



STATE OF NEW HAMPSHIRE
DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT
OFFICE of the COMMISSIONER

172 Pembroke Road P.O. Box 1856 Concord, New Hampshire 03302-1856

603-271-2411
FAX: 603-271-2629

February 14, 2013

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Executive Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Pursuant to RSA 21-I:80, (b), authorize the Department of Resources and Economic Development, Division of Parks and Recreation to enter into a contract with JMS Roofing, LLC (VC #223050), Wolfeboro Falls, NH, in the amount of \$21,500 for roof replacement on the Taylor Sawmill at Ballard State Forest in Derry, NH upon approval of Governor and Executive Council through May 17, 2013.
100% Capital Funds

Funding is available in account titled, 11-253:1-XII-B State Park Repairs, as follows:

03-35-35-351530-09900000-034-500162-35B020AC	Capital Projects	<u>FY 2013</u>
		\$21,500

EXPLANATION

The cedar shingle roofing on the Taylor Sawmill at Ballard State Forest has worn out and is in need of replacement. The present roofing was installed in the mid 1980's and the shingles have deteriorated to a point of no longer being effective at preventing leaks. Therefore, replacement of the roofing material is necessary to protect the integrity of this building.

In December 2012, an invitation to submit bids for cedar shingle roof replacement on the Taylor Sawmill at Ballard State Forest was advertised through 5 companies known to the Department and the construction industry, and on the Department of Administrative Services' and the Division of Parks and Recreation's websites. Ten (10) contractors attended a mandatory pre-bid meeting on January 8, 2013. Five (5) bids were received and JMS Roofing was selected as the low-bid contractor for this project.

The Attorney General's Office has approved this contract as to form, substance and execution.

Respectfully submitted,



Philip A. Bryce
Acting Commissioner

PAB/lml

**State of New Hampshire
Department of Resources and Economic Development
Planning and Development**

Cedar Shingle Roof Replacement Taylor Mill Ballard State Forest Derry, NH

Project No. FL-1306

Bidder Information

Contractors:	Phone	Attended Pre-Bid	Lump Sum Bid	
Atlantic 165 Chelmsford St. Lowell Mass 01851-2622	603-234-2222	YES		
CK Landmark PO Box 4092 Manchester, NH 03108	603-340-0760	YES	\$ 31,500.00	
Eagle Rivet 2 Boxcar Blvd. Tewksbury, MA 01876	978-423-4006	YES	\$ 24,780.00	
Guimond Construction 103 Knox Rd Bow, NH 03301	603-224-8367	YES	\$ 45,328.00	
MC Contracting 24 Lomar Park Peperell, MA 01463	603-305-6238	YES	\$ 34,900.00	
JMS Roofing 15 High Street Wolfeboro Falls, NH 03896	603-393-0262	YES	\$ 21,500.00	AWARDED PENDING G&C APPROVAL
Nicholson Construction Services 90 Drakeside Rd Hampton, NH 03842-1801	781-760-7312	YES		
Pellowe Construction 50 Old Wolfeboro Road Alton, NH 03809-4722	603-875-4602	YES		
Skyline Roofing 861 Page St. Manchester, NH 03109	603-669-0131	YES		
Tier One Construction 1552 Belmont St. Manchester, NH 03104-2718	603-597-7522	YES		

Bidding Procedure: This project was put out to bid on December 11, 2012. It was advertised through the NH Bureau of Purchase and Property Website, NH State Parks Website, Construction Summary of NH, Infinite Imaging, McGraw Hill Construction, Signature Press and Blueprinting and Works in Progress. The bidding period went on for three weeks. A Mandatory Prebid was held on January 8, 2013 and Ten (10) Contractors attended. Bids closed on January 17, 2013 at a public bid opening at the DRED office. Five (5) bids were received, and the low bidder, JMS Roofing, LLC was accepted in the amount of \$21,500

Subject: Cedar Shingle Roofing, Taylor Sawmill, Ballard State Forest, FL-1306

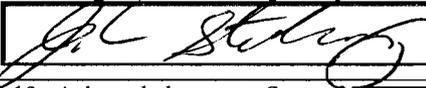
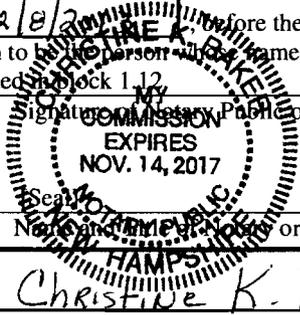
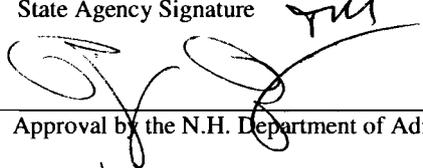
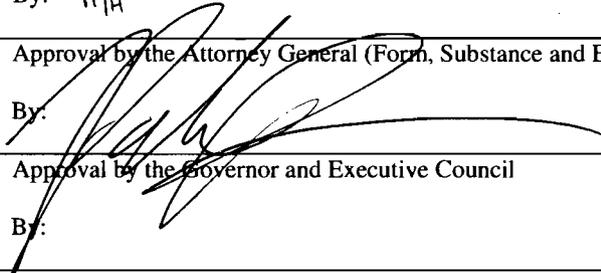
FORM NUMBER P-37 (version 1/09)

AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name Department of Resources and Economic Development		1.2 State Agency Address PO Box 1856, 172 Pembroke Rd. Concord, NH 03302-1856	
1.3 Contractor Name JMS ROOFING, LLC.		1.4 Contractor Address 15 HIGH STREET, WOLFEBORO FALLS, NH 03896	
1.5 Contractor Phone Number (603)-393-0262	1.6 Account Number 09900000-034-500162	1.7 Completion Date May 17, 2013	1.8 Price Limitation \$21,500
1.9 Contracting Officer for State Agency Edward Mussey, Public Works Project Manager I		1.10 State Agency Telephone Number 603-271-2606 Ext. 404	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory Jake Stanley, Owner / President	
1.13 Acknowledgement: State of <u>NH</u> , County of <u>Rockingham</u> On <u>2/8/2013</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  <u>Christine K. Baker</u>			
1.13.2 Name of Notary Public or Justice of the Peace <u>Christine K. Baker</u>			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory Philip A. Bryce, Acting Comm.	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: <u>n/a</u> Director, On:			
1.17 Approval by the Attorney General (Form, Substance and Execution) By:  On: <u>2/27/13</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.

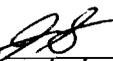
14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

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 
Date 2/8/13

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.

STATE OF NEW HAMPSHIRE
DEPARTMENT OF RESOURCES AND ECONOMIC DEVELOPMENT
DIVISION OF PARKS AND RECREATION

ROOF REPLACEMENT FOR
TAYLOR MILL
BALLARD STATE FOREST
DERRY, NH

EXHIBIT A

SUMMARY OF THE WORK: The intent of the contract is to provide the State with a new roof on the Taylor Mill at Ballard State Forest in Derry, NH watertight and completely finished., according to, in compliance with, and as indicated by and in the Department's plans and specifications ("Cedar Shingle Roof Replacement Taylor Sawmill at Ballard State Forest 242 Island Pond Road Derry, NH 03038") dated December 2012. A copy of which the Contractor acknowledges receipt of, and the following scope of work:

- a) Strip off and dispose of existing cedar shingle roofing material. Inspect sheathing for damage.
- b) Replace deteriorated fascia and rake boards.
- c) Patch and repair deteriorated sheathing as necessary.
- d) Install new furring strips.
- e) Install new Alaskan yellow Cedar Shingles on the roofs.

EXHIBIT B

Payments shall be made upon satisfactory completion of work and receipt of an itemized invoice.

Total contract shall not exceed \$21,500

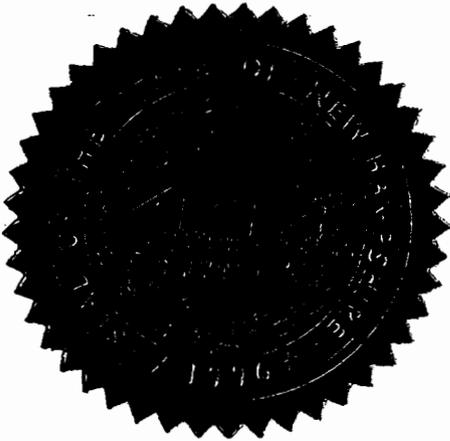
EXHIBIT C

There are no additional provisions on this 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 JMS Roofing LLC is a New Hampshire limited liability company formed on March 15, 2010. I further certify that it is in good standing as far as this office is concerned, having filed the annual report(s) and paid the fees required by law; and that a certificate of cancellation has 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 12th day of July, A.D. 2012

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

William M. Gardner
Secretary of State

CERTIFICATE OF AUTHORITY/VOTE
(Limited Liability Company)

I, Jacob M. Stanley, hereby certify that:
(Name of Sole Member/Manager of Limited Liability Company, Contract Signatory - Print Name)

1. I am the Sole Member/Manager of the Company of JMS Roofing LLC
(Name of Limited Liability Company)

2. I hereby further certify and acknowledge that the State of New Hampshire will rely on this certification as evidence that I have full authority to bind JMS Roofing LLC
(Name of Limited Liability Company)

and that no corporate resolution, shareholder vote, or other document or action is necessary to grant me such authority.

[Signature]
(Contract Signatory - Signature)
2/8/13
(Date)

STATE OF New Hampshire
COUNTY OF Rockingham

On this the 8th day of February, 2013, before me Christine K. Baker,
(Day) (Month) (Yr) (Name of Notary Public / Justice of the Peace)

the undersigned officer, personally appeared Jacob M. Stanley, known to me (or
(Contract Signatory - Print Name)

satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same for the purposes therein contained. In witness whereof, I hereunto set my hand

and official seal



Commission Expires

[Signature]
(Notary Public / Justice of the Peace - Signature)

