town	Grant Award
Balch Lake	East Wakefield	\$15,304.00
Beaver Lake	Derry	\$3,195.00
Big Island Pond	Derry	\$8,073.00
Cobbetts Pond	Windham	\$4,746.00
Contoocook Lake	Jaffrey & Rindge	\$13,030.00
Danforth Ponds	Freedom	\$12,192.00
Flints Pond	Hollis	\$1,487.00
Forest Lake	Winchester	\$3,610.00
Glen Lake	Goffstown	\$3,681.00
Gorham Pond	Dunbarton	\$4,232.00
Horseshoe/Naticook	Merrimack	\$4,437.00
Jones/Downing/Marsh	New Durham/Alton	\$8,838.00
Lees Pond	Moultonborough	\$5,641.00
Long Pond	Danville and Kingston	\$7,449.00
Massasecum	Bradford	\$1,250.00
Melendy/Potanipo	Brookline	\$10,999.00
Milton Three Ponds	Milton	\$5,900.00
Monomonac	Rindge	\$3,865.00
Namaske Lake	Manchester	\$13,186.00
Nashua River	Nashua	\$15,573.00
Northwood Lake	Northwood	\$15,932.00
Opechee	Laconia	\$2,462.00
Ossipee Lake	Ossipee	\$5,546.00
Pearly Pond	Rindge	\$6,295.00
Phillips Pond	Sandown	\$8,490.00
Pine Island Pond	Manchester	\$2,275.00
Post Pond	Lyme	\$7,039.00
Powwow Pond	Kingston & East Kingston	\$14,748.00
Robinson and Otternic	Hudson	\$15,939.00
Rocky Pond	Canterbury	\$6,044.00
Scobie	Francestown	\$4,848.00
Silver Lake	Tilton & Belmont	\$1,243.00
Squam Lake	Holderness	\$12,366.00
Suncook Lakes/River/Barnstead Ponds	Barnstead	\$9,905.00
Sunrise Lake	Middleton	\$5,958.00
Turee Pond	Bow	\$5,349.00
Winnepesaukee	Alton	\$12,389.00
Winnepesaukee	Gilford	\$6,550.00
Winnepesaukee	Laconia	\$14,618.00
Winnepesaukee	Meredith	\$8,712.00
Winnepesaukee	Moultonborough	\$60,000.00
Winnepesaukee	Tuftonboro	\$5,601.00
Winnepesaukee	Wolfeboro	\$5,991.00
Winnisquam	Laconia	\$11,599.00




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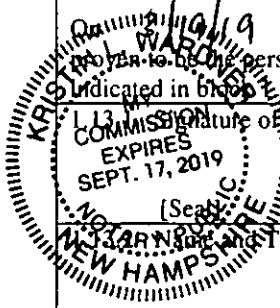
AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name Department of Environmental Services		1.2 State Agency Address 29 Hazen Drive Concord, NH 03301	
1.3 Contractor Name Town of Merrimack		1.4 Contractor Address P.O. Box 940 Merrimack, NH 03054	
1.5 Contractor Phone Number (603) 424-2331	1.6 Account Number 03-44-44-14300000-073	1.7 Completion Date December 31, 2019	1.8 Price Limitation \$4,437.00
1.9 Contracting Officer for State Agency Amy P. Smagula		1.10 State Agency Telephone Number 603-271-2248	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory Eileen Cabanel Town manager	
1.13 Acknowledgement: State of NH, County of Hillsborough			
I, _____, before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily by 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 Signature of Notary Public or Justice of the Peace 			
1.13 Title of Notary or Justice of the Peace Kristin L. Wardner, Notary Public			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory Robert R. Scott, Commissioner, NHDES	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By: _____ On: 5/9/19			
1.18 Approval by the Governor and Executive Council (if applicable) By: _____ On: _____			



2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.18, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.14 ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated 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 Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision 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 Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. This may include the requirement to utilize auxiliary aids and services to ensure that persons with communication disabilities, including vision, hearing and speech, can communicate with, receive information from, and convey information to the Contractor. In addition, the Contractor shall comply with all applicable copyright laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this

Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

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

8.2.1 give the Contractor 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 Contractor notice of termination;

8.2.2 give the Contractor 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 contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

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

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

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 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 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.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. TERMINATION. In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

11. CONTRACTOR'S RELATION TO THE STATE. In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS. The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice and consent of the State. None of the Services shall be subcontracted by the Contractor without the prior written notice and consent of the State.

13. INDEMNIFICATION. The Contractor 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 or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. 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 in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate ; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than thirty (30) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than thirty (30) days prior written notice of cancellation or modification of the policy.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A (*"Workers' Compensation"*).

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. 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 of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default 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 Event of Default on the part of the Contractor.

17. 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 given in blocks 1.2 and 1.4, herein.

18. 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 Executive Council of the State of New Hampshire unless no

such approval is required under the circumstances pursuant to State law, rule or policy.

19. CONSTRUCTION OF AGREEMENT AND TERMS.

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

20. 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.

21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. SPECIAL PROVISIONS. Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

23. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. 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

1. The Town of Merrimack is the grantee for this project. The New Hampshire Department of Environmental Services (NHDES) is referred to as the "state." Amy P. Smagula of the Watershed Management Bureau is the grant officer for the state.
2. Variable milfoil, an invasive aquatic plant, has become a nuisance problem in various portions Horseshoe Pond and Naticook Lake, and the grantee is seeking grant funds to assist in control efforts in 2019.
3. The grantee shall ensure that the contractors (selected through a competitive bid process) adhere to the following project-specific tasks:

For the diver work in Naticook and Horseshoe Pond in 2019, the grantee will ensure that the diver(s) perform(s) the following tasks:

- Task 1 Notify the NHDES Exotic Species Program of the scope and timing of the project, and how the materials removed from the pond will be disposed of, and the names of the divers performing the work, at least two weeks before the work is scheduled to begin. Divers performing this work must be certified Weed Control Divers in New Hampshire.
 - Task 2 Notify NHDES within 5 business days of when the work is completed by submitting a daily dive report for work that was performed, per the reporting examples provided in the Weed Control Diver course.
4. NHDES will provide monetary support to you for up to 25% of the total project cost as outlined in the project bids, up to the amount specified in this document.

Should the cost of the diver work be lower than the bids for those projects, remaining grant funds may be used match costs associated with other NHDES approved milfoil control projects in the above referenced waterbodies.

Initials: SMR
Date: 3/19/19

Exhibit B
Grant Amount and Payment Schedule

Payments shall be made by NHDES to the grantee upon approval of stated outputs and verification of the value of completed work through submittal of invoices for services rendered. NHDES will pay the Town of Merrimack up to \$4,437.00, within 30 days of receiving a copy of the contractor's invoice(s) for completion of the tasks outlined in #3 above.

The grantee is responsible for paying the contractor.

The billing address shall be as follows:

NH Department of Environmental Services
29 Hazen Drive, PO Box 95
Concord, NH 03302-0095
Attn: Amy Smagula, Watershed Management Bureau
E-mail: Amy.Smagula@des.nh.gov

Invoices shall be approved by the Grant Officer before payment is processed.

Initials: AMS
Date: 3/19/19

Exhibit C
Special Provisions

Paragraph 14 is waived with respect to the Grantee. However, the Grantee shall ensure that the contractor or subcontractor hired by the Grantee to perform the work shall meet the insurance requirements of Paragraph 14.

Initials: EV
Date: 3/19/19

CERTIFICATE OF AUTHORITY

I, Diane Trippett, Town Clerk of the Town of Merrimack, do
(Printed Name of Certifying Officer) (Office) (Grantee)

hereby certify that:

- (1) I am the duly elected Town Clerk ;
(Office)
- (2) at the meeting held on March 14, 2019, the Town Council voted to accept
(Date) (Organization)
DES funds and to enter into a contract with the Department of Environmental Services;
- (3) the Town Council further authorized the Town Manager or designee to execute any
(Organization) (Office of Person Authorized to Sign Grant Agreement)
documents which may be necessary for this contract;
- (4) this authorization has not been revoked, annulled, or amended in any manner whatsoever, and remains in full force and effect as of the date hereof; and
- (5) the following person has been appointed to and now occupies the office indicated in (3) above:

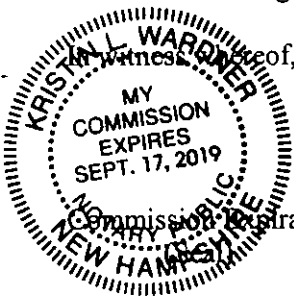
Eileen Cabanel
(Printed name of person who signed Grant Agreement)

IN WITNESS WHEREOF, I have hereunto set my hand as the Town Clerk of
(Office of Certifying Officer)
the Town of Merrimack, this 19 day of March, 2019.
(Organization)

Diane Trippett
(Signature of Certifying Officer)

STATE OF New Hampshire
County of Hillsborough

On this the 19 day of March, 2019, before me Kristin L. Wardner
(Notary Public)
the undersigned officer, personally appeared Diane Trippett who acknowledged
(Printed Name of Certifying Officer)
him/herself to be the Town Clerk of the Organization being authorized so to do,
(Office)
executed the foregoing instrument for the purpose therein contained.



Kristin L. Wardner
(Notary Public Signature)

In witness whereof, I have set my hand and official seal.
Commission Registration Date: 9/17/2019

**Attachment A
Budget Estimates**

DIVER/DIVER-ASSISTED SUCTION HARVESTING

Item/Service	Cost
8 Days Exotic Aquatic Plant Removal Services and Disposal of Harvested Materials in HORSESHOE	\$7,900
10 Days Exotic Aquatic Plant Removal Services and Disposal of Harvested Materials in NATICOOK	\$9,850
Total	\$17,750*

*DES will pay up to 25% of the total project cost (\$4,437.50) as outlined in the bid.

Attachment B

Waterbody Name	Town	Grant Award
Balch Lake	East Wakefield	\$15,304.00
Beaver Lake	Derry	\$3,195.00
Big Island Pond	Derry	\$8,073.00
Cobbetts Pond	Windham	\$4,746.00
Contoocook Lake	Jaffrey & Rindge	\$13,030.00
Danforth Ponds	Freedom	\$12,192.00
Flints Pond	Hollis	\$1,487.00
Forest Lake	Winchester	\$3,610.00
Glen Lake	Goffstown	\$3,681.00
Gorham Pond	Dunbarton	\$4,232.00
Horseshoe/Naticook	Merrimack	\$4,437.00
Jones/Downing/Marsh	New Durham/Alton	\$8,838.00
Lees Pond	Moultonborough	\$5,641.00
Long Pond	Danville and Kingston	\$7,449.00
Massasecum	Bradford	\$1,250.00
Melendy/Potanipo	Brookline	\$10,999.00
Milton Three Ponds	Milton	\$5,900.00
Monomonac	Rindge	\$3,865.00
Namaske Lake	Manchester	\$13,186.00
Nashua River	Nashua	\$15,573.00
Northwood Lake	Northwood	\$15,932.00
Opechee	Laconia	\$2,462.00
Ossipee Lake	Ossipee	\$5,546.00
Pearly Pond	Rindge	\$6,295.00
Phillips Pond	Sandown	\$8,490.00
Pine Island Pond	Manchester	\$2,275.00
Post Pond	Lyme	\$7,039.00
Powwow Pond	Kingston & East Kingston	\$14,748.00
Robinson and Otternic	Hudson	\$15,939.00
Rocky Pond	Canterbury	\$6,044.00
Scobie	Francestown	\$4,848.00
Silver Lake	Tilton & Belmont	\$1,243.00
Squam Lake	Holderness	\$12,366.00
Suncook Lakes/River/Barnstead Ponds	Barnstead	\$9,905.00
Sunrise Lake	Middleton	\$5,958.00
Turee Pond	Bow	\$5,349.00
Winnepesaukee	Alton	\$12,389.00
Winnepesaukee	Gilford	\$6,550.00
Winnepesaukee	Laconia	\$14,618.00
Winnepesaukee	Meredith	\$8,712.00
Winnepesaukee	Moultonborough	\$60,000.00
Winnepesaukee	Tuftonboro	\$5,601.00
Winnepesaukee	Wolfboro	\$5,991.00
Winnisquam	Laconia	\$11,599.00

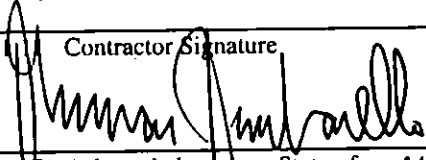
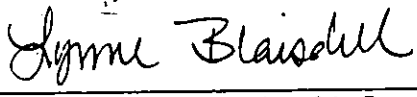
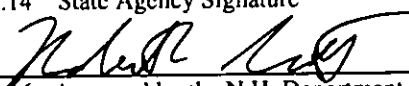
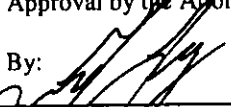
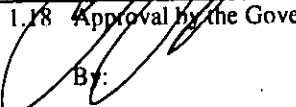
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name Department of Environmental Services		1.2 State Agency Address 29 Hazen Drive Concord, NH 03301	
1.3 Contractor Name Town of Sandown		1.4 Contractor Address P.O. Box 1756 320 Main Street Sandown, NH 03873	
1.5 Contractor Phone Number 603 887-0212	1.6 Account Number 03-44-44-14300000-073	1.7 Completion Date December 31, 2019	1.8 Price Limitation \$8,490.00
1.9 Contracting Officer for State Agency Amy P. Smagula		1.10 State Agency Telephone Number 603-271-2248	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory Thomas Tombarello Chairman, Board of Selectmen	
1.13 Acknowledgement: State of <u>NH</u> , County of <u>ROCKINGHAM</u> On <u>March 18, 2019</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]		LYNNE C. BLAISDELL Notary Public - New Hampshire My Commission Expires May 27, 2020	
1.13.2 Name and Title of Notary or Justice of the Peace Lynne Blaisdell Notary Public			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory Robert R. Scott, Commissioner, NHDES	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By:  On: <u>5/19/19</u>			
1.18 Approval by the Governor and Executive Council (if applicable) By:  On: _____			

2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.18, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.14 ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated 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 Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.

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5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision 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 Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. This may include the requirement to utilize auxiliary aids and services to ensure that persons with communication disabilities, including vision, hearing and speech, can communicate with, receive information from, and convey information to the Contractor. In addition, the Contractor shall comply with all applicable copyright laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this

Contractor Initials JS
Date 3/18/2016

Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

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

8.2.1 give the Contractor 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 Contractor notice of termination;

8.2.2 give the Contractor 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 contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

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

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

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 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 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.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. **TERMINATION.** In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

11. **CONTRACTOR'S RELATION TO THE STATE.** In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. **ASSIGNMENT/DELEGATION/SUBCONTRACTS.** The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice and consent of the State. None of the Services shall be subcontracted by the Contractor without the prior written notice and consent of the State.

13. **INDEMNIFICATION.** The Contractor 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 or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. 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 in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

Contractor Initials: _____

Date: _____

3/18/2019

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than thirty (30) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than thirty (30) days prior written notice of cancellation or modification of the policy.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. 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 of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default 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 Event of Default on the part of the Contractor.

17. 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 given in blocks 1.2 and 1.4, herein.

18. 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 Executive Council of the State of New Hampshire unless no

such approval is required under the circumstances pursuant to State law, rule or policy.

19. CONSTRUCTION OF AGREEMENT AND TERMS.

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

20. 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.

21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. SPECIAL PROVISIONS. Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

23. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. 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.

Contractor Initials

Date



3/18/2012

Exhibit A
Town of Sandown Scope of Services

1. The Town of Sandown is the grantee for this project. The New Hampshire Department of Environmental Services (NHDES) is referred to as the "state." Amy P. Smagula of the Watershed Management Bureau is the grant officer for the state.
2. Variable milfoil and fanwort, both invasive aquatic plants, have become nuisance problems in various portions of Phillips Pond, and the grantee is seeking grant funds to assist in control efforts in 2019.
3. The grantee shall ensure that the contractors (selected through a competitive bid process) adhere to the following project-specific tasks:

For herbicide treatment in 2019, the grantee will ensure that SOLitude Lake Management performs the following tasks:

- Task 1 Prepare and file Special Permit application with NH DPC (inclusive of the required abutter notifications, publication of newspaper notices and all costs associated with advertising and attending a public hearing, if required).
- Task 2 Perform chemical treatment of the subject waterbody per the bid specifications, inclusive of all labor, chemical, and equipment costs.
- Task 3 Conduct pre- and post-treatment surveys; coordinate water quality sampling for herbicide residues; and, submit the required written reporting to the State per the bid specifications.

For the diver work in 2019, the grantee will ensure that the diver(s) perform(s) the following tasks:

- Task 1 Notify the NHDES Exotic Species Program of the scope and timing of the project, and how the materials removed from the pond will be disposed of, and the names of the divers performing the work, at least two weeks before the work is scheduled to begin. Divers performing this work must be certified Weed Control Divers in New Hampshire.
 - Task 2 Notify NHDES within 5 business days of when the work is completed by submitting a daily dive report for work that was performed, per the reporting examples provided in the Weed Control Diver course.
4. NHDES will provide monetary support to you for up to 25% of the total project cost as outlined in the project bid, up to the amount specified in this document.

Should the cost of the herbicide or diver work be lower than the bids for those projects, remaining grant funds may be used match costs associated with other NHDES approved control projects in the above referenced waterbody.

Initials: JT

Date: 3/18/2019

Exhibit B
Town of Sandown Grant Amount and Payment Schedule

Payments shall be made by NHDES to the grantee upon approval of stated outputs and verification of the value of completed work through submittal of invoices for services rendered. NHDES will pay the Town of Sandown up to \$8,490.00, within 30 days of receiving a copy of the contractor's invoice(s) for completion of the tasks outlined in #3 above.

The grantee is responsible for paying the contractor(s), and submitting invoices to NHDES for reimbursement.

The billing address shall be as follows:

NH Department of Environmental Services
29 Hazen Drive, PO Box 95
Concord, NH 03302-0095
Attn: Amy Smagula, Watershed Management Bureau
E-mail: Amy.Smagula@des.nh.gov

Invoices shall be approved by the Grant Officer before payment is processed.

Initials:

Date:

3/18/2019

Exhibit C
Town of Sandown Special Provisions

Paragraph 14 is waived with respect to the Grantee. However, the Grantee shall ensure that the contractor or subcontractor hired by the Grantee to perform the work shall meet the insurance requirements of Paragraph 14.

Initials: TJ
Date: 3/18/2019

CERTIFICATE OF AUTHORITY

I, LYNNE BLAISDELL, TOWN ADMINISTRATOR of the TOWN OF SANDOWN, do
(Printed Name of Certifying Officer) (Office) (Grantee)

hereby certify that:

- (1) I am the duly elected TOWN ADMINISTRATOR, BOARD OF SELECTMEN OF THE
(Office)
- (2) at the meeting held on 3-18-19, the TOWN OF SANDOWN voted to accept
(Date) (Organization)
DES funds and to enter into a contract with the Department of Environmental Services;
- (3) the TOWN OF SANDOWN further authorized the CHAIRMAN to execute any
(Organization) (Office of Person Authorized to Sign Grant Agreement)
documents which may be necessary for this contract;
- (4) this authorization has not been revoked, annulled, or amended in any manner whatsoever, and remains in full force and effect as of the date hereof; and
- (5) the following person has been appointed to and now occupies the office indicated in (3) above:

THOMAS TOMBARELLO
(Printed name of person who signed Grant Agreement)

IN WITNESS WHEREOF, I have hereunto set my hand as the TOWN ADMINISTRATOR of
(Office of Certifying Officer)
the TOWN OF SANDOWN, this 18th day of March
(Organization)

Lynne Blaisdell
(Signature of Certifying Officer)

STATE OF New Hampshire

County of Rockingham

On this the 18th day of March, before me Judith E. Devine
(Notary Public)

the undersigned officer, personally appeared Lynne Blaisdell who acknowledged
(Printed Name of Certifying Officer)
himself to be the Town Administrator of the Organization being authorized so to do,
(Office)

executed the foregoing instrument for the purpose therein contained.

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

Judith E. Devine
(Notary Public Signature)

Commission Expiration Date:
(Seal)

JUDITH E. DEVINE, Notary Public
State of New Hampshire
My Commission Expires January 24, 2023

**Attachment A
Budget Estimates**

HERBICIDE

Item/Service	Cost
Permitting	\$1,560
Treatment (labor, herbicide & posting)	\$20,328
Biological Surveys/Residue Sampling/Reporting	\$5,450
Total	\$27,338*

*DES will pay up to 25% of the total project cost (\$6,834.50) as outlined in the bid.

DIVER/DIVER-ASSISTED SUCTION HARVESTING

Item/Service	Cost
5 Days Exotic Aquatic Plant Removal Services and Disposal of Harvested Materials	\$6,625
Total	\$6,625*

*DES will pay up to 25% of the total project cost (\$1,656.25) as outlined in the bid.

Attachment B

Waterbody Name	Town	Grant Award
Balch Lake	East Wakefield	\$15,304.00
Beaver Lake	Derry	\$3,195.00
Big Island Pond	Derry	\$8,073.00
Cobbetts Pond	Windham	\$4,746.00
Contoocook Lake	Jaffrey & Rindge	\$13,030.00
Danforth Ponds	Freedom	\$12,192.00
Flints Pond	Hollis	\$1,487.00
Forest Lake	Winchester	\$3,610.00
Glen Lake	Goffstown	\$3,681.00
Gorham Pond	Dunbarton	\$4,232.00
Horseshoe/Naticook	Merrimack	\$4,437.00
Jones/Downing/Marsh	New Durham/Alton	\$8,838.00
Lees Pond	Moultonborough	\$5,641.00
Long Pond	Danville and Kingston	\$7,449.00
Massasecum	Bradford	\$1,250.00
Melendy/Potanipo	Brookline	\$10,999.00
Milton Three Ponds	Milton	\$5,900.00
Monomonac	Rindge	\$3,865.00
Namaske Lake	Manchester	\$13,186.00
Nashua River	Nashua	\$15,573.00
Northwood Lake	Northwood	\$15,932.00
Opechee	Laconia	\$2,462.00
Ossipee Lake	Ossipee	\$5,546.00
Pearly Pond	Rindge	\$6,295.00
Phillips Pond	Sandown	\$8,490.00
Pine Island Pond	Manchester	\$2,275.00
Post Pond	Lyme	\$7,039.00
Powwow Pond	Kingston & East Kingston	\$14,748.00
Robinson and Otternic	Hudson	\$15,939.00
Rocky Pond	Canterbury	\$6,044.00
Scobie	Francestown	\$4,848.00
Silver Lake	Tilton & Belmont	\$1,243.00
Squam Lake	Holderness	\$12,366.00
Suncook Lakes/River/Barnstead Ponds	Barnstead	\$9,905.00
Sunrise Lake	Middleton	\$5,958.00
Turee Pond	Bow	\$5,349.00
Winnepesaukee	Alton	\$12,389.00
Winnepesaukee	Gifford	\$6,550.00
Winnepesaukee	Laconia	\$14,618.00
Winnepesaukee	Meredith	\$8,712.00
Winnepesaukee	Moultonborough	\$60,000.00
Winnepesaukee	Tuftonboro	\$5,601.00
Winnepesaukee	Wolfeboro	\$5,991.00
Winnisquam	Laconia	\$11,599.00