



# New Hampshire Fish and Game Department

**HEADQUARTERS:** 11 Hazen Drive, Concord, NH 03301-6500  
(603) 271-3421  
FAX (603) 271-1438

03/07/2015 10:51 AM

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**www.WildNH.com**  
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June 11, 2015

Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Council  
State House  
Concord, NH 03301

### Requested Action

Authorize the New Hampshire Fish and Game Department to enter into a contract with Fay, Spofford and Thorndike, LLC, Bedford, NH (Vendor Code #161284), in the amount of \$50,000.00 for Engineering Services for the Statewide Public Access Program from Governor and Council approval through June 30, 2017. 75% Federal Funds, 25% Public Boat Access Funds.

Funding is available for this service and will be expended as follows, contingent upon availability and continued appropriations for State Fiscal Years 2016 and 2017 with the authority to adjust encumbrances in each of the state fiscal years through the Budget Office if needed and justified.

		<u>FY 2016</u>	<u>FY 2017</u>
03 7575 753520 21170000	Facilities and Lands – Statewide Public Boat Access		
20 07500 21170000 046 500463	Consultants	\$25,000.00	\$25,000.00

### Explanation

The New Hampshire Fish and Game Department is in need of engineering services, including environmental engineering and survey services, in support of the ongoing Statewide Public Access Program. The Department continues to promote and develop access and maintenance projects. Presently there are twenty projects in various stages of development from conceptual evaluation, design and environmental review or construction. The Department works with individual land owners, municipalities and other state agencies to develop new sites and maintain existing sites.

The sites provide convenient and safe access to lakes, ponds, river and marine water bodies for use by the boating public. Maintenance of these facilities in good working condition is essential for stocking fisheries, law enforcement and promotion of a positive image to the public.

Twenty-three engineering firms expressed interest in providing engineering services. Seven firms submitted qualifications information as prescribed. A three member selection committee short-listed three firms for interviews. A three member interview team evaluated the firms and selected one firm based on qualifications. The selected firm presented billing information for review and the Department negotiated the fee structure. Fees were not negotiated with other firms.

Respectfully submitted,

Glenn Normandeau  
Executive Director

Kathy Ann LaBonte  
Chief, Business Division

**REGION 1**  
629B Main Street  
Lancaster, NH 03584-3612  
(603) 788-3164  
FAX (603) 788-4823  
email: reg1@wildlife.nh.gov

**REGION 2**  
PO Box 417  
New Hampton, NH 03256  
(603) 744-5470  
FAX (603) 744-6302  
email: reg2@wildlife.nh.gov

**REGION 3**  
225 Main Street  
Durham, NH 03824-4732  
(603) 868-1095  
FAX (603) 868-3305  
email: reg3@wildlife.nh.gov

**REGION 4**  
15 Ash Brook Court  
Keene, NH 03431  
(603) 352-9669  
FAX (603) 352-8798  
email: reg4@wildlife.nh.gov

Subject: Engineering Services for Statewide Public Access Program FORM NUMBER P-37 ( version 1/09)

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

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

1.1 State Agency Name <u>NH Fish and Game Department</u>		1.2 State Agency Address <u>11 Hazen Drive, Concord, NH 03301</u>	
1.3 Contractor Name <u>Fay, Spofford and Thorndike, LLC</u>		1.4 Contractor Address <u>288 South River Road, Bldg C, Bedford, NH 03110</u>	
1.5 Contractor Phone Number <u>(603) 250-6417</u>	1.6 Account Number <u>21170000 046 500463</u>	1.7 Completion Date <u>June 30, 2017</u>	1.8 Price Limitation <u>\$50,000.00</u>
1.9 Contracting Officer for State Agency <u>Glenn Normandeau, Executive Director</u>		1.10 State Agency Telephone Number <u>(603) 271-3511</u>	
1.11 Contractor Signature <u><i>William R. Moore</i></u>		1.12 Name and Title of Contractor Signatory <u>William R. Moore, P.E., Sr. VP</u>	
1.13 Acknowledgement: State of <u>NH</u> , County of <u>Hillsborough</u> On <u>6-8-2015</u> , before the undersigned officer, personally <del>appeared</del> the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and <del>acknowledged</del> s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace [Seal] <u><i>Sara J. Cofer</i></u>			
1.13.2 Name and Title of Notary or Justice of the Peace <u>Sara Cofer - Notary</u>			
1.14 State Agency Signature <u><i>Glenn Normandeau</i></u>		1.15 Name and Title of State Agency Signatory <u>Glenn Normandeau, Executive Director</u>	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) By: <u><i>[Signature]</i></u> On: <u>7-6-2015</u>			
1.18 Approval by the Governor and Executive Council By: _____ On: _____			

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

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.**  
3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("Effective Date").  
3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

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

**5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.**  
5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.  
5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.  
5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

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

**6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.**  
6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.  
6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.  
6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

**7. PERSONNEL.**  
7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.  
7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.  
7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

Contractor Initials WJW  
Date 6/10/15

**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

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Date 6/8/15

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**

**SCOPE OF SERVICES**

**“STATEWIDE PUBLIC ACCESS PROGRAM”**

The consultant shall furnish all labor, materials, and services necessary to ensure the development of public access areas. The Consultant shall comply with all applicable state and local laws, rules and regulations.

**Phase I – Preliminary Site Selection and Engineering Evaluation.**

The Consultant shall provide assistance in developing alternative site selections and preparing engineering evaluations.

**A. Site Selection Activities**

The Consultant shall conduct site evaluations consisting of the primary choice and alternatives to determine the best location for a public access project. Supportive documents relative to the choice must be available for inspection by the New Hampshire Fish and Game Department (NHFG). The Consultant may be required to defend a site selection at any public hearing relative to public access projects that are on schedule for acquisition and/or development by the NHFG.

**B. Engineering Evaluation Activities**

The Consultant shall prepare a preliminary engineering evaluation consisting of drawings and other documents illustrating scale and relationship of various project components and configurations, together with recommendations and a semi-detailed estimate of construction costs. Three (3) sets of these studies shall be submitted to the New Hampshire Fish and Game Department, Facilities and Lands Division, for review and comment. Work in Phase II & III is contingent upon results from the preliminary engineering evaluation.

**C. Topographic Survey**

The Consultant shall provide a property survey completed in accordance with Chapter 500, New Hampshire Code of Administrative Rules, and Board of Licensing for Land Surveyors.

**D. Environment and Hazardous Waste**

**1. Environmental Reviews**

The Consultant shall provide environmental reviews and documentation that are consistent with the National Environmental Policy Act procedures; Federal and

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State permitting; wetland delineation techniques as outlined in the “Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1”; Hydric soils delineation techniques as outlined in the manual Field Indicators for “Identifying Hydric Soils in New England”; and, wetland classifications in accordance with the United States Fish and Wildlife Service Manual, “Classification of Wetlands and Deepwater Habitats of the United States.”

2. Hazardous Waste Assessment

The Consultant shall provide hazardous waste assessments in accordance with “Standard Practice for Limited Environmental Due Diligence: Transaction Screen Process,” “ASTM E1527 - 13 Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process,” and/ or “ASTM E1903 – 11 Standard Practice for Environmental Site Assessments: Phase II Environmental Site assessment Process.”

3. Historic and Archeological Assessment

The Consultant shall provide environmental reviews and documentation that are consistent with Section 106 of the National Historic Preservation Act and historical and archeological inventory and assessment protocols that may be required by the New Hampshire Division of Historical Resources (State Historic Preservation Office).

4. Endangered and Threatened Species Assessment

The Consultant shall provide environmental reviews and documentation that are consistent with Native Plant Protection Act of 1987 and the Endangered Species Act of 1973.

**Phase II – Preliminary Plans, Specifications and Estimates**

The Consultant shall prepare from approved preliminary engineering evaluations, the Preliminary Plans, Specifications, and Estimates consisting of drawings and other documents, to fix and describe the size and character of the entire project as to structural integrity, mechanical and electrical systems, site development and utilities, materials and methods as may be required, together with a further detailed estimate of construction costs. Three sets of these preliminary plans, specifications, and engineering estimates shall be submitted to the New Hampshire Fish and Game Department, Facilities and Lands Division.

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### **Phase III – Final Plans, Specifications and Estimates**

The Consultant shall prepare from approved Phase II documents, working drawings and specifications, setting forth in detail the requirements for construction of the entire project.

Construction documents shall comply with all current state and local codes, laws, regulations and requirements applicable to the project.

The Consultant agrees that the construction drawings shall be of an appropriate scale, on Mylar, measuring 24 inches by 36 inches with a ½ inch border and a binder border of 1-½ inches. Drawings, which have been completed by a computer aided drafting system, shall be presented to the Department in .DXF or AutoDesk .DWG 2010 format. Plan Sheet backs shall be labeled with its corresponding electronic file name. Specifications, which have been completed by a computerized word processing system, shall be presented to the Department in Microsoft Office 2003 Word or compatible format. The format and file names shall be clearly identified on the electronic media.

The Consultant shall prepare the technical specifications to utilize as closely as possible the latest Standard Specifications for Road and Bridge Construction established by the New Hampshire Department of Transportation. Specification shall be on “Bond Paper” suitable for reproduction. In addition, an electronic file will be prepared as described above.

Ramp and boat access facility designs and specifications shall conform to recommendations in the latest guidance documents by the States Organization for Boating Access. Facility engineering designs and specifications shall be compliant with current requirements of the Americans with Disabilities Act of 1990 and best practice recommendations by the Architectural and Transportation Barriers Compliance Board and the latest edition of the United States Department of Agriculture “Accessibility Guidebook for Outdoor Recreation and Trails.”

The Consultant shall advise the NHFG Public Boat Access Program Coordinator and NHFG Facilities and Lands Division Chief of any adjustments to previous statements of probable construction costs indicated by change in program or requirements.

The Consultant shall prepare permit documents and other information in a form and to the specifications required for submission to federal, state and local agencies to establish authorization to proceed with land acquisition, construction, maintenance and other ancillary work to accomplish the Department’s objectives under the “New Hampshire Statewide Public Boat Access Program.”

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The Consultant shall cooperate in the evaluation of any changes in the work with the NHFG Public Boat Access Program Coordinator and NHFG Facilities and Lands Division Chief.

**Phase IV – Site Development Supervision and Project Completion**

The Consultant shall be responsible for monitoring any and all phases of a project. Project observation will be provided to ensure that each site development conforms to all federal, state, and local laws and also, conforms to the agreed upon documentation of Phases II and III.

The Consultant may be required to observe a variety of work forces; including sub-contractors, construction crews, state agency construction crews, or municipal construction crews.

A project is completed when it meets with the approval of the NHFG Statewide Public Boat Access Program Coordinator and NHFG Facilities and Lands Division Chief.

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**EXHIBIT B**

**TERMS OF PAYMENT**

**“STATEWIDE PUBLIC ACCESS PROGRAM”**

The consultant shall receive payment for services rendered in accordance with the following schedule:

1. **Contract Price** – The Consultant shall be eligible to receive up to \$25,000/year for two years. The Consultant may receive the entire amount or any portion of said amount, depending on services rendered during each contract year.
2. **Vouchers for Payment** – The Consultant may voucher for payments for work satisfactorily completed on a monthly basis. The payment requests for services rendered shall be compiled using the rates shown on the Consultant’s fee schedule negotiated for this statewide contract.
3. **Mileage** will be reimbursed at the rate of \$0.575/mile and will be adjusted annually based on Federal Government rates.
4. **Expenses** including mail, photos, Federal Express, reproductions, etc. will be invoiced at cost.

**Inflationary Clause** – The cost for professional services and reimbursable direct costs may be adjusted after two years, to reflect the cost of living index.

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**EXHIBIT C**

**SPECIAL PROVISIONS: AMENDMENTS TO AGREEMENT (Form P-37)**

**“STATEWIDE PUBLIC ACCESS PROGRAM”**

8. EVENT OF DEFAULT: REMEDIES

Amend 8.1 to include:

- 8.1.4 Becomes insolvent, or is declared bankrupt, or commits any act of bankruptcy or insolvency, or
- 8.1.5 Makes an assignment for the benefit of creditors, or
- 8.1.6 For any other cause whatsoever, fails to carry on the work in an acceptable manner.

The Department shall give notice in writing to the Consultant for such delay, neglect, or default. If the Consultant does not proceed in accordance with the Notice, then the Department will, upon written notification from the Project Manager of the fact for such delay, neglect or default and the Consultant’s failure to comply with such notice, have full power and authority without violating the contract, to take the prosecution of the work out of the hands of the Consultant. The Department may enter into an Agreement for the completion of said contract according to the terms and conditions thereof, or use such other methods as in its opinion, will be required for the completion of said contract in an acceptable manner.

10. TERMINATION

Amend 10 to read:

Termination of Contract Without Fault

The Department, for any cause, including but not limited to an order of any Federal authority of petition of the Consultant due to circumstances beyond his control may, in written notice to the Consultant, with the concurrence of the Governor and Council, terminate the contract, or any portion thereof, subject to conditions a, b, c and d provided below.

Notwithstanding, anything to the contrary contained in these conditions, it is understood and agreed by the parties hereto that all obligations of the Department hereunder, including the continuance of payments, are contingent upon the availability and continued appropriation of State and/or Federal funds, and in no event shall the Department be liable for any payments hereunder in excess of such available for Appropriated funds. In the event of a reduction, termination or failure to appropriate any or all such available funds, or appropriations, or a reduction of expenditure of State Funds by the Advisory Budget Control Committee, the Department may, by written Notice to the Consultant, immediately terminate this contract in whole or in part in accordance with the following conditions:

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- a) When a contract, or any portion thereof, is terminated before completion of all items of work in the contract, payment will be made for the actual items of work completed. Payment for items of work not completed at the time of termination shall be the greater of the following amounts: 1) a percentage or completion of the particular item at time of termination, or 2) such amount as shall be mutually agreed upon by the parties. No claim for loss of anticipated profits on items or units of work not completed will be allowed.
- b) Reimbursement for organization of the work and mobilization, when not otherwise included in the contract, shall be made where the volume of work completed is too small to compensate the Consultant for these expenses under the Contract, the intent being that an equitable settlement be made with the Consultant.
- c) Acceptable materials obtained or ordered by the Consultant for work and that are not incorporated in the work shall, at the option of the Consultant, be purchased from the Consultant based upon the delivered cost of the materials at such points of delivery as may be designated by the Department. The Consultant shall do everything possible to cancel unfilled orders.
- d) Termination of a contract or a portion thereof shall not relieve the Consultant of his responsibilities for the work completed.

#### 14. INSURANCE AND BOND

Amend GENERAL PROVISION 14.1 as follows:

Amend 14.1 to read

14.1 The Consultant shall deliver at the time of execution of the Contract, certificates of insurance required hereunder and such insurance shall be reviewed prior to approval by the Attorney General. The certificates of insurance shall contain the description of the project, and at the request of the Department, the Consultant shall promptly make available a copy of any and all listed insurance policies. The State of New Hampshire Fish and Game Department shall be named as Certificate holder. The Consultant shall, at its sole expense, obtain and maintain in force, and shall require any sub-contractor or assignee to obtain and maintain in force, both for the benefit of the State, the following insurance:

Amend 14.1.1 to read:

14.1.1 Workers' Compensation Insurance

Limits of Liability  
(Statutory under RSA Chapter 281)  
\$100,000.00 per Accident

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Amend 14.1.2 to read:

14.1.2 General Liability, Comprehensive form including  
Premises – Operations  
Completed Operations  
Contractual (see Indemnification Clause)  
Broad Form Property Damage  
Independent Contractors (Contractors Protective)

Combined Single Limit, Bodily Injury and Property Damage  
\$2,000,000.00 Per Occurrence  
\$2,000,000.00 Aggregate

Or

Umbrella Liability Coverage  
\$13,000,000.00 Per Occurrence  
\$13,000,000.00 Aggregate

The Consultant shall indemnify, defend and Save harmless the State of New Hampshire and its agents and employees from and against any suit, action, or claim of loss of expenses because of bodily injury, including death at any time resulting there from, sustained by any person or persons or on account of damage to property, including loss of use thereof, whether caused by or contributed to by said State of New Hampshire, its agents, employees or others.

Add 14.1.3: Automobile Liability, Comprehensive Form  
Including coverage for all owned, non-owned and hire vehicles.

Limits of Liability  
Bodily Injury: \$1,000,000.00 each person  
\$1,000,000.00 each accident  
Property Damage: \$500,000.00 each accident

Or

Combined Single Limits, Bodily Injury and Property Damage  
\$1,500,000.00 each accident

Or

Umbrella Liability Coverage  
\$13,000,000.00 Per Occurrence  
\$13,000,000.00 Aggregate

*Wnm  
6/8/15*

Add 14.1.4 Professional Liability, Claims Made Form  
Limits of Liability  
\$1,000,000.00 Per Claim  
\$1,000,000.00 Aggregate

CLAIMS AND INDEMNIFICATION:

(a) NON-PROFESSIONAL LIABILITY INDEMNIFICATION: The Consultant agrees to defend, indemnify and hold harmless the STATE and all of its officers, agents and employees from and against any and all claims, liabilities or suits arising from (or which may be claimed to arise from) any (i) acts or omissions of the CONSULTANT or its sub-consultants in the performance of this AGREEMENT allegedly resulting in property damage or bodily injury and/or (ii) misconduct by wrongdoing of the CONSULTANT or its sub-consultants in the performance of this AGREEMENT.

(b) PROFESSIONAL LIABILITY INDEMNIFICATION: The CONSULTANT agrees to defend, indemnify and hold harmless the STATE and all of its officers, agents and employees from and against any and all claims, liabilities or suits arising from (or which may be claimed to arise from) any negligent acts or omissions of the CONSULTANT or its sub-consultants in the performance professional services covered by this AGREEMENT.

(c) These covenants shall survive the termination of the AGREEMENT. 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 by the STATE.

WRM  
6/8/15





# State of New Hampshire Department of State

## CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that Fay, Spofford & Thorndike, LLC, a(n) Massachusetts limited liability company registered to do business in New Hampshire on January 11, 2000. I further certify that it is in good standing as far as this office is concerned, having filed the annual report(s) and paid the fees required by law.



In TESTIMONY WHEREOF, I hereto  
set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 13<sup>th</sup> day of May, A.D. 2015

A handwritten signature in black ink, appearing to read "William M. Gardner".

William M. Gardner  
Secretary of State



Date: June 8, 2015

I, Thomas D. Jenkins, Assistant Secretary of Fay, Spofford & Thorndike, Inc. (Managing Member of Fay, Spofford & Thorndike, LLC) a Massachusetts corporation, and as such having custody of the corporate records, hereby certify that the following is a true copy of a vote unanimously passed at a meeting of the Board of Directors of Fay, Spofford & Thorndike, Inc., held at Burlington, Massachusetts, on March 11, 2015, at which a quorum was present.

**VOTED:** That the following individuals are hereby authorized and empowered for and on behalf of Fay, Spofford & Thorndike, Inc. (Managing Member of Fay, Spofford & Thorndike, LLC) to sign individually or severally, as the circumstances require, any and all contracts, agreements, or obligations between Fay, Spofford & Thorndike, LLC and any other contracting party or parties, except for obligations involving the borrowing of funds or the withdrawal of funds for corporate use from bank accounts of the company. Additionally, the named individuals are authorized to execute the following named agreement:

**Professional Civil/Environmental Engineering and Surveying Services  
For the Statewide Public Access Program**

Peter J. Howe	President & Chief Executive Officer
Christopher C. Yannoni	Senior Vice President & Treasurer
Leonard V. Dzengelewski	Senior Vice President & Secretary
William R. Moore	Senior Vice President & Assistant Treasurer
Thomas D. Jenkins	Senior Vice President & Assistant Secretary
Michael A. Roache	Senior Vice President & Security Officer
Paul F. Harrington	Senior Vice President
James R. Branch	Senior Vice President
William R. Reed	Senior Vice President
Brian E. Shea	Senior Vice President
Richard A. Azzalina	Vice President
Mark S. Bartlett	Vice President
Dennis P. Boucher	Vice President
Brian R. Brenner	Vice President
Stephen R. Bushey	Vice President
Michael E. Carroll	Vice President
Stephen A. Chapman	Vice President
Jennifer A. Ducey	Vice President
Paul G. Ferguson	Vice President
Justin D. Gould	Vice President
Victor M. Govoni	Vice President
Jerome A. Guerra	Vice President
John K. Hendrickson	Vice President
Edward D. Hollingshead	Vice President
John T. Krawczyk	Vice President
S.D. Daniel Lee	Vice President
Frederick A. Moseley	Vice President
Jeffrey R. Paul	Vice President
Michael A. Sorrentino	Vice President
James M. Taylor	Vice President
Paul G. Yannoni	Vice President
Meredith S. Zona	Vice President

I further certify that said vote is in full force and effect.

Thomas D. Jenkins, Assistant Secretary of Fay, Spofford & Thorndike, Inc.  
Managing Member of Fay, Spofford & Thorndike, LLC



# New Hampshire Fish and Game Department

11 Hazen Drive, Concord, NH 03301-6500  
Headquarters: (603) 271-3421  
Web site: [www.WildNH.com](http://www.WildNH.com)

TDD Access: Relay NH 1-800-735-2964  
FAX (603) 271-1438  
E-mail: [info@wildlife.nh.gov](mailto:info@wildlife.nh.gov)

Glenn Normandeau  
Executive Director

## **Interview Team Qualifications For 2015 Engineering Selection**

**Richard J. Fink, P.E.** Chief, Facility and Lands Division  
Title: Public Works Project Manager

Education: BS in civil engineering, license in NH

Experience: 30+ years as Engineer for state and private engineering firms. Design experience includes boat ramps, roads, airports, drainage and environmental permit applications. Served on interview boards in the past.

**Garret W. Graaskamp, P.G.** Statewide Public Access Coordinator  
Title: Program Specialist IV

Education: MS in Geology, license in NH

Experience: 30+ years as Geologist in private and non-profit sectors performing natural resource assessments and property development; contaminated site assessment and remediation; environmental planning and permitting. Served on interview boards in the past.

**Alan Moody** Title: Engineering Technician

Experience: 20+ years engineering design and construction of boat ramps for NH Fish & Game, coordination and review of engineering design by others, coordination of environmental permit application. Served on interview boards in the past.

**SUMMARY**  
**REQUEST FOR QUALIFICATIONS EVALUATION**  
**2015 Engineering Services Contract Solicitation**

**CANDIDATE FIRM**

Possible Score	Dubois & King Inc.	Fay Spofford & Thordike, LLC	Fieldstone Land Consultants	GZA	Nobis Engineering	T. F. Moran	T. R. Selling Engineering, P.C.
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**Business Documents Present**

Form SF 330

Y/N	Y	Y	Y	Y	Y	Y	Y
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**Request for Qualifications Criteria - REVIEWER**

Richard Fink	115	98	98	50	94	72	66	52
Garret Graaskamp	115	84	90	31	85	69	80	34
Alan Moody	115	103	105	73	88	79	91	55
Subtotal		95.0	97.7	51.3	89.0	73.3	79.0	47.0
Rank		2	1	6	3	5	4	7

# SUMMARY

## PRESENTATION/ INTERVIEWS EVALUATION (March 19 and 20, 2015) 2015 Engineering Services Contract Solicitation

REVIEWER	Maximum Score	Dubois & King	GZA	FST
Richard Fink	100	60	69	79
Garret Graaskamp	100	74	80	85
Alan Moody	100	88	76	90
<b>Subtotal</b>		74.0	75.0	84.7
<b>Rank</b>		<b>3</b>	<b>2</b>	<b>1</b>

**SAM Search Results**

**List of records matching your search for :**

**Classification: Firm, Special Entity Designation, Vessel**

**Entity Name: Fay, Spofford and Thorndike, LLC**

**Entity Name: William R. Moore**

**Entity Name: Peter J. Howe**

**Entity Name: Christopher C. Yannoni**

**Entity Name: Leonard V. Dzengelewski**

**Entity Name: Thomas D. Jenkins**

**Functional Area: Performance Information**

**No Search Results**