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New Hampshire Fish and Game Department

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July 13, 2020

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

REQUESTED ACTION

Authorize the New Hampshire Fish and Game Department (NHFG) to enter into a grant agreement with the Littleton Water and Light (Vendor Code 159893) in the amount of \$50,000 to provide partial funding for the removal of the South Branch Gale River Dam located in Bethlehem, New Hampshire, effective upon Governor and Council approval through December 31, 2021. Funding is 100% Fisheries Habitat Funds.

Funding for this grant is available as follows:

03 75 75 752020-21270000 Inland Fisheries Management – Fisheries Habitat Management

20-07500-21270000-020-500208	Current Expenses	<u>FY2021</u> \$50,000
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EXPLANATION

Inland Fisheries Division staff conducted a comprehensive assessment of fish and stream crossings in the Ammonoosuc River watershed in 2013 and 2014. That assessment provided the Department and its partners the much needed data to identify high priority connectivity projects to benefit wild brook trout. During this same time period, a report was completed to identify high priority dam removal projects in the Upper Connecticut River watershed, from the White River in Vermont upstream to the Connecticut River headwaters. The South Branch Gale River dam was identified in that analysis to be one of the highest priority dams to remove to reconnect fish populations in small and large watersheds. Additionally, the USDA Forest Service recently replaced several stream crossings upstream of the dam to reconnect stream habitats.

This expenditure of funds was approved by the Fish and Game Commission at their meeting on February 12, 2020.

Respectfully submitted,

Glenn Normandeau
Executive Director

Kathy Ann LaBonte
Chief, Business Division

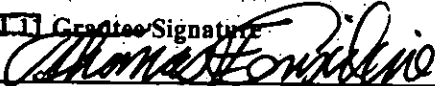

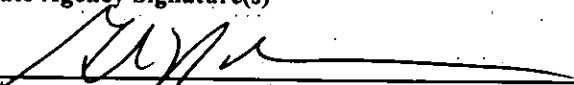
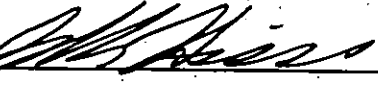
GRANT AGREEMENT

Subject: South Branch Gale River Dam Removal

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

GENERAL PROVISIONS

I. IDENTIFICATIONS AND DEFINITIONS

1.1 State Agency Name Fish and Game Department		1.2 State Agency Address 11 Hazen Drive Concord, NH 03301	
1.3 Grantee Name Littleton Water and Light		1.4 Grantee Address 65 Lafayette Ave. Littleton, NH 03561	
1.5 Effective Date Upon G&C approval	1.6 Completion Date December 31, 2021	1.7 Audit Date N/A	1.8 Grant Limitation \$50,000.00
1.9 Grant Officer for State Agency Glenn Normandeau, Executive Director		1.10 State Agency Telephone Number 603-271-3511	
1.1 Grantee Signature 		1.12 Name & Title of Grantee Signor THOMAS CONSIDINE, TREASURER	
1.6 Acknowledgment: State of New Hampshire, County of <u>Grafton</u> On <u>7/8/2020</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 Signature of Notary Public or Justice of the Peace (Seal) 			
1.13 Name & Title of Notary Public or Justice of the Peace Sharon A. Hampson		<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> SHARON A. HAMPSON ★ NOTARY PUBLIC - NEW HAMPSHIRE ★ My Commission Expires August 8, 2023 </div>	
1.14 State Agency Signature(s) 		1.15 Name/Title of State Agency Signor(s) Glenn Normandeau, Executive Director	
1.16 Approval by Attorney General's Office (Form, Substance and Execution) By:  Attorney, On: <u>7/27/2020</u>			
1.17 Approval by the Governor and Council By: _____ On: <u> / /</u>			

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

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

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

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

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

5. **GRANT AMOUNT: LIMITATION ON AMOUNT: VOUCHERS: PAYMENT.**

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

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

5.3 In accordance with the provisions set forth in EXHIBIT B, and in consideration of the satisfactory performance of the Project, as determined by the State, and as limited by subparagraph 5.5 of these general provisions, the State shall pay the Grantee the Grant Amount. The State shall withhold from the amount otherwise payable to the Grantee under this subparagraph 5.3 those sums required, or permitted, to be withheld pursuant to N.H. RSA 80:7 through 7-c.

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

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

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

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

7. **RECORDS AND ACCOUNTS.**

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

7.2 Between the Effective Date and the date seven (7) years after the Completion Date, at any time during the Grantee's normal business hours, and as often as the State shall demand, the Grantee shall make available to the State all records pertaining to matters covered by this Agreement. The Grantee shall permit the State to audit, examine, and reproduce such records, and to make audits of all contracts, invoices, materials, payrolls, records or personnel, data (as that term is hereinafter defined), and other information relating to all matters covered by this Agreement. As used in this paragraph, "Grantee" includes all persons, natural or fictional, affiliated with, controlled by, or under common ownership with, the entity identified as the Grantee in block 1.3 of these general provisions.

8. **PERSONNEL.**

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

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

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

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

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

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

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

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

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

10. **CONDITIONAL NATURE OF AGREEMENT.**

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

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

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

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

11.1.2 failure to submit any report required hereunder; or

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

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

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

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

11.2.2 give the Grantee a written notice specifying the Event of

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

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

12. TERMINATION.

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

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

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

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

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

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

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

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

17. INSURANCE AND BOND.

17.1 The Grantee shall, at its sole expense, obtain and maintain in force, or shall require any subcontractor, subgrantee or assignee

performing Project work to obtain and maintain in force, both for the benefit of the State, the following insurance:

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

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

17.2 The policies described in subparagraph 18.1 of this paragraph shall be the standard form employed in the State of New Hampshire, issued by underwriters acceptable to the State, and authorized to do business in the State of New Hampshire. Each policy shall contain a clause prohibiting cancellation or modification of the policy earlier than ten (10) days after written notice has been received by the State.

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

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

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

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

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

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

EXHIBIT A
SCOPE OF SERVICES

The Scope of Services is agreed to be as follows between Littleton Water and Light and the New Hampshire Fish and Game Department (NHFG).

Littleton Water and Light shall:

1. Provide for the removal of the South Branch Gale River Dam either by own forces or hiring an approved contractor.
2. Submit an invoice to NHFG up to \$50,000 as payment for the removal of the South Branch Gale River Dam by December 31, 2021.

New Hampshire Fish and Game shall:

1. Inspect completed work prior to grant payment.

EXHIBIT B
METHOD OF PAYMENT

Method of payment shall be as follows:

1. Upon the completion of the project, Littleton Water and Light shall submit an invoice not to exceed \$50,000. The following appropriation code shall be referenced on the invoice: 20-07500-21270000-020-500208.
2. Invoice will be paid within 30 days of approval.

EXHIBIT C
SPECIAL PROVISIONS

1. Little Water and Light shall not complete the removal of the South Branch Gale River Dam but shall retain an approved contractor to perform the work described herein.
2. Paragraph 17 is amended to the extent that Littleton Water and Light does not need to obtain the insurance requirements herein but shall require that its chosen contractor obtain the requisite insurance described in Paragraph 17 and provide documentation of such insurance to Littleton Water and Light.

Done
Done

Tom
7/27/20

Tom
7/27/20



Certificate of Vote

I, Thomas F. Considine, General Manager and Treasurer a duly authorized Senior Officer of the Littleton Water and Light (LWL), New Hampshire public water system 1381010 do hereby certify that at a regular business meeting held on Monday, July, 6 2020 the Littleton Water and Light Board of Commissioners voted unanimously to enter into a grant agreement with the New Hampshire Fish and Game Department (NHFG) in the amount of \$50,000 to provide partial funding for the removal of the South Branch Gale River dam (NHDES Dam No. D025011) located in Bethlehem, NH off the Gale River Loop Road, NHFG reference 20-07500-21270000-020-500208, LWL project 20-595.

In the State of New Hampshire, County of Grafton

On this 8 day of July, 2020 before me, the undersigned notary public, personally appeared Thomas F. Considine, who acknowledged himself to be the General Manager and Treasurer of the Littleton Water and Light a duly authorized Senior Officer being fully authorized to do so affirmed to me that the above statement is truthful and accurate to the best of his knowledge.

In witness thereof, I have set my hand and official seal

Notary Public Sharon A. Hampson My Commission expires

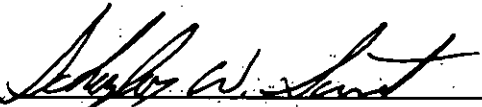




Certificate of Authorization

The Littleton Water and Light Board of Commissioners do hereby authorize **Thomas F. Considine**, General Manager and Treasurer a duly authorized Senior Officer of the Littleton Water and Light to execute any and all documents which may be necessary to effectuate the New Hampshire Fish and Game Departments (NHFG) grant agreement (NHFG reference 20-07500-21270000-020-500208) on behalf of the Littleton Water and Light (LWL Project No 20-595).

IN WITNESS WHEREOF, I have hereunto set my hand as the President of the Littleton Water and Light Board of Commissioner this 6th day of July 2020.



Schuyler Sweet, Commissioner
President

In the State of New Hampshire, County of Grafton

On this 6 day of July, 2020 before me, the undersigned notary public, personally appeared **Schuyler Sweet**, who acknowledged himself to be the President of the Littleton Water and Light Board of Commissioners, being a duly authorized most Senior Officer, and being fully authorized to do so execute the foregoing instrument for the purpose therein contained.

In witness thereof, I have set my hand and official seal



Notary Public:  My Commission expires: _____