

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

37
FIS 14 035 *Genh*

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOSEPH A. FOSTER
ATTORNEY GENERAL



ANN M. RICE
DEPUTY ATTORNEY GENERAL

February 26, 2014

The Honorable Mary Jane Wallner, Chairman
Fiscal Committee of the General Court
State House
Concord, NH 03301

Sutton
Approved by Fiscal Committee 2/21/14
Date

Her Excellency, Governor Margaret Wood Hassan
And the Honorable Council
State House
Concord, NH 03301

REQUESTED ACTION

1. Pursuant to RSA 14:30-a, IV, authorize the Department of Justice to accept and expend \$300,000 from the Department of Environmental Services for reimbursement of the costs associated with the services rendered by Underwood Engineering, LLC for the overall assessment of the Hooksett Wastewater Treatment Facility and to serve as the Department of Justice's expert witness in pending litigation effective on the date of the Fiscal Committee and Governor and Council approvals through December 30, 2014. 100% Agency Income.
2. Authorize the Department of Justice to enter into a **retroactive** Memorandum of Understanding with the Department of Environmental Services to provide the management and oversight of the contract with Underwood Engineers, Inc., which is responsible for the overall assessment of the Hooksett Wastewater Treatment Facility effective August 5, 2013 through December 30, 2014. 100% Agency Income.

These funds are available in the Department of Environmental Services, CWSRF Loan Management, Contracts for Program Services, accounting unit number 03-44-44-441018-4788-102-500731.

The funds are to be budgeted in account #02-20-20-200010-2601, Department of Justice, as follows:

Department of Justice Attorney General 02-20-20-200010-2601				
Class	Description	Current Budget	Requested Action	New Budget
010-500100	Personal Services Perm	\$232,390	\$0	\$232,390
011-500102	Personal Services - Unclass	\$116,470	\$0	\$116,470
012-500128	Personal Services - Unclass	\$100,343	\$0	\$100,343
013-500132	Personal Services - Unclass	\$94,920	\$0	\$94,920
015-500137	Personal Services - Unclass	\$92,706	\$0	\$92,706
017-500147	Employees Special Provis	\$75,947	\$0	\$75,947
018-500106	Overtime	\$1,000	\$0	\$1,000
020-500200	Current Expense	\$47,975	\$0	\$47,975
024-500227	Maint. Other than Build-Gnds	\$3,069	\$0	\$3,069
026-500251	Membership Fees	\$30,000	\$0	\$30,000
027-502799	Transfers to DOIT	\$52,763	\$0	\$52,763
035-500035	Shared Services	\$49,521	\$0	\$49,521
039-500188	Telecommunications	\$15,000	\$0	\$15,000
049-500246	Trans. to other State Agencies	\$2,750	\$0	\$2,750
057-500531	Books, Periodicals, Subscript.	\$111,550	\$0	\$111,550
060-500601	Benefits	\$301,913	\$0	\$301,913
066-500543	Employee Training	\$500	\$0	\$500
070-500704	In-State Travel	\$7,000	\$0	\$7,000
073-500581	Grants - non-Federal	\$150,000	\$0	\$150,000
080-500714	Out of State Travel	\$3,500	\$0	\$3,500
232-500767	Witness Fees	\$365,000	\$0	\$365,000
233-500769	Litigation Expense	<u>\$1,250,000</u>	<u>\$300,000</u>	<u>\$1,550,000</u>
	Total	\$3,104,317	\$300,000	\$3,404,317
<u>Revenue</u>				
009-402325	Agency Income	\$194,840	\$300,000	\$494,840
	General Fund	<u>\$2,909,477</u>	<u>\$0</u>	<u>\$2,909,477</u>
	Total	\$3,104,317	\$300,000	\$3,404,317

EXPLANATION

The Department of Justice has entered into a retroactive Memorandum of Understanding (“MOU”) with the Department of Environmental Services to provide the management and oversight of the contract with Underwood Engineers, Inc. (“Underwood”) which is responsible for the overall assessment of the Hooksett Wastewater Treatment Facility (“WTF”). Underwood will serve as the Department of Justice’s expert witness in pending litigation. The MOU is retroactive due to the administrative process.

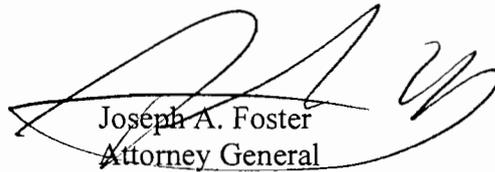
The WTF was upgraded over the last decade using both Federal and State grants in order to increase capacity. As part of the upgrade, the WTF began using biofilm chips in the form of small plastic discs in its bioremediation tanks. These discs increase efficiency. However, in 2011, the discs "blinded" the screen sieves that guard the exit of the bioremediation tanks. As a result, no effluent could leave the tanks through the exit manifold and the tanks overflowed into the parking lot. All of the effluent, along with several million discs, escaped to the Merrimack River. The Town of Hooksett incurred over \$1M in cleanup costs and the WTF still does not perform to specifications. The discharge in 2011 violates several environmental statutes.

The Town and the State have sued the disc manufacturer, the plant designer, and the contractor who built the plant seeking penalties for the unlawful discharge, cleanup costs for the Town and costs to redesign the WTF to a design that performs to specifications. Underwood will provide essential expertise with respect to the cause of the 2011 discharge and necessary remediation measures both during mediation and in the form of trial testimony if needed. All of the funding for Underwood from the Department of Environmental Services originates from a federal grant.

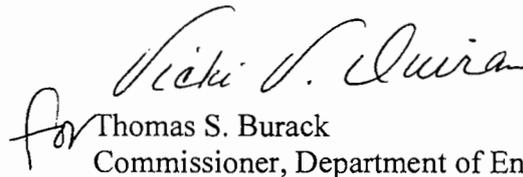
Please let me know if you have any questions concerning this request.

Your consideration is greatly appreciated.

Respectfully submitted,



Joseph A. Foster
Attorney General



for Thomas S. Burack
Commissioner, Department of Environmental Services

MEMORANDUM OF UNDERSTANDING

A. Agreement

This Memorandum of Understanding (“MOU”) between the New Hampshire Department of Environmental Services (hereinafter “DES”) and the New Hampshire Department of Justice (hereinafter “DOJ”) sets forth the terms and conditions whereby DES will pay the DOJ for DOJ’s costs associated with professional expert services provided by Underwood Engineering, LLC (hereinafter “Underwood”) with respect to the case of *State, et al. v. Kruger, Inc., et al.*

B. Contracting

DOJ will be responsible for establishing and maintaining the direct contractual relationship with Underwood.

C. Scope of Work

DOJ will provide the management and oversight of the contract with Underwood.

D. Payment for Services

The DOJ will be reimbursed for the costs associated with the services rendered by Underwood.

Funding shall be drawn from the DES CWSRF Loan Management, Contracts for Program Services, account number 03-44-44-41018-4788-102-500731. This account is fee funded. To the extent that this account is no longer available, DES will not be liable for the costs described herein.

Pursuant to its contract with Underwood, DOJ shall ensure that Underwood provides DOJ with appropriate documentation justifying expenses under this MOU which could include time sheets, invoices, receipts, and other similar information. DES shall have access to all such documentation. DES shall reimburse DOJ within 30 days of a receipt of any invoice or other request for payment from DOJ.

E. Evaluation

The services provided by Underwood must be satisfactory to DES and the DOJ. In the event that DES determines that the services are not provided in a satisfactory manner, DES shall report its concerns to the DOJ, and the DOJ shall take appropriate action to address these concerns. The DOJ reserves the right to terminate Underwood’s contract if necessary upon consultation with DES.

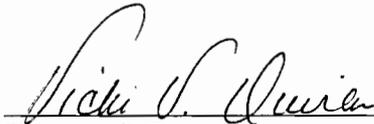
F. Miscellaneous

This MOU makes up the entire understanding between the parties. Neither party may further modify or amend the terms of this MOU except by written agreement signed by both parties.

Neither this MOU, nor any rights, duties, or obligations described herein, shall be assigned by either party hereto without the prior written consent of the other party. This Agreement shall be construed under the laws of the State of New Hampshire. Nothing herein shall function or be construed as a waiver of sovereign immunity, such immunity being hereby specifically reserved.

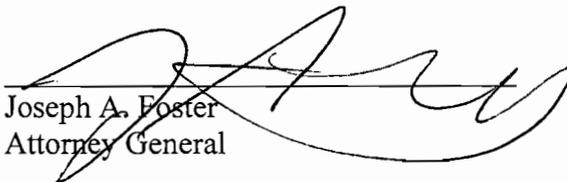
G. Duration

This MOU is effective August 5, 2013 and shall continue until terminated, subject to continued availability of funds. This MOU may be terminated by either party with 90 days notice.

for 

Thomas S. Burack
Commissioner, NH Department of
Environmental Services

2/26/14
Date



Joseph A. Foster
Attorney General

2-27-14
Date

