



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

Robert R. Scott, Commissioner

MAY 21 '19 AM 10:17 DAS 117

May 6, 2019

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

REQUESTED ACTION

Authorize the New Hampshire Department of Environmental Services (DES) to enter into grant agreements with the following entities, totaling \$30,191, to fund exotic aquatic plant control activities, effective upon Governor and Council approval, through December 31, 2019. 100% Lake Restoration Funds.

Vendor Name	Waterbody/Town/State	Vendor #	Grant Amount
City of Laconia	Paugus Bay / Laconia / NH	177419-B001	\$14,618
City of Nashua	Nashua River / Nashua / NH	177441-B006	\$15,573
		Grand Total	\$30,191

Funding is available in the account as follows:

03-44-44-442010-1430-073-500580 FY 2019
 Dept. Environmental Services, Lakes Restoration Program, Grants-Nonfederal \$30,191

EXPLANATION

Exotic aquatic plants have been a problem in the above-listed waterbodies for several years. NHDES grant funds in the amounts outlined in the table above are earmarked for management activities to control these exotic aquatic plants in 2019.

The primary purpose of New Hampshire's Exotic Aquatic Plant Program is to "prevent the introduction and further dispersal of exotic aquatic weeds and to manage or eradicate exotic aquatic weed infestations in the surface waters of the state" (RSA 487:17, II).

The program, initiated in 1981, has five focus areas: 1) Prevention of new infestations; 2) Monitoring for early detection of new infestations to facilitate rapid control activities; 3) Control of new and established infestations; 4) Research towards new control methods with the goal of reducing or eliminating infested areas; and 5) Regional cooperation.

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and The Honorable Council

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DES received 44 requests for funding to control exotic aquatic plant growth in 2019. Each project was selected to receive a grant. The budget estimate for each entity is included as Attachment A in the agreements. Please refer to Attachment B of each agreement for a listing of projects that are identified to receive funding, as well as information on the grant request reviewer.

The program is 100% fee funded through the Lake Restoration Fund. In the event that fee funds become no longer available, General Funds will not be requested to support this program. This agreement was approved by the Office of the Attorney General as to form, execution, and content.

We respectfully request your approval.


Robert R. Scott, Commissioner


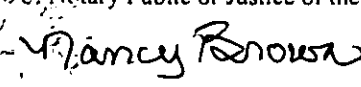
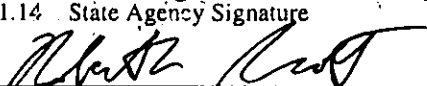
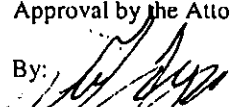
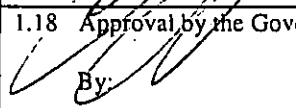
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.


AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name Department of Environmental Services		1.2 State Agency Address 29 Hazen Drive Concord, NH 03301	
1.3 Contractor Name City of Laconia		1.4 Contractor Address 45 Beacon Street East Laconia, NH 03246	
1.5 Contractor Phone Number 603-527-1270	1.6 Account Number 03-44-44-14300000-073	1.7 Completion Date December 31, 2019	1.8 Price Limitation \$14,618.00
1.9 Contracting Officer for State Agency Amy P. Smagula		1.10 State Agency Telephone Number 603-271-2248	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory Scott Myers City Manager	
1.13 Acknowledgement: State of New Hampshire County of Berkshire On 2/22/19, 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]			
1.13.2 Name and Title of Notary or Justice of the Peace Nancy Brown, Notary Public			
1.14 State Agency Signature  Date: 5-15-19		1.15 Name and Title of State Agency Signatory Robert R. Scott, Commissioner NHDES	
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: 5/17/19			
1.18 Approval by the Governor and Executive Council (if applicable) By:  On: _____			

 2-27-19

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

Contractor Initials

Date 2-27-19

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.

Contractor Initials



Date

2-27-19

Exhibit A
Scope of Services

1. The City of Laconia is the grantee for this project. The New Hampshire Department of Environmental Services (NHDES) is referred to as the "state." Amy P. Smagula of the Watershed Management Bureau is the grant officer for the state.
2. Variable milfoil, an invasive aquatic plant, has become a nuisance problem in various portions of Paugus Bay of Lake Winnepesaukee. The grantee is seeking grant funds to assist in control efforts in 2019.
3. The grantee shall ensure that the contractors (selected through a competitive bid process) adhere to the following project-specific tasks:

For herbicide treatment in 2019, the grantee will ensure that SOLitude Lake Management performs the following tasks:

- Task 1 Prepare and file Special Permit application with NH DPC (inclusive of the required abutter notifications, publication of newspaper notices and all costs associated with advertising and attending a public hearing, if required).
- Task 2 Perform chemical treatment of the subject waterbody per the bid specifications, inclusive of all labor, chemical, and equipment costs.
- Task 3 Conduct pre- and post-treatment surveys, collect herbicide residue samples, and submit the required written reporting to the State per the bid specifications.

For the diver work in 2019, the grantee will ensure that the diver(s) perform(s) the following tasks:

- Task 1 Provide up to 20 days of diver and/or DASH work in portions of Paugus Bay as directed by NHDES.
 - Task 2 Notify the NHDES Exotic Species Program of the scope and timing of the project, and how the materials removed from the pond will be disposed of, and the names of the divers performing the work, at least two weeks before the work is scheduled to begin. Divers performing this work must be certified Weed Control Divers in New Hampshire.
 - Task 3 Notify NHDES within 5 business days of when the work is completed by submitting daily dive reports for work that was performed, per the reporting examples provided in the Weed Control Diver course.
4. NHDES will provide monetary support to you for up to \$14,618.00 of the total project cost as outlined in the project bid, up to the amount specified in this document. Should the cost of the diver work or herbicide treatment be lower than the bids for those projects, remaining grant funds may be used match costs associated with other NHDES approved milfoil control projects in the above referenced waterbody, including additional locations within Paugus Bay as approved by NHDES.


Initials: 
Date: 7-27-19

Exhibit B
Grant Amount and Payment Schedule

Payments shall be made by NHDES to the grantee upon approval of stated outputs and verification of the value of completed work through submittal of invoices for services rendered. NHDES will pay the City of Laconia up to \$14,618.00 of total project costs, within 30 days of receiving a copy of the contractor's invoice(s) for completion of the tasks outlined in #3 above.

The grantee is responsible for paying the contractor, and submitting invoices to NHDES for reimbursement.

The billing address shall be as follows:

NH Department of Environmental Services
29 Hazen Drive, PO Box 95
Concord, NH 03302-0095
Attn: Amy Smagula, Watershed Management Bureau
E-mail: Amy.Smagula@des.nh.gov

Invoices shall be approved by the Grant Officer before payment is processed.

Initials: AS

Date: 2-27-19

Exhibit C
Special Provisions

Paragraph 14 is waived with respect to the Grantee. However, the Grantee shall ensure that the contractor or subcontractor hired by the Grantee to perform the work shall meet the insurance requirements of Paragraph 14.

Initials: SB
Date: 2-27-19

CERTIFICATE OF AUTHORITY

I, Cheryl Hebert, City Clerk of the City of Laconia, do hereby certify that:

- (1) I am the duly elected City Clerk of the City of Laconia;
- (2) at the meeting held on February 25, 2019, the Laconia City Council voted to accept DES funds and to enter into a contract with the Department of Environmental Services;
- (3) the Laconia City Council further authorized the City Manager to execute any documents which may be necessary for this contract;
- (4) this authorization has not been revoked, annulled, or amended in any manner whatsoever, and remains in full force and effect as of the date hereof; and
- (5) the following person has been appointed to and now occupies the office indicated in (3) above:

Scott Myers

IN WITNESS WHEREOF, I have hereunto set my hand as the City Clerk of the City of Laconia this 27th day of February, 2019.

Cheryl M. Hebert
(Signature of Certifying Officer)

STATE OF NEW HAMPSHIRE
COUNTY OF BELKNAP

On this the 27th day of February, 2019, before me, Nancy Brown, the undersigned officer, personally appeared Cheryl M. Hebert, who acknowledged herself to be the City Clerk of the Organization being authorized so to do, executed the foregoing instrument for the purpose therein contained.

In witness whereof, I have set my hand and official seal.

Nancy Brown
(Notary Public Signature)

Commission Expiration Date: May 16, 2023

**Attachment A
Budget Estimates**

HERBICIDE

Item/Service	Cost
Permitting	\$2,280
Treatment (labor, herbicide & posting)	\$31,494
Biological Surveys, Herbicide Residue Sampling and Reporting	\$5,100
Total	\$38,874*

*DES will pay up to (\$9,718.50) of the combined projects cost as outlined in the bid.

DIVER/DIVER-ASSISTED SUCTION HARVESTING

Item/Service	Cost
10 Days Exotic Aquatic Plant Removal Services and Disposal of Harvested Materials	\$19,600
Total	\$19,600*

*DES will pay up to 25% of the total project cost (\$4,900) as outlined in the bid.

Attachment B

Waterbody Name	Town	Grant Award
Balch Lake	East Wakefield	\$15,304.00
Beaver Lake	Derry	\$3,195.00
Big Island Pond	Derry	\$8,073.00
Cobbetts Pond	Windham	\$4,746.00
Contoocook Lake	Jaffrey & Rindge	\$13,030.00
Danforth Ponds	Freedom	\$12,192.00
Flints Pond	Hollis	\$1,487.00
Forest Lake	Winchester	\$3,610.00
Glen Lake	Goffstown	\$3,681.00
Gorham Pond	Dunbarton	\$4,232.00
Horseshoe/Naticook	Merrimack	\$4,437.00
Jones/Downing/Marsh	New Durham/Alton	\$8,838.00
Lees Pond	Moultonborough	\$5,641.00
Long Pond	Danville and Kingston	\$7,449.00
Massasecum	Bradford	\$1,250.00
Melendy/Potanipo	Brookline	\$10,999.00
Milton Three Ponds	Milton	\$5,900.00
Monomonac	Rindge	\$3,865.00
Namaske Lake	Manchester	\$13,186.00
Nashua River	Nashua	\$15,573.00
Northwood Lake	Northwood	\$15,932.00
Opechee	Laconia	\$2,462.00
Ossipee Lake	Ossipee	\$5,546.00
Pearly Pond	Rindge	\$6,295.00
Phillips Pond	Sandown	\$8,490.00
Pine Island Pond	Manchester	\$2,275.00
Post Pond	Lyme	\$7,039.00
Powwow Pond	Kingston & East Kingston	\$14,748.00
Robinson and Otternic	Hudson	\$15,939.00
Rocky Pond	Canterbury	\$6,044.00
Scobie	Francestown	\$4,848.00
Silver Lake	Tilton & Belmont	\$1,243.00
Squam Lake	Holderness	\$12,366.00
Suncook Lakes/River/Barnstead Ponds	Barnstead	\$9,905.00
Sunrise Lake	Middleton	\$5,958.00
Turee Pond	Bow	\$5,349.00
Winnipesaukee	Alton	\$12,389.00
Winnipesaukee	Gilford	\$6,550.00
Winnipesaukee	Laconia	\$14,618.00
Winnipesaukee	Meredith	\$8,712.00
Winnipesaukee	Moultonborough	\$60,000.00
Winnipesaukee	Tuftonboro	\$5,601.00
Winnipesaukee	Wolfeboro	\$5,991.00
Winnisquam	Laconia	\$11,599.00

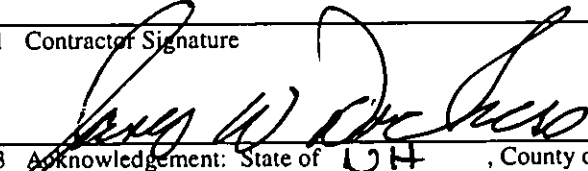
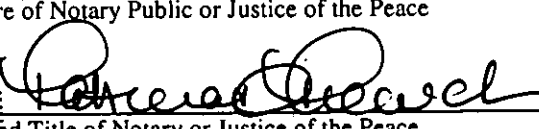
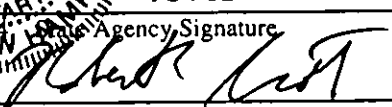
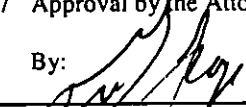
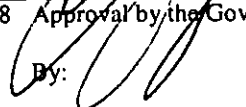
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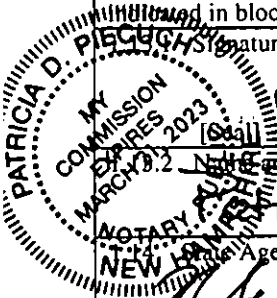
AGREEMENT

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 03301	
1.3 Contractor Name City of Nashua		1.4 Contractor Address 229 Main Street P.O. Box 2019 Nashua, NH 03060	
1.5 Contractor Phone Number 603-589-3095	1.6 Account Number 03-44-44-143000-073	1.7 Completion Date December 31, 2019	1.8 Price Limitation \$15,573.00
1.9 Contracting Officer for State Agency Amy P. Smagula		1.10 State Agency Telephone Number 603-271-2248	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory James W Donchess, Mayor	
1.13 Acknowledgement: State of <u>NH</u> , County of <u>Hillsborough</u> On <u>April 4, 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 identified in block 1.12.			
Signature of Notary Public or Justice of the Peace 			
Name and Title of Notary or Justice of the Peace Patricia D. Pearch			
State Agency Signature 		1.15 Name and Title of State Agency Signatory Robert R Scott, Commissioner, NHDET	
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>5/17/19</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

Contractor Initials

Date 4/7/19

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.

Handwritten signature and date: 9/24/19

Exhibit A
Scope of Services

1. The City of Nashua is the grantee for this project. The New Hampshire Department of Environmental Services (NHDES) is referred to as the "state." Amy P. Smagula of the Watershed Management Bureau is the grant officer for the state.
2. A variety of state-listed invasive plants have become a nuisance problem in various portions of the Nashua River and Mine Falls Pond and Canal, and the grantee is seeking grant funds to assist in control efforts in 2019.
3. The grantee shall ensure that the contractors (selected through a competitive bid process) adhere to the following project-specific tasks:

For herbicide treatment in 2019, the grantee will ensure that SOLitude Lake Management performs the following tasks:

- Task 1 Prepare and file Special Permit application with NH DPC (inclusive of the required abutter notifications, publication of newspaper notices and all costs associated with advertising and attending a public hearing, if required).
 - Task 2 Perform chemical treatment of the subject waterbody per the bid specifications, inclusive of all labor, chemical, and equipment costs.
 - Task 3 Conduct pre- and post-treatment surveys, herbicide residue sampling and submit the required written reporting to the State per the bid specifications.
4. NHDES will provide monetary support for up to 25% of the total project cost as outlined in the project bid, up to the amount specified in this document.

Should the cost of the herbicide be lower than the bids for those projects, remaining grant funds may be used match costs associated with other NHDES approved invasive aquatic plant control projects in the above referenced waterbody.


Initials: 
Date: 4/9/19

Exhibit B
Grant Amount and Payment Schedule

Payments shall be made by NHDES to the grantee upon approval of stated outputs and verification of the value of completed work through submittal of invoices for services rendered. NHDES will pay the City of Nashua up to \$15,573.00, within 30 days of receiving a copy of the contractor's invoice(s) for completion of the tasks outlined in #3 above.

The grantee is responsible for paying the contractor.

The billing address shall be as follows:

NH Department of Environmental Services
29 Hazen Drive, PO Box 95
Concord, NH 03302-0095
Attn: Amy Smagula, Watershed Management Bureau
E-mail: Amy.Smagula@des.nh.gov

Invoices shall be approved by the Grant Officer before payment is processed.


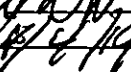

Initials: 
Date: 

Exhibit C
Special Provisions

Paragraph 14 is waived with respect to the Grantee. However, the Grantee shall ensure that the contractor or subcontractor hired by the Grantee to perform the work shall meet the insurance requirements of Paragraph 14.

Initials: 
Date: 4/2/19



City of Nashua

Office of the City Clerk

Patricia Piecuch
City Clerk

229 Main Street
P.O. Box 2019
Nashua, NH 03061-2019


(603) 589-3010
Fax (603) 589-3029
E-Mail: cityclerkdept@NashuaNH.gov

CERTIFICATE OF AUTHORITY

I, Patricia D. Piecuch, City Clerk of the City of Nashua, County of Hillsborough, State of New Hampshire, do hereby certify that:

1. I am the duly appointed City Clerk for the City of Nashua, NH;
2. I maintain and have custody of and am familiar with the seal and minute books of the municipality;
3. I am authorized to issue certificates with respect to the contents of such books and to affix such seal to such certificate;
4. The attached is a true and complete copy of Resolution 19-108; that said Resolution was approved following a motion duly made at a meeting of the Board of Aldermen of the City of Nashua, NH, held on March 26, 2019, which was duly called and at which a quorum was present;
5. The foregoing Resolution R-19-108 is in full force and effect, unamended, as of the date hereof;
6. That James Donchess was duly elected as Mayor of the City of Nashua at the Municipal Election held on November 3, 2015, by the voters of the City of Nashua; and
7. Resolved: That as Mayor he is hereby authorized on behalf of the City of Nashua to enter into the said contract with the State and to execute any and all documents, agreements and other instruments, and any amendments, revisions, or modifications thereto, as he may deem necessary, desirable or appropriate.

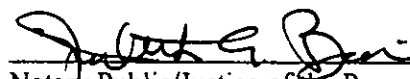
IN WITNESS WHEREOF, I have hereunto set my hand as the City Clerk of the Municipality this 4th day of April, 2019.

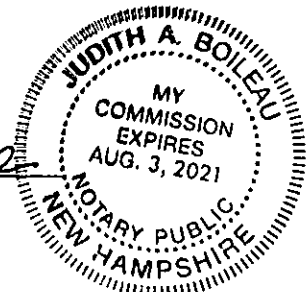

Patricia D. Piecuch, City Clerk

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

On April 4, 2019, before the undersigned officer personally appeared the person identified in the foregoing certificate, known to me, to be the City Clerk, of the City of Nashua, identified in the foregoing certificate, and acknowledge that she executed the foregoing instrument for the purpose therein contained.

In witness whereof I hereunto set my hand and official seal.


Notary Public/Justice of the Peace





RESOLUTION

RELATIVE TO THE ACCEPTANCE AND APPROPRIATION OF \$15,573 FROM THE STATE OF NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES, EXOTIC SPECIES PROGRAM AND AUTHORIZING THE TRANSFER OF MATCHING FUNDS

CITY OF NASHUA

In the Year Two Thousand and Nineteen

RESOLVED, by the Board of Aldermen of the City of Nashua that the City of Nashua and the Division of Community Development are authorized to accept and appropriate \$15,573 from the State of New Hampshire Department of Environmental Services, Exotic Species Program into Community Development Grant Activity "Exotic Aquatic Plant Control" for the purpose of controlling and managing aquatic invasive species in various portions of the Nashua River, and to authorize the transfer of matching funds in the amount of \$46,720 from the following fund and account:

Fund #	Fund Description	Dept. #	Dept. Description	Account #	Account Description	Amount	
1000	General Fund	181	Community Development	55699	Other Contracted Services	\$ 46,720	(1)

- (1) Matching funds from Community Development in the amount of \$46,720 are included in the FY2020 proposed operating budget as part of the FY2020 budget resolution and will be transferred to the grant activity upon passage of the FY2020 budget.

RESOLUTION

R-19-108

Relative to the acceptance and appropriation of \$15,573 from the State of New Hampshire Department of Environmental Services, Exotic Species Program and authoring the transfer of matching funds

IN THE BOARD OF ALDERMEN

1ST READING FEBRUARY 19, 2019

Referred to:
HUMAN AFFAIRS COMMITTEE

2nd Reading MARCH 26, 2019

3rd Reading _____

4th Reading _____

Other Action _____

Passed MARCH 26, 2019

Indefinitely Postponed _____

Defeated _____

Attest: *Conner O'Leary*
City Clerk

Lari Wilshire
President

Approved: *James W. Prudhoe*
Mayor's Signature

4/2/19
Date

Endorsed by

James W. Prudhoe
Barry

MAYOR

SCHMIDT

TENCZA

MELIZZI-
COLJA

[Signature]

KELLY

CARON

LAWS

KLEE

HARRIOTT-
GATHRIGHT

Michael O'Brien

O'BRIEN

Vetoed: _____

Veto Sustained: _____

Veto Overridden: _____

Attest: _____
City Clerk

President

**Attachment A
Budget Estimates**

HERBICIDE

Item/Service	Cost
Initial – Permitting	\$2,830
Initial – Treatment (labor, herbicide & posting)	\$18,121
Initial – Biological Surveys/Residue Sampling/Reporting	\$1,300
Second – Treatment (labor, herbicide & posting)	\$18,121
Second – Biological Surveys/Residue Sampling/Reporting	\$1,300
Final – Treatment (labor, herbicide & posting)	\$18,121
Final – Biological Surveys/Residue Sampling/Reporting	\$2,500
Total	\$62,293*

*DES will pay up to 25% of the total project cost (\$15,573.25) as outlined in the bid.

Attachment B

Waterbody Name	Town	Grant Award
Balch Lake	East Wakefield	\$15,304.00
Beaver Lake	Derry	\$3,195.00
Big Island Pond	Derry	\$8,073.00
Cobbetts Pond	Windham	\$4,746.00
Contoocook Lake	Jaffrey & Rindge	\$13,030.00
Danforth Ponds	Freedom	\$12,192.00
Flints Pond	Hollis	\$1,487.00
Forest Lake	Winchester	\$3,610.00
Glen Lake	Goffstown	\$3,681.00
Gorham Pond	Dunbarton	\$4,232.00
Horseshoe/Naticook	Merrimack	\$4,437.00
Jones/Downing/Marsh	New Durham/Alton	\$8,838.00
Lees Pond	Moultonborough	\$5,641.00
Long Pond	Danville and Kingston	\$7,449.00
Massasecum	Bradford	\$1,250.00
Melendy/Potanipo	Brookline	\$10,999.00
Milton Three Ponds	Milton	\$5,900.00
Monomonac	Rindge	\$3,865.00
Namaske Lake	Manchester	\$13,186.00
Nashua River	Nashua	\$15,573.00
Northwood Lake	Northwood	\$15,932.00
Opechee	Laconia	\$2,462.00
Ossipee Lake	Ossipee	\$5,546.00
Pearly Pond	Rindge	\$6,295.00
Phillips Pond	Sandown	\$8,490.00
Pine Island Pond	Manchester	\$2,275.00
Post Pond	Lyme	\$7,039.00
Powwow Pond	Kingston & East Kingston	\$14,748.00
Robinson and Otternic	Hudson	\$15,939.00
Rocky Pond	Canterbury	\$6,044.00
Scobie	Francestown	\$4,848.00
Silver Lake	Tilton & Belmont	\$1,243.00
Squam Lake	Holderness	\$12,366.00
Suncook Lakes/River/Barnstead Ponds	Barnstead	\$9,905.00
Sunrise Lake	Middleton	\$5,958.00
Turee Pond	Bow	\$5,349.00
Winnepesaukee	Alton	\$12,389.00
Winnepesaukee	Gilford	\$6,550.00
Winnepesaukee	Laconia	\$14,618.00
Winnepesaukee	Meredith	\$8,712.00
Winnepesaukee	Moultonborough	\$60,000.00
Winnepesaukee	Tuftonboro	\$5,601.00
Winnepesaukee	Wolfeboro	\$5,991.00
Winnisquam	Laconia	\$11,599.00