



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

October 29, 2013

Her Excellency, Governor Margaret Wood Hassan
and The Honorable Council
State House
Concord, NH 03301

REQUESTED ACTION

Authorize the Department of Environmental Services (DES)) to execute a no-cost time extension amendment to the Agreement (PO# 7000592) with John Turner Consulting (JTC), Dover, NH (VC #158313), by extending the completion date to June 30, 2015 from December 31, 2013 and changing the source of funds to the Maintenance of Dams account, effective upon Governor and Council approval. The original Agreement was approved by G&C on November 9, 2011 (Item #85). 100% Maintenance of Dams funds.

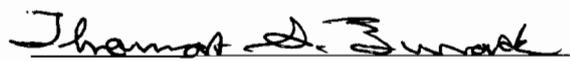
EXPLANATION

Under RSA 482:57, DES is responsible for the maintenance, repair and reconstruction of state owned dams. As required by NH dam safety rules, DES performs construction materials testing as part of repair and reconstruction activities at state-owned dams. These testing services are to assure proper construction quality control. The results of the tests are made available for historical documentation and record keeping.

In November 2011, DES contracted the services of John Turner Consulting to perform these tests on an "on-demand" basis. Several larger projects anticipated when the contract was originally requested have been delayed by other commitments and it is expected that the larger projects, requiring more testing, will be constructed in the current biennium. By extending the Agreement until June 30, 2015, the program is allowed to maintain current pricing for services and maintain the flexibility of an on-demand contract for construction materials testing for state-owned dam projects. Of the original \$60,000 contract amount, \$10,125 has been expended to date and \$49,875 remains available.

The original funding source for this Agreement was a Capital Account for Dam Repairs and Reconstruction to be performed in the 2012-2013 biennium pursuant to Chapter 253:1-VI-C, Laws of 2011. Since the testing services will now be required beyond the 2012-2013 biennium and will be required on dams reconstruction projects other than those identified in Chapter 253:1-VI-C, the funding source must be changed to the Dam Maintenance Account, which is the non-lapsing account established to fund the maintenance and repair of all state-owned dams.

The amendment has been approved by the Office of the Attorney General as to form, execution, and content. We respectfully request your approval.


Thomas S. Burack, Commissioner

**AMENDMENT #1
TO
CONTRACT
BETWEEN
DEPARTMENT OF ENVIRONMENTAL SERVICES
AND
JOHN TURNER CONSULTING, INC.**

**PROFESSIONAL SERVICES – ON DEMAND TESTING OF CONSTRUCTION
MATERIALS**

WHEREAS the State of New Hampshire has entered into an Agreement with John Turner Consulting, Inc. in the amount of \$60,000.00 for professional materials testing as required for state-owned dam repair and/or reconstruction projects effective October 27, 2011 through December 31, 2013.

WHEREAS the State of New Hampshire wishes to extend the end date of the Agreement from December 31, 2013 to June 30, 2015 to allow for additional work to be completed using these funds for projects that have been identified and are being pursued as repair and/or reconstruction projects throughout the State of New Hampshire.

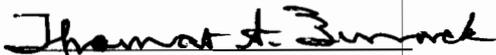
NOW THEREFORE, amend the original Agreement between the State of New Hampshire and John Turner Consulting, Inc. as approved by Governor and Council on November 9, 2011, as Item #85 in the following manner:

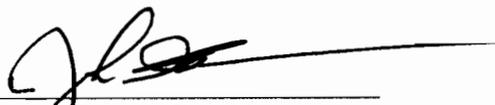
Change Section 1.6 of the Agreement (account number) to 03-44-44-442010-3817-102-500731.

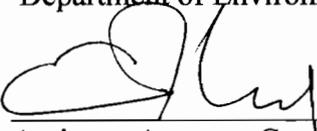
Change Section 1.7 of the Agreement (completion date) to June 30, 2015.

Change Section 2.11 of Exhibit A to read: Project Duration: Governor and Council approval through June 30, 2015.

All other conditions outlined in the contract shall remain in effect.


Thomas S. Burack, Commissioner
Department of Environmental Services


John D. Turner, President
John Turner Consulting, Inc.


Assistant Attorney General
Department of Justice

MEMORANDUM OF CORPORATE MEETING
and CERTIFICATE OF VOTE

for

John Turner Consulting, Inc.

NOW COMES, **John Turner Consulting, Inc.**, a corporation duly organized and existing under the laws of the State of New Hampshire, with its principal place of business at 19 Dover Street, Dover, County of Strafford and State of New Hampshire, by and through its Secretary, Albert E. Souther, Esq., and publishes the following:

1. On October 2, 2013, John Turner, as the President and sole-stockholder and sole Director of John Turner Consulting, Inc., met at the law office of Albert E. Souther, Esq., Secretary of the corporation, in order to authorize John Turner, as President and sole Director of John Turner Consulting, Inc., to execute any and all documents required by the New Hampshire Department of Environmental Services, regarding all contact obligations, authorizations for Change Orders, and any other documents required for employment by the New Hampshire Department of Environmental Services.
2. THEREFORE, as sole-shareholder, John Turner voted to authorize himself, as President and sole Director to execute the above-mentioned documents in the name of the corporation.
3. I hereby certify that said vote has not been amended or repealed and remains in full force and effect as of October 2, 2013, and that John Turner is the duly elected President and sole Director of this corporation.

Respectfully submitted,

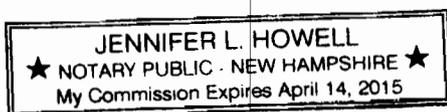


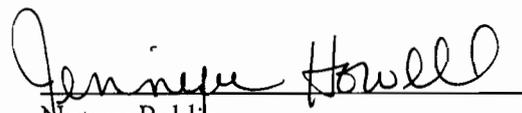
Albert E. Souther, Esq., Secretary
John Turner Consulting, Inc.

Date: October 2, 2013

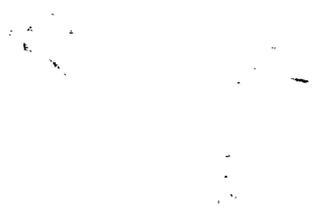
THE STATE OF NEW HAMPSHIRE
COUNTY OF STRAFFORD, SS

Personally appeared the above-named Albert E. Souther, Esq., in his capacity as Secretary of John Turner Consulting, Inc., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same for the purposes therein contained. Before me, this 2nd day of October, 2013.





Notary Public



State of New Hampshire Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that JOHN TURNER CONSULTING, INC. is a New Hampshire corporation duly incorporated under the laws of the State of New Hampshire on October 3, 1997. I further certify that all fees and annual reports required by the Secretary of State's office have been received and that articles of dissolution have not been filed.



In TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 24th day of May, A.D. 2013

A handwritten signature in cursive script, appearing to read "William M. Gardner".

William M. Gardner
Secretary of State



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

October 27, 2011

APPROVED G & C

DATE 11/9/11
ITEM # 89

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

REQUESTED ACTION

Authorize the Department of Environmental Services (DES) to enter into an Agreement with John Turner Consulting, Inc., (VC # 158313) Dover, New Hampshire in the amount of up to \$60,000.00 to provide on-demand construction materials testing services for repair and reconstruction projects at certain dams owned by the State of New Hampshire, effective upon Governor & Council approval through December 31, 2013. Funding is 100% Capital (General) Funds.

Funds are available in the account as follows:

FY 2012
03-44-44-442030-0957-034-500161 \$60,000.00
Dept of Environmental Services, 11,253:1-VI-C Dam Repairs and Reconstruction, Capital Projects

EXPLANATION

The State of New Hampshire owns 274 dams, including many of the largest and most economically important dams in the state. DES is responsible for the operation and maintenance of most state-owned dams. Many dam repair and reconstruction projects require construction materials testing per New Hampshire dam safety requirements. DES has multiple proposals in the planning stages that will require construction materials testing. Because the list of projects and schedules may be revised over time with changes in priorities, an "on-call" Agreement with a "not-to-exceed" price is the most efficient way to provide these services.

In August/September 2011, DES advertised in the Union Leader and on the DES website a request for qualifications and standard test rates from construction materials testing providers for on-demand construction materials testing services. DES received responses from S.W. Cole Engineering, Inc., of Somersworth, Geotechnical Services, Inc., of Goffstown, and John Turner Consulting, Inc., of Dover. DES approved the qualifications of all three companies. The rates were requested for the applicable ASTM (American Society for Testing and Materials) standard tests for soil and concrete, laboratory procedures, and mileage/expenses. A cost analysis was performed by applying the rates provided in the proposals received to a list of ten project locations around the state where testing services will

DES Web site: www.des.nh.gov

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

Telephone: (603) 271-3503 • Fax: (603) 271-2982 • TDD Access: Relay NH 1-800-735-2964

His Excellency, Governor John H. Lynch
and the Honorable Council

Page 2 of 2

likely be required during the duration of this contract. The primary criteria for rating proposals was the estimated cost to provide on-demand construction materials testing services for the ten projects. The results of the analysis are summarized in the following table (a more complete summary table by project is provided in Attachment A).

Construction Materials Testing Provider	Estimated Total Project Costs
S.W. Cole Engineering, Inc.	\$136,679.36
Geotechnical Services, Inc.	\$74,210.00
John Turner Consulting, Inc.	\$55,440.00

Based on the lowest cost of the proposals received, John Turner Consulting, Inc., was selected to establish an agreement for on-demand construction testing services using the rates and expenses provided in their proposal. DES has negotiated terms and conditions for the services to be provided, the process for establishing scopes of work for individual projects, authorization to conduct work, billing rates, and a not-to-exceed cost of \$60,000 for this agreement with John Turner Consulting, Inc.

Because the number and choice of testing for each project varies, individual scopes of work must be established for each project. The process for this is outlined in Exhibit A (Services). The agreement has been approved by the Office of the Attorney General as to form, execution, and content.

We respectfully request your approval.



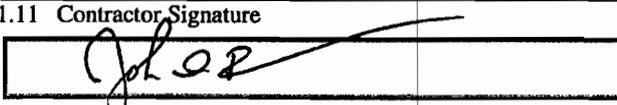
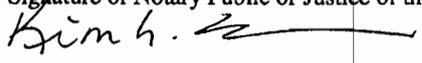
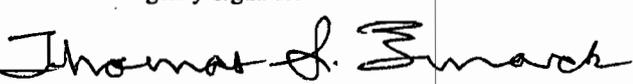
Thomas S. Burack
Commissioner

Subject: On Demand Construction Materials Testing FORM NUMBER P-37 (version 1/09)

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

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name <u>NH Department of Environmental Services</u>		1.2 State Agency Address <u>95 Hazen Drive - PO Box 95, Concord, NH 03302-0095</u>	
1.3 Contractor Name <u>John Turner Consulting, Inc.</u>		1.4 Contractor Address <u>10 Dover Street Dover, NH 03820</u>	
1.5 Contractor Phone Number <u>603-234-0850</u>	1.6 Account Number <u>03-94-44-44 2030-0957-034</u>	1.7 Completion Date <u>December 31, 2013</u>	1.8 Price Limitation <u>\$60,000.00</u>
1.9 Contracting Officer for State Agency <u>Kent R. Finemore, P.E.</u>		1.10 State Agency Telephone Number <u>603-271-0566</u>	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory <u>John D. Turner, President</u>	
1.13 Acknowledgement: State of <u>New Hampshire</u> , County of <u>Rockingham</u> On <u>9/8/2011</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]		KIM L. SEYMOUR NOTARY PUBLIC State of New Hampshire My Commission Expires September 17, 2013	
1.13.2 Name and Title of Notary or Justice of the Peace <u></u>			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory <u>Thomas S. Burack, Commissioner</u>	
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) By:  Evan M. Hallett On: <u>10-24-2011</u>			
1.18 Approval by the Governor and Executive Council 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, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("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. 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 consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Contractor without the prior written 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 \$250,000 per claim and \$2,000,000 per occurrence; and

14.1.2 fire and extended coverage insurance 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 fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be

Contractor Initials JOA
Date 10/18/11

attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) 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.

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 SERVICES

1. WORK TO BE PERFORMED BY THE CONTRACTOR

- 1.1 Work Program: The Work Program, as described below in Section 2, contains certain activities to be performed with the funds pursuant to this Agreement.
- 1.2 Contractor Assurance: John Turner Consulting, Inc., heretofore known as the "Contractor", in consideration of the compensation to be provided pursuant to this Agreement, hereby covenants and agrees to perform and carry out in a satisfactory and proper manner, as determined by the Department of Environmental Services (DES), those activities identified and more particularly described below in the Work Program (individual work tasks and services).
- 1.3 Work Products: All materials, maps, reports, documents and other work products specified in the Work Program for preparation and submission by the Contractor shall be submitted to DES on or before the due dates, and in the number of copies and format specified in the Work Program.

2. WORK PROGRAM

- 2.1 Title: On Demand Construction Materials Testing Agreement.
- 2.2 Project Locations: Certain state-owned dams as authorized by DES.
- 2.3 Objective: The purpose of this agreement is to provide "on-call" construction materials testing services at certain dams owned by the State of New Hampshire.
- 2.4 Background/Description: The State of New Hampshire owns 274 dams, including many of the largest and most economically important dams in the state. DES serves as "owner" to most of those dams, and is responsible for the operation and maintenance of those and most other state-owned dams. Many dam repair and reconstruction projects require construction materials testing per New Hampshire dam safety requirements. DES has multiple proposals in the planning stages that will require construction materials testing. Because the list of projects and schedules may be revised over time with changes in priorities, an "on-call" Agreement with a "not-to-exceed" price is the most efficient way to provide these services.
- 2.5 Work Tasks: Project specific work tasks will be assigned by DES in a scope of work for each individual project. When DES has need for construction materials testing services, DES shall submit to the Contractor a proposed scope of work a minimum of 24-hours before the work is to be done. The Contractor will complete the scope of work within the time frame agreed to in scope of work unless otherwise mutually agreed to by all parties. Reports, forms and other

documentation will be submitted to DES prior to invoicing. The types of services required may include, but are not necessarily limited to, any combination of the following:

ASTM soil testing methods:

- C117 (sieve analysis fines)
- C136 (sieve analysis)
- D422 (sieve/hydrometer analysis)
- D698 (laboratory compaction)
- D1556 (density – sand cone method)
- D1557 (modified Proctor)
- D2434 (constant head permeability)
- D2922 (nuclear density)
- D3080 (direct shear – consolidated, drained)
- D5084 (hydraulic conductivity)

ASTM concrete testing methods:

- C31 (concrete test samples)
- C39 (compressive strength)
- C138 (unit weight)
- C143 (slump)
- C173 (air content)
- C1064 (temperature)

- 2.6 **Half Day and Full Day Rates:** Half Day rates are for time on-site for up to four hours. Full Day rates are for time on-site for up to eight hours. Travel time is not included in these rates.
- 2.7 **Soils Field Inspections:** Half Day and Full Day rates for soils field inspections shall include a certified field technician on-site to monitor the placement of soils and determine the in-place moisture and density of soils (D15556 and/or D2922). Charges shall be per person and no surcharge or other fee will be assessed if technician performs multiple services within a single time frame.
- 2.8 **Concrete with Reinforcing Steel Field Inspections:** Half Day and Full Day rates for concrete with reinforcing steel field inspections shall include a certified field technician on-site to inspect formwork, shoring and bracing, inspect reinforcing steel, perform quality control testing on-site to include slump test, air content, concrete and air temperature of fresh concrete at the time of making specimens for strength tests (C31, C138, C 143, C173, C1064), inspect concrete placement for proper application techniques, and inspect for maintenance of specified curing temperature and techniques.

John Turner Consulting, Inc.
On-Demand Construction Materials Testing Services Contract
Exhibit A - Services

- 2.9 Timeliness of Results: Results from Sieve Analysis (C117), Sieve Analysis Fines (C136), Laboratory Compaction (D698), and Modified Proctor (D1557) tests shall be made available to DES within 24 hours of the test. Results from Constant Head Permeability (D2434) test shall be made available to DES within 48 hours of the test. Results from Sieve/Hydrometer Analysis (D422) tests shall be made available to DES within 72 hours of the test.
- 2.10 Other Services: Hourly rates for Project Engineer, Special Inspector, Project Manager, Professional Engineer, and Principal can only be applied if specifically requested in writing by DES as an extra service and are not attachable to any other rates.
- 2.11 Project Duration: Governor and Council approval through December 31, 2013.

EXHIBIT B
AGREEMENT PRICE, METHOD, AND TERMS OF PAYMENT

1. PROGRAM COSTS AND REVIEW

- 1.1 **Program Costs:** As used in this Agreement, the term “program costs” shall mean all expenses directly or indirectly incurred by John Turner Consulting, Inc., heretofore referred to as the “Contractor”, in the performance of the program activities, as determined by the New Hampshire Department of Environmental Services (DES) to be eligible and allowable for payment in accordance with this Agreement and scopes of services approved under the provisions of this Agreement.
- 1.2 **Payment of Program Costs:** Subject to the terms and conditions of this agreement, DES agrees to pay the Contractor all allowable program costs, provided, however, that in no event shall the total of all payments made by the DES pursuant to this Agreement exceed the amount of the contract price as set out in paragraph 1.8 of the General Provisions and that the program costs have been incurred prior to the completion date. Program costs may be paid if requested within 90 days after the completion date.
- 1.3 **Payment of Reimbursable Program Costs:** DES agrees to reimburse the Contractor for program costs, except that program costs may be retained until the DES determines that a particular program activity or portion of the program activity hereunder has been satisfactorily completed.
- 1.4 **Conditions Precedent to Payment:** Notwithstanding the foregoing provisions of this Section or anything to the contrary contained herein, it is understood and agreed that each payment shall be conditioned upon DES’ s determination that the project activities have been and are being performed in a satisfactory manner.
- 1.5 **Review by DES; Disallowance of Costs:** At any time during the performance of the program activities, and upon receipt of any interim work products, progress reports, final work products, or an audited financial report, DES may review all program costs incurred by the Contractor and all payments made to date. Upon such review DES shall disallow any expense items which are not allowable or are determined to be in excess of actual expenditures and shall, by written notice specifying the disallowed expenditures, inform the Contractor of any such disallowance. If DES disallows costs for which payment has not yet been made, it shall refuse to pay such costs.

If payment has been made with respect to costs that are subsequently disallowed, DES may deduct the amount of disallowed costs from any future payments under this Agreement or require that the Contractor refund to the DES the amount of the disallowed costs.

2. PAYMENT PROCEDURE

DES shall pay to the Contractor the total reimbursable program costs in accordance with the following requirements:

Reimbursement requests for program costs shall be made by the Contractor per the rates for each test procedure in Table B-1. Documentation of reimbursable and matching costs may include invoices for test results, supplies, equipment, services, contractual services, and a report of personnel, travel and indirect costs. For projects that demonstrate progress solely through the submission of interim progress reports, payments shall be made upon receipt, review and approval of the interim progress report and accompanying payment request form.

TABLE B-1

Construction Materials Testing Rates

FIELD TESTING	UNITS	RATE
A. Soils Field Inspection (ASTM D1556 and/or D2922)	half day	\$115.00
	full day	\$215.00
B. Concrete with Reinforcing Steel Field Inspection (ASTM C31, C138, C143, C173, C1084)	half day	\$115.00
	full day	\$215.00
C. Nuclear Density Testing (D2922)	per visit	\$15.00
D. Project Engineer	per hour	\$50.00
E. Special Investigator	per hour	\$50.00
F. Project Manger	per hour	\$70.00
G. Professional Engineer	per hour	\$90.00
H. Prncpal	per hour	\$125.00
LABORATORY TESTING (ASTM SOIL TESTING METHODS)		
A. Sieve Analysis (C117)	each	\$25.00
B. Sieve Analysis fines (C136)	each	\$50.00
C. Sieve/Hydrometer Analysis (D422)	each	\$80.00
D. Laboratory Compaction (D698)	each	\$75.00
E. Modified Proctor (D1557)	each	\$75.00
F. Constant Head Permeability (D2434)	each	\$75.00
G. Direct Shear - Consolidated, Drained (D3080)	each	\$250.00
H. Hydraulic Conductivity (D5084)	each	\$250.00
LABORATORY TESTING (ASTM CONCRETE TESTING METHODS)		
A. Compressive Strength	each	\$9.00

EXHIBIT C
SPECIAL PROVISIONS

1. The New Hampshire Department of Environmental Services (DES) has negotiated terms and conditions for the services to be provided, the process for establishing scopes of work for individual projects, authorization to conduct work, billing rates, and a not-to-exceed cost for this Agreement with John Turner Consulting, Inc., heretofore referred to as the "Contractor". Because the number and choice of testing for each project varies, individual scopes of work requested by DES must be established for each project.
2. Project specific work tasks will be formulated by a scope of work for each individual project. DES alone has the responsibility of allocating projects or tasks (an "assignment"). When DES has need for construction materials testing services, DES shall contact the Contractor with a proposed scope of work. With a minimum notice of 24 hours, the Contractor shall be on-site to provide the services requested in the scope of work.
3. Only work authorized by DES under an approved scope of work will be eligible for compensation under this Agreement. DES will not approve payment for any work outside of the parameters set forth in an approved scope of services. Rates for testing procedures and services are provided in Exhibit B (Table B-1).
4. Assignment of subcontractors is not allowed under this contract without an approved amendment from the Governor and Executive Council.

MEMORANDUM OF CORPORATE MEETING
and CERTIFICATE OF VOTE

for

John Turner Consulting, Inc.

NOW COMES, **John Turner Consulting, Inc.**, a corporation duly organized and existing under the laws of the State of New Hampshire, with its principal place of business at 19 Dover Street, Dover, County of Strafford and State of New Hampshire, by and through its Secretary, Albert E. Souther, Esq., and publishes the following:

1. On October 7, 2011, John Turner, as the President and sole-stockholder and sole Director of John Turner Consulting, Inc., met at the law office of Albert E. Souther, Esq., Secretary of the corporation, in order to authorize John Turner, as President and sole Director of John Turner Consulting, Inc., to execute any and all documents required by the New Hampshire Department of Environmental Services, regarding all contact obligations, authorizations for Change Orders, and any other documents required for employment by the New Hampshire Department of Environmental Services.
2. THEREFORE, as sole-shareholder, John Turner voted to authorize himself, as President and sole Director to execute the above-mentioned documents in the name of the corporation.
3. I hereby certify that said vote has not been amended or repealed and remains in full force and effect as of October 7, 2011, and that John Turner is the duly elected President and sole Director of this corporation.

Respectfully submitted,



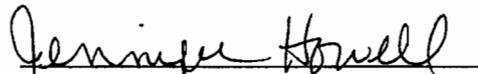
Albert E. Souther, Esq., Secretary
John Turner Consulting, Inc.

Date: October 7, 2011

THE STATE OF NEW HAMPSHIRE
COUNTY OF STRAFFORD, SS

Personally appeared the above-named Albert E. Souther, Esq., in his capacity as Secretary of John Turner Consulting, Inc., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same for the purposes therein contained. Before me, this 7th day of October, 2011.



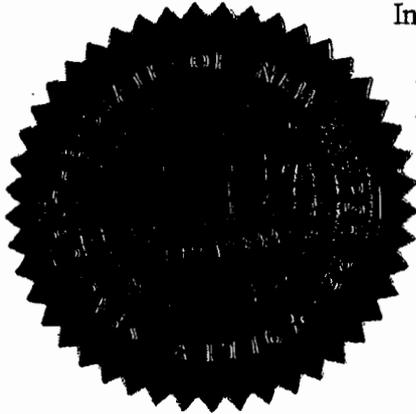


Notary Public

State of New Hampshire
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that JOHN TURNER CONSULTING, INC. is a New Hampshire corporation duly incorporated under the laws of the State of New Hampshire on October 3, 1997. I further certify that all fees and annual reports required by the Secretary of State's office have been received and that articles of dissolution have not been filed.



In TESTIMONY WHEREOF, I hereto
set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 13th day of October, A.D. 2011

A handwritten signature in black ink, appearing to read "William M. Gardner".

William M. Gardner
Secretary of State



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/7/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER John J. Flynn Ins Agy Inc 818 Central Ave Dover NH 03820		CONTACT NAME: John Flynn PHONE (A/C No. Ext): (603) 740-0140 FAX (A/C No.): (603) 743-3370 E-MAIL ADDRESS: John.Flynn@Flynninsurance.net PRODUCER CUSTOMER ID#: 00008232	
INSURED John Turner Consulting, Inc 19 Dover St. Dover NH 03820		INSURER(S) AFFORDING COVERAGE INSURER A: Peerless Insurance Company NAIC # 24198 INSURER B: National Grange Mutual Ins Co NAIC # 14788 INSURER C: INSURER D: INSURER E: INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** CL1110706551 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY			CBP9359962	10/20/2010	10/20/2011	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GENL. AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPOP AGG \$ N/A
B	AUTOMOBILE LIABILITY			B1T2515K	10/20/2010	10/20/2011	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Uninsured motorist property \$ 25,000 Uninsured motorist combined \$ 1,000,000
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 10,000			CU8551271	10/20/2011	10/20/2012	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N Y N/A	WC9354262	10/20/2011	10/20/2012	WC STATUTORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
 Business owner is excluded from worker compensation

CERTIFICATE HOLDER**CANCELLATION**

NH Department of Environmental Services PO Box 95 29 Hazen Drive Concord, NH 03302	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE John Flynn/SRM
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Attachment A

Summary of On-Demand Materials Testing Proposal Cost Analysis

		<i>Geotechnical Services, Inc.</i>	<i>John Turner Consulting, Inc.</i>	<i>S.W. Cole, Inc.</i>
Project	Town	Estimated Project Cost	Estimated Project Cost	Estimated Project Cost
Milton Three Ponds Dam	Milton	\$3,220.00	\$2,660.00	\$4,888.40
Highland Lake Dam	Stoddard	\$1,416.00	\$1,030.00	\$1,974.20
Boundary Pond Dam	Pittsburg	\$6,482.00	\$2,860.00	\$13,682.04
Seaver Dam	Harrisville	\$11,680.00	\$9,800.00	\$17,584.00
Ballard Pond Dam	Derry	\$6,520.00	\$6,225.00	\$13,800.00
Cass Pond Dam	Epsom	\$3,240.00	\$2,980.00	\$6,184.40
Northwood Lake Dam	Epsom	\$1,790.00	\$1,650.00	\$3,214.20
Barnstead Parade Dam	Barnstead	\$2,152.00	\$1,985.00	\$4,412.96
Scotts Bog Dam	Pittsburg	\$9,650.00	\$6,785.00	\$19,767.00
Mendums Pond Dam	Nottingham	\$14,285.00	\$12,820.00	\$23,982.32
Shehan Pond Dam	Clarksville	\$13,775.00	\$6,645.00	\$27,189.84
Total Cost		\$74,210.00	\$55,440.00	\$136,679.36