



MAY 27 '15 AM 9:19 DAS



**Thomas S. Burack, Commissioner**

May 21, 2015

Her Excellency, Governor Margaret Wood Hassan  
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 SumCo Eco-Contracting, LLC, Salem, Massachusetts (VC# 218584) in the amount of \$207,617 for construction services on the Leighton Brook Mitigation Project, effective upon Governor and Council approval through October 31, 2015. 100% Capital (General) Funds.

(2) Further authorize DES to include Allowances (not included in the base bid) A1 and A2 via executed Change Order(s), in the amount of \$21,600, as incurred during the contract period, effective upon Governor and Council approval through October 31, 2015. 100% Capital (General) Funds.

(3) Further authorize DES to establish a contingency amount of \$30,000 to cover unforeseen conditions and work that may occur during construction of the Leighton Brook Mitigation Project, effective upon Governor and Council approval through October 31, 2015. 100% Capital (General) Funds.

Funding is available in the account as follows:

|                                                                                                 |                |
|-------------------------------------------------------------------------------------------------|----------------|
|                                                                                                 | <u>FY 2015</u> |
| 03-44-44-440030-0960-034-500162                                                                 | \$259,217      |
| Dept. Environmental Services, Suncook River Infrastructure Protection Project, Capital Projects |                |

**EXPLANATION**

Approval of this contract will authorize construction of stream channel and bank stabilization practices on Leighton Brook in Epsom, New Hampshire needed to protect the Black Hall Road Bridge and abutting, private properties against continued channel adjustments. In 2006, a large flood event on the Suncook River resulted in a channel avulsion between the Huckins Mill Dam and the Route 4 Bridge in Epsom, New Hampshire. This avulsion caused the abandonment of the primary and secondary channels and created a new channel to the east of Bear Island. The Suncook River is continuing to adjust to its shorter channel length by migrating laterally across a sand dominated valley and incising (down-cutting) steadily. This ongoing incision is highlighted at the confluence of the Suncook River and Leighton Brook where the length of Leighton Brook has been considerably shortened due to the avulsion and a migrating headcut now threatens the structural integrity of the Black Hall Road stream crossing over Leighton Brook. The primary goal of this construction project is to prevent the Black Hall Road stream crossing from being undercut and to halt the mass failure of streambanks that also threaten two residential homes on either side of Leighton Brook.

A Request for Qualifications (RFQ) was prepared and advertised on the State of New Hampshire Department of Administrative Services Purchase and Property website and distributed widely to construction contractors throughout the region by email. DES requested that the following element be submitted for consideration from interested firms: grading of channel bed and banks, sourcing and hauling large quantities of rock, installation of rock, both angular and rounded, installation of geotechnical fabric under rock, installation of fabric encapsulated soil lifts, installation of surface erosion control fabric, installation of sediment and erosion control measures, control of water in an active stream habitat, and installation of native seed, shrubs, and trees. Firms were also asked to provide a list of five river-related projects completed in the past five years.

DES received twelve RFQ packages from firms throughout New England. The project design engineer from Inter-Fluve, Inc. and a representative from the DES reviewed all twelve RFQ submittal packages received and determined that four out of twelve met the pre-qualification criteria established in the RFQ. Attachment A provides a pre-qualification summary for all twelve firms. After notifying all firms of the results of the pre-qualification process, four firms were invited to submit bids for the Leighton Brook Mitigation Project. A mandatory pre-bid site walk was held at Leighton Brook on April 6, 2015 with all the pre-qualified firms listed below in attendance. Bids were delivered to DES by April 17, 2015 and opened publicly that afternoon. Contractor selection was made based upon low bid and contractors were notified of the decision on April 17, 2015.

| <u>Firm Name</u>                                          | <u>Basis of Award</u> | <u>Total plus Allowances</u> |
|-----------------------------------------------------------|-----------------------|------------------------------|
| SumCo Eco-Contracting LLC, Salem, MA                      | \$207,617             | \$259,217                    |
| SUR Construction, Inc, Rochester, NH                      | \$398,015             | \$459,015                    |
| Charter Contracting Company, LLC,<br>Caribou Springs, LLC | Withdrew              |                              |
|                                                           | Withdrew              |                              |

As a result of the low bid and due diligence to confirm the qualifications and capabilities of the respondents, we recommend awarding the contract to SumCo Eco-Contracting LLC (SumCo). This firm has satisfactorily completed similar, river restoration and stabilization projects in New Hampshire and New England within the last five years and has the resources necessary to complete the project during the summer of 2015 as specified by permit conditions issued by DES. In addition, the bid included Allowance Bid Items that could be included as necessary based upon the site conditions found during construction. This project and bid package has been discussed in detail with the DES subcontractor, design engineer, and geomorphologist from Inter-Fluve, Inc. and with engineers from the DES Wastewater Engineering Bureau due to their experience with large-scale construction contracts to ensure that this bid is favorable and that it is in compliance with contractual requirements. The outcome of this review process was unanimous support for the bid from SumCo and award of the construction contract plus the two Allowances and the \$30,000 contingency to SumCo.

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

We respectfully request your approval.

  
Thomas S. Burack, Commissioner

Subject: Leighton Brook Mitigation Project 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<br><span style="border: 1px solid black; padding: 2px;">Department of Environmental Services</span>                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                             | 1.2 State Agency Address<br><span style="border: 1px solid black; padding: 2px;">29 Hazen Drive, Concord, NH 03302</span>                   |                                                                                                  |
| 1.3 Contractor Name<br><span style="border: 1px solid black; padding: 2px;">SumCo Eco-Contracting, LLC</span>                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                             | 1.4 Contractor Address<br><span style="border: 1px solid black; padding: 2px;">16 Front Street, Suite 209, Salem MA, 01970</span>           |                                                                                                  |
| 1.5 Contractor Phone Number<br><span style="border: 1px solid black; padding: 2px;">(978)744-1515</span>                                                                                                                                                                                                                                                                                                                                                                                                                                   | 1.6 Account Number<br><span style="border: 1px solid black; padding: 2px;">44-440030-0960-034-500162</span> | 1.7 Completion Date<br><span style="border: 1px solid black; padding: 2px;">October 31, 2015</span>                                         | 1.8 Price Limitation<br><span style="border: 1px solid black; padding: 2px;">\$259,217.00</span> |
| 1.9 Contracting Officer for State Agency<br><span style="border: 1px solid black; padding: 2px;">Stephen Landry, Merrimack Watershed Supervisor</span>                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                             | 1.10 State Agency Telephone Number<br><span style="border: 1px solid black; padding: 2px;">(603)271-2969</span>                             |                                                                                                  |
| 1.11 Contractor Signature<br><span style="border: 1px solid black; padding: 2px;"></span>                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                             | 1.12 Name and Title of Contractor Signatory<br><span style="border: 1px solid black; padding: 2px;">RICHARD SUMNER, MANAGER</span>          |                                                                                                  |
| 1.13 Acknowledgement: State of <span style="border: 1px solid black; padding: 2px;">MA</span> , County of <span style="border: 1px solid black; padding: 2px;">Essex</span><br>On <span style="border: 1px solid black; padding: 2px;">May 5<sup>th</sup>, 2015</span> , 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 1.12, 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<br><span style="border: 1px solid black; padding: 2px;"></span><br>[Seal]                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                             |                                                                                                                                             |                                                                                                  |
| 1.13.2 Name and Title of Notary or Justice of the Peace<br><span style="border: 1px solid black; padding: 2px;">ERIC LEWIS, NOTARY PUBLIC</span>                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                             |                                                                                                                                             |                                                                                                  |
| 1.14 State Agency Signature<br><span style="border: 1px solid black; padding: 2px;"></span>                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                             | 1.15 Name and Title of State Agency Signatory<br><span style="border: 1px solid black; padding: 2px;">Thomas S. Burack, Commissioner</span> |                                                                                                  |
| 1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable)<br>By: _____ Director, On: _____                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                             |                                                                                                                                             |                                                                                                  |
| 1.17 Approval by the Attorney General (Form, Substance and Execution)<br>By: <span style="border: 1px solid black; padding: 2px;"></span> On: <span style="border: 1px solid black; padding: 2px;">5-22-2015</span>                                                                                                                                                                                                                                                                                                                        |                                                                                                             |                                                                                                                                             |                                                                                                  |
| 1.18 Approval by the Governor and Executive Council<br>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

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

**15. WORKERS' COMPENSATION.**

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

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

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

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

**18. AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire.

**19. CONSTRUCTION OF AGREEMENT AND TERMS.**

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual

intent, and no rule of construction shall be applied against or in favor of any party.

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

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

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

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

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

EXHIBIT "A"  
THE SERVICES

Construction of Leighton Brook Mitigation Project April 2015 as designed and specified by Inter-Fluve Inc.

The Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

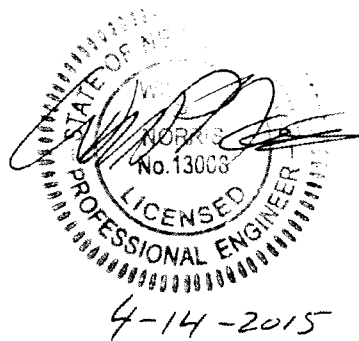
1. Bank and channel stabilization to prevent headcut migration through the use of rock and surface fabric treatments.
2. River flow management, including, but not limited to, temporary diversion and sequencing of work.
3. Removal and relocation of the oil tank that is currently on-site.

Project Manual issued in March 2015 and Addendum No. 1 dated April 13, 2015 are incorporated as part of Exhibit "A" by reference. The Project Manual cover and table of contents, as reissued following the addendum, are attached.

# Leighton Brook Mitigation Project

## Project Manual

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**April 14, 2015**



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Contractor Initials FR  
Date 5/5/15

EXHIBIT "B"  
COST PROPOSAL AND TERMS OF PAYMENT

Contract Plans and Specifications March 2015 and Addendum No. 1 dated April 13, 2015 are incorporated as part of Exhibit "B" by reference.

**Attachment 1:** SumCo Eco-Contracting LLC Bid, including Base Bid for the Leighton Brook Mitigation Project plus allowances as follows:

1. Allowance 1: Include allowance for the importing of additional topsoil necessary for completion of the Project as shown in the Drawings that exceeds the amount available through salvaging. Allowance shall include all material, equipment and labor required to perform Work.
2. Allowance 2: Include allowance for surface water diversion if necessary for completion of the Project as shown in the Drawings. Allowance shall include all material, equipment and labor required to perform Work.
3. Allowance 3: Include allowance for contingency to cover unforeseen conditions.

Contract Price Limitation Includes:

|             |                 |
|-------------|-----------------|
| Base Bid    | \$207,617       |
| Allowance 1 | \$6,600         |
| Allowance 2 | \$15,000        |
| Allowance 3 | <u>\$30,000</u> |

Total Contract Price Limitation \$259,217

Contractor Initials ES  
Date 5/5/15

Leighton Brook Mitigation Project

SECTION 00301 – BID FORM

PROJECT IDENTIFICATION: Leighton Brook Mitigation Project

Article 1 – BID RECIPIENT

1.01 THIS BID IS SUBMITTED TO: the New Hampshire Department of Environmental Services, 29 Hazen Drive, PO Box 95, Concord, NH 03302-0095, herein after referred to as the Owner.

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with OWNER in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

Article 2 – BIDDER’S ACKNOWLEDGEMENTS

2.01 Bidder accepts all of the terms and conditions of the Advertisement or Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. The Bid will remain subject to acceptance for 90 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

2.02 Bidder acknowledges that execution of a contract is subject to receipt of all state and federal permits necessary to complete the work. If permits are not received, the bid security will be returned to the Successful Bidder.

Article 3 – BIDDER’S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents, as set forth in the Agreement, that:

A. Bidder has examined and carefully studied the Bidding Documents, other related data identified in the Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged:

| <u>Addendum No.</u> | <u>Addendum Date</u> |
|---------------------|----------------------|
| <u>1</u>            | <u>4/13/15</u>       |
| <u>          </u>   | <u>          </u>    |
| <u>          </u>   | <u>          </u>    |

B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance of the Work.

## Leighton Brook Mitigation Project

- C. Bidder is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) that have been identified in SC-4.02 as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in SC-4.06 as containing reliable "technical data."
- E. Bidder has considered the information known to Bidder; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents; and (3) Bidder's safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 3.01.E above, Bidder does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.
- I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.

### Article 4 – **BIDDER'S CERTIFICATION**

#### 4.01 Bidder certifies that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;

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Leighton Brook Mitigation Project

- C. Bidder has not solicited or induced any individual or entity to refrain from bidding;
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
  4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.
- E. The bidder accepts the state's terms and conditions that apply to the particular bid and any resulting purchase order or contract by filling out and signing Form P-37 and that any other terms and conditions submitted by the bidder are null and void;
- F. The bidder will be subject to the terms and conditions stated on the purchase order relating to purchase; and
- G. The bidder offers to sell to the state of New Hampshire the commodities or services indicated at the price or prices quoted and in compliance with the requirements and specifications of the bid.
- H. In addition to the foregoing, the bidder shall, as part of his or her bid submission, certify by notarized affidavit, signed under oath, that neither the bidder, nor any of its subsidiaries, affiliates or principal officers:
1. Has, within the past 2 years, been convicted of, or pleaded guilty to, a violation of RSA 356:2, RSA 356:4, or any state or federal law or county or municipal ordinance prohibiting specified bidding practices, or involving antitrust violations, which has not been annulled;
  2. Has been prohibited, either permanently or temporarily, from participating in any public works project pursuant to RSA 638:20;
  3. Has previously provided false, deceptive, or fraudulent information on a vendor code number application form, or any other document submitted to the state of New Hampshire, which information was not corrected as of the time of the filing a bid, proposal, or quotation;

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Leighton Brook Mitigation Project

4. Is currently debarred from performing work on any project of the federal government or the government of any state;
5. Has, within the past 2 years, failed to cure a default on any contract with the federal government or the government of any state;
6. Is presently subject to any order of the New Hampshire department of labor, the New Hampshire department of employment security, or any other state department, agency, board, or commission, finding that the applicant is not in compliance with the requirements of the laws or rules that the department, agency, board, or commission is charged with implementing;
7. Is presently subject to any sanction or penalty finally issued by the New Hampshire department of labor, the New Hampshire department of employment security, or any other state department, agency, board, or commission, which sanction or penalty has not been fully discharged or fulfilled;
8. Is currently serving a sentence or is subject to a continuing or unfulfilled penalty for any crime or violation noted in this section;
9. Has failed or neglected to advise the Owner of any conviction, plea of guilty, or finding relative to any crime or violation noted in this section, or of any debarment, within 30 days of such conviction, plea, finding, or debarment; or
10. Has been placed on the debarred parties list specified in Adm 606.11 within the past year.

Article 5 – **BASIS OF BID**

Leighton Brook Mitigation Project

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

BASE BID SCHEDULE

| NO.                                    | ITEM                                         | UNIT     | ESTIMATED QUANTITY      | UNIT PRICE             | TOTAL ESTIMATED PRICE   |
|----------------------------------------|----------------------------------------------|----------|-------------------------|------------------------|-------------------------|
| 1                                      | Mobilization & Demobilization                | LS       | 1                       | \$19,000 <sup>00</sup> | \$19,000 <sup>00</sup>  |
| 2                                      | Flow Management, Erosion & Pollution Control | LS       | 1                       | \$2,900 <sup>00</sup>  | \$2,900 <sup>00</sup>   |
| 3                                      | Oil Tank Removal                             | LS       | 1                       | \$9,000 <sup>00</sup>  | \$9,000 <sup>00</sup>   |
| 4                                      | Excavation                                   | LS       | 1                       | \$29,500 <sup>00</sup> | \$29,500 <sup>00</sup>  |
| 5a                                     | Type 1 Rock                                  | TON      | 2244                    | \$34 <sup>00</sup>     | \$76,296 <sup>00</sup>  |
| 5b                                     | Type 2 Rock                                  | TON      | 962                     | \$33 <sup>00</sup>     | \$31,746 <sup>00</sup>  |
| 6                                      | Boulders                                     | EA       | 80                      | \$135 <sup>00</sup>    | \$10,800 <sup>00</sup>  |
| 7                                      | Large Wood                                   | Per tree | 30                      | \$210 <sup>00</sup>    | \$6,300 <sup>00</sup>   |
| 8                                      | Surface Fabric Treatment                     | Sq. Yd.  | <del>3,590</del><br>700 | \$10 <sup>50</sup>     | \$7,350 <sup>00</sup>   |
| 10                                     | Seed                                         | LB       | 25                      | \$125 <sup>00</sup>    | \$3,125 <sup>00</sup>   |
| 11                                     | 3-Gallon Container Plant                     | EA       | 400                     | \$29 <sup>00</sup>     | \$11,600 <sup>00</sup>  |
| TOTAL OF ALL ESTIMATED BID PRICES (\$) |                                              |          |                         |                        | \$207,617 <sup>00</sup> |

BASE BID TWO HUNDRED SEVEN THOUSAND SIX HUNDRED SEVENTEEN DOLLARS AND <sup>00</sup>/<sub>100</sub> (\$207,617<sup>00</sup>)  
(use words) (figures)

ALLOWANCES (NOT INCLUDED IN BASE BID)

| NO.                                                                            | ITEM                                       | UNIT | ESTIMATED QUANTITY | UNIT PRICE             | TOTAL ESTIMATED PRICE  |
|--------------------------------------------------------------------------------|--------------------------------------------|------|--------------------|------------------------|------------------------|
| A1                                                                             | Imported Topsoil                           | CY   | 120                | \$55 <sup>00</sup>     | \$6,600 <sup>00</sup>  |
| A2                                                                             | Surface Water Diversion                    | LS   | 1                  | \$15,000 <sup>00</sup> | \$15,000 <sup>00</sup> |
| A3                                                                             | Contingency to cover unforeseen conditions |      |                    |                        | \$30,000               |
| TOTAL OF ALL ESTIMATED ALLOWANCE PRICES (\$)                                   |                                            |      |                    |                        | \$51,600 <sup>00</sup> |
| <u>FIFTY ONE THOUSAND SIX HUNDRED DOLLARS AND <sup>00</sup>/<sub>100</sub></u> |                                            |      |                    |                        |                        |

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## Leighton Brook Mitigation Project

All specific cash allowances are included in the price(s) set forth above and have been computed in accordance with paragraph 11.02 of the General Conditions and paragraph SC-11.02 of the Supplementary Conditions.

Unit Prices have been computed in accordance with paragraph 11.03.B of the General Conditions.

Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Bid items will be based on actual quantities provided, determined as provided in the Contract Documents.

### Article 6 – TIME OF COMPLETION

- 6.01 Bidder agrees that the Work will be substantially complete on or before September 15, 2015, and will be completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions on or before October 31, 2015.
- 6.02 Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the times specified above, which shall be stated in the Agreement.

### Article 7 – ATTACHMENTS TO THIS BID

- 7.01 The following documents are submitted with and made a condition of this Bid:
- A. Required Bid security in the form of Bid Bond (Specification Section 00310 – Bid Bond, EJCDC NO. C-430 Documents, Bid Bond (Penal Sum), Pages 1-2), identified in Section 00100 – Instructions to Bidders in the form of a certified or bank check or bid bond;
  - B. List of Proposed Subcontractors;
  - C. List of Proposed Suppliers;
  - D. List of Project References;
  - E. Noncollision Affidavit.

### Article 8 – DEFINED TERMS

- 8.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

SUBMITTED on April 17, 2015.

Leighton Brook Mitigation Project

If Bidder is:

An Individual

Name (typed or printed): \_\_\_\_\_

By: \_\_\_\_\_ (SEAL)  
*(Individual's signature)*

Doing business as: \_\_\_\_\_  
Business address: \_\_\_\_\_

Phone No.: \_\_\_\_\_ FAX No.: \_\_\_\_\_

A Partnership

Partnership Name: \_\_\_\_\_ (SEAL)

By: \_\_\_\_\_  
*(Signature of general partner -- attach evidence of authority to sign)*

Name (typed or printed): \_\_\_\_\_

Business address: \_\_\_\_\_

Phone No.: \_\_\_\_\_ FAX No.: \_\_\_\_\_

A Corporation Limited Liability Company

LLC Corporation Name: SumCo Eco-Contracting, LLC (SEAL)

State of Incorporation: Massachusetts

Type (~~General Business, Professional, Service~~, Limited Liability): Limited Liability

By: \_\_\_\_\_  
*(Signature -- attach evidence of authority to sign)*

Name (typed or printed): Travis Sumner

Title: Manager

(CORPORATE SEAL)

Attest Mehli A. Adambauer  
*(Signature of Corporate Secretary)*

Business address: 16 Front Street, Suite 209, Salem, MA 01970

Phone No.: (978) 744-1515 FAX No.: (815) 572-5022

Date of Qualification to do business is February 17, 2006

Leighton Brook Mitigation Project

A Joint Venture

Joint Venturer Name: \_\_\_\_\_ (SEAL)

By: \_\_\_\_\_  
(Signature of joint venture partner -- attach evidence of authority to sign)

Name (typed or printed): \_\_\_\_\_

Title: \_\_\_\_\_

Business address: \_\_\_\_\_

Phone No.: \_\_\_\_\_ FAX No.: \_\_\_\_\_

Joint Venturer Name: \_\_\_\_\_ (SEAL)

By: \_\_\_\_\_  
(Signature -- attach evidence of authority to sign)

Name (typed or printed): \_\_\_\_\_

Title: \_\_\_\_\_

Business address: \_\_\_\_\_

Phone No.: \_\_\_\_\_ FAX No.: \_\_\_\_\_

Phone and FAX Number, and Address for receipt of official communications:  
\_\_\_\_\_  
\_\_\_\_\_

(Each joint venturer must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated above.)

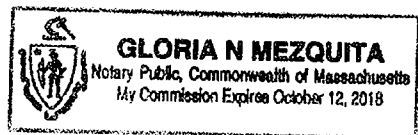
Notarized Affidavit

On this the 10<sup>th</sup> day of April, 2015, before the undersigned officer, personally appeared Travis Sumner (print name), Manager (title), who acknowledged himself to be the person who executed the foregoing instrument for the purpose therein contained.

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

Gloria N. Mezquita  
enter name notary public/JOP, select title

My Commission Expires:  
10/12/18 (date)



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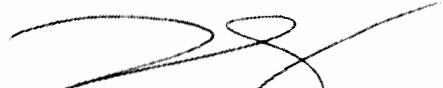
03/18/2015

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Contractor Initials [Signature]  
Date 5/5/15

**CERTIFICATION OF TAX COMPLIANCE:**

Pursuant to Mass General Laws, Chapter 62C, s. 49A, I certify under the penalties of perjury, that I, to my best knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

  
\_\_\_\_\_  
Signature of Individual or Officer

Travis Sumner, Manager  
Company Officer

26-0135998  
Tax ID Number

April 17, 2015  
Date

ATTACHMENT E

Leighton Brook Mitigation Project

State of Massachusetts )  
County of Essex )

Contract Bid Name LEIGHTON BROOK MITIGATION ss.

I state that I am Manager (Title) of SumCo Eco-Contracting, LLC (Name of Firm) and that I am authorized to make this affidavit on behalf of this firm and its owners, directors, and officers. I am the person responsible in this firm for the price(s) and the amount of this Bid.

I state that:

(1) The price(s) and amount of this Bid have been arrived at independently and without consultation, communication or agreement with any other Contractor, Bidder, or potential Bidder, except as disclosed on the attached appendix.


(2) That neither the price(s) nor the amount of this Bid, and neither the approximate price(s) nor approximate amount of this Bid, have been disclosed to any other firm or person who is a Bidder or potential Bidder, and they will not be disclosed before Bid opening.

(3) No attempt has been made or will be made to induce any firm or person to refrain from bidding on this contract, or to submit a Bid higher than this Bid, or to submit any intentionally high or noncompetitive Bid.

(4) SumCo Eco-Contracting, LLC (name of this firm), its affiliates, subsidiaries, officers, directors and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted of or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as described in the attached appendix.

I state that SumCo Eco-Contracting, LLC (name of this firm) understands and acknowledges that the above representations are material and important, and will be relied on by the State of New Hampshire in awarding the contract(s) for which this Bid is submitted. I understand and this firm understands that any misstatement in this affidavit is and shall be treated as fraudulent concealment from the State of New Hampshire of the true facts relating to the submission of Bids for this contract.

Signature



Name of Company/Position

SumCo Eco-Contracting - MANAGER

Sworn to and subscribed before me this 10<sup>th</sup> day of April, 2014.

Notary Public for New Hampshire MA




This commission expires 10/12/2018

END OF SECTION 00320

PM  
Date 5/5/15

EXHIBIT "C"  
SPECIAL CONDITIONS

There are no special conditions.

Contractor Initials   
Date 5/5/15

# 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 SumCo Eco-Contracting, LLC, a(n) Massachusetts limited liability company registered to do business in New Hampshire on November 17, 2008. 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.



In TESTIMONY WHEREOF, I hereto  
set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 5<sup>th</sup> day of May, A.D. 2015

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

William M. Gardner  
Secretary of State



May 4, 2015

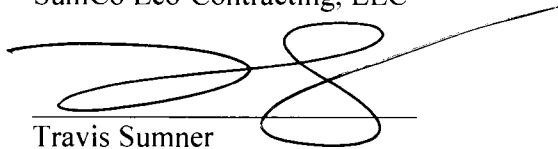
To Whom It May Concern:

SumCo Eco-Contracting, LLC is a limited liability company organized in the State of Massachusetts. Limited Liability Companies (LLCs) do not have Boards of Directors or elected officers. LLCs are organized and owned by Members and are run by Managers, designated from time to time by those Members. Managers are authorized, for and on behalf of the LLC to do all things necessary or appropriate to carry on the business and purposes of the LLC and to exercise all powers and authority granted by the Massachusetts Limited Liability Company Act to managers.

The following individual was designated as a Manager of SumCo Eco-Contracting, LLC in the Company's Certificate of Organization, filed with the Commonwealth of Massachusetts on February 17, 2006, and is therefore authorized to execute contracts and bonds in the name and on behalf of the Company. Such designation has not been amended or rescinded and remains in full force and effect as of this date.

Richard Sumner  
14 Park Street  
South Hamilton, MA 01982

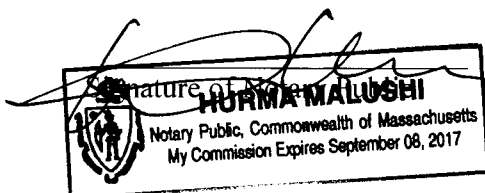
Respectfully submitted,  
SumCo Eco-Contracting, LLC

  
Travis Sumner  
Manager

---

Commonwealth of Massachusetts ( SUFFOLK COUNTY ) ss.

On this 5 day of MAY, 2015, before me, the above signed personally appeared Travis Sumner, proved to me through satisfactory evidence of identification, which were MA Drivers Lic. to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.







# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
5/4/2015

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<br>Cleary Insurance Inc<br>226 Causeway St., Suite 302<br>Boston MA 02114      | CONTACT NAME: Ann Lafond                                                                                      |
|                                                                                         | PHONE (A/C, No, Ext): 617-723-0700 FAX (A/C, No): 617-305-0365<br>E-MAIL ADDRESS: alafond@clearyinsurance.com |
| INSURED<br>SumCo Eco-Contracting, LLC<br>16 Front Street<br>Suite 209<br>Salem MA 01970 | INSURER(S) AFFORDING COVERAGE                                                                                 |
|                                                                                         | INSURER A: Homeland Mutual Co of NY                                                                           |
|                                                                                         | INSURER B: Safety Insurance                                                                                   |
|                                                                                         | INSURER C: Granite State Ins Co                                                                               |
|                                                                                         | INSURER D:                                                                                                    |
|                                                                                         | INSURER E:                                                                                                    |

COVERAGES CERTIFICATE NUMBER: 2015 Master REVISION NUMBER:

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

| INSR LTR | TYPE OF INSURANCE                                                                                                                                                                                                                                                      | ADDL INSR | SUBR VVVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS                                                                                                                                                                                                                                                                   |
|----------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|-----------|---------------|-------------------------|-------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A        | GENERAL LIABILITY<br><input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY<br><input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR                                                                                                | X         |           | 793002155-01  | 5/1/2015                | 5/1/2016                | EACH OCCURRENCE \$ 1,000,000<br>DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000<br>MED EXP (Any one person) \$ 5,000<br>PERSONAL & ADV INJURY \$ 1,000,000<br>GENERAL AGGREGATE \$ 2,000,000<br>PRODUCTS - COMP/OP AGG \$ 2,000,000<br>Per Project Max \$ 10,000,000 |
|          | GEN'L AGGREGATE LIMIT APPLIES PER:<br><input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC                                                                                                                         |           |           |               |                         |                         |                                                                                                                                                                                                                                                                          |
| B        | AUTOMOBILE LIABILITY<br><input type="checkbox"/> ANY AUTO<br><input type="checkbox"/> ALL OWNED AUTOS<br><input checked="" type="checkbox"/> HIRED AUTOS<br><input checked="" type="checkbox"/> SCHEDULED AUTOS<br><input checked="" type="checkbox"/> NON-OWNED AUTOS |           |           | 5055915       | 5/1/2015                | 5/1/2016                | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000<br>BODILY INJURY (Per person) \$<br>BODILY INJURY (Per accident) \$<br>PROPERTY DAMAGE (Per accident) \$<br>Uninsured motorist Bl split limit \$ 100,000                                                                |
|          | UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR<br>EXCESS LIAB <input checked="" type="checkbox"/> CLAIMS-MADE<br>DED RETENTION \$                                                                                                                             |           |           |               |                         |                         |                                                                                                                                                                                                                                                                          |
| C        | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY<br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)<br>If yes, describe under DESCRIPTION OF OPERATIONS below                                                                                 | Y/N<br>N  | N/A       | WC005690115   | 5/12/2015               | 5/12/2016               | <input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER<br>E.L. EACH ACCIDENT \$ 1,000,000<br>E.L. DISEASE - EA EMPLOYEE \$ 1,000,000<br>E.L. DISEASE - POLICY LIMIT \$ 1,000,000                                                         |
|          | A                                                                                                                                                                                                                                                                      |           |           |               |                         |                         | Contractors Pollution                                                                                                                                                                                                                                                    |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
Project: Leighton Brook Mitigation Project  
The New Hampshire Dept. of Environmental Services is included as additional insured when required by written contract per OBENVGE304 0211 & OBENVGE301 0211

|                                                                                                                                                           |                                                                                                                                                                                           |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>CERTIFICATE HOLDER</b><br><br>New Hampshire Dept of Environmental Servi<br>Attn: Steve Landry<br>29 Hazen Drive<br>PO Box 95<br>Concord, NH 03302-0095 | <b>CANCELLATION</b><br><br>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<br><br>Ann Lafond/LAFOND <i>Ann Lafond</i>                                                                                                                      |

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION – FORM I

This endorsement only modifies coverage provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
CONTRACTORS ENVIRONMENTAL LIABILITY COVERAGE PART

### SCHEDULE

**Name of Person or Organization:**

Any person or organization for which the Named Insured has agreed to provide insurance prior to loss as provided by this policy but only to the scope of insurance agreed to by the Named Insured.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

- A. **SECTION II – WHO IS AN INSURED** is amended to include as an insured the person or organization shown in the SCHEDULE above, but only with respect to liability arising out of your ongoing operations performed for that insured.
- B. With respect to the insurance afforded to these additional insureds, the following exclusion is added:

**2. Exclusions**

This insurance does not apply to **bodily injury, property damage or environmental damage** occurring after:

- (a) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or
- (b) That portion of **your work** out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

All other terms and conditions remain the same.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement only modifies coverage provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
CONTRACTORS ENVIRONMENTAL LIABILITY COVERAGE PART

### SCHEDULE

| Name Of Additional Insured Person(s)<br>Or Organization(s):                                                                                                                                        | Location And Description Of Completed Operations:                                                      |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------|
| Any person or organization for which the Named Insured has agreed to provide insurance prior to loss as provided by this policy but only to the scope of insurance agreed to by the Named Insured. | Any location or completed operation, but only to the scope of insurance agreed to by the Named Insured |

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

**SECTION II – WHO IS AN INSURED** is amended to include as an additional insured the person(s) or organization(s) shown in the SCHEDULE above, but only with respect to liability for **bodily injury, property damage** or **environmental damage** caused, in whole or in part, by **your work** at the location designated and described in the SCHEDULE above performed for that additional insured and included in the **products-completed operations hazard**.

All other terms and conditions remain the same.

**PERFORMANCE BOND**

**KNOW ALL MEN BY THESE PRESENTS:** that

Sumco-Eco Contracting LLC

(Name of Contractor)

16 Front Street-Suite 209 Sale MA 01970

(Address of Contractor)

a Limited Liability Coporation , hereinafter called Principal,

(Corporation, Partnership or Individual)

and Western Surety Company

(Name of Surety)

333 S Wabash Avenue Chicago IL 60604

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto

New Hampshire Department of Environmental Services

(Name of Owner)

29 Hazen Drive Concord NH 03302-0095

(Address of Owner)

hereinafter called **OWNER**, in the total aggregate penal sum of Two Hundred Fifty Nine Thousand

Two Hundred Seventeen Dollars and 00/100

Dollars, \$ ( 259,217.00 )

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators successors, and assigns, jointly and severally, firmly by these presents.

**THE CONDITION OF THIS OBLIGATION** is such that whereas, the Principal entered into a certain contract with the **OWNER**, dated the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_ , a copy of which is hereto attached and made a part hereof for the construction of:

Leighton Brook Mitigation Project

**NOW, THEREFORE**, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extension thereof which may be granted by the **OWNER**, with or without notice to the Surety and during the one year guaranty period, and if the **PRINCIPAL** shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the **OWNER** from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the **OWNER** all outlay and expense which the **OWNER** may incur in making good any default, then this obligation shall be void: otherwise to remain in full force and effect.

**PROVIDED, FURTHER**, that the said surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to **WORK** to be performed thereunder or the specifications accompanying same shall in any way affect its obligation on this **BOND**, and it does hereby waive notice of any such change, extension of time alteration or addition to the terms of the contract or to the **WORK** or to the specifications.

**PROVIDED, FURTHER**, that it is expressly agreed that this **BOND** shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the contract price more than 20 percent, so as to bind the **PRINCIPAL** and the **SURETY** to the full and faithful performance of the Contract as so amended.

The term "Amendment", wherever used in this **BOND** and whether referring to this **BOND**, the contract or the loan Documents shall include any alteration, addition, extension or modification of any character whatsoever.

**PROVIDED, FURTHER**, that no final settlement between the **OWNER** and the **CONTRACTOR** shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

**IN WITNESS WHEREOF**, this instrument is executed in 1 counterparts, each one of which shall be deemed an original, this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ .  
(number)

**ATTEST:**

By: [Signature]  
(Principal) Secretary

(SEAL)

SumCo Eco-Contracting, LLC  
Principal

**BY** [Signature]

Richard Sumner, Manager  
(Address)

16 Front Street - Suite 209  
Salem, MA 01970

By: \_\_\_\_\_  
Witness as to Principal

\_\_\_\_\_  
(Address)

**ATTEST:**

By: [Signature]  
Witness as to Surety

\_\_\_\_\_  
(Address)

Western Surety Company  
(Surety)

**BY** [Signature]  
Attorney - in - Fact

Thomas P. Durkin  
(Address)

226 Causeway Street Suite 302  
Boston, MA 02114

**NOTE:** Date of **BOND** must not be prior to date of Contract.

If **CONTRACTOR** is Partnership, all partners should execute **BOND**

**IMPORTANT:** Surety companies executing **BONDS** must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of New Hampshire

# Western Surety Company

## POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

**Know All Men By These Presents**, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

**Thomas P Durkin, Danielle Wilga, Individually**

of Westford, MA, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

### - In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

**In Witness Whereof**, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 5th day of September, 2013.



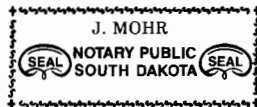
WESTERN SURETY COMPANY

Paul T. Bruflat, Vice President

State of South Dakota }  
County of Minnehaha } ss

On this 5th day of September, 2013, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires  
June 23, 2015



J. Mohr, Notary Public

### CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.



WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary

**PAYMENT BOND**

**KNOW ALL MEN BY THESE PRESENTS:** that

Sumco-Eco Contracting LLC

(Name of Contractor)

16 Front Street-Suite 209 Salem MA 01970

(Address of Contractor)

a Limited Liability Corporation , hereinafter called Principal,  
(Corporation, Partnership or Individual)

and Western Surety Company

(Name of Surety)

333 S Wabash Avenue, Chicago IL 60604

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto

New Hampshire Department of Environmental Services

(Name of Owner)

29 Hazen Drive Concord NH 03302-0095

(Address of Owner)

hereinafter called **OWNER** and unto all persons, firms, and corporations who or which may furnish labor, or who furnish materials to perform as described under the contract and to their successors and assigns, in the total aggregate penal sum of Two Hundred Fifty Nine Thousand Two Hundred Seventeen Dollars, (\$ 259,217.00 ) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

**THE CONDITION OF THIS OBLIGATION** is such that whereas, the Principal entered into a certain contract with the **OWNER**, dated the \_\_\_\_\_ day of \_\_\_\_\_ 20 15 , a copy of which is hereto attached and made a part hereof for the construction of:

Leighton Brook Mitigation Project

**NOW, THEREFORE**, if the Principal shall promptly make payment to all persons, firms, and corporations furnishing materials for or performing labor in the prosecution of the **WORK** provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such **WORK**, and for all labor cost incurred in such **WORK** including that be a subcontractor, and to any mechanic or materialman lienholder whether it acquires its lien by operation of State or Federal Law; then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, that beneficiaries or claimants hereunder shall be limited to the subcontractors, and persons, firms, and corporations having a direct contract with the PRINCIPAL or its SUBCONTRACTORS.

**PROVIDED FURTHER**, that the said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the **WORK** to be performed thereunder or the **SPECIFICATIONS** accompanying the same shall in any way affect its obligation on this **BOND**, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the **WORK** or to the **SPECIFICATIONS**.


**PROVIDED, FURTHER** that no suit or action shall be commenced hereunder by any claimant: (a) Unless claimant, other than one having a direct contract with the PRINCIPAL shall have given written notice to any two of the following: The PRINCIPAL, the OWNER, or the SURETY above named within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the PRINCIPAL, OWNER, or SURETY, at any place where an office is regularly maintained for the transaction business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer. (b) After the expiration of one (1) year following the date on which PRINCIPAL ceased work on said CONTRACT, it being understood, however, that if any limitation embodied in the BOND is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

**PROVIDED, FURTHER**, that it is expressly agreed that this BOND shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the contract price more than 20 percent, so as to bind the PRINCIPAL and the SURETY to the full and faithful performance of the Contract as so amended. The term "Amendment", wherever used in this BOND and whether referring to this BOND, the contract or the loan Documents shall include any alteration, addition, extension or modification of any character whatsoever.


**PROVIDED FURTHER**, that no final settlement between the **OWNER** and the **CONTRACTOR** shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.



IN WITNESS WHEREOF, this instrument is executed  
in \_\_\_\_\_ 1 counterparts, each one of  
(number)  
which shall be deemed an original,  
this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ .

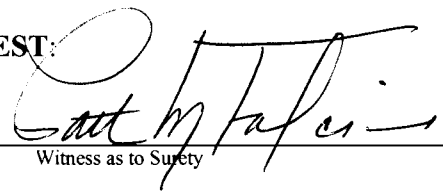
ATTEST:  
By:   
(Principal) Secretary  
(SEAL)

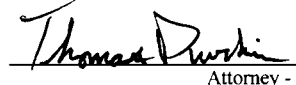
SumCo Eco-Contracting, LLC  
Principal

BY   
Richard Sumner, Manager  
(Address)  
16 Front Street - Suite 209  
Salem, MA 01970

By: \_\_\_\_\_  
Witness as to Principal  
\_\_\_\_\_  
(Address)

Western Surety Company  
(Surety)

ATTEST:  
By:   
Witness as to Surety  
\_\_\_\_\_  
\_\_\_\_\_  
(Address)

BY   
Attorney - in - Fact  
Thomas P. Durkin  
(Address)  
226 Causeway Street Suite 302  
Boston, MA 02114

**NOTE:** Date of **BOND** must not be prior to date of Contract.  
If **CONTRACTOR** is partnership, all partners should execute **BOND**.

**IMPORTANT:** Surety companies executing **BONDS** must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of New Hampshire.

# Western Surety Company

## POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

**Thomas P Durkin, Danielle Wilga, Individually**

of Westford, MA, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

### - In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 5th day of September, 2013.



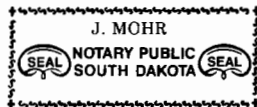
WESTERN SURETY COMPANY

*Paul T. Bruflat*  
Paul T. Bruflat, Vice President

State of South Dakota }  
County of Minnehaha } ss

On this 5th day of September, 2013, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires  
June 23, 2015



*J. Mohr*  
J. Mohr, Notary Public

### CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.



WESTERN SURETY COMPANY

*L. Nelson*  
L. Nelson, Assistant Secretary

## Attachment A: Leighton Brook Mitigation Project Pre-Qualification Summary for Contractors

| Contractor                               | Experience - >10yrs experience in rivers/resource areas? |                  | Examples of current work included required elements? | 5 River Related projects in past 5 years? | Any project not completed by original contract date? | 3 projects in last 5 yrs with: sediment/erosion control, water mgmt, channel bed/bank stabilization, installation of seed and plantings? | Provided 3 references from last 5 years? | Qualified to Bid? |
|------------------------------------------|----------------------------------------------------------|------------------|------------------------------------------------------|-------------------------------------------|------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|-------------------|
|                                          | Project Mgr.                                             | Field Supervisor |                                                      |                                           |                                                      |                                                                                                                                          |                                          |                   |
| Caribou Springs LLC                      | Y                                                        | Y                | Y                                                    | Y                                         | N                                                    | Y                                                                                                                                        | Y                                        | Y                 |
| Charter Contracting Company, LLC         | Y                                                        | Y                | Y                                                    | Y                                         | N                                                    | Y                                                                                                                                        | Y                                        | Y                 |
| SumCo Eco-Contracting, LLC               | Y                                                        | Y                | Y                                                    | Y                                         | Y (resolved)                                         | Y                                                                                                                                        | Y                                        | Y                 |
| SUR Construction, Inc.                   | Y                                                        | Y                | Y                                                    | N                                         | N                                                    | Y                                                                                                                                        | Y                                        | Y                 |
| Alvin J Coleman & Son, Inc.              | NS                                                       | Y (one)          | Y                                                    | Y                                         | N                                                    | Y                                                                                                                                        | Y                                        | N                 |
| The Dirt Doctors, LLC                    | N                                                        | N                | Y                                                    | N                                         | N                                                    | N                                                                                                                                        | Y                                        | N                 |
| FL Merrill Construction, Inc.            | N                                                        | N                | Y                                                    | Y                                         | N                                                    | N                                                                                                                                        | Y                                        | N                 |
| Greene & Russell, Inc.                   | N                                                        | N                | Y                                                    | N                                         | N                                                    | N                                                                                                                                        | Y                                        | N                 |
| Daniel T. Ladd Site Work LLC             | NS                                                       | NS               | N                                                    | N                                         | N                                                    | N                                                                                                                                        | Y                                        | N                 |
| Northeast Earth Mechanics, Inc.          | N                                                        | N                | Y                                                    | Y                                         | N                                                    | NS                                                                                                                                       | Y                                        | N                 |
| J. Parker & Daughters Construction, Inc. | N                                                        | N                | NS                                                   | NS                                        | N                                                    | N                                                                                                                                        | Y                                        | N                 |
| T. Buck Construction, Inc.               | NS                                                       | NS               | N                                                    | N                                         | N                                                    | N                                                                                                                                        | Y                                        | N                 |

Note - items marked "NS" were not specified or were insufficiently detailed to make a determination.

### Review Team Members

| Name                                             | Qualifications                                                                                                                                      |
|--------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|
| Nick Nelson, Inter-Fluve Inc.                    | 8 years experience with Inter-Fluve, Inc. as Fluvial Geomorphologist and 3 years of graduate work in the field of fluvial geomorphology             |
| Steve Landry, NHDES Watershed Assistance Section | 16 years experience, Merrimack Watershed Supervisor, aquatic biologist, project management, river restoration, dam removal, and watershed expertise |