



The State of New Hampshire
Department of Environmental Services

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Robert R. Scott, Commissioner

April 28, 2022

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

REQUESTED ACTION

Authorize the Department of Environmental Services (NHDES) to enter into an Agreement with John Turner Consulting, Inc., (VC # 296984-B001) Dover, New Hampshire in the amount not-to-exceed \$30,000 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, 2024. Funding is 100% Maintenance of Dams Fund.

Funds are available in the account as follows:

	<u>FY 2022</u>
03-44-442010-38170000-102-500731	\$30,000
Dept. Environmental Services, Dam Maintenance Program, Contracts for Program Services	

EXPLANATION

The State of New Hampshire owns 274 dams, including many of the largest and most economically important dams in the state. NHDES 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. NHDES has multiple projects 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.

On February 16, 2022, NHDES posted on the Department of Administrative Services and NHDES websites a request for Letters of Interest from providers of construction materials testing services for a pre-qualified low-bid on-call contract. NHDES received responses from Prime Consulting, Inc., of Norton, MA, S.W. Cole of Londonderry, and John Turner Consulting, Inc., of Dover. NHDES approved the qualifications of S.W. Cole and John Turner Consulting, Inc., and both firms were provided a Request For Proposals and accompanying Bid Form to provide rates for the applicable ASTM (American Society for Testing and Materials) standard tests for soil and concrete, laboratory

and field procedures, and travel/expenses. A cost analysis was performed by applying the rates provided in the proposals received to a list of three typical project locations in the state where testing services are anticipated to be required during the duration of this contract. The primary criterion for rating proposals was the estimated cost to provide on-demand construction materials testing services for the three 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	\$54,570.00
John Turner Consulting, Inc.	\$34,675.00

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. NHDES 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 \$30,000 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.


Robert R. Scott, Commissioner


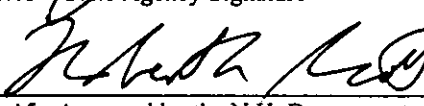
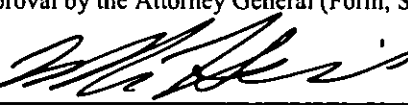
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name NH Department of Environmental Services		1.2 State Agency Address 29 Hazen Drive, PO Box 95 Concord, NH 03302-0095	
1.3 Contractor Name John Turner Consulting, Inc.		1.4 Contractor Address 19 Dover Street, Dover, NH 03820	
1.5 Contractor Phone Number 603-749-1841	1.6 Account Number 03-44-442010-38170000-102-500731	1.7 Completion Date December 31, 2024	1.8 Price Limitation \$30,000.00
1.9 Contracting Officer for State Agency Corey J. Clark, P.E.		1.10 State Agency Telephone Number 603-271-8871	
1.11 Contractor Signature  Date: 4/13/22		1.12 Name and Title of Contractor Signatory John Turner, President	
1.13 State Agency Signature  Date: 5/15/22		1.14 Name and Title of State Agency Signatory Robert R. Scott, Commissioner	
1.15 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.16 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By:  On: 5/16/2022			
1.17 Approval by the Governor and Executive Council (if applicable) G&C Item number: _____ G&C Meeting Date: _____			

Contractor Initials JS
 Date 4/13/22

2. 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 B 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 1.17, 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 1.13 ("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 affected by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part. 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 reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source 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 C 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 applicable 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 employment opportunity laws. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property 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 The Contractor 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 cured, 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 give the Contractor a written notice specifying the Event of Default and 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 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

8.3. 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.

9. TERMINATION.

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, 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 B. In addition, at the State's discretion, the Contractor shall, within 15 days of notice of early termination, develop and

submit to the State a Transition Plan for services under the Agreement.

10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

10.1 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.

10.2 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.

10.3 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.

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.

12.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State. For purposes of this paragraph, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.2 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State. The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

13. INDEMNIFICATION. Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the

Contractor Initials Jor
Date 4/13/22

Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. 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 continuously maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 commercial 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 or excess; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 10.2 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 ten (10) days prior to the expiration date of each insurance policy. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

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. The 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. **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.

17. **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.

18. **CHOICE OF LAW AND FORUM.** This Agreement shall be governed, interpreted and 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. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

19. **CONFLICTING TERMS.** In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and/or attachments and amendment thereof, the terms of the P-37 (as modified in EXHIBIT A) shall control.

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 or modifying provisions set forth in the attached EXHIBIT A 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 with respect to the subject matter hereof.

**EXHIBIT A
SPECIAL PROVISIONS**

There are no Special Provisions.

A-1

Contractor Initials QAS
Date 4/13/22

**EXHIBIT B
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 New Hampshire Department of Environmental Services (NHDES), 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 NHDES 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 NHDES.
- 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 275 dams, including many of the largest and most economically important dams in the state. NHDES 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. NHDES has multiple projects 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 NHDES in a scope of work for each individual project. When NHDES has need for construction materials testing services, NHDES 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 NHDES prior to invoicing. The types of services required may include, but are not necessarily limited to, any combination of the following laboratory and field tests:

Laboratories used for conducting the following tests shall be American Concrete Institute (ACI) accredited and be owned and operated by the Contractor. The Contractor shall maintain a laboratory or office where NHDES can drop off samples within one hour of Concord, NH.

ASTM soil and rock laboratory testing methods:

- C117 (aggregate sieve analysis fines)
- C136 (aggregate sieve analysis)
- D6913 (sieve/hydrometer analysis)
- D4318 (Atterberg Limit)
- D698 (laboratory compaction)
- D1557 (modified Proctor)
- D2434 (constant head permeability)
- D3080 (direct shear – consolidated, drained)
- D5084 (hydraulic conductivity)
- D2974 (organic content)
- D7012 (rock sample compressive test)

ASTM concrete laboratory testing methods:

- C39 (compressive strength)

Field technicians performing the following field tests shall hold a valid ACI accreditation, be trained in ASTM D6938 testing methods and be a direct employee of Contractor. Field inspection services shall be available at any time with 24 hours of notice from NHDES.

ASTM soil and rock field testing methods:

- D6938 (nuclear density)

ASTM concrete field testing methods:

- C31 (concrete test samples)
- C138 (unit weight)
- C143 (slump)
- C173 (air content)
- C1064 (temperature)
- C1611 (self-consolidating concrete slump)
- C1758 (self-consolidating concrete test samples)

2.6 Nuclear gauge rental rate: A single rate for the daily use of a nuclear gauge necessary to perform in-place moisture and density of soils in accordance with ASTM D6938. Time for the technician to use the nuclear gauge is not included in this rate.

2.7 Soils Field Inspections: Half Day and Full Day rates for soils field inspections shall include a certified field technician on-site to observe the placement and compaction of soils and determine the in-place moisture and density of soils (D1556 and/or D6938). Charges shall be

per person and include the time and effort necessary to perform the previously listed ASTM soil and rock field testing methods. No surcharge or other fee will be assessed if technician performs multiple services within a single time frame. 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.

- 2.8 Concrete Field Inspections: Half Day and Full Day rates for concrete inspections shall include a certified field technician on-site to perform quality control testing on fresh concrete for parameters such as slump, air content, air temperature, concrete temperature and the making of specimens for strength tests (C31, C138, C 143, C173, C1064) and including tests (C1611 and C1758) if self-consolidating concrete is used. All specimens for strength tests shall be stored in a container representing the area from which the sample was taken with temperatures being recorded in accordance with C31. Charges shall be per person and include the time and effort necessary to perform the previously listed ASTM concrete field testing methods. No surcharge or other fee will be assessed if technician performs multiple services within a single time frame. 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.
- 2.9 Timeliness of Results: Results from field testing shall be submitted to NHDES via email within one (1) week of performing field testing. Results from Concrete Compressive Strength (C39), Rock Compressive Strength (D7012), Sieve Analysis (C117), Sieve Analysis Fines (C136), Laboratory Compaction (D698), and Modified Proctor (D1557) tests shall be submitted to NHDES within 48 hours of completing the test. Results from Constant Head Permeability (D2434) and Sieve/Hydrometer Analysis (D422) tests shall be submitted to NHDES within 72 hours of completing the test.
- 2.10 Trip Charge for each NH County: A single rate for transportation and travel time to conduct on-site testing for soils or concrete within each County (Coos, Grafton, Carroll, Belknap, Sullivan, Merrimack, Strafford, Cheshire, Hillsborough, Rockingham) in NH. Trip charges will be based on which County the project site is located in.
- 2.11 Overtime Rate: Hourly overtime rate for time spent on-site over eight hours. Travel time is not included in this rate.
- 2.12 Sample Retrieval for each NH County: A single rate for sample retrieval shall include transportation and travel time to retrieve soil samples and/or concrete cylinder samples within each County of NH. Sample retrieval charges will be based on which County the site is located in.
- 2.13 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 NHDES as an extra service and are not attachable to any other rates.
- 2.14 Project Duration: Governor and Council approval through December 31, 2024

EXHIBIT C
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 (NHDES) 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, NHDES agrees to pay the Contractor all allowable program costs, provided, however, that in no event shall the total of all payments made by the NHDES 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: NHDES agrees to reimburse the Contractor for program costs, except that program costs may be retained until the NHDES 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 NHDES' determination that the project activities have been and are being performed in a satisfactory manner.
- 1.5 Review by NHDES; 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, NHDES may review all program costs incurred by the Contractor and all payments made to date. Upon such review NHDES 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 NHDES 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, NHDES may deduct the amount of disallowed costs from any future payments under this Agreement or require that the Contractor refund to the NHDES the amount of the disallowed costs.

2. PAYMENT PROCEDURE

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

C-1

Contractor Initials

Date

JOT
7/13/02

Reimbursement requests for program costs shall be made by the Contractor per the rates for each test procedure in Table C-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.

The total cost of this Agreement shall not exceed \$30,000.

TABLE C-1

Laboratory Testing Rates used in this Agreement

	Standard Turn Around Time	Expedited or Rush Turn Around Time
Soil, Rock and Concrete Laboratory Tests (ASTM Test Method)	Contract Rate per Test in (\$)	Contract Rate per Test in (\$)
(C117) sieve analysis fines	\$60.00	\$90.00
(C136) sieve analysis	\$60.00	\$90.00
(D6913) sieve/hydrometer analysis	\$130.00	\$175.00
(D4318) Atterberg Limit	\$90.00	\$125.00
(D698) laboratory compaction	\$120.00	\$150.00
(D1557) Modified Proctor	\$130.00	\$165.00
(D2434) constant head permeability	\$175.00	\$250.00
(D3080) direct shear – consolidated, drained	\$250.00	\$450.00
(D5084) hydraulic conductivity	\$400.00	\$600.00
(D2974) organic content	\$75.00	\$100.00
(D7012) rock sample compressive strength	\$500.00	\$700.00
(C39) concrete compressive strength	\$17.00	N/A

Half Day and Full Day Field Inspection Rates used in this Agreement

	Half Day Rate (up to 4 hours on site, not including travel time)	Full Day Rate (4 to 8 hours on site, not including travel time)
	Contract Rate per Inspection in (\$)	Contract Rate per Inspection in (\$)
Soils Field Inspection	\$220.00	\$400.00
Concrete Field Inspection	\$220.00	\$400.00

Overtime Rates used in this Agreement

	Contract Rate per Hour in Figures (\$)
Overtime Rate On-site (not including travel time)	\$80.00

Nuclear Gauge Rental used in this Agreement

	Contract Rate per Rental in (\$)
Nuclear Gauge Daily Rental	\$40.00

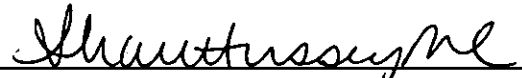
Trip Charge and Sample Retrieval Charge used in this Agreement

	On-site Testing Trip Charge	On-Site Sample Retrieval Charge
	Contract Rate per Trip in (\$)	Contract Rate per Trip in (\$)
Coos County	\$200.00	\$200.00
Grafton County	\$150.00	\$150.00
Carrol County	\$150.00	\$150.00
Belknap County	\$100.00	\$100.00
Sullivan County	\$100.00	\$100.00
Merrimack County	\$100.00	\$100.00
Strafford County	\$50.00	\$50.00
Cheshire County	\$100.00	\$100.00
Hillsborough County	\$100.00	\$100.00
Rockingham County	\$50.00	\$60.00

CERTIFICATE OF AUTHORITY – CORPORATE

1. I hereby certify that I, **Sharon Hussey McLaughlin**, am the *Clerk/Secretary* of: **John Turner Consulting, Inc.** Corporation; and that
2. **John D. Turner** is duly elected **President** of said Corporation; and that
3. On **January 1, 2022*** at a duly authorized meeting of the Board of Directors of said corporation at which all the Directors were present or waived notice, it was voted that **John D. Turner – President** of this corporation be and hereby is authorized to execute contracts and bonds in the name and on behalf of said corporation, and affix its Corporate Seal thereto, and such execution of any contract of obligation in this corporation's name on its behalf, with or without the Corporate Seal, shall be valid and binding upon this corporation; and that
4. The above vote has not been amended or rescinded and remains in full force and effect as of the date set forth below.

ATTEST:


(Signature of Clerk or Secretary)

Name:

Sharon Hussey McLaughlin
(type name of Clerk or Secretary)

Date:

April 13, 2022
(date Certificate signed by Clerk or Secretary)

*This date must be on or before the date that the corporate officer signs the contract.

**This date must be on or after the date that the corporate officer signs the contract.



State of New Hampshire

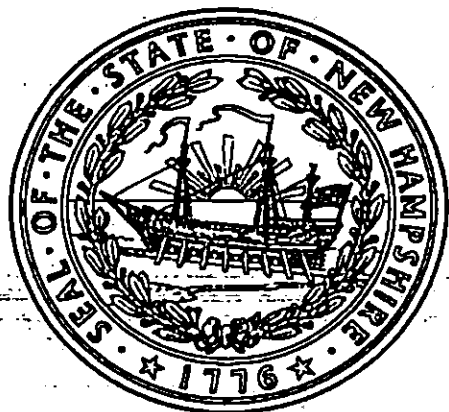
Department of State

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 Profit Corporation registered to transact business in New Hampshire on October 03, 1997. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 279565

Certificate Number: 0005746049



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 1st day of April A.D. 2022.

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

William M. Gardner
Secretary of State



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

04/18/2022

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 have ADDITIONAL INSURED provisions or 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 Cross Insurance 75 Portsmouth Blvd. Suite 100 Portsmouth NH 03801	CONTACT NAME: Paula Martineau	
	PHONE (A/C, No, Ext): (603) 812-2600 FAX (A/C, No): (603) 570-1073 E-MAIL ADDRESS: PortCerts@crossagency.com	
INSURED John Turner Consulting Inc & Fessenden Geo-Technical LLC Harper Environmental Associates 44 Lafayette Road, Suite 6 North Hampton NH 03862	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: The Phoenix Ins Co	25823
	INSURER B: Travelers Indemnity Co	25858
	INSURER C: Travelers Prop. Cas. Co. of America	25874
	INSURER D: The Charter Oak Fire Ins Co	25815
	INSURER E: Navigators Specialty Insurance Company	38058
INSURER F:		


COVERAGES CERTIFICATE NUMBER: 21-22 Master Liab JTC 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 SUBR INSD	WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR			P-630-9N221189-PHX-21	10/30/2021	10/30/2022	EACH OCCURRENCE \$ 1,000,000	
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:							DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY			810-9N222033-21-43-G	10/30/2021	10/30/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000	
								BODILY INJURY (Per person) \$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE			CUP-9N222948-21-43	10/30/2021	10/30/2022	EACH OCCURRENCE \$ 10,000,000	
	DED <input checked="" type="checkbox"/> RETENTION \$ 10,000							AGGREGATE \$ 10,000,000
D	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	N/A	UB-9N223195-21-43-G	10/30/2021	10/30/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER	
								E.L. EACH ACCIDENT \$ 1,000,000
E	Professional/Pollution Liability Ded per claim \$25K, Aggregate \$75K			CE21MPL0BR317IC	10/30/2021	10/30/2022	Aggregate \$3,000,000 Each Claim \$3,000,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Insurance afforded by the policies described herein is subject to all the terms, exclusions, warranties and conditions of such policies.

CERTIFICATE HOLDER NH Department of Environmental Services 29 Hazen Drive PO Box 95 Concord NH 03302-0095	CANCELLATION 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 

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Attachment A

Summary of On-Demand Materials Testing Proposal Cost Analysis

		<i>S.W. Cole</i>	<i>John Turner Consulting, Inc.</i>
Project	County	Estimated Project Cost	Estimated Project Cost
Coos County complete dam reconstruction project	Coos	\$8,815.00	\$5,255.00
Rockingham County complete dam reconstruction project	Rockingham	\$20,095.00	\$13,785.00
Cheshire County complete dam reconstruction project	Cheshire	\$25,660.00	\$15,635.00
Total Cost		\$54,570.00	\$34,675.00