



The State of New Hampshire
Department of Environmental Services



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Robert R. Scott, Commissioner

May 10, 2018

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

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REQUESTED ACTION

Authorize the Department of Environmental Services (NHDES) to enter into a **Sole Source** contract with Barbara Hoffman, Warner, NH (VC# 272203) in an amount not to exceed \$28,000 to provide services necessary to assist NHDES with development of administrative rules for the Wetlands Bureau, effective upon Governor and Council approval through September 30, 2018. 100% Wetland Fee funds.

Funding is available in the account as follows:

	<u>FY18</u>
03-44-442010-3855-046-500464	\$28,000
Department of Environmental Services, Wetlands Bureau, Consultant Services	

EXPLANATION

The contract is to provide rulemaking assistance to the Wetlands Bureau. This contract is necessary because of the substantial workload of the NHDES-Legal Unit and the need for immediate assistance. This contract is **SOLE SOURCE** because the person specifically identified in this scope of work has demonstrated success and experience in rulemaking, interpreting state and federal laws, and in drafting rules in accordance with the NH Drafting and Procedure Manual for Administrative Rules. The qualifications of this contractor received excellent references from past employers, her work with the NHDES-Legal unit, and the Department overall. NHDES needs consulting assistance to address the significant stakeholder comments in an timely manner. The contract has been approved by the Department of Justice as to form, content, and execution.

We respectfully request your approval.


Robert Scott, Commissioner

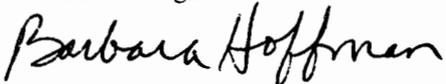
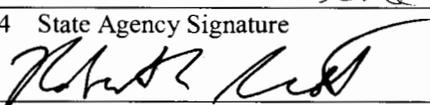
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name Department of Environmental Services		1.2 State Agency Address 29 Hazen Drive PO Box 95 Concord, NH 03302	
1.3 Contractor Name Barbara Hoffman		1.4 Contractor Address 70 E. Sutton Road Warner, NH 03278	
1.5 Contractor Phone Number 603-456-2769	1.6 Account Number 03-44-442010-3855-046	1.7 Completion Date September 30, 2018	1.8 Price Limitation \$28,000
1.9 Contracting Officer for State Agency Mary Ann Tilton, Asst. Administrator, Wetlands Bureau		1.10 State Agency Telephone Number 603-271-2929	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory Barbara Hoffman, principal	
1.13 Acknowledgement: State of <u>NH</u> , County of <u>Merrimack</u> On <u>5-10-2018</u> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace <div style="display: flex; justify-content: space-between; align-items: center;"> <div style="text-align: center;"> [Seal]  </div> <div style="text-align: right;"> DONNA M. JONES, Notary Public State of New Hampshire (My Commission Expires January 27, 2021) </div> </div>			
1.13.2 Name and Title of Notary or Justice of the Peace <u>Donna Jones Notary</u>			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory <u>Robert R. Scott</u> Commissioner NHDES	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: <u>Sana J. Sullivan</u> Director, On: <u>5-11-18</u>			
1.17 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By: <u>W. G. Ari</u> On: <u>5/10/18</u>			
1.18 Approval by the Governor and Executive Council (if applicable) By: _____ On: _____			

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

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

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

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

4. CONDITIONAL NATURE OF AGREEMENT.

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

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.

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

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

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

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

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

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

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

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

7. PERSONNEL.

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

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

Agreement. This provision shall survive termination of this Agreement.

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

8. EVENT OF DEFAULT/REMEDIES.

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

8.1.1 failure to perform the Services satisfactorily or on schedule;

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

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

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

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

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

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

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

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

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

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

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

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

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

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

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

14. INSURANCE.

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

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

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

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

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

15. WORKERS' COMPENSATION.

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

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

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

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

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

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

19. CONSTRUCTION OF AGREEMENT AND TERMS.

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

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

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

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

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

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

EXHIBIT A

SCOPE OF SERVICES

Provide services to assist the NHDES – Wetlands Bureau on matters including, but not limited to researching applicable state and federal law for the drafting and adoption of wetland rules, reviewing and responding to the public comments received, and developing administrative rules for the wetlands bureau pursuant to RSA 482-A and consistent with RSA 541-A, and the NH Drafting and Procedure Manual for Administrative Rules.

- 1) Research issues raised by the wetlands bureau or by public comments and provide summary of guidance in writing or in person.
- 2) Provide week by week rolling assistance based on NHDES review of stakeholder and workgroup comments.
- 3) Provide timely rules drafting and revisions for NHDES – wetlands bureau review and approval.
- 4) Be available for weekly or upon request for check-ins on status and questions on rules drafting.
- 5) Be available for participation in stakeholder workgroup meetings upon request.

EXHIBIT B

Contract Price and Method of Payment

The total contract price shall be \$28,000. This amount will be charged for services provided in connection with the work on the wetland rules development, and billed on an hourly rate not to exceed the total contract price. Detailed invoices will be required for all payments. The hourly rate of pay is @ \$100/ hour; beginning upon Governor and Executive Council approval and expiring on September 30, 2018.

EXHIBIT C

Paragraph 14 of the General Provisions of the standard state agreement is expressly waived. This provision is being waived because this is an individual and carrying this general liability insurance would be cost prohibitive.

Contractor Initials Blt
Date 5/10/18

BARBARA L. HOFFMAN

Lawyer with more than 30 years of experience in environmental law.

2016 Independent Contractor
New Hampshire Site Evaluation Committee, Concord, NH

Provided services necessary to assist the SEC on matters including researching applicable state and federal law for the siting of intra-state and inter-state high pressure gas pipelines, reviewing public comments, and developing administrative rules for the siting of high pressure gas pipelines pursuant to RSA 162-H:10-b and consistent with RSA 541-A and the NH Drafting and Procedure Manual for Administrative Rules.

2011 – 2014 SIP Planning Manager
New Hampshire Department of Environmental Services, Concord, NH

Managed the preparation and submittal of State Implementation Plans and amendments thereto to EPA Region I, which included rulemaking for the Air Resources Division of DES, drafting plans, and holding hearings on proposed rules and plans. In addition, supervised the Division's response to file review requests pursuant to RSA 91-A. Retired from the DES on August 1, 2014.

2006 – 2011 Compliance and Enforcement Programs Manager
New Hampshire Department of Environmental Services, Concord, NH

Supervised the Enforcement, Asbestos, and Compliance sections of the Compliance Bureau of the Air Resources Division. In addition to supervising staff, was responsible for managing the EPA asbestos grant and reporting compliance activities to DES management and EPA.

2005 – 2006 Enforcement Section Supervisor
New Hampshire Department of Environmental Services, Concord, NH

Supervised staff, drafted administrative enforcement orders issued to entities that violated statutes and rules implemented by the Air Resources Division, assisted the NH Department of Justice in preparing for litigation involving the Air Resources Division, and coordinated air enforcement actions with EPA Region I.

2000 - 2005 Planning Manager
New Hampshire Department of Environmental Services, Concord, NH

Drafted and presented rules to the Air Resources Council, the public at rulemaking hearings, and the Joint Legislative Committee on Administrative Rules, drafted state plans and amendments to the State Implementation Plan for review and approval by

EPA Region I, assisted the NH Department of Justice in preparing for litigation involving the Air Resources Division, and reviewed and commented on legislation affecting the Division.

1996 – 2000 **Staff Attorney III**
Oklahoma Department of Environmental Quality, Oklahoma City, Oklahoma

Drafted rules and legislation for the Air Quality Division, prepared memoranda to assist the Division in implementing its rules, and negotiated and drafted consent orders to obtain compliance. Frequently made presentations both within and outside of the DEQ on environmental and administrative law topics.

1993 – 1996 **Of Counsel**
McKinney, Stringer & Webster, Oklahoma City, Oklahoma

Recruited to assist this firm with its nationwide environmental practice. My practice emphasized environmental regulatory law in hazardous waste, solid waste, water and air. Drafted numerous articles for the firm's environmental newsletter and the Oklahoma Bar Journal.

1991 - 1993 **Solo Practitioner**
Barbara L. Hoffman, Norman, Oklahoma

As a solo practitioner, provided legal advice to the Superfund section of the Oklahoma Department of Environmental Quality on a contract basis. Drafted consent orders, memoranda of understanding with the EPA, and construction contracts.

1979 - 1991 **Director of Environmental Liaison Services; Attorney**
Kerr-McGee Corporation, Oklahoma City, Oklahoma

As Director of Environmental Liaison Services from 1987 until 1991, coordinated and managed company-supported or company-conducted remedial investigations and cleanup activities at Superfund sites around the country.

As in-house attorney from 1979 until 1987, advised chemical and energy facilities in 15 states on all environmental matters, drafted contracts, reviewed permit applications, commented on proposed regulations, prepared legal opinions, and represented the company before agencies such as the Nuclear Regulatory Commission, the Environmental Protection Agency, and their state counterparts.

EDUCATION: J.D., The University of Oklahoma College of Law
B.A., Southern Illinois University