



The State of New Hampshire APR02'19 PM12:26 DAS
DEPARTMENT OF ENVIRONMENTAL SERVICES



Robert R. Scott, Commissioner

March 19, 2019

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

REQUESTED ACTIONS

Authorize the Department of Environmental Services (NHDES) to **RETROACTIVELY** amend the agreement (PO# 7002214) with F.L. Merrill Construction Inc., Loudon, New Hampshire (VC# 156850) to complete construction services on the Suncook River Mitigation Project by extending the completion date to December 31, 2023 from December 31, 2018 and reducing the contract amount by \$19,699 from \$2,636,427 to \$2,616,728, effective upon Governor and Council approval through December 31, 2023. This is a no cost time extension. The original agreement was approved by Governor and Council on September 13, 2017, Item #65. An amendment was approved by Governor and Council on June 6, 2018, Item #110. 100% Capital (General) Funds.

EXPLANATION

This agreement expired on December 31, 2018. The request is **retroactive** due to the unexpected development of sink holes in during the fall of 2018. F.L. Merrill and the lead design and engineering firm performed emergency repairs to the impacted project areas in November and December of 2018. Only after the repairs were complete and the payments processed, could NHDES confirm the remaining project budget to conduct the final, long-term assessments and any future emergency construction needs on this project. The sink holes that developed within the project area are not attributed to design or construction oversights by either firm involved with the project. This contract with F.L. Merrill came in under budget by \$117,303 allowing NHDES to extend the contract and reallocate \$97,634 should other emergency repairs be needed.

The 2006 avulsion on the Suncook River is widely regarded as the most significant river change in New Hampshire recorded history. Following the avulsion, the River abandoned over a mile of its former channel, forging a new course through wetlands, working agricultural fields, and forested tracts of land. The newly formed channel was unstable and threatened to undermine the structural integrity of the U.S. Route 4 Bridge in Epsom. With designs for a river and floodplain stabilization project for the River developed by Inter-Fluve, Inc., the majority of construction on the stabilization project was completed by F.L. Merrill during the summer of 2018. The discovery of several sink holes within the project areas associated with sheet-pile installations extended construction late into the fall of 2018. The scale and complexity of this stabilization project dwarfed all others in the state. Additionally, all construction practices had to be conducted in a sand-dominated river valley, which had no stable underlying geological structure available for anchoring stabilization practices. The project required the reconstruction of the river bed and banks, and failsafe measures to achieve the target design life of sixty years. These failsafe measures included valley-spanning, subsurface, sheet-pile walls installed perpendicular to river flow across each floodplain in the upper project area adjacent to the U.S Route 4 Bridge. The sheet-pile was driven to depth at least 40 feet with 3 feet of well tilled soil on top to sustain a working corn field. The sheeting was installed to design specifications. Compaction rates were verified, finish grades achieved, and the prescribed planting plan executed. Despite exhaustive geotechnical, seismic, and test pit analyses associated with design, the sheeting installations caused

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unforeseen fluctuations within the groundwater table, subsurface flow, and drainage patterns that led to supersaturation of backfilled materials. This caused slumping and development of sink holes. All stream and river restoration sites typically require a minimum of five years to fully adjust to any disturbances created to surface areas and any deep subsurface conditions before a new equilibrium is achieved. This event underscores the need for continued monitoring, assessment, construction, and construction oversight extending for at least five years to ensure that all stabilization practices are performing as designed and any unforeseen, environmental adjustments, which require immediate attention are addressed quickly and effectively by the design and construction team affiliated with the project sites.

This time extension with F.L. Merrill ensures that any emergency repairs of installed practices continues by the firm that constructed the project ensuring the protection of the U.S. Route 4 Bridge, the safety of the traveling public, private property, and working, agricultural fields in Epsom.

Copies of the original Contract and Amendments are included in Attachment A. To date \$2,519,094 of the original contract amount of \$2,636,427 has been spent.

The agreement has been approved by the Office of the Attorney General as to form, execution, and content. We respectfully request your approval.



Robert R. Scott, Commissioner

Agreement for Services with F.L. Merrill Construction, Inc.
Amendment No. 2

This agreement (hereinafter called the "Amendment") dated this 12th day of February, 2019, is by and between the State of New Hampshire, acting by and through its Department of Environmental Services (hereinafter referred to as the "State") and F.L. Merrill Inc., acting by and through its Secretary, Susan J. Merrill (hereinafter referred to as the "Contractor").

WHEREAS, pursuant to an Agreement (hereinafter called the "Agreement") approved by the Governor and Council on September 13, 2017, its first Amendment (hereinafter called "Amendment 1") approved by the Governor and Council on June 6, 2018, the Contractor agreed to perform certain services upon the terms and conditions specified in the Agreement and subsequent Amendment, and in consideration of payment by the State of certain sums as specified therein; and

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

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

1. Amendment and Modification of Agreement: The Agreement and subsequent Amendment are hereby amended as follows:
 - (A) The completion Date as set forth in sub-paragraph 1.7 of the agreement shall be changed from December 31, 2018 to December 31, 2023.
 - (B) The Grant Limitation as set forth in sub-paragraph 1.8 of the agreement shall be changed from \$2,636,427 to \$2,616,728.
 - (C) The Contract Price and Method of payment as set forth in Exhibit B shall be amended as follows, and will include payment for the items payable upon completion, review, and approval of deliverables and/or scope and budget change orders by the State as specified:

Contractor Initials SJM
Date 02/28/2019

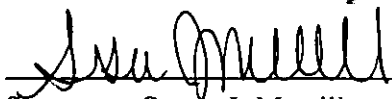
| Item | Description | Original Budget | Revision | Revised Budget |
|-------------|--|-----------------|-------------|----------------|
| S01/A01 | Mobilization and Demobilization | \$127,000 | \$7,634 | \$134,634 |
| S02/A02 | Access and Traffic Control | \$74,000 | \$0 | \$74,000 |
| S03/A03 | Erosion and Pollution Control | \$74,000 | \$0 | \$74,000 |
| A04 | Earthwork | \$360 | \$0 | \$360 |
| S04 | Earthwork: second riffle site (imported, locally sourced, reuse) | \$54,250 | \$45,000 | \$99,250 |
| S05/A05 | Earthwork (straight fill) | \$37,875 | \$0 | \$37,875 |
| S06 | Sheet Pile Installation | 892,500 | (\$114,215) | \$778,285 |
| A06 | Earthwork: avulsion site (imported and locally sourced fill) | \$73,200 | \$188,800 | \$262,000 |
| S07/S08/A08 | Rock (sourced from Kingston and Concord/Pembroke) | \$673,955 | \$200,301 | \$874,256 |
| A07 | Topsoil | \$21,600 | \$6,360 | \$27,960 |
| A09 | Drainage swale stone | \$9,300 | (\$9,300) | \$0 |
| S09/A10 | Fabric encapsulated soil lifts | \$147,530 | (\$12,114) | \$135,416 |
| S10/A11 | Seed for upland areas | \$5,425 | \$0 | \$5,425 |
| S11 | Seed for wetland areas | \$1,300 | \$0 | \$1,300 |
| S12/A12 | 3 gallon container plants | \$88,000 | (\$49,600) | \$38,400 |
| S13/A13 | Croploss | \$7,000 | (\$7,000) | \$0 |
| S14 | Crushed (coarse) stone | \$5,250 | \$0 | \$5,250 |
| | Contingency | 343,882 | (\$275,565) | 68,317 |
| Totals | | \$2,636,427 | (\$19,699) | \$2,616,728 |

- Effective Date of Amendment: This Amendment shall take effect upon the date of approval of this Amendment by the Governor and Executive Council of the State of New Hampshire.
- Continuance of Agreement: Except as specifically amended and modified by the terms and conditions of this Amendment, the Agreement, and the obligations of the parties thereunder, shall remain in full force and effect in accordance with the terms and conditions set forth therein.

Contractor Initials Jim
Date 02/28/2019

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

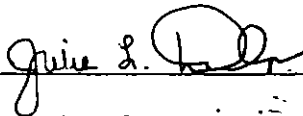
F.L. Merrill Construction, Inc.

By 
Secretary, Susan J. Merrill

STATE OF NEW HAMPSHIRE
MERRIMACK COUNTY

On this the 28 day of February, 2019, before the undersigned officer, personally appeared Susan J. Merrill, Secretary who acknowledged herself 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.



My Commission Expires:

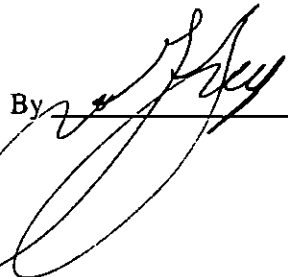
My Commission Expires Apr. 06, 2022


THE STATE OF NEW HAMPSHIRE
Department of Environmental Services

By 
Robert R. Scott, Commissioner

Approved by Attorney General this 25 day of March, 2019

OFFICE OF ATTORNEY GENERAL

By 

Contractor Initials 
Date 02/28/2019

State of New Hampshire

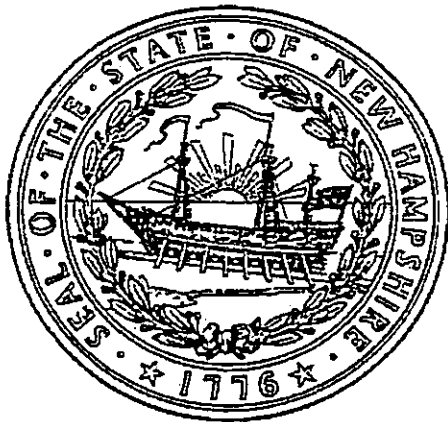
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that F.L. MERRILL CONSTRUCTION, INC. is a New Hampshire Profit Corporation registered to transact business in New Hampshire on May 09, 1990. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 160454

Certificate Number: 0004076722



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire.
this 6th day of April A.D. 2018.

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

William M. Gardner
Secretary of State



35 VETERAN'S DRIVE
LOUDON, NEW HAMPSHIRE 03307
(603) 228-5558 FAX (603) 228-5559

February 28, 2019

To Whom It May Concern:

F.L. Merrill Construction, Inc. is a company based in and incorporated in New Hampshire. Below is a list of our Board Members as of January 01, 2019:

| | |
|----------------------------------|-----------------------|
| President: | Frank L. Merrill |
| Vice President: | Bradley M. Merrill |
| Vice President - Operations: | Terrance R. McCormack |
| Vice President – Administration: | Kara L. Merrill |
| Treasurer: | Frank L. Merrill |
| Secretary: | Susan J. Merrill |

All of the names listed above are authorized to sign contracts on behalf of the company. Such designation has not been amended or rescinded and remains in full force and effect as of this date.

If you have any questions, please do not hesitate to contact me at (603) 228-5558

Sincerely,

Kara Merrill
Vice President – Administration

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

On this the 28th day of February, 2019, before the undersigned officer, personally appeared, Kara Merrill, Vice President – Administration, who acknowledged herself 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.

My Commission Expires: April 06, 2021

F.L. MERRILL CONSTRUCTION, INC.

**Action by Consent of the Board of Directors
In Lieu of Annual Meeting - 2018**

Pursuant to the provisions of New Hampshire RSA Chapter 293-A:8.21, Frank L. Merrill, being the Sole Director of **F.L. MERRILL CONSTRUCTION, INC.**, has taken the following action effective January 9, 2018, provided that this consent shall be filed with the Minutes of the Corporation:

RESOLVED: To elect the following to the offices set forth before their respective names to serve until their successors shall be elected and qualify:

| | |
|--|------------------------------|
| President | Frank L. Merrill |
| Vice President - Operations | Terrance R. McCormack |
| Vice President | Bradley Mark Merrill |
| Vice President - Administration | Kara Lynn Merrill |
| Treasurer | Frank L. Merrill |
| Secretary | Susan J. Merrill |


RESOLVED: That pursuant to NH RSA 293-A:7.08, **Frank L. Merrill** is hereby appointed as the Chairman of the Corporation who shall preside at all Shareholder meetings.

RESOLVED: To appoint **Susan J. Merrill** as the Registered Agent of the Corporation.

RESOLVED: That either **Frank L. Merrill** or **Susan J. Merrill**, acting alone, is hereby authorized to execute, affix the corporate seal to and deliver, on behalf of the company, contracts, deeds, discharges, assignments and partial releases of mortgages, and all other instruments of title, leases or real property or documents in relation thereto, the execution and delivery of which are required or appropriate in the business of the company, without prior or subsequent reference thereof to the Board of Directors.

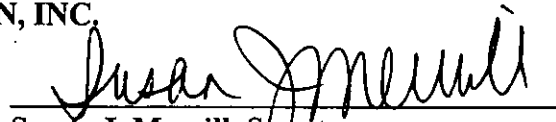
No further action is taken by the Board of Directors.

Effective this 9th day of January, 2018, the foregoing action by consent pursuant to RSA 293-A:8.21 is signed by the Director of the Corporation (notice hereby being waived) and is filed with the Secretary of the Corporation as part of the corporate records.



Frank L. Merrill, Sole Director
Dated: 1-9-2018

The foregoing action by consent has been received and filed with the corporate records of F.L. MERRILL CONSTRUCTION, INC.



Susan J. Merrill, Secretary
Dated: 1-9-2018



FLMERRI-01

KPETTIT

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/5/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or 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 Davis & Towle Morrill & Everett, Inc. 115 Airport Road Concord, NH 03301 | CONTACT NAME: Kathy M. Pettit | |
| | PHONE (A/C, No, Ext): (603) 715-9739 FAX (A/C, No): (603) 225-7935 | |
| | E-MAIL ADDRESS: kpettit@davistowle.com | |
| INSURED F.L. Merrill Construction, Inc. 35 Veterans Drive Loudon, NH 03307 | INSURER(S) AFFORDING COVERAGE | NAIC # |
| | INSURER A: Acadia Insurance Company | 31325 |
| | INSURER B: Lumber Industries Self Insd Gr Trust | |
| | INSURER C: | |
| | INSURER D: | |
| | INSURER E: | |
| | INSURER F: | |

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

| INSR LTR | TYPE OF INSURANCE | ADDL INSD | SUBR WYD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|--|-----------|----------|-----------------|-------------------------|-------------------------|---|
| A | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC OTHER: | X | | CPA5151793-14 | 7/1/2018 | 7/1/2019 | EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 |
| A | AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY | | | CAA5151794-14 | 7/1/2018 | 7/1/2019 | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ |
| A | <input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0 | | | CUA5151795-14 | 7/1/2018 | 7/1/2019 | EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 |
| B | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below | Y/N | N/A | WC0120191001436 | 1/1/2019 | 1/1/2020 | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

MA WORKERS COMPENSATION: Carrier-Safety First; Term 1/1/2019 to 1/1/2020; Limits \$500,000/\$500,000/\$500,000. **Workers Compensation: 3A States NH & MA.

RE: Suncook River Mitigation Project, Epsom, NH. It is agreed and understood that the State of New Hampshire, Dept. of Environmental Services and State of New Hampshire, Dept. of Transportation are included as additional insured on General Liability for ongoing operations when required by written contract.

CERTIFICATE HOLDER

CANCELLATION

State of New Hampshire, Dept. of Environmental Services
29 Hazen Drive
PO Box 95
Concord, NH 03302

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

Attachment C:
Copy of original agreement



The State of New Hampshire
Department of Environmental Services

Katherine Zink



Robert R. Scott, Commissioner

April 30, 2018

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

APPROVED G & C

DATE 6/6/18
 ITEM # 110

REQUESTED ACTION


Authorize the Department of Environmental Services (NHDES) to execute a **RETROACTIVE** amendment to the agreement (PO# 7002214) with F.L. Merrill Construction Inc., Loudon, New Hampshire (VC# 156850) to complete construction services on the Suncook River Mitigation Project by extending the completion date to December 31, 2018 from April 30, 2018, effective upon Governor and Council approval through December 31, 2018. This is a no cost time extension. The original agreement was approved by G&C on September 13, 2017, Item #65. 61% Capital (General) Funds and 39% Transfer from DOT funds.

EXPLANATION

This agreement expired on April 30, 2018. NHDES is requesting approval of this **RETROACTIVE** amendment to the agreement in order to provide F.L. Merrill Construction, Inc. (F.L. Merrill), with additional time to address several areas of structural instability within the project area. Although construction activities were on schedule to conclude before the scheduled April 30, 2018 agreement end date, a site walk conducted in late April by the project team revealed several sink holes, exposed faces of sheet-pile and cap, and other pockets of erosion. The severity of and the extended conditions during the winter of 2018 likely led to the freeze and thaw of fill materials and interfered with proper compaction of placed materials associated with the installation of the metal sheeting underneath the floodplain of the Suncook River. Once temperatures warmed in April, the thawing process of compacted fill created void spaces that allowed for sink holes to develop along the face of installed, sheet-pile on both sides of the floodplain. These conditions were not discovered by project partners until late April when trees and shrubs were being installed throughout the project area. This late discovery drives the need for more construction services to have the project meet engineered specifications and resulted in the untimely request for this extension. A copy of the original contract is included in Attachment A.

Construction of the Suncook River stabilization project is complete other than the repairs needed along the face of installed sheet-pile that will correct the damages caused by severe winter conditions and subsequent slumping and sink holes. Crews from F.L. Merrill will resume construction activities at the Route 4 site on both sides of the Suncook River once this contract extension has been approved. Construction close-out activities will also commence and include final topographic surveys to generate as-built plan sets, and restoration of private drives where heavy equipment transition practices were installed. It is anticipated that all construction activities will be completed by early summer of 2018. To date, \$2,459,268.80 of the original contract amount of \$2,636,427.00 has been spent. The amendment has been approved by the Department of Justice as to form, substance and execution.

We respectfully request your approval.


 Robert R. Scott, Commissioner

www.des.nh.gov

Agreement for Services with F.L. Merrill Construction, Inc.
Amendment No. 1

This agreement (hereinafter called the "Amendment") dated this 12th day of April, 2018, is by and between the State of New Hampshire, acting by and through its Department of Environmental Services (hereinafter referred to as the "State") and F.L. Merrill Inc., acting by and through its Secretary, Susan J. Merrill (hereinafter referred to as the "Contractor").

WHEREAS, pursuant to an Agreement (hereinafter called the "Agreement") approved by the Governor and Council on September 13, 2017, the Contractor agreed to perform certain services upon the terms and conditions specified in the Agreement and in consideration of payment by the State of certain sums as specified therein; and

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

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

1. Amendment and Modification of Agreement: The Agreement and subsequent Amendments are hereby amended as follows:
 - (A) The completion Date as set forth in sub-paragraph 1.7 of the agreement shall be changed from April 30, 2018 to December 31, 2018.
2. Effective Date of Amendment: This Amendment shall take effect upon the date of approval of this Amendment by the Governor and Executive Council of the State of New Hampshire.
3. Continuance of Agreement: Except as specifically amended and modified by the terms and conditions of this Amendment, the Agreement, and the obligations of the parties thereunder, shall remain in full force and effect in accordance with the terms and conditions set forth therein.

Contractor Initials

SJM

Date

4/12/18

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

F.L. Merrill Construction, Inc.

By *Susan J. Merrill*
Secretary, Susan J. Merrill

STATE OF NEW HAMPSHIRE
MERRIMACK COUNTY

On this the 12th day of April, 2018, before the undersigned officer,
personally appeared Susan J. Merrill, Secretary who acknowledged herself 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.

Kara L. Merrill
April 12, 2018



My Commission Expires:

THE STATE OF NEW HAMPSHIRE
Department of Environmental Services

By *Robert R. Scott*
Robert R. Scott, Commissioner

Approved by Attorney General this 9th day of May, 2018

OFFICE OF ATTORNEY GENERAL

By *[Signature]*

Contractor Initials *JPM*
Date 4/12/18

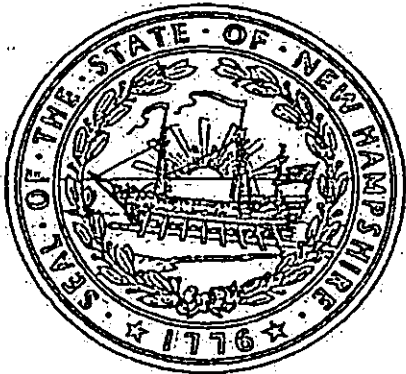
State of New Hampshire
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that F.L. MERRILL CONSTRUCTION, INC. is a New Hampshire Profit Corporation registered to transact business in New Hampshire on May 09, 1990. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 160454

Certificate Number: 0004076722



IN TESTIMONY WHEREOF.

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 6th day of April A.D. 2018.

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

William M. Gardner
Secretary of State



**State of New Hampshire
Department of State
2018 ANNUAL REPORT**

| |
|--|
| Filed |
| Date Filed: 2/16/2018 |
| Effective Date: 2/16/2018 |
| Business ID: 160454 |
| William M. Gardner Secretary of State |

| | | |
|--|--|---|
| BUSINESS NAME: F.L. MERRILL CONSTRUCTION, INC. | | |
| BUSINESS TYPE: Domestic Profit Corporation | | |
| BUSINESS ID: 160454 | | |
| STATE OF INCORPORATION: New Hampshire | | |
| CURRENT PRINCIPAL OFFICE ADDRESS | | CURRENT MAILING ADDRESS |
| 35 VETERANS DRIVE LOUDON, NH, 03307, USA | | 35 VETERANS DRIVE LOUDON, NH, 03307, USA |
| REGISTERED AGENT AND OFFICE | | |
| REGISTERED AGENT: Merrill, Susan J | | |
| REGISTERED AGENT OFFICE ADDRESS: 35 Veterans Drive Loudon, NH, 03307, USA | | |
| PRINCIPAL PURPOSE(S) | | |
| NAICS CODE | NAICS SUB CODE | |
| OTHER / SITE, UTILITIES, EXCAVATION, ROAD WORK | | |
| OFFICER / DIRECTOR INFORMATION | | |
| NAME | BUSINESS ADDRESS | TITLE |
| Susan J. Merrill | 35 Veteran's Drive, Loudon, NH, 03307, USA | Secretary |
| Frank L. Merrill | 35 Veteran's Drive, Loudon, NH, 03307, USA | Director |
| I, the undersigned, do hereby certify that the statements on this report are true to the best of my information, knowledge and belief. | | |
| Title: Secretary | | |
| Business Name: F. L. Merrill Construction, Inc. | | |
| Signature: Susan J. Merrill | | |
| Name of Signer: Susan J. Merrill | | |
| Title of Signer: Secretary | | |



35 VETERAN'S DRIVE
LOUDON, NEW HAMPSHIRE 03307
(603) 228-5558 FAX (603) 228-5559

April 12, 2018

To Whom It May Concern;

FL Merrill Construction, Inc. is a company based and incorporated in New Hampshire. Below is a list of our board members as of 1/9/2018.

| | |
|-----------------------------|-----------------------|
| President: | Frank L. Merrill |
| Vice President- Operations: | Terrance R. McCormack |
| Treasurer: | Frank L. Merrill |
| Secretary: | Susan J. Merrill |

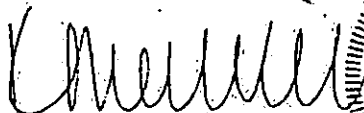
Of those listed above, Frank L. Merrill and Susan J. Merrill are designated as authorized to sign contracts on behalf of the company. Such designation has not been amended or rescinded and remains in full force and effect as of this date. Also, attached for use are our meeting minutes from the last board meeting in January.

If you have any questions please feel free to contact me at the office.

Sincerely,


Bob Burns
FLMCI

April 12, 2018



April 12, 2018



F.L. MERRILL CONSTRUCTION, INC.

**Action by Consent of the Board of Directors
In Lieu of Annual Meeting - 2018**

Pursuant to the provisions of New Hampshire RSA Chapter 293-A:8.21, Frank L. Merrill, being the Sole Director of F.L. MERRILL CONSTRUCTION, INC., has taken the following action effective January 9, 2018, provided that this consent shall be filed with the Minutes of the Corporation:

RESOLVED: To elect the following to the offices set forth before their respective names to serve until their successors shall be elected and qualify:

| | |
|--|------------------------------|
| President | Frank L. Merrill |
| Vice President - Operations | Terrance R. McCormack |
| Vice President | Bradley Mark Merrill |
| Vice President - Administration | Kara Lynn Merrill |
| Treasurer | Frank L. Merrill |
| Secretary | Susan J. Merrill |

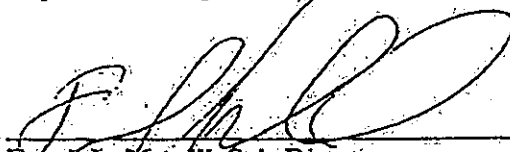
RESOLVED: That pursuant to NH RSA 293-A:7.08, Frank L. Merrill is hereby appointed as the Chairman of the Corporation who shall preside at all Shareholder meetings.

RESOLVED: To appoint Susan J. Merrill as the Registered Agent of the Corporation.

RESOLVED: That either Frank L. Merrill or Susan J. Merrill, acting alone, is hereby authorized to execute, affix the corporate seal to and deliver, on behalf of the company, contracts, deeds, discharges, assignments and partial releases of mortgages, and all other instruments of title, leases or real property or documents in relation thereto, the execution and delivery of which are required or appropriate in the business of the company, without prior or subsequent reference thereof to the Board of Directors.

No further action is taken by the Board of Directors.

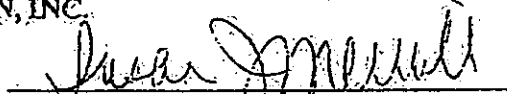
Effective this 9th-day of January, 2018, the foregoing action by consent pursuant to RSA 293-A:8.21 is signed by the Director of the Corporation (notice hereby being waived) and is filed with the Secretary of the Corporation as part of the corporate records.



Frank L. Merrill, Sole Director

Dated: 1-9-2018

The foregoing action by consent has been received and filed with the corporate records of
F.L. MERRILL CONSTRUCTION, INC.



Susan J. Merrill, Secretary

Dated: 1-9-2018



FLMERRI-01

KPETTIT

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
07/19/2017

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 have ADDITIONAL INSURED provisions or 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 Davis & Towle Morrill & Everett, Inc. 115 Airport Road Concord, NH 03301 | CONTACT Kathy M: Pettit | |
| | PHONE (AAC No. Exp): (603) 715-9739 | FAX (AAC No.): (603) 225-7935 |
| E-MAIL: kpettit@davistowle.com | | |
| INSURED F.L. Merrill Construction, Inc. 35 Veterans Drive Loudon, NH 03307 | INSURER(S) AFFORDING COVERAGE: | |
| | INSURER A: Acadia Insurance Company | NAIC # 31325 |
| | INSURER B: Evanston Insurance Co. | |
| | INSURER C: | |
| | INSURER D: | |
| | INSURER E: | |


COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

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

| INSR. LTR. | TYPE OF INSURANCE | ADDL. INSR. INSR. DTD. | POLICY NUMBER | POLICY EFF. (MM/DD/YYYY) | POLICY EXP. (MM/DD/YYYY) | LIMITS |
|------------|--|------------------------|----------------|--------------------------|--------------------------|--|
| A | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input checked="" type="checkbox"/> PRO. <input type="checkbox"/> LOC OTHER: | X | CPA5151793-13 | 07/01/2017 | 07/01/2018 | EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea. occurrence) \$ 300,000 MED. EXP. (Any one person) \$ 5,000 PERSONAL & ADV. INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 |
| A | AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY | | CAA5151794-13 | 07/01/2017 | 07/01/2018 | COMBINED SINGLE LIMIT (Ea. accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ |
| A | <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0 | | CUA5151795-13 | 07/01/2017 | 07/01/2018 | EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 |
| A | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/OWNER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below | Y/N N | WPA5151797-13 | 07/01/2017 | 07/01/2018 | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER EL EACH ACCIDENT \$ 500,000 EL DISEASE - EA EMPLOYED \$ 500,000 EL DISEASE - POLICY LIMIT \$ 500,000 |
| B | Pollution Liability | | MKLV1ENV100336 | 07/01/2017 | 07/01/2018 | Limit \$ 2,000,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 *Workers Compensation: 3A States NH & MA.

RE: Suncook River Mitigation Project, Epsom, NH. It is agreed and understood that the State of New Hampshire, Dept. of Environmental Services and State of New Hampshire, Dept. of Transportation are included as additional insured on General Liability for ongoing operations when required by written contract.

| | |
|---|---|
| CERTIFICATE HOLDER | CANCELLATION |
| State of New Hampshire, Dept. of Environmental Services 29 Hazon Drive PO Box 95 Concord, NH 03302 | 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  |

ACORD 25 (2016/03)

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Attachment A: Copy of Original Agreement



The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner



August 18, 2017

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

APPROVED G & C

DATE 8/13/17
 ITEM # 65

REQUESTED ACTIONS

- (1) Authorize the Department of Environmental Services (DES) to enter into an agreement with F.L. Merrill Construction Inc., Loudon, New Hampshire (VC# 156850-B001) in the amount of \$2,292,545 for construction services on the Suncook River Mitigation Project, effective upon Governor and Council approval through April 30, 2018. 61% Capital (General) and 39% Transfer from DOT Funds.

Funding is available in the accounts as follows:

| | |
|---|----------------|
| | <u>FY 2018</u> |
| 03-44-44-440030-4998-034 | \$1,392,545 |
| Dept. Environmental Services, 15-220:1-VI-C Suncook River, Capital Projects | |

| | |
|--|----------------|
| | <u>FY 2018</u> |
| 03-44-44-442010-6932-102 | \$900,000 |
| Dept. Environmental Services, Suncook River Stabilization Project, Contract for Program Services | |

- (2) Further authorize a contingency amount of \$343,882 be appropriated to cover unforeseen conditions and work that may occur during construction of the Suncook River Mitigation Project, bringing the total to \$2,636,427 effective upon Governor and Council approval through April 30, 2018. 100% Capital (General) Funds.

| | |
|---|----------------|
| | <u>FY 2018</u> |
| 03-44-44-440030-4998-034 | \$343,882 |
| Dept. Environmental Services, 15-220:1-VI-C Suncook River, Capital Projects | |

EXPLANATION

Approval of this contract will authorize construction of river channel and bank stabilization practices on the Suncook River in Epsom, New Hampshire needed to protect the U.S. Route 4 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 Huckius 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 downstream of the U.S. Route 4 Bridge where the length of the Suncook River has been shortened due to the avulsion and a migrating headcut now threatens the structural integrity of the bridge footings and has already damaged working agricultural

fields adjacent to the Suncook River. The primary goal of this construction project is to prevent the U.S. Route 4 Bridge river crossing from being undercut and to halt the mass failure of river banks that also threaten and are continually damaging private properties.

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 elements be submitted for consideration from interested firms: grading of channel bed and banks, sourcing and hauling large quantities of rock, installation of rock, installation of sheet-pile, 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, 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 eleven RFQ packages. The project design engineer from Inter-Fluve, Inc. and a representative from DES reviewed all RFQ submittal packages received and determined that eight out of eleven met the pre-qualification criteria established in the RFQ. Attachment A provides a pre-qualification summary for all eleven firms. After notifying all firms of the results of the pre-qualification process, eight firms were invited to submit bids for the Suncook River Mitigation Project. A mandatory pre-bid site walk was held at the Suncook River on June 9, 2017 with six pre-qualified firms listed below in attendance. Bids were delivered to DES by June 30, 2017 and opened publicly that morning. Contractor selection was made based upon low bid and contractors were notified of the decision on June 30, 2017.

| <u>Firm Name</u> | <u>Basis of Award</u> | <u>Total plus Contingency</u> |
|--|-----------------------|-------------------------------|
| F.L. Merrill Construction Inc., Loudon, NH | \$2,292,545.00 | \$2,636,427.00 |
| Charter Contracting Company, LLC, Boston, MA | \$2,413,022.00 | \$2,756,904.00 |
| Sargent Corporation, Stillwater, ME | \$2,692,555.00 | \$3,036,437.00 |
| SumCo Eco-Contracting LLC, Salem, MA | \$3,091,790.00 | \$3,435,672.00 |
| R.S. Audley, Inc., Bow, NH | \$3,364,882.50 | \$3,708,764.50 |

As a result of the low bid and due diligence to confirm the qualifications and capabilities of the respondents, we recommend awarding the contract and a contingency amount of \$343,882 to F.L. Merrill Construction, Inc. This firm has satisfactorily completed similar, stabilization projects in New Hampshire and New England within the last five years and has the resources necessary to complete the project during the specified by permit conditions issued by DES.

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

We respectfully request your approval.


Robert R. Scott, Commissioner

Subject: Suncook River 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:

Form with fields for State Agency Name, Contractor Name, Completion Date, Price Limitation, Signatures, and Acknowledgements. Includes a notary seal for Kara Merrill.

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-e 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 Suncook River Mitigation Project May 2017 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. River channel bed and bank stabilization to reduce erosion through the use of rock, fabric treatments, and sheet-pile.
2. Planting of native seed, shrubs, and trees.

Project Manual issued in May 2017 and Addendum No. 1 dated June 19, 2017 are incorporated as part of Exhibit "A" by reference. The Project Manual cover and table of contents, and Addendum #1 cover sheet as reissued, are attached.

Suncook River Mitigation Project

Project Manual



May 30, 2017

Suncook River Mitigation Project
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Suncoke River Mitigation

Addendum #1

This cover sheet summarizes the changes made to the project manual and the project drawings. The changes to the project manual are in red text in the manual. Changes to the project drawings have been indicated clearly on the drawings.

Project Manual

Section 00200 – Notice to Contractors

- Bid due date has been changed to June 30, 2017 at 9am. The bid opening shall be at 9:30am.
- The last two sentences of the third paragraph have been removed.

Section 00301 – Bid Form

- S6 quantity has been updated to 25,500 S.F. of sheetpile
- S12 quantity has been updated to 800 each
- A12 quantity has been updated to 300 each
- Added: S14 Crushed (Coarse) Stone, units in Cubic Yards, quantity 250 cubic yards

Section 00500 – Agreement

- Section 4.02.A. – The dates for substantial completion and final completion have been corrected to December 31, 2017 and April 30, 2018 respectively, matching the dates referenced elsewhere in the Project Manual.

Section 01260 – Measurement and Payment

- Section 3.1.B.4. Items S7 and A8 Rock – the following language has been added: *This item also includes the crushed (coarse) stone necessary to fill the void spaces in the temporary access ramps shown on Sheet 8 of the Drawings.*
- Added: *Section 3.1.B.12 Item S14 Crushed (Coarse) Stone per cubic yard. This item includes all labor, equipment and materials for the acquisition, hauling and installation of Crushed (Coarse) Stone including but not limited to: stone and backfill required to support required thickness of stone.*

1. *Measurement. This item shall be measured in place in cubic yards.*

2. *Payment. Stone will be paid for at the Contract unit price per cubic yard installed*
- Section 3.1.B.3. Item S6 Sheet-pile – Measurement paragraph replaced with:
Measurement shall be based on actual, confirmed by inspection, in-place square feet installed.

Design Drawings:

- Sheets 3 and 4: elevations have been added to the contour lines
- Sheets 3-6: the typical detail that is referenced at the siltation barrier has been changed to typical detail 3 on Sheet 22
- Sheet 13: an alternative access route has been added to the Avulsion Site off of Black Hall Road
- Sheets 17-19: the top 6 inches of the soil fill shall be topsoil
- Sheet 23: The note in the middle of the page and the table at the bottom of the page have been corrected to reference Planting Area 3 as an upland planting area, rather than a wetland planting area.

EXHIBIT "B"
COST PROPOSAL AND TERMS OF PAYMENT

Contract Plans and Specifications May 2017 and Addendum No. 1 dated June 19, 2017 are incorporated as part of Exhibit "B" by reference.

Attachment 1: F.L. Merrill Construction, Inc. Bid, including Base Bid for the Suncook River Mitigation Project plus allowances as follows:

1. Allowance 1: Include allowance for contingency to cover unforeseen conditions.

Contract Price Limitation Includes:

| | |
|-------------|------------------|
| Base Bid | \$2,292,545 |
| Allowance 1 | <u>\$343,882</u> |

Total Contract Price Limitation \$2,636,427

Funding is split between the following accounts:

| | |
|-------------------------------|------------------|
| 03-44-44-440030-4998-034..... | \$1,392,545 |
| 03-44-44-440030-4998-034..... | \$343,882 |
| 03-44-44-442010-6932-102..... | <u>\$900,000</u> |
| | |
| Total..... | \$2,636,427 |

Contractor Initials FLM
Date 5/17/17

Suncook River Mitigation Project

SECTION 00301 - BID FORM

PROJECT IDENTIFICATION: Suncook River 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> |
|---------------------|----------------------|
| #1 | 6/19/17 |
| _____ | _____ |
| _____ | _____ |

- 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.

Suncook River 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;

Suncook River 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;

Suncook River 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

Suncook River 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 |
|---|--|------|--------------------|------------|-----------------------|
| Second Rifle Work Area | | | | | |
| S1 | Mobilization & Demobilization | LS | 1 | 94,000.00 | 94,000.00 |
| S2 | Access & Traffic Control | LS | 1 | 53,000.00 | 53,000.00 |
| S3 | Erosion & Pollution Control | LS | 1 | 33,000.00 | 33,000.00 |
| S4 | Earthwork (cut, to be reused at avulsion site or in Item S5) | CY | 10,850 | 5.00 | 54,250.00 |
| S5 | Earthwork (fill salvaged from Item S4) | CY | 550 | 8.00 | 4,400.00 |
| S6 | Sheet-pile | SF | 33,600 | 25.50 | 892,500.00 |
| S7 | Rock | CY | 3,355 | 50.00 | 167,750.00 |
| S8 | Rock - free rock at Kingston facility | CY | 5,955 | 51.00 | 303,705.00 |
| S9 | Fabric encapsulated lifts | FF | 4,350 | 28.00 | 121,800.00 |
| S10 | Seed for Upland Areas | LB | 13 | 175.00 | 2,275.00 |
| S11 | Seed for Wetland Areas | LB | 4 | 325.00 | 1,300.00 |
| S12 | 3-Gallon Container Plants | EA | 600 | 80.00 | 64,000.00 |
| S13 | Crop Loss | EA | 1 | \$3,500 | 3,500.00 |
| S14 | Crushed (Coarse) Stone | CY | 250 | 21.00 | 5,250.00 |
| Second Rifle Work Area Subtotal | | | | | 1,800,730.00 |
| Avulsion Site Work Area | | | | | |
| A1 | Mobilization & Demobilization | LS | 1 | 33,000.00 | 33,000.00 |
| A2 | Access & Traffic Control | LS | 1 | 21,000.00 | 21,000.00 |
| A3 | Erosion & Pollution Control | LS | 1 | 41,000.00 | 41,000.00 |
| A4 | Earthwork (cut and reuse for fill) | CY | 120 | 3.00 | 360.00 |
| A5 | Earthwork (fill, salvaged from upstream) | CY | 10,300 | 3.25 | 33,475.00 |
| A6 | Earthwork (fill, imported) | CY | 7,320 | 10.00 | 73,200.00 |
| A7 | Topsoil (imported) | CY | 900 | 24.00 | 21,600.00 |
| A8 | Rock | CY | 4,050 | 50.00 | 202,500.00 |
| A9 | Drainage Swale Stone | CY | 150 | 62.00 | 9,300.00 |
| A10 | Fabric Encapsulated Lifts | FF | 830 | 31.00 | 25,730.00 |
| A11 | Seed for Upland Areas | LB | 18 | 175.00 | 3,150.00 |
| A12 | 3-Gallon Container Plants | EA | 400 | 80.00 | 24,000.00 |
| A13 | Crop Loss | EA | 1 | \$3,500 | 3,500.00 |
| Avulsion Site Work Area Subtotal | | | | | 491,815.00 |

BASE BID TWO MILLION, TWO HUNDRED NINETY TWO THOUSAND, SIX HUNDRED FIFTY FIVE DOLLARS & NO CENTS (\$ 2,292,645.00)
 FIVE HUNDRED FORTY FIVE DOLLARS & NO CENTS

Suncook River Mitigation Project

(use words)
(figures)

(figures)

ALLOWANCES (NOT INCLUDED IN BASE BID)

| NO. | ITEM | UNIT | ESTIMATED QUANTITY | UNIT PRICE | TOTAL ESTIMATED PRICE |
|--|------|------|--------------------|------------|-----------------------|
| TOTAL OF ALL ESTIMATED ALLOWANCE PRICES (\$) | | | | | \$ |

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 December 31, 2017, and will be completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions on or before April 30, 2018.
- 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. Proposed Schedule for Project Completion
 - C. List of Proposed Subcontractors;
 - D. List of Proposed Suppliers;
 - E. List of Project References;

Suncook River Mitigation Project

F. A completed "DISADVANTAGED BUSINESS ENTERPRISE COMMITMENT FORM" and Letters of Intent for each disadvantaged business.

G. Contract 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 June 30, 2017.

Suncook River 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

Corporation Name: FL Mcgarrall Construction, Inc. (SEAL)

State of Incorporation: NH

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

By: *Susan J. Mcgarrall*
(Signature -- attach evidence of authority to sign)

Name (typed or printed): SUSAN J. MCGARRALL

Title: Secretary

Attest: *Susan J. Mcgarrall* (CORPORATE SEAL)
(Signature of Corporate Secretary)

Business address: 35 Volcanos Drive
London, N.H. 03307

Phone No.: 278-5552 FAX No.: 278-5559

Date of Qualification to do business is 1990

Suncook River 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.: _____

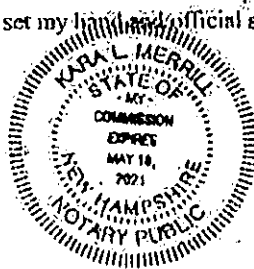
Phone and FAX Number, and Address for receipt of official communications:

(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 29th day of June, 2017, before the undersigned officer, personally appeared Susan Merrill (print name), Secretary (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.



K. Merrill
_____ (print name notary public/JOP, select title)

My Commission Expires:

May 18, 2021 (date)

State of NH
County of Merrimack

Contract Bid Name Suncook Mitigation)ss.

I state that I am Secretary (Title) of FLMCI Construction, Inc. (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) FLMCI (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 FLMCI (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 [Handwritten Signature]

Name of Company/Position FLMCI Construction, Inc. / Secretary

Sworn to and subscribed before me this 9th day of June, 2017.

Notary Public for New Hampshire [Handwritten Signature]

This commission expires May 18, 2021



END OF SECTION 00320

EXHIBIT "C"
SPECIAL CONDITIONS

There are no special conditions.

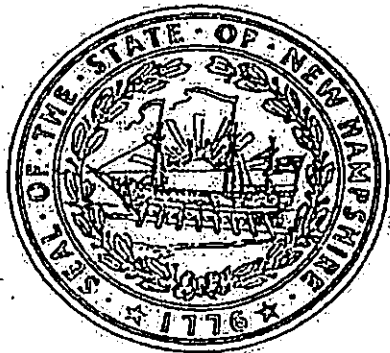
DM
8/17/17

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 F.L. MERRILL CONSTRUCTION, INC. is a New Hampshire Profit Corporation registered to transact business in New Hampshire on May 09, 1990. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 160454



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 3rd day of July A.D. 2017.

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

William M. Gardner
Secretary of State



**State of New Hampshire
Department of State
2017 ANNUAL REPORT**

| |
|--|
| Filed |
| Date Filed: 3/22/2017 |
| Effective Date: 3/22/2017 |
| Business ID: 160454 |
| William M. Gardner Secretary of State |

| | | |
|--|---|------------------|
| BUSINESS NAME: F.L. MERRILL CONSTRUCTION, INC. | | |
| BUSINESS TYPE: Domestic Profit Corporation | | |
| BUSINESS ID: 160454 | | |
| CITIZENSHIP: Domestic | | |
| STATE OF INCORPORATION: New Hampshire | | |
| CURRENT PRINCIPAL OFFICE ADDRESS | CURRENT MAILING ADDRESS | |
| 35 VETERANS DRIVE LOUDON, NH, 03307, USA | 35 VETERANS DRIVE LOUDON, NH, 03307, USA | |
| REGISTERED AGENT AND OFFICE | | |
| REGISTERED AGENT: Merrill, Susan J | | |
| REGISTERED AGENT OFFICE ADDRESS: 35 Veterans Drive Loudon, NH, 03307, USA | | |
| PRINCIPAL PURPOSE(S) | | |
| NAICS CODE | NAICS SUB CODE | |
| OTHER / SITE, UTILITIES, EXCAVATION, ROAD WORK | | |
| OFFICER / DIRECTOR INFORMATION | | |
| NAME | BUSINESS ADDRESS | TITLE |
| Susan J. Merrill | 35 Veteran's Drive, Loudon, NH, 03307, USA | Secretary |
| Frank L. Merrill | 35 Veteran's Drive, Loudon, NH, 03307, USA | Director |
| I, the undersigned, do hereby certify that the statements on this report are true to the best of my information, knowledge and belief. | | |
| Susan J. Merrill | Secretary | |
| SIGNATURE | TITLE | |

F.L. MERRILL CONSTRUCTION, INC.

**Action by Consent of the Board of Directors
In Lieu of Annual Meeting - 2017**

Pursuant to the provisions of New Hampshire RSA Chapter 293-A:8.21, Frank L. Merrill, being the Sole Director of **F.L. MERRILL CONSTRUCTION, INC.**, has taken the following action effective January 9, 2017, provided that this consent shall be filed with the Minutes of the Corporation:

RESOLVED: To elect the following to the offices set forth before their respective names to serve until their successors shall be elected and qualify:

| | |
|------------------------------------|------------------------------|
| President | Frank L. Merrill |
| Vice President - Operations | Terrance R. McCormack |
| Treasurer | Frank L. Merrill |
| Secretary | Susan J. Merrill |

RESOLVED: That pursuant to NH RSA 293-A:7.08, **Frank L. Merrill** is hereby appointed as the Chairman of the Corporation who shall preside at all Shareholder meetings.

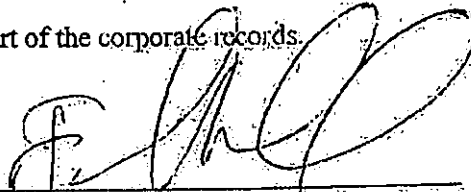
RESOLVED: To appoint **Susan J. Merrill** as the Registered Agent of the Corporation.

RESOLVED: That either **Frank L. Merrill** or **Susan J. Merrill**, acting alone, is hereby authorized to execute, affix the corporate seal to and deliver, on behalf of the company, contracts, deeds, discharges, assignments and partial releases of mortgages, and all other instruments of title, leases or real property or documents in relation thereto, the execution and delivery of which are required or appropriate in the business of the company, without prior or subsequent reference thereof to the Board of Directors.

No further action is taken by the Board of Directors.

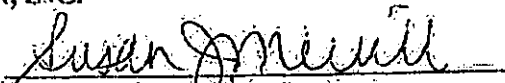
Effective this 9th day of January, 2017, the foregoing action by consent pursuant to RSA 293-A:8.21 is signed by the Director of the Corporation (notice hereby being waived) and is filed

with the Secretary of the Corporation as part of the corporate records.



Frank L. Merrill, Sole Director
Dated: 1/16/2017

The foregoing action by consent has been received and filed with the corporate records of
F.L. MERRILL CONSTRUCTION, INC.



Susan J. Merrill, Secretary
Dated: 1/16/2017



35 VETERAN'S DRIVE
LOUDON, NEW HAMPSHIRE 03307
(603) 228-5568 FAX (603) 228-5559

August 15, 2017

To Whom It May Concern;

FL Merrill Construction, Inc. is a company based and incorporated in New Hampshire. Below is a list of our board members as of 1/9/2017.

| | |
|-----------------------------|--|
| President: | Frank L. Merrill |
| Vice President- Operations: | Terrance R. McCormack |
| Treasurer: | Frank L. Merrill |
| Secretary: | Susan J. Merrill <i>Susan J. Merrill</i> 8/17/17 |

Of those listed above, Frank L. Merrill and Susan J. Merrill are designated as authorized to sign contracts on behalf of the company. Such designation has not been amended or rescinded and remains in full force and effect as of this date. Also, attached for use are our meeting minutes from the last board meeting in January.

If you have any questions please feel free to contact me at the office.

Sincerely,

Bob Burns
FLMCI

K. Merrill 8/17/17





FLMERRI-01

KPEITII

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
07/19/2017

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 have ADDITIONAL INSURED provisions or 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 Davis & Towle Morrill & Everett, Inc. 115 Airport Road Concord, NH 03301 | CONTACT: Kathy M. Pettit |
| | PHONE (AC, No, Ext): (603) 715-9739 FAX (AC, No): (603) 225-7935 |
| | E-MAIL ADDRESS: kpettit@davistowle.com |
| INSURED F.L. Merrill Construction, Inc. 35 Veterans Drive Loudon, NH 03307 | INSURER(S) AFFORDING COVERAGE |
| | INSURER A: Acadia Insurance Company |
| | INSURER D: Evanston Insurance Co. |
| | INSURER C: |
| | INSURER E: |
| | INSURER F: |

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

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

| INSR LTR | TYPE OF INSURANCE | ADDITIONAL WSD Y/N | POLICY NUMBER | POLICY EFF. (MM/DD/YYYY) | POLICY EXP. (MM/DD/YYYY) | LIMITS |
|----------|---|--------------------|----------------|--------------------------|--------------------------|---|
| A | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR | X | CPA5151793-13 | 07/01/2017 | 07/01/2018 | EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED EQUIPMENT (Per occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADM INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPOP AGG \$ 2,000,000 |
| | GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJ <input checked="" type="checkbox"/> LOC OTHER: | | | | | |
| A | AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> LIMITED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY | | CAA5151794-13 | 07/01/2017 | 07/01/2018 | COMBINED SINGLE LIMIT (Per accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ |
| A | <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR DED <input checked="" type="checkbox"/> RETENTIONS 0 | | CUA5151796-13 | 07/01/2017 | 07/01/2018 | EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 |
| A | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/OWNER EXCLUDED? (Mandatory in NH) Y/N N/A | N/A | WPA5151797-13 | 07/01/2017 | 07/01/2018 | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000 |
| B | Pollution Liability | | MKLVIENV100336 | 07/01/2017 | 07/01/2018 | Limit \$ 2,000,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
**Workers Compensation: 3A States NH & MA.

RE: Suncook River Mitigation Project, Epsom, NH. It is agreed and understood that the State of New Hampshire, Dept. of Environmental Services and State of New Hampshire, Dept. of Transportation are included as additional insured on General Liability for ongoing operations when required by written contract.

| | |
|---|---|
| CERTIFICATE HOLDER State of New Hampshire, Dept. of Environmental Services 29 Hazon Drive PO Box 95 Concord, NH 03302 | CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE |
|---|---|



FLMERRI-01

KPETIT

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
07/19/2017

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 have ADDITIONAL INSURED provisions or 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 Davis & Towle Morrill & Everett, Inc. 115 Airport Road Concord, NH 03301 | CONTACT: Kathy M. Pettit | |
| | PHONE (AC, No. Ext): (603) 715-9739 | FAX (AC, No.): (603) 225-7935 |
| | EMAIL: kpetit@davistowle.com | |
| | INSURER(S) AFFORDING COVERAGE | NAIC # |
| | INSURER A: Acadia Insurance Company | 31325 |
| | INSURER B: Evanston Insurance Co. | |
| | INSURER C: | |
| | INSURER D: | |
| | INSURER E: | |
| | INSURER F: | |

INSURED
F.L. Merrill Construction, Inc.
35 Veterans Drive
Loudon, NH 03307

COVERAGES: CERTIFICATE NUMBER: REVISION NUMBER:

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

| REF. LTD. | TYPE OF INSURANCE | ADDED SUPPL. (Y/N) | POLICY NUMBER | POLICY EFF. (MM/DD/YYYY) | POLICY EXP. (MM/DD/YYYY) | LIMITS |
|-----------|--|--------------------|----------------|--------------------------|--------------------------|--|
| A | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GENL. AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO. <input checked="" type="checkbox"/> LOC OTHER: | X | CPA5151793-13 | 07/01/2017 | 07/01/2018 | EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED EQUIPMENT (Per occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 |
| A | AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY | | CAA5151794-13 | 07/01/2017 | 07/01/2018 | COMBINED SINGLE LIMIT (Per accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ |
| A | <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 0 | | CUA5151795-13 | 07/01/2017 | 07/01/2018 | EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 |
| A | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY <input type="checkbox"/> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/OWNER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below | Y/N N | WPA5151797-13 | 07/01/2017 | 07/01/2018 | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER EL: EACH ACCIDENT \$ 500,000 EL: DISEASE - EA EMPLOYEE \$ 500,000 EL: DISEASE - POLICY LIMIT \$ 500,000 |
| B | Pollution Liability | | MKLV1ENV100336 | 07/01/2017 | 07/01/2018 | Limit \$ 2,000,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Workers Compensation: 3A States NH & MA.
RE: Suncook River Mitigation Project, Epsom, NH. It is agreed and understood that the State of New Hampshire, Dept. of Transportation and State of New Hampshire, Dept. of Environmental Services are included as additional insured on General Liability for ongoing operations when required by written contract.

| | |
|--|---|
| CERTIFICATE HOLDER State of New Hampshire, Dept. of Transportation 7 Hazen Drive PO Box 483 Concord, NH 03302 | CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. |
| | AUTHORIZED REPRESENTATIVE |

B-3.1

PAYMENT BOND

BOND NO. 0209929

KNOW ALL MEN BY THESE PRESENTS: that

F.L. MERRILL CONSTRUCTION, INC.

(Name of Contractor)

35 VETERAN'S DRIVE, LONDON, NH 03307

(Address of Contractor)

a CORPORATION, hereinafter called Principal,

(Corporation, Partnership or Individual)

and BERKLEY INSURANCE COMPANY

(Name of Surety)

475 STEAMBOAT ROAD, GREENWICH, CT 06830

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto

STATE OF NEW HAMPSHIRE, DEPARTMENT OF ENVIRONMENTAL SERVICES

(Name of Owner)

29 HAZEN DRIVE, PO BOX 95, CONCORD, NH 03302

(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 MILLION, SIX HUNDRED THIRTY SIX THOUSAND, FOUR HUNDRED TWENTY SEVEN AND 00/100 Dollars, (\$ 2,636,427.00) 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 15TH day of AUGUST

20 17, a copy of which is hereto attached and made a part hereof for the construction of:

SUNCOOK RIVER MITIGATION PROJECT, EPSOM, NH #2016-06

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.

B-3.2

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.

B-3.3.

IN WITNESS WHEREOF, this instrument is executed in FOUR counterparts, each one of
(number)
which shall be deemed an original, this 16TH day of AUGUST, 2017.

ATTEST:

By: *Susan Merrill*
(Principal) Secretary
(SEAL)

F.L. MERRILL CONSTRUCTION, INC.
Principal

BY *Susan Merrill*

(Address)
35 VETERAN'S DRIVE
LOUDON, NH 03307

By: *[Signature]*
Witness as to Principal
37 Canal Ridge Rd, Pittsfield, NH
(Address)

BERKLEY INSURANCE COMPANY
(Surety)

ATTEST:

By: *Trina Elsmann*
Witness as to Surety TRINA ELSMAN

BY *Nancy L. Castonguay*
NANCY L. CASTONGUAY
(Address)

103 PARK STREET, PO BOX 481
LEWISTON, ME 04243
(Address)

103 PARK STREET, PO BOX 481
LEWISTON, ME 04243

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.

B-4.1

PERFORMANCE BOND

BOND NO. 0209929

KNOW ALL MEN BY THESE PRESENTS: that

F.L. MERRILL CONSTRUCTION, INC.

(Name of Contractor)

35 VETERAN'S DRIVE, LOUDON, NH 03307

(Address of Contractor)

a CORPORATION, hereinafter called Principal,
(Corporation, Partnership or Individual)

and BERKLEY INSURANCE COMPANY
(Name of Surety)

475 STEAMBOAT ROAD, GREENWICH, CT 06830

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto

STATE OF NEW HAMPSHIRE, DEPARTMENT OF ENVIRONMENTAL SERVICES

(Name of Owner)

29 HAZEN DRIVE, PO BOX 95, CONCORD, NH 03302

(Address of Owner)

hereinafter called OWNER, in the total aggregate penal sum of TWO MILLION, SIX HUNDRED THIRTY SIX THOUSAND, FOUR HUNDRED TWENTY SEVEN AND 00/100
Dollars, \$ (2,636,427.00)

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 15TH day of AUGUST 2017, a copy of which is hereto attached and made a part hereof for the construction of:

SUNCOOK RIVER MITIGATION PROJECT, EPSOM, NH #2016-06

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 FOUR counterparts, each one of which shall be deemed an original, this 16TH day of AUGUST, 2017

ATTEST:

By: [Signature]
(Principal Secretary)
(SEAL)

F.L. MERRILL CONSTRUCTION, INC.
Principal

BY [Signature]
(Address)
35 VETERAN'S DRIVE
LOUDON, NH 03307

By: [Signature]
Witness as to Principal
37 Quakerbridge Rd.
(Address)
P. H. Fields, III

BERKLEY INSURANCE COMPANY
(Surety)

BY [Signature]
(Address)
NANCY L. CASTONGUAY
103 PARK STREET, PO BOX 481
LEWISTON, ME 04243

ATTEST:

By [Signature]
Witness as to Surety
TRINA ELSMAN
103 PARK STREET, PO BOX 481
LEWISTON, ME 04243
(Address)

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

POWER OF ATTORNEY
BERKLEY INSURANCE COMPANY
WILMINGTON, DELAWARE

NOTICE: The warning found elsewhere in this Power of Attorney affects the validity thereof. Please review carefully.

KNOW ALL MEN BY THESE PRESENTS, that BERKLEY INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Delaware, having its principal office in Greenwich, CT, has made, constituted and appointed, and does by these presents make, constitute and appoint: *Nancy L. Castonguay; Robert E. Shaw, Jr.; Heidi Rodzon; Joline L. Rineffe; or Melanie A. Bonnevie of Skillings - Shaw & Associates, Inc. of Lewiston, ME* its true and lawful Attorney-in-Fact, to sign its name as surety only as delineated below and to execute, seal, acknowledge and deliver any and all bonds and undertakings, with the exception of Financial Guaranty Insurance, providing that no single obligation shall exceed One Hundred Million and 00/100 U.S. Dollars (U.S.\$100,000,000.00), to the same extent as if such bonds had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office in their own proper persons.

This Power of Attorney shall be construed and enforced in accordance with, and governed by, the laws of the State of Delaware, without giving effect to the principles of conflicts of laws thereof. This Power of Attorney is granted pursuant to the following resolutions which were duly and validly adopted at a meeting of the Board of Directors of the Company held on January 25, 2010:

RESOLVED, that, with respect to the Surety business written by Berkley Surety Group, the Chairman of the Board, Chief Executive Officer, President or any Vice-President of the Company, in conjunction with the Secretary or any Assistant Secretary are hereby authorized to execute powers of attorney authorizing and qualifying the attorney-in-fact named therein to execute bonds, undertakings, recognizances, or other suretyship obligations on behalf of the Company, and to affix the corporate seal of the Company to powers of attorney executed pursuant hereto, and said officers may remove any such attorney-in-fact and revoke any power of attorney previously granted; and further

RESOLVED, that such power of attorney limits the acts of those named therein to the bonds, undertakings, recognizances, or other suretyship obligations specifically named therein, and they have no authority to bind the Company except in the manner and to the extent therein stated; and further

RESOLVED, that such power of attorney revokes all previous powers issued on behalf of the attorney-in-fact named; and further

RESOLVED, that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any power of attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligation of the Company; and such signature and seal when so used shall have the same force and effect as though manually affixed. The Company may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Company, notwithstanding the fact that they may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, the Company has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 27th day of April, 2016.

Attest:

Berkley Insurance Company

(Seal)

By Ira S. Lederman
Senior Vice President & Secretary

By Jeffrey M. Hafter
Senior Vice President

WARNING: THIS POWER INVALID IF NOT PRINTED ON BLUE "BERKLEY" SECURITY PAPER.

STATE OF CONNECTICUT)

) ss:

COUNTY OF FAIRFIELD)

Sworn to before me, a Notary Public in the State of Connecticut, this 27th day of April, 2016, by Ira S. Lederman and Jeffrey M. Hafter who are sworn to me to be the Senior Vice President and Secretary, and the Senior Vice President, respectively, of Berkley Insurance Company.

MARIA C. RUNDBAKEN
NOTARY PUBLIC
MY COMMISSION EXPIRES
APRIL 30, 2019

Maria C. Rundbaken
Notary Public, State of Connecticut

CERTIFICATE

I, the undersigned, Assistant Secretary of BERKLEY INSURANCE COMPANY, DO HEREBY CERTIFY that the foregoing is a true, correct and complete copy of the original Power of Attorney; that said Power of Attorney has not been revoked or rescinded and that the authority of the Attorney-in-Fact set forth therein, who executed the bond or undertaking to which this Power of Attorney is attached, is in full force and effect as of this date.

Given under my hand and seal of the Company, this 16TH day of AUGUST, 2017

(Seal)

Andrew M. [Signature]

WARNING - Any unauthorized reproduction or alteration of this document is prohibited. This power of attorney is void unless seals are readable and the certification seal at the bottom is embossed. The background imprint, warning and verification instructions (on reverse) must be in blue ink.

Please **verify the authenticity** of the instrument attached to this Power by:

Toll-Free Telephone: (800) 456-5486; or

Electronic Mail: BSGIquiry@berkleysurety.com

Any written notices, inquiries, claims or demands to the Surety on the bond attached to this Power should be directed to:

Berkley Surety Group
412 Mount Kemble Ave.
Suite 310N
Morristown, NJ 07960
Attention: Surety Claims Department

Or

Email: BSGClaim@berkleysurety.com

Please include with all communications the bond number and the name of the principal on the bond. Where a claim is being asserted, please set forth generally the basis of the claim. In the case of a payment or performance bond, please also identify the project to which the bond pertains.

Berkley Surety Group is an operating unit of W. R. Berkley Corporation that underwrites surety business on behalf of Berkley Insurance Company, Berkley Regional Insurance Company and Carolina Casualty Insurance Company.

Attachment A: Suncook River Mitigation Project Pre-Qualification Summary for Contractors

| Contractor | >10yrs experience in river resource areas? | 5 River Related projects in past 5 years | Any project not completed by original contract date? | Did company delay or cease work? | 3 projects in last 5 years with: seed/erosion control, water management, channel bed/bank stabilization, installation of seed and plantings | 3 references from last 5 years | Qualified to Bid? |
|----------------------------------|--|--|--|----------------------------------|---|--------------------------------|-------------------|
| Charter Contracting Company, LLC | Yes | Yes | No | No | Yes | Yes | Yes |
| Hansen Construction | Yes | No | No | No | Yes | Yes | No |
| Ladd | No | No | No | No | No | No (1) | No |
| Merrill | NS | Yes | No | No | Yes | Yes | Yes |
| Northeast Earth Mechanics, Inc. | NS | Yes | No | No | NS | Yes | Yes |
| Olszak Construction | No | NS | No | No | No | Yes | No |
| R.S. Audley | NS | Yes | No | No | Yes | Yes | Yes |
| RM Piper | Yes | Yes | No | No | Yes | Yes | Yes |
| Sargent Corp | NS | Yes | No | No | Yes | Yes | Yes |
| SumCo:Eco-Contracting, LLC | Yes | Yes | Yes | No | Yes | Yes | Yes |
| SUR Construction, Inc. | Yes | Yes | No | No | Yes | Yes | Yes |

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. | 10 years experience with Inter-Fluve, Inc. as a Fluvial Geomorphologist and 5 years of graduate work in the field of fluvial geomorphology. |
| Steve Landry, NHDES | 23 years experience, Supervisor of the New Hampshire Nonpoint Source Pollution Program and Watershed Assistance Section, project management, watershed restoration. |