



The State of New Hampshire
Department of Environmental Services

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Robert R. Scott, Commissioner

July 10, 2019

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

REQUESTED ACTIONS

1. Authorize the Department of Environmental Services (DES) to enter into a **SOLE SOURCE** amendment to contract #1068208 with Busby Construction Co., Inc. (VC# 155275-B001) Atkinson, New Hampshire for additional repair work on the sewer force main located near Pendleton Beach, Laconia by increasing the contract amount by \$305,500, from \$323,000 to \$628,500, effective upon Governor and Council approval through December 31, 2019. The original contract was approved by the Governor and Council on June 19, 2019 Item # 193. 100% Winnepesaukee River Basin Program (WRBP) Funds.
2. Further authorize DES to increase the contingency amount by \$66,000, from \$32,000 to \$98,000, to cover unforeseen work that may occur during repairs of the 24-inch sewer force main located in Laconia near Pendleton Beach, effective upon Governor and Council approval through December 31, 2019. The original contract was approved by the Governor and Council on June 19, 2019 Item # 193. 100% Winnepesaukee River Basin Program (WRBP) Funds.

Funding is available in the account as follows:

	<u>FY20</u>
03-44-44-4442010-54260000-048-500226	\$371,500
Dept Environmental Services, Winnepesaukee River Basin, Replacement Fund, Contract Repairs	

EXPLANATION

Approval of this **Sole Source** request will allow completion of necessary rehabilitation of the Pendleton Beach forcemain in Laconia. This is a Sole Source request since the amount of the amendment is greater than 10 percent of the original contract price limitation and the amendment seeks to continue the work approved in the original contract. The force main broke in April 2019 and emergency repairs were put in place. After the break was stabilized, WRBP contracted with Busby Construction to make permanent repairs to the broken line. During the inspections of the drained 24-inch ductile iron pipeline, it was discovered that there were significant areas with perforation (holes) in the forcemain located outside the boundaries contained in the original scope of work. Additional CCTV inspection was then performed and it was determined that the entire 1300+/- length of this forcemain was degraded and needed rehabilitation before it could be placed back into service. Time being of the essence to get the pump

His Excellency, Governor Christopher T. Sununu
and the Honorable Council

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station back into service and restore the affected residential area, Busby Construction Co., Inc. (Busby) will subcontract with the pipeline lining vendor selected under the original contract to perform the initial 700-foot lining installation to perform the additional lining of 600+/- feet of pipeline.

Busby will provide all the equipment and supplies not provided by the pipeline vendor to successfully complete the permanent repairs. Busby will perform all necessary site work, including restoration of the road and abutting properties. Amendment #1 describes the scope of work in more detail.

All of the WRBP's operating expenses are paid by the users of the system; there is no General Fund contribution to the system's operating budget.

The amendment has been approved by the Department of Justice as to form, substance and execution.

We respectfully request your approval.



Robert R. Scott, Commissioner

AMENDMENT #1
CONTRACT CE 1068208

This Agreement (hereinafter called the "Amendment #1"), dated this th 10 day of July, 2019, by and between the State of New Hampshire acting by and through its Department of Environmental Services (NHDES), Water Division (hereinafter referred to as the "State") and Busby Construction Co., Inc. (hereinafter called the "Contractor").

WHEREAS, pursuant to an agreement (hereinafter called the "Agreement") dated May 28, 2019, and approved by the Governor and Council on June 19, 2019 at Item #193 as Contract Number CE 1068208, the Contractor agreed to perform certain services upon terms and conditions specified in the Agreement and in consideration of payment by the State of certain sums specified therein; and

WHEREAS, pursuant to the provisions of paragraph 17 of the Agreement, the Agreement may be amended, waived or discharged only by written instrument executed by the parties thereto; and

WHEREAS, the Contractor and the State have agreed to amend the Agreement in certain respects;

NOW THEREFORE, in consideration of the foregoing, and the covenants and conditions contained in the Agreement and set forth herein, the parties hereto do hereby agree as follows:

1. Amendment and Modification of Agreement:

The Agreement is hereby amended as follows:

- A) The price limitation governing the Agreement as set forth in the Agreement (line 1.8 of the General Provisions and as referenced in Exhibit A, Scope of Services, and in Exhibit B, Cost and Terms of Payment, shall be increased by \$371,500 from \$355,000 to \$726,500.
- B) Exhibit A of the Agreement (The Services) is modified as follows:

Amendment #1 will allow for additional work to complete the Pendleton Beach forcemain rehabilitation project determined to be necessary following CCTV inspection of the entire 1300+/- feet of 24-inch ductile iron forcemain exiting the Pendleton Beach Pump Station. The inspection showed additional areas of perforations in the pipeline as evidenced by infiltration of sand and groundwater entering the drained pipeline. The original contract provided for lining only the first 700 feet of forcemain that was located in suspect soil and submerged groundwater conditions and had perforations that caused a sanitary sewer overflow to the environment.

Additional Scope of Work includes:

- Cured-in-place custom lining of the additional 600+/- linear feet of an existing 24-inch ductile iron forcemain in Laconia, New Hampshire local to Lake Winnepesaukee and

Pendleton Beach Road includes excavation and dewatering, design and installation of a custom cured-in-place lining, and restoration and repaving.

- Subcontracted custom designed and installed cured-in-place lining work to be performed by Green Mountain Pipeline Services (see attached quotation and scope of work for additional option #2).
- Contractor to provide all work excluded from Green Mountain's (Option #2) scope of work that is necessary to satisfactorily complete the work.

(C) Exhibit B of the Agreement (Cost and Terms of Payment) is amended by addition of the following:

ADDITIONAL CONSTRUCTION SERVICES FOR PENDLETON BEACH FORCE MAIN REHABILITATION

Additional Cost Items (estimated based upon current understanding of site conditions and schedule)

	<u>Cost</u>
CIPP lining performed by Green Mountain Pipeline Services (Option #2)	\$110,000.00
NHDOT-standard 5% mark-up on subcontracted services	\$ 5,500.00
Additional site work including access excavation and pipe fitting installation	\$ 30,000.00
Bypass pump rental (@35,000/month) for months 3, 4 and 5 (through Sept 10 th)	\$105,000.00
Additional pipe-fittings, parts, equipment to interconnect lined pipeline	<u>\$ 55,000.00</u>
Total	\$305,500.00

ADDITIONAL CONTINGENCY FUNDS

An amount of 10% of the revised contract amount (original contract for \$355,000 plus proposed amendment #1 for \$305,500 = \$660,500), or \$66,000 rounded to the nearest \$1000, is provided as a contingency in the event that unforeseen conditions or scheduling delays are encountered during the pipeline rehabilitation project. Expenditure of contingency funds is subject to DES review and written approval. The contingency will permit the work by the contractor to continue without stopping the project and causing unnecessary delays and include provisions for additional time and materials to undertake said repairs, including bypass pump system rental, labor, or equipment necessary to complete the project.

TOTAL ADDITIONAL FUNDS

Total Additional Construction Services	\$305,500.00
Total Additional Contingency (rounded to nearest \$1000)	<u>\$ 66,000.00</u>
Grand Total Requested in Amendment #1	\$371,500.00

2. Effective Date of Amendment:

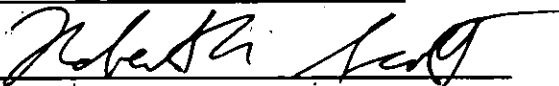
This Amendment shall take effect upon the date of approval of this Amendment by the Governor and Executive Council of the State of New Hampshire.

3. Continuation of Agreement:

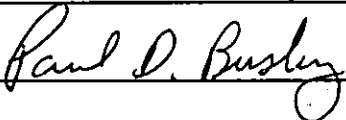
Except as specifically amended and modified by the terms and conditions of this Amendment, the Agreement and the obligations of the parties thereunder, shall remain in full force and effect with the terms and conditions set forth.

IN WITNESS WHEREOF, the parties set their hands as of the day and year first above written.

THE STATE OF NEW HAMPSHIRE
Department of Environmental Services

By:  DATE: 7/15/19
Robert R. Scott, Commissioner

BUSBY CONSTRUCTION CO., INC.

By:  DATE: 7/10/19

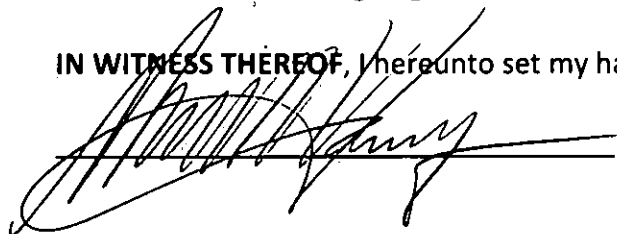
Acknowledgment:

State of New Hampshire County of Rockingham

On this 10 day of July, 2019 before the undersigned officer, personally appeared Paul D. Busby and acknowledges himself to be the President of Busby Construction Co., Inc.

who executed the foregoing instrument for the purposes therein contained.

IN WITNESS THEREOF, I hereunto set my hand and official seal.




MICHAEL P. HENRY
Notary Public - New Hampshire
My Commission Expires June 1, 2021

Name and Title of Notary Public

Approval by ATTORNEY GENERAL

(Form, Substance and Execution):

By:  DATE: 7/16/2019
Assistant Attorney General Signature

Approved by the GOVERNOR and COUNCIL, this _____ day of July, 2019.



BUSBY CONSTRUCTION CO., INC.

71 ROUTE 111
ATKINSON, NH 03811
(603) 898-4800
FAX (603) 898-4808

CERTIFICATE OF VOTE

At a duly authorized meeting of the Board of Trustees / Directors of

Busby Construction Co., Inc. held on July 1, 2019
(Name of Organization) *(Date)*

At which all the Trustees/Directors were present and waived notice, it was voted, that

Paul D. Busby President
(Name) *(Title)*

of this organization, is authorized to execute any and all legal documents in the name and on the behalf of said organization, and affix its corporate seal thereto; and such execution of any contract document in this organization's name and on its behalf by such

President under the seal of the organization shall be valid and
(Title)

binding upon this organization.

I hereby certify that Paul D. Busby is the duly elected President
(Name) *(Title)*

of said organization, and that the above vote has not been amended or rescinded and remains in full force and effect as of this date.

Corporate Seal Here:

Virginia A. Busby
Signature

Virginia A. Busby
Type Name

Secretary / Treasurer
Title

July 11, 2019
Date

State of New Hampshire

County of Rockingham

On this 11th day of July, 2019, the above-named Virginia A. Busby presented proof of identity in the form of NH Driver's License and swore that the above statement is true and accurate.

Notary Public Christopher A. Connolly

CHRISTOPHER A. CONNOLLY, Notary Public
State of New Hampshire
My Commission Expires May 6, 2020

My Commission Expires My Commission Expires May 6, 2020

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 BUSBY CONSTRUCTION CO., INC. is a New Hampshire Profit Corporation registered to transact business in New Hampshire on August 02, 1979. 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: 5783

Certificate Number: 0004521005



IN TESTIMONY WHEREOF,

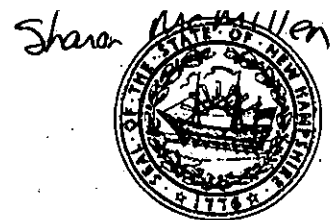
I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 29th day of May A.D. 2019.

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



Robert R. Scott, Commissioner

May 30, 2019

APPROVED G & C
DATE 6/19/19
ITEM # 193

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

REQUESTED ACTIONS

1. Authorize the Department of Environmental Services (DES) to enter into an agreement with Busby Construction Co., Inc. (VC# 155275-B001) Atkinson, New Hampshire in the amount of \$323,000.00 to permanently repair the Winnepesaukee River Basin Program's 24-inch sewer force main located in Laconia near Pendleton Beach effective upon Governor and Council approval through December 31, 2019. 100% WRBP Funds.
2. Further authorize DES to establish a contingency amount of \$32,000.00 to cover unforeseen work that may occur during repairs of the Winnepesaukee River Basin Program's 24-inch sewer force main located in Laconia near Pendleton Beach effective upon Governor and Council approval through December 31, 2019. 100% WRBP Funds.

Funding is available in the account as follows:

	<u>FY19</u>
03-44-44-4442010-54260000-048-500226	\$355,000.00
Dept Environmental Services, Winnepesaukee River Basin, Replacement Fund, Contract Repairs	

EXPLANATION

Busby Construction (Busby) was the only local firm able to respond in a timely fashion to this forcemain leak with the equipment necessary to do both the temporary measures to stop the sewage discharge as well as complete the installation of the permanent cured-in-place, custom lining. This sewer force main located along Pendleton Beach Road in Laconia became operational in 1982 after this portion of the WRBP wastewater collection system was constructed. A sewage leak was discovered coming from the 24-inch diameter ductile iron sewer force main on April 20, 2019. A temporary, partial patch was put on the pipeline but this patch was not the necessary, permanent repair since the pipeline was degraded along the bottom in more than one location. This pipeline and pump station remains non-operational with bypass pumping continuing until permanent repairs are completed.

The permanent repairs require additional, limited excavation to facilitate the installation of an engineered cured-in-place lining for approximately 700 feet of the sewer forcemain located in the same suspect soil conditions. This solution is not only cost effective, but is the preferred option recommended by WRBP's

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engineering consultant (Wright-Pierce) since it does not require excavation and replacement of the entire 17 to 20-foot deep pipeline, will limit damage to Pendleton Beach Road and abutting properties, and minimize disruption of the largely residential neighborhood. Other options that were evaluated and determined not to be feasible in this particular situation included slip-lining by insertion of a smaller diameter pipe which would be problematic due to bends in the existing pipeline and fold-and-form lining segments installed from multiple points along the length of the pipeline.

Three vendors in New England were identified by Wright-Pierce as experienced and qualified to install the specialized cured-in-place lining selected as the permanent repair solution for this 24" diameter forcemain application. All three vendors were provided information about the forcemain and site conditions and performed site visits to gain first-hand information about the site and design requirements for the work. Two of the pipeline lining vendors chose to submit quotations. The third vendor (National Watermain Cleaning) determined that their capabilities did not meet the specific pressure requirements for this repair work and did not provide a quotation. Green Mountain Pipeline Services provided a quotation for \$192,500 to install the lining in one 700-foot long segment. US Pipelining's quote was \$324,800 and would have required more site work since it would be installed in two segments instead of one. Although the low bidder (Green Mountain) was selected to install the custom lining, there is significant work that they are not capable of performing to complete the installation and restore the site. Busby has the necessary capabilities and experience to perform such work and is already on site with the required construction equipment.

Time being of the essence to get the pump station back into service and restore the affected residential area, Busby will subcontract with the pipeline lining vendor (Green Mountain) selected to perform the lining custom design, installation and post-installation inspections for \$192,500. Busby will also provide all the other equipment and supplies not provided by the pipeline vendor to successfully complete the permanent repairs. Busby will perform all necessary site work, including restoration of the private road and abutting properties. This additional work will be provided by Busby for an estimated \$162,500, including the requested \$32,000 contingency for unforeseen conditions. Exhibit A describes the scope of work provided by Busby and the lining services to be provided by Green Mountain under subcontract to Busby in more detail.

All of the WRBP's expenses are paid by the users of the system; there is no General Fund contribution to the WRBP budget.

We respectfully request your approval.



Robert R. Scott, Commissioner

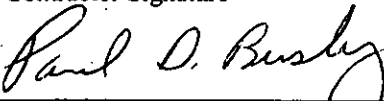
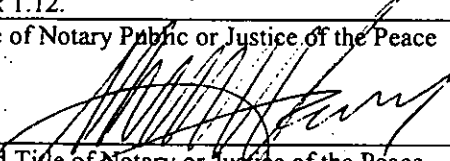
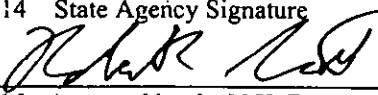
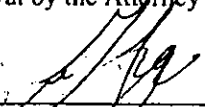
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name Department of Environmental Services		1.2 State Agency Address 29 Hazen Drive, Concord, NH 03302	
1.3 Contractor Name Busby Construction Co., Inc.		1.4 Contractor Address 71 Route 111 Atkinson, NH 03811	
1.5 Contractor Phone Number 603-898-4800	1.6 Account Number 03-44-44-442010-5426-048	1.7 Completion Date 12/31/2019	1.8 Price Limitation \$355,000.00
1.9 Contracting Officer for State Agency Sharon McMillin		1.10 State Agency Telephone Number 603-934-4032	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory Paul D. Busby President	
1.13 Acknowledgement: State of <u>New Hampshire</u> , County of <u>Frothingham</u> On <u>May 28, 2019</u> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace  [Seal]		MICHAEL P. HENRY Notary Public - New Hampshire My Commission Expires June 1, 2021	
1.13.2 Name and Title of Notary or Justice of the Peace <u>Michael Henry</u>			
1.14 State Agency Signature  Date: <u>6/3/19</u>		1.15 Name and Title of State Agency Signatory <u>Robert R Scott, Commissioner NHDES</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)(if applicable) By:  On: <u>6/4/19</u>			
1.18 Approval by the Governor and Executive Council(if applicable) By: _____ On: _____			

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

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

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

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

4. CONDITIONAL NATURE OF AGREEMENT.

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

5.CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.

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

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

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

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

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

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

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

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

7.PERSONNEL.

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

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

Agreement. This provision shall survive termination of this Agreement.

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

8. EVENT OF DEFAULT/REMEDIES.

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

8.1.1 failure to perform the Services satisfactorily or on schedule;

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

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

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

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

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

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

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

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

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

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

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

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

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

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

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

13. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

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

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

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

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

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

15. WORKERS' COMPENSATION.

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

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

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

17. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

18. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no

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

19. CONSTRUCTION OF AGREEMENT AND TERMS.

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

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

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

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

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

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

Exhibit A Scope of Work

The scope of work involves all necessary repairs to the Winnepesaukee River Basin's Pendleton Beach forcemain and site restoration as summarized below.

1. Subcontracted work to be performed by Green Mountain Pipeline Services (see attached quotation and scope of work)
2. Provide all work excluded from Green Mountain's (Option #1) scope of work that is necessary to satisfactorily complete the work
3. Bypass and de-watering pumping; including pump and temporary pipeline run overland
4. Site excavations as necessary to allow cured in place lining to be installed
5. Water necessary to complete the lining installation and hydrostatic pressure testing
6. Work site traffic control
7. Equipment, fittings and parts to restore forcemain interconnections after lining is installed
8. Site restoration including but not limited to debris removal and disposal, restoring the parking lot of the WRBP Pendleton Beach pump station, private road and road right of ways

Initials I.D.B.
Date 5/29/19

Exhibit B
Cost and Terms of Payment

CIPP lining performed by Green Mountain Pipeline Services (Option #1)	\$192,500.00
NHDOT-standard 5% mark-up on subcontracted services	\$ 9,625.00
Site work including excavations and restoration (estimated based upon current understanding of site conditions)	\$ 80,000.00
Bypass pump rental - month #2	\$35,000.00
Miscellaneous pipe fittings, parts, equipment to interconnect lined pipeline	<u>\$5,000.00</u>
	\$322,125.00
Subtotal(rounded up to nearest \$1000)	\$323,000.00
Contingency (rounded up to nearest \$1000)	<u>\$ 32,000.00</u>
Contract Price Limitation	\$355,000.00

1. Contract price limitation shall not be exceeded.
2. Contingency will only be used upon prior approval by the NH-DES WRBP.
3. Contractor to be paid immediately upon satisfactory completion of the scope of work and presentation of an invoice(s) documenting actual costs.
4. Partial payments for purchases, rentals and subcontracted work are allowed upon receipt of an invoice with appropriate documentation of such incurred expenses.

Busby Construction

Contractor Name

Initials P.O.B.
Date 5/29/19

Exhibit C
Special Conditions

None.

Initials P.O.B.
Date 5/29/19



BUSBY CONSTRUCTION CO., INC.

71 ROUTE 111
ATKINSON, NH 03811
(603) 898-4800
FAX (603) 898-4808

CERTIFICATE OF VOTE

At a duly authorized meeting of the Board of Trustees / Directors of

Busby Construction Co., Inc. held on May 17, 2019
(Name of Organization) (Date)

At which all the Trustees/Directors were present and waived notice, it was voted, that

Paul D. Busby President
(Name) (Title)

of this organization, is authorized to execute any and all legal documents in the name and on the behalf of said organization, and affix its corporate seal thereto; and such execution of any contract document in this organization's name and on its behalf by such

President under the seal of the organization shall be valid and binding upon this organization.
(Title)

I hereby certify that Paul D. Busby is the duly elected President of said organization, and that the above vote has not been amended or rescinded and remains in full force and effect as of this date.
(Name) (Title)

Corporate Seal Here:

Virginia A. Busby
Signature

Virginia A. Busby
Type Name

Secretary / Treasurer
Title

May 17, 2019
Date

State of New Hampshire

County of Rockingham

On this 17th day of May, 2019, the above-named Virginia A. Busby presented proof of identity in the form of NH Driver's License and swore that the above statement is true and accurate.

Notary Public Christopher A. Connolly

My Commission Expires My Commission Expires May 6, 2020
CHRISTOPHER A. CONNOLLY, Notary Public
State of New Hampshire

State of New Hampshire

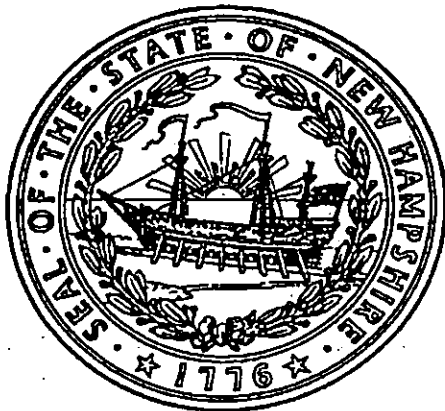
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that BUSBY CONSTRUCTION CO., INC. is a New Hampshire Profit Corporation registered to transact business in New Hampshire on August 02, 1979. 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: 5783

Certificate Number: 0004521005



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 29th day of May A.D. 2019.

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

William M. Gardner
Secretary of State



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/29/2019

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 THE ROWLEY AGENCY INC. 45 Constitution Avenue P.O. Box 511 Concord NH 03302-0511	CONTACT NAME: Donna Bickford PHONE (A/C No. Ext): (603)224-2562 FAX (A/C No.): (603)224-8012 E-MAIL ADDRESS: dbickford@rowleyagency.com	
	INSURER(S) AFFORDING COVERAGE	
INSURED Busby Construction Co., Inc. 71 Route 111 Atkinson NH 03811	INSURER A: Firemen's Ins Co of Wash. DC NAIC # 21784	
	INSURER B: Acadia Insurance Company 31325	
	INSURER C: Charter Oak Fire Ins Co 25615	
	INSURER D:	
	INSURER E:	
INSURER F:		

COVERAGES **CERTIFICATE NUMBER:** **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 INSD	SUBR 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 GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC OTHER:			CPA150089428	6/7/2019	6/7/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/>			CAA150089528	6/7/2019	6/7/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 0			CJA150089628	6/7/2019	6/7/2020	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
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	N/A	WPA150089729 3A STATES: NH MA NO EXCLUDED OFFICERS	6/7/2019	6/7/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.I. EACH ACCIDENT \$ 1,000,000 E.I. DISEASE - EA EMPLOYEE \$ 1,000,000 E.I. DISEASE - POLICY LIMIT \$ 1,000,000
C	LEASED/RENTED EQUIPMENT - ACV			QT6602H552036COF19	6/7/2019	6/7/2020	LIMIT: \$1,200,000 DEDUCTIBLE: \$1,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Re: Pendleton Beach Sewer/ Emergency Repair
 The New Hampshire Department of Environmental Services is included as an additional insured on all liability policies except workers comp when required by written contract with the named insured.

CERTIFICATE HOLDER NH Department of Environmental Services Winnepesaukee River Basin Program PO Box 68 Franklin, NH 03235	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 Donna Bickford/DTB <i>Donna L. Bickford</i>

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