



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

Thomas S. Burack, Commissioner



January 8, 2014

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

Retroactive

REQUESTED ACTION

Authorize the Department of Environmental Services to **retroactively** amend an agreement (PO# 1020955) with the City of Manchester, NH, (VC #177433), for the *Nutt Pond Watershed Management Plan Implementation Phase 2: West Inlet & Jewett Street School Best Management Practices* project by changing the completion date to December 31, 2014 from December 31, 2013, effective upon Governor and Council approval through December 31, 2014. The original agreement was approved by G&C on January 11, 2012, Item # 43, and Amendment 1 was approved by G&C on February 6, 2013, Item number 57. No additional funding is requested in this amendment. 100% Federal Funds.

EXPLANATION

DES is requesting approval of this **retroactive** amendment to allow the City of Manchester additional time to complete the agreed upon scope of services. The additional time is necessary due to unforeseen difficulties in obtaining the permits and easements necessary to construct the proposed best management practices (BMPs). The amendment request is retroactive because the City of Manchester wanted to be sure that the concerned parties could negotiate a resolution which would allow the project to move forward before requesting an amendment to this grant agreement.

At the project's outset, the land necessary to construct the west inlet stormwater treatment practice was thought to be owned by the City. While developing permit applications during the summer of 2013, it was discovered that a former rail corridor bisecting the property had been transferred to the New Hampshire Department of Transportation (DOT). It initially appeared that this situation would prevent the project from moving forward. During the summer DES, DOT, and the City began negotiations which would allow the stormwater treatment practices to be installed on DOT property. This necessitated development of easements, and significant plan revisions. To accommodate those revisions, a Public Service of New Hampshire (PSNH) utility pole would need to be moved. The City and their engineers worked through the autumn of 2013 to develop several conceptual design options in an attempt to accommodate all of the stakeholders' needs and allow the project to progress. Subsequent meetings with DOT and PSNH during the winter of 2013 resulted in agreement upon conceptual designs, and now the City is confident that the project can move forward.

To date, \$9,000 of the \$174,000 grant amount has been paid, and the city has expended significant time and well over \$50,000 in matching funds to cover the unanticipated additional expenses. Though much

progress has been made, final design, final permitting, and construction will need to be completed during 2014. Please see Attachment A for a copy of the original grant agreement and Amendment 1.

Nutt Pond watershed occupies approximately 557 acres of mostly urbanized land in Manchester, New Hampshire. The pond is currently listed on the DES List of Impaired Waters for chlorides, dissolved oxygen, and chlorophyll-a. In 2008, the City completed the Nutt Pond Watershed Restoration Plan which details implementation actions to reduce phosphorus and sediment loading to the pond. The restoration plan proposed a prioritized list of BMPs to help reduce pollutant loading to the pond based on cost and pollutant removal estimates. As a result of this Restoration Plan, the City implemented several BMPs throughout the East, South and North sub-watersheds. As part of the ongoing effort to restore the pond, the current Phase 2 project is implementing further improvements throughout the West Inlet and East Inlet sub-watersheds.

In the event that Federal Funds become no longer available, General Funds will not be requested to support this program. This amendment has been approved by the Office of the Attorney General as to form, execution, and content.

We respectfully request your approval.


Thomas S. Burack, Commissioner

Agreement for Services with the City of Manchester
Amendment No. 2

This Agreement (hereinafter called the "Amendment") dated this 29th day of September, 2013, 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 the City of Manchester, acting by and through its Mayor, Theodore L. Gatsas (hereinafter referred to as the "Grantee").

WHEREAS, pursuant to an Agreement (hereinafter called the "Agreement") approved by the Governor and Council on January 11, 2012, and its first Amendment (hereinafter called "Amendment 1") approved by the Governor and Council on February 6, 2013, the Grantee agreed to perform certain services upon the terms and conditions specified in the Agreement, and Amendment 1, and in consideration of payment by the State of certain sums as specified therein; and

WHEREAS, The Grantee 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 Amendment 1, and set forth herein, the parties hereto do hereby agree as follows:

1. Amendment and Modification of Agreement: The Agreement is hereby amended as follows:

The Completion Date as set forth in sub-paragraph 1.6 of the agreement shall be changed from December 31, 2013 to December 31, 2014.

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.

Grantee Initials

T.G.
Date: 12/5/2013

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

City of Manchester

By Theodore L. Gatsas
Theodore L. Gatsas, Mayor

STATE OF NEW HAMPSHIRE
COUNTY OF Hillsborough

On this the 5th day of December, 2013, before the undersigned officer, personally appeared Theodore L. Gatsas, Mayor 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.

Victoria L. Ferraro, Constituent
Service Rep.

My Commission Expires: date

VICTORIA L. FERRARO, Notary Public
My Commission Expires April 28, 2015

THE STATE OF NEW HAMPSHIRE
Department of Environmental Services

By Thomas S. Burack
Thomas S. Burack, Commissioner

Approved by Attorney General this 29 day of January, 2014

OFFICE OF ATTORNEY GENERAL

By [Signature]

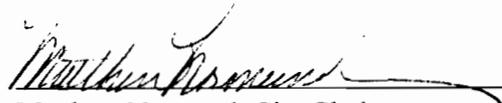
Grantee Initials JG
Date: 12/5/2013

CERTIFICATE OF VOTE AND AUTHORIZATION

I, Matthew Normand, City Clerk for the City of Manchester, New Hampshire do hereby certify that:

- (1) The Board of Mayor and Alderman voted on Tuesday, October 18, 2011, to accept and approve a grant from the New Hampshire Department of Environmental Services for \$174,000 for the restoration of the Nutt's Pond and authorized the Mayor to sign and execute all related grant agreements;
- (2) This authorization has not been revoked, annulled, or amended in any manner whatsoever, and remains in full force and effect as of the date hereof; and
- (3) The following individual now occupies the office of Mayor, Theodore L. Gatsas.

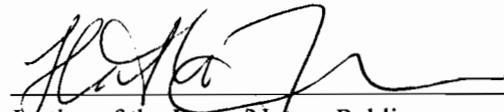
IN WITNESS WHEREOF, I have hereunto set my hand as the City Clerk of Manchester, New Hampshire this 12th day of December, 2013.


Matthew Normand, City Clerk

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

On this the 13th day of December, 2013, before me Heather Freeman, the undersigned officer, personally appeared Matthew Normand, City Clerk, who acknowledged herself/himself to be the City Clerk for the City of Manchester, being authorized to do so, executed the foregoing instrument for the purpose therein contained.

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


Justice of the Peace/Notary Public
Commission Expiration Date: _____

(Seal)

Attachment A: Copy of the original Grant Agreement and Amendment 1





The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

J. Lynch



Thomas S. Burack, Commissioner

December 20, 2011

APPROVED G & C

His Excellency, Governor John H. Lynch
and The Honorable Council
State House
Concord, NH 03301

DATE 1/11/12
ITEM # 43

REQUESTED ACTION

Authorize the Department of Environmental Services to enter into an agreement with the City of Manchester, NH, VC #177433, in the amount of \$174,000 to complete the *Nutt Pond Watershed Management Plan Implementation Phase 2: West Inlet & Jewett Street School Best Management Practices* project effective upon Governor and Council approval through December 31, 2013. 100% Federal Funds.

Funding is available in the account as follows:

	<u>FY 2012</u>
03-44-44-442010-2035-072-500575	\$174,000
Dept. Environmental Services, NPS Restoration Program, Contracts for Program Services	

COPY

EXPLANATION

The Department of Environmental Services issued a Request For Proposals (RFP) for the 2011 Watershed Assistance and Restoration Grant Program. The proposal process is a two-part process involving pre-proposals, and full proposals. Twenty-two pre-proposals were received. The pre-proposals were ranked based on the criteria included in the RFP: water quality benefits, potential to restore impaired waters, commitment of local support, clarity of project outcomes, tasks matching goals, and overall quality of the proposal. The nine highest ranking organizations were invited to attend an interview with DES staff to further discuss the proposed project, and then invited to submit full proposals. Based on results of the interview, quality of the full proposal submitted, and available federal grant funding, all nine projects were selected to receive funding. Please see Attachment B for a list of project rankings and review team members.

The DES Watershed Assistance Section focuses on the reduction of nonpoint source (NPS) pollution. NPS pollution occurs when rainfall, snowmelt, or irrigation water runs over land or through the ground, transporting materials which are then deposited into rivers, lakes, and coastal waters, or introduced into the groundwater. Pollutants can include chemicals, sediments, nutrients, and toxics. These materials can have harmful effects on drinking water supplies, recreation, fisheries, and wildlife. Land development or changes in land use can also cause NPS pollution by disrupting the natural hydrology of a water body, increasing impervious surfaces, and contributing to the loss of aquatic

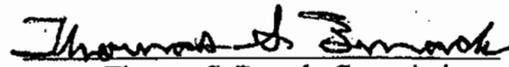
habitat. Watershed Assistance programs address NPS pollution by managing land use and drainage on a watershed scale.

This project proposes improvements within the Nutt Pond watershed, which occupies about 557 acres in Manchester, New Hampshire. Nutt Pond is currently listed on DES's 2010 List of Impaired Waters for chlorides, dissolved oxygen, and for chlorophyll-a. The impairments can impact recreation uses of the pond and indicate poor overall aquatic health. Nutt Pond has historically received significant loadings of sediment and nutrients from activities occurring in this heavily developed watershed. From 2006- 2008, as part of the first phase of the restoration of Nutt Pond, the City prepared the Nutt Pond Watershed Restoration Plan which details implementation actions to reduce phosphorus and sediment loadings into the pond. The Restoration Plan proposed and prioritized several Best Management Practices (BMPs) to help reduce these loading to the pond based on cost and pollutant removal estimates. As a result of this Restoration Plan, the City implemented several structural BMPs throughout the East, South and North sub-watersheds and initiated a commercial based Sand Reduction Program in 2007 and 2008. As an ongoing effort to restore the watershed, The Nutt Pond Phase II Watershed Restoration Grant Project proposes additional improvements throughout the West Inlet and East Inlet sub-watersheds.

The goal of this project is to improve the water quality of Nutt Pond by implementing stormwater BMPs and Low Impact Development (LID) techniques throughout the East and West Inlet subwatersheds. The proposed activities include installing a treatment system consisting of a sediment forebay, wet pond, and gravel filter prior to stormwater outfalls at two of the West inlets to Nutt Pond. Additionally, stormwater runoff from school parking lots and residential roads will be directed to rain garden / infiltration BMPs to minimize the direct discharge into water portions of Tannery Brook (a tributary to Nutt Pond). The project goals will be measured by successful completion and documenting the following milestones: 1) Construction of the West Inlet treatment system 2) construction of rain gardens and infiltration trench at the Jewett Street Elementary School.

The total project costs are budgeted at \$290,000. DES will provide \$174,000 (60%) of the project costs through a federal grant and the City of Manchester will provide the remaining costs through cash and in-kind services. A budget breakdown is provided in Attachment A. As required by Section 319 of the Clean Water Act, federal funds provided to this project must be matched by a local, state, or private share of at least 40 percent. In the event that federal funds become no longer available, general funds will not be requested to support this program.

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


Thomas S. Burack, Commissioner

GRANT AGREEMENT

Subject: Nutt Pond Watershed Management Plan Implementation Phase 2: West Inlet & Jewett Street School Best Management Practices.

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

GENERAL PROVISIONS

1. IDENTIFICATIONS AND DEFINITIONS

1.1 State Agency Name Department of Environmental Services		1.2 State Agency Address 29 Hazen Drive Concord, NH 03301	
1.3 Grantee Name City of Manchester		1.4 Grantee Address One City Hall Plaza Manchester, NH 03101	
1.5 Effective Date Upon G&C approval	1.6 Completion Date December 31, 2013	1.7 Audit Date N/A	1.8 Grant Limitation \$174,000
1.9 Grant Officer for State Agency Eric Williams, Watershed Assistance Section Supervisor		1.10 State Agency Telephone Number 603-271-2358	
1.11 Grantee Signature <i>Frederick Peter Mayo</i>		1.12 Name & Title of Grantee Signor Frederick L. Gatsas, Mayor	
1.13 Acknowledgment: State of New Hampshire County of Hillsborough On 12/21/11, before the undersigned Notary, personally appeared the person identified in block 1.12., or satisfactorily proven to be the person whose name is signed in block 1.11., and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace (Seal) <i>Sandra Van Dyne</i>			
1.13.2 Name & Title of Notary Public or Justice of the Peace SANDRA VAN DYNE, Notary Public My Commission Expires December 20, 2015			
1.14 State Agency Signature(s) <i>Thomas S. Burack</i>		1.15 Name/Title of State Agency Signor(s) Thomas S. Burack, Commissioner	
1.16 Approval by Attorney General's Office (Form, Substance and Execution) By: <i>[Signature]</i> Attorney, On: 12/23/11			
1.17 Approval by the Governor and Council By: _____ On: / /			

2. **SCOPE OF WORK.** In exchange for grant funds provided by the state of New Hampshire, acting through the agency identified in block 1.1 (hereinafter referred to as "the State"), pursuant to RSA 21-O, the Grantee identified in block 1.3 (hereinafter referred to as "the Grantee"), shall perform that work identified and more particularly described in the scope of work attached hereto as EXHIBIT A (the scope of work being referred to as "the Project").

3. **AREA COVERED.** Except as otherwise specifically provided for herein, the Grantee shall perform the Project in, and with respect to, the state of New Hampshire.

4. **EFFECTIVE DATE; COMPLETION OF PROJECT.**

4.1 This Agreement, and all obligations of the parties hereunder, shall become effective on the date in block 1.5 or on the date of approval of this Agreement by the Governor and Council of the State of New Hampshire whichever is later (hereinafter referred to as "the Effective Date").

4.2 Except as otherwise specifically provided for herein, the Project, including all reports required by this Agreement, shall be completed in ITS entirety prior to the date in block 1.6 (hereinafter referred to as "the Completion Date").

5. **GRANT AMOUNT; LIMITATION ON AMOUNT;**

VOUCHERS; PAYMENT.

5.1 The Grant Amount is identified and more particularly described in EXHIBIT B, attached hereto.

5.2 The manner of, and schedule of payment shall be as set forth in EXHIBIT B.

5.3 In accordance with the provisions set forth in EXHIBIT B, and in consideration of the satisfactory performance of the Project, as determined by the State, and as limited by subparagraph 5.5 of these general provisions, the State shall pay the Grantee the Grant Amount. The State shall withhold from the amount otherwise payable to the Grantee under this subparagraph 5.3 those sums required, or permitted, to be withheld pursuant to N.H. RSA 80:7 through 7-c.

5.4 The payment by the State of the Grant amount shall be the only, and the complete, compensation to the Grantee for all expenses, whatever nature, incurred by the Grantee for the performance of the Project, and shall be the only, and the complete, compensation to the Grantee for the Project. The State shall have no liabilities to the Grantee in excess of the Grant Amount.

5.5 Notwithstanding anything 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 Grant limitation set forth in block 1.8 of these general provisions.

6. **COMPLIANCE BY GRANTEE WITH LAWS AND REGULATIONS.**

In connection with the performance of the Project, the Grantee shall comply with all statutes, laws, regulations, and orders of federal, state, county, or municipal authorities which shall impose any obligations or duty upon the Grantee, including the acquisition of any and all necessary permits.

7. **RECORDS AND ACCOUNTS.**

7.1 Between the Effective Date and the date seven (7) years after the Completion Date the Grantee shall keep detailed accounts of all expenses incurred in connection with the Project, including, but not limited to, costs of administration, transportation, insurance, telephone calls, and clerical materials and services. Such accounts shall be supported by receipts, invoices, bills and other similar documents.

7.2 Between the Effective Date and the date seven (7) years after the Completion Date, at any time during the Grantee's normal business hours, and as often as the State shall demand, the Grantee shall make available to the State all records pertaining to matters covered by this Agreement. The Grantee shall permit the State to audit, examine, and reproduce such records, and to make audits of all contracts, invoices, materials, payrolls, records or personnel, data (as that term is hereinafter defined), and other information relating to all matters covered by this Agreement. As used in this paragraph, "Grantee" includes all persons, natural or fictional, affiliated with, controlled by, or under common ownership with, the entity identified as the Grantee in block 1.3 of these general provisions.

8. **PERSONNEL.**

8.1 The Grantee shall, at its own expense, provide all personnel necessary to perform the Project. The Grantee warrants that all personnel engaged in the Project shall be qualified to perform such Project, and shall be properly licensed and authorized to perform such Project under all applicable laws.

8.2 The Grantee shall not hire, and it shall not permit any subcontractor, subgrantee, or other person, firm or corporation with whom it is engaged in a combined effort to perform such Project, to hire any person who has a contractual relationship with the State, or who is a State officer or employee, elected or appointed.

8.3 The Grant officer shall be the representative of the State hereunder. In the event of any dispute hereunder, the interpretation of this Agreement by the Grant Officer, and his/her decision on any dispute, shall be final.

9. **DATA; RETENTION OF DATA; ACCESS.**

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 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 Between the Effective Date and the Completion Date the Grantee shall grant to the State, or any person designated by it, unrestricted access to all data for examination, duplication, publication, translation, sale, distribution, or any other purpose whatsoever.

9.3 All data shall be subject to copyright in the United States or any other country by anyone other than the State.

9.4 Except after the Effective Date all data, and any property which has been received from the State or purchased with funds provided for the Project 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, whichever shall first occur.

The State, and anyone it shall designate, shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, all data.

10. **CONDITIONAL NATURE OF AGREEMENT.**

Notwithstanding anything in this Agreement to the contrary, all obligations of the State hereunder, including without limitation, the continuance of payments hereunder, are contingent upon the availability or continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available or appropriated funds. In the event of a reduction or termination of those 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 Grantee notice of such termination.

11. **EVENT OF DEFAULT; REMEDIES.**

11.1 Any one or more of the following acts or omissions of the Grantee shall constitute an event of default hereunder (hereinafter referred to as "Events of Default"):

11.1.1 failure to perform the Project satisfactorily or on schedule; or
11.1.2 failure to submit any report required hereunder; or
11.1.3 failure to maintain, or permit access to, the records required hereunder; or

11.1.4 failure to perform any of the other covenants and conditions of this Agreement.

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

11.2.1 give the Grantee 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 Grantee notice of termination; and

11.2.2 give the Grantee 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 Grant Amount which would otherwise accrue to the grantee during the period from the date of such notice until such time as the State determines that the Grantee has cured the Event of Default shall never be paid to the Grantee; and 11.2.3 set off against any other obligation the State may owe to the Grantee any damages the State suffers by reason of any Event of Default; and

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

12. TERMINATION.

12.1 In the event of any early termination of this Agreement for any reason other than the completion of the Project, the Grantee shall deliver to the Grant Officer, not later than fifteen (15) days after the date of termination, a report (hereinafter referred to as the "Termination Report") describing in detail all Project Work performed, and the Grant Amount earned, to and including the date of termination.

12.2 In the event of Termination under paragraphs 10 or 12.4 of these general provisions, the approval of such a Termination Report by the State shall entitle the Grantee to receive that portion of the Grant amount earned to and including the date of termination.

12.3 In the event of Termination under paragraphs 10 or 12.4 of these general provisions, the approval of such a Termination Report by the State shall in no event relieve the Grantee from any and all liability for damages sustained or incurred by the State as a result of the Grantee's breach of its obligations hereunder.

12.4 Notwithstanding anything in this Agreement to the contrary, either the State or except where notice default has been given to the Grantee hereunder, the Grantee, may terminate this Agreement without cause upon thirty (30) days written notice.

13. CONFLICT OF INTEREST. No officer, member or employee of the Grantee and no representative, officer or employee of the State of New Hampshire or of the governing body of the locality or localities in which the Project is to be performed, who exercises any functions or responsibilities in the review or approval of the undertaking, or carries out of such Project, shall participate in any decision relating to the Agreement which affects his or her personal interests or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested, nor shall he or she have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

14. GRANTEE'S RELATION TO THE STATE. In the performance of this Agreement, the Grantee, its employees, and any subcontractor or subgrantee of the Grantee are in all respects independent contractors, and are neither agents nor employees of the State. Neither the Grantee nor any of its officers, employees, agents, members, subcontractors or subgrantees, shall have authority to bind the State nor are they entitled to any of the benefits, worker's compensation or emoluments provided by the State to its employees.

15. ASSIGNMENT AND SUBCONTRACTS. The Grantee shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the State. None of the Project Work shall be subcontracted or subgranted by the Grantee other than as set forth in Exhibit A without the prior written consent of the State.

16. INDEMNIFICATION. The Grantee 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 on, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Grantee or Subcontractor, or subgrantee or other agent of the Grantee. 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 shall survive the termination of this agreement.

17. INSURANCE AND BOND.

17.1 The Grantee shall, at its sole expense, obtain and maintain in force, or shall require any subcontractor, subgrantee or assignee performing Project work to obtain and maintain in force, both for the

benefit of the State, the following insurance:

17.1.1 statutory worker's compensation and employees liability insurance for all employees engaged in the performance of the Project, and

17.1.2 comprehensive public liability insurance against all claims of bodily injuries, death or property damage, in amounts not less than \$2,000,000 for bodily injury or death any one incident, and \$500,000 for property damage in any one incident; and

17.2 The policies described in subparagraph 17.1 of this paragraph shall be the standard form employed in the State of New Hampshire, issued by underwriters acceptable to the State, and authorized to do business in the State of New Hampshire. Each policy shall contain a clause prohibiting cancellation or modification of the policy earlier than ten (10) days after written notice has been received by the State.

18. 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, or any subsequent Event. No express waiver of any Event of Default shall be deemed a waiver of any provisions hereof. No such failure or waiver 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 default on the part of the Grantee.

19. 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 first above given.

20. AMENDMENT. This agreement may be amended, waived or discharged by an instrument in writing signed by the parties hereto and approved by the approval of such amendment, waiver or discharge by the Governor and Council of the State of New Hampshire.

21. CONSTRUCTION OF AGREEMENT AND TERMS. This Agreement shall be construed in accordance with the law of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assignees. The captions and headings of the "subject" blank are used only as a matter of convenience, and are not to be considered a part of this Agreement or used in determining the intent of the parties hereto.

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

23. 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 supercedes all prior agreements and understandings relating hereto.

JG
11/2/11

Exhibit A
Scope of Services

The City of Manchester shall perform the following tasks as described in the detailed proposal titled Nutt Pond Watershed Management Plan Implementation Phase 2: West Inlet & Jewett Street School Best Management Practices Project, submitted by the City of Manchester, dated December 3, 2010:

Objective 1: Installation of Stormwater Treatment Train at West Inlet

Measures of Success: Measurement of sediment and pollutant removal: Monitor the amount of sediment removed each time maintenance is performed. Prepare a SSPP for modeling of pollutant removals and document BMP removals through the use of a pollutant load reduction model (STBPL, Simple, Eutromod) and pre and post-construction photographs.

Deliverable 1: Provide DES with documentation of BMP Design, Permitting, Bidding, BMP Construction, and a signed Operations and Maintenance plan as described in the Tasks below.

- Task 1:** Complete topographical survey and prepare design of BMPs. Prepare CAD based plans and technical specifications for permitting and bidding. Complete applicable local, state and federal wetland permitting submissions; obtain easements and or maintenance agreements. Complete design of the public educational kiosk. Prepare construction estimates, bid documents and bid process in accordance with state/federal requirements. Award contract to lowest qualified and eligible contractor.
- Task 2:** Coordinate with the City's engineer to supervise the contractor's work to prepare the site for installation of the BMPs. This includes mobilization, staging, preparing construction access, clearing, grubbing, tree removal and rough grading.
- Task 3:** Supervise the contractor's work to excavate for the treatment ponds and install all the required components for the BMPs. This includes installation of pre-cast structures, piping, gravel filter, BMP components, and riprap armoring.
- Task 4:** Coordinate with the City's engineer to supervise the contractor's work to excavate and prepare footings for the Public Educational Kiosk. Furnish and install a heavy duty, theft / vandal proof kiosk which can securely hold public education materials.
- Task 5:** Coordinate with the City's engineer to supervise the contractor's work to stabilize the treatment ponds and install all the required components for the BMPs to properly operate. This includes final grading and installation of loam, seeding, plants and final stabilization methods.
- Task 6:** Prepare an Operations and Maintenance plan (O&M) for each of the treatment train components. Coordinate with the City's engineer to monitor the success of the BMP and document the overall success of the objective by preparing a SSPP for modeling, completing a pollutant loading and removal model, and submitting Pollutants Controlled Reports to NH DES. No modeling will take place prior to SSPP approval.

Objective 2: Installation of Stormwater Treatment Train and tree box filters at the Jewett Street Elementary School
Measures of Success: Measurement of sediment and pollutant removal: Monitor the amount of sediment removed each time maintenance is performed. Prepare a SSPP for modeling of pollutant removals and document BMP removals through the use of a pollutant load reduction model (STEPL, Simple, Eutromod) and pre and post-construction photographs.

Deliverable 2: Provide DES with documentation of BMP Design, Permitting, Bidding, BMP Construction, and signed Operations and Maintenance plan(s) as described in the Tasks below.

- Task 7:** Coordinate with the City's engineer and school officials to determine the best location for the individual BMPs. Prepare and present educational materials and BMP conceptual plans to the School Department. Conduct on-site coordination meetings with stakeholders (e.g., school officials, teachers, grounds staff, Manchester DPW staff) throughout the process. Outreach materials must be approved by DES prior to construction.

distribution.

- Task 8: Complete topographical survey and prepare design of BMPs. Prepare CAD based plans and technical specifications for permitting and bidding. Complete applicable local, state and federal wetland permitting submissions; obtain easements and or maintenance agreements. Complete design of a public educational kiosk. Prepare construction estimates, bid documents and bid project in accordance with state/federal requirements. Award contract to lowest qualified and eligible bidder.
- Task 9: Coordinate with the City's engineer to supervise the contractor's work to prepare the site for installation of the BMPs. This includes mobilization, staging, preparing construction access, clearing, grubbing, tree removal and rough grading.
- Task 10: Supervise the contractor's work to excavate for the treatment ponds and install all the required components for the BMPs. This includes installation of pre-treatment devices, pre-cast structures, piping, gravel filter, BMP components, and riprap armoring. Task includes construction administration and oversight.
- Task 11: Supervise the contractor's work to excavate for the tree box filters and install at least 4 tree box filters and required components. This will include installation of pre-cast structures, soil mixes, trees, piping, tree grates, and curbing as necessary to allow the BMPs to operate properly.
- Task 12: Supervise the contractor's work to excavate and prepare footings for two Public Educational Kiosks. Furnish and install a heavy duty, theft / vandal proof kiosk which can securely hold public education materials.
- Task 13: Supervise the contractor's work to stabilize the treatment ponds and install all the required components for the BMPs to properly operate. This includes final grading and installation of loam, seeding, plants and final stabilization methods.
- Task 14: Coordinate with the City's engineer to monitor the success of the BMP and document the overall success of the objective by preparing a SSPP for modeling, completing a pollutant loading and removal model, and providing Pollutants Controlled Reports to NH DES. Model modeling will take place prior to SSPP approval.
- Task 15: Prepare an Operations and Maintenance (O&M) plan for each of the BMP components, and coordinate with the stakeholders to determine each organization's role and responsibility for maintenance. Obtain signatures indicating each organization's commitment to their role in the O&M plan. Provide any applicable maintenance training to ensure that the BMPs will be properly maintained into the future.

Objective 3: Completion of project reporting which meets DES and EPA requirements.

Deliverable 3: Provide DES with required semi-annual and final reports as detailed in the Tasks below.

- Task 16: Submit electronic semi-annual reports documenting all work performed on the project at the end of each June and December of the project period. The semi-annual reports will include a Pollutants Controlled Report when structural BMPs have been implemented during the reporting period.
- Task 17: Submit a comprehensive final report in both electronic and hard-copy to DES on or before the project completion date. The final report shall include load reduction estimates, photo-documentation of installed system components, and comply with the DES and EPA requirements found in the final report guidance document.

Additional Requirements of the Agreement

Quality Assurance

All project activities which are to be guided by a Quality Assurance document such as a Quality Assurance Project Plan (QAPP) or Site Specific Project Plan (SSPP) must not begin prior to DES/EPA approval of that QA document. In the event that sampling, modeling, or other such activities precede QA document approval, the data will not be considered valid, and the grantee will forfeit the ability to receive payment for those activities.

Outreach Materials

All materials produced for public distribution shall be reviewed and approved by DES prior to distribution and shall include the DES logo and the following citation: "Funding for this project was provided in part by a

Watershed Assistance Grant from the NH Department of Environmental Services with Clean Water Act Section 319 funds from the U.S. Environmental Protection Agency”.

Operations and Maintenance

Management practices implemented as agreed upon in the scope of services of this grant agreement and with funds awarded under the NH 319 Watershed Assistance Grants Program shall be properly operated and maintained for the intended purposes during the life span of the project. The life span of a project shall be determined by the Grantee, tailored to the types of practices expected to be funded in this project, and agreed upon by DES. The Grantee shall provide DES with an engineering estimate of the design life of the best management practice(s) (BMPs).

Operation includes the administration, management, and performance of non-maintenance actions needed to keep the completed practice safe and functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail. The Grantee shall assure that any sub-award of Section 319 funds similarly include the same condition in the sub-award. Additionally, both EPA and DES reserve the right to periodically inspect a practice during the life span of the project to ensure that operation and maintenance are occurring. If it is determined that the participants are not operating and maintaining these practices in an appropriate manner, DES may request a refund for that practice supported by the grant.

COPY

Grantee Initials JG
Date 11/2/11

Exhibit B
Contract Price and Method of Payment

All services shall be performed to the satisfaction of DES before payment is made. All payments shall be made upon receipt and approval of stated outputs and upon receipt of an associated invoice. Documentation of match costs (including the value of volunteer labor) shall be provided with each payment request. The final invoice shall include total match cost documentation of \$116,000. Payment shall be made in accordance with the following schedule based upon completion of specific tasks described in Exhibit A:

Upon completion and DES approval of Task 1	\$28,600
Upon completion and DES approval of Task 2	\$12,000
Upon completion and DES approval of Task 3	\$58,000
Upon completion and DES approval of Task 4	\$2,400
Upon completion and DES approval of Task 5	\$10,000
Upon completion and DES approval of Task 6	\$2,700
Upon completion and DES approval of Task 7	\$1,000
Upon completion and DES approval of Task 8	\$8,000
Upon completion and DES approval of Task 9	\$1,000
Upon completion and DES approval of Task 10	\$15,000
Upon completion and DES approval of Task 11	\$20,000
Upon completion and DES approval of Task 12	\$4,000
Upon completion and DES approval of Task 13	\$5,000
Upon completion and DES approval of Task 14	\$2,300
Upon completion and DES approval of Task 15	\$1,000
Upon completion and DES approval of Tasks 16 and 17	\$3,000
Total	\$174,000

Funding is provided through a Watershed Assistance Grant from the NH Department of Environmental Services with Clean Water Act Section 319 funds from the U.S. Environmental Protection Agency.

**Exhibit C
Special Provisions**

If the date for commencement of Exhibit A precedes the Effective Date all services performed by Grantee between the commencement date and the Effective Date shall be performed at the sole risk of the Grantee and in the event that this Agreement does not become effective, the State shall be under no obligation to pay the Grantee for any costs incurred or services performed.

Subparagraph 1.7 of the General Provisions shall not apply to this Agreement.

Paragraph 17 of the General Provisions shall not apply to the grantee. The City of Manchester is self-insured. All contractors performing project work will maintain coverage that meets the requirements of Paragraph 17.

In addition to the General Provisions of Paragraph 1 through 23, the following provisions as required by federal regulations apply to this Agreement:

I) **Nondiscrimination.** The Grantee shall comply with 40 CFR part 7 which prohibits discrimination under any program or activity receiving EPA assistance on the basis of race, color, national origin, or gender, and 40 CFR part 12 which prohibits discrimination based on handicap.

II) **Financial management.** The Grantee shall comply with 40 CFR 31.20 and the specific standards regarding financial reporting, accounting records, internal control, budget control, allowable cost, source documentation, and cash management outlined therein.

III) **Allowable costs.** All costs charged to this Agreement shall be eligible, necessary, and reasonable for performing the tasks outlined in the approved project scope of services. The costs, including match, shall be incurred during the period of performance of the project and shall be allowable, meaning that the costs must conform to specific federal requirements detailed in 40 CFR part 31.22; and OMB Circular A-87.

IV) **Matching funds.** All matching funds contributed by the Grantee shall conform to the same laws, regulations, and grant conditions as the federal funds in the Agreement and referenced in 40 CFR 31.24 and OMB Circular A-87.

V) **Property Management.** The Grantee shall comply with the property management and procedures detailed in 40 CFR 31.32 and 40 CFR 31.33.

VI) **Debarment and Suspension.** The grantee shall comply with 40 CFR part 31.35. By signing and submitting the Agreement, the Grantee certifies that they have not been debarred or suspended by a government agency. The Grantee will not make any award or permit any award (subgrant or subcontract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

VII) **Procurement.** When purchasing goods or services with grant or match funds, the Grantee shall comply with procurement regulations as detailed in 40 CFR 31.36 which include procurement standards, competition, methods of procurement, contract cost and price, agency review, bonding requirements, and contract provisions.

a. **Assignment of Subcontracts.** The Contractor shall not assign, or otherwise transfer any interest in this contract without the prior written consent of the Contract Owner and the State.

b. **Subcontracts.** The Contractor shall:

i. Ensure that every subcontract includes provisions for compliance with Federal and State standards

- applicable to the contract;
 - ii. Ensure that every subcontract includes any clauses required by Federal statute and executive orders and their implementing regulations; and
 - iii. Ensure that subcontractors are aware of requirements imposed upon them by State and Federal statutes and regulations.
- c. Payment to consultants. Grant payments to individual consultants retained by the Contractor (excluding overhead) are limited to the maximum daily rate for Level IV of the Executive Schedule (formerly GS-18). Maximum daily rates may change annually or more often. As of January 1, 2010, the limit is approximately \$598 per day and \$74.75 per hour. This amount does not include transportation and subsistence costs, in accordance with normal travel reimbursement practices. The Contractor may pay consultants more than this amount, but the excess amount shall not be paid with federal grant funds. Contracts with firms for services which are awarded using the procurement requirements in 40 CFR 31.36 are not affected by this limitation.

VIII) *Participation by Disadvantaged Business Enterprises.* The Grantee shall comply with the terms of 40 CFR Part 33 Subpart C, which requires that organizations conduct a competitive procurement process making a good faith effort to utilize goods and services provided by disadvantaged businesses.

IX) *New Restrictions on Lobbying: Interim Final Rule.* The Grantee shall comply with the terms of 40 CFR part 34 and OMB Circular A-87 which prohibit the use of federal grant funds to influence (or attempt to influence) a federal employee, and requires the submission of Standard Form LLL ("Disclosure of Lobbying Activities") if nonfederal funds have been used to influence (or attempt to influence) a federal employee.

X) *Drug-Free Workplace.* The Grantee shall comply with the terms of 40 CFR Part 36 which require that as a condition of the Agreement, certification that they maintain a drug-free workplace. By signing and submitting the Agreement, the Grantee certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance, or conducting any activity associated with the Agreement.

XI) *Bonding requirements.* For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold (currently \$100,000), the minimum requirements shall be as follows:

- a. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

XII) *Additional contract provisions.* The Grantee shall comply with the following as applicable:

- a. Comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their subcontractors)
- b. Comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subcontracts for construction or repair)
- c. Comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subcontractors in excess of \$2,000, and in excess of \$2,500 for other contracts which involve

the employment of mechanics or laborers.)

d. Comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Subcontracts in excess of \$100,000)

e. Comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

XIII) *Federal Funding Accountability and Transparency Act (FFATA)*. The Grantee shall comply with the terms of the FFATA by providing DES with their Data Universal Numbering System (DUNS) number, and all applicable Executive Compensation Data information as required under the FFATA.

COPY

J.G.
11/2/11

Attachment B: Watershed Assistance and Restoration Grant Ranking

Organization	Project Description	95	96	92	92	85	93	91	99	89	822	1
City of Dover, DPW	Berry Brook Watershed Restoration Plan Implementation Phase 2: Low Impact Development Restarts in an Urban Environment	95	96	92	92	85	93	91	99	89	822	1
City of Manchester, EFD	Nurt Pond Watershed Restoration Project - Phase II	95	87	88	96	93	93	95	97	73	817	2
Blue Ocean Society for Marine Conservation	Hodgson Brook Restoration Plan Implementation Phase 2: Fenway Manor and Great Bay Community College BMP's and Charle-TMUD development	77	94	85	70	84	81	89	94	62	746	3
Lakes Region Planning Commission	Lake Merrimack Watershed Management Plan: Carter Harbor	95	74	68	90	77	82	89	93	72	738	4
Cocheco River Watershed Coalition	Cocheco River Watershed Restoration Plan Implementation Phase 2: Rochester, LD	95	75	79	79	84	91	88	81	80	730	5
New Hampshire Rivers Council	McQueen Brook Watershed Restoration Plan - Phase 1	83	77	74	82	78	85	84	76	85	724	6
Brenwood Conservation Commission	Exeter River Watershed-Shared Plan, Middle Exeter River Implementation Phase 1 Rowell Road-West	80	78	73	82	80	91	70	80	87	721	7
Green Mountain Conservation Group	Outslope Lake Watershed Management Plan Phase 1: Alternative Analysis	62	66	94	87	92	88	70	98	65	720	8
Town of Whiteboro	Lake Wentworth and Crescent Lake Watershed Management Plan Phase 1	90	79	83	87	84	77	75	79	50	704	9
Carroll Lake Protective Association	Development and Implementation of the Carroll Lake Watershed Management Plan	75	65	72	75	78	81	74	84	80	682	Not Selected
Lakes Region Planning Commission	Lake Merrimack Watershed Management Plan: A Watershed Restoration Plan for Scarborough Bay (Not A Watershed Approach to Sedimentation and Soil Erosion on Oxbow Brook)	80	75	70	81	70	83	78	66	65	968	Not Selected
Town of Gilford Cans Com	Implementation of the Pleasant Creek Watershed Management Plan - Phase I	70	72	61	78	87	82	69	89	38	646	Not Selected
Town of Rye	Partridge Lake Watershed Subsoil Amendment	79	57	70	71	78	82	78	68	53	634	Not Selected
Partridge Lake Property Owners Association	Partridge Lake Watershed Subsoil Amendment	40	46	46	78	62	76	68	86	52	631	Not Selected
Ammonoosuc River Conservation Trust	Ammonoosuc River Bank Stabilization	53	70	65	57	62	82	52	50	43	555	Not Selected
Southern New Hampshire Planning Commission	Watershed Management and Restoration Plan for the Piscataquam River	40	60	60	45	58	63	62	64	485	Not Selected	
Rye Beach Village District Natural Resource Council	Est Pond Restoration Project	18	59	40	40	40	60	49	84	22	444	Not Selected
Upper Valley Stewardship Center	Standing on the Shoulders of the Connecticut River Joint Commission to Enhance Water Quality and Riparian Habitat on the Otterden Brook through Stewardship, Education, and Community Leadership	20	37	67	67	67	50	59	81	54	459	Not Selected
Friends of Mowat Pond	Development of the Simpson (i.e., Mowat) Pond Watershed Restoration Plan	18	59	40	40	40	60	49	84	22	444	Not Selected
City of Nashua	Broad Street Parkway Beautification Project	20	35	32	28	49	41	28	25	55	309	Not Selected
Medville Cooperative, Inc.	MRP Slope Instability and Erosion, Piscataquam River, Golfdown	55	26	24	30	40	47	17	3	10	252	Not Selected
Centbrook Local River Advisory Committee	Implementation of New Centbrook River Corridor Management Plan	25	2	7	10	28	6	18	8	0	105	Not Selected

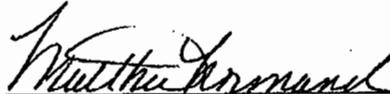
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Organization	Review Team Members
City of Dover, DPW	11 years experience, Clean Lakes Program Coordinator, equals biologist, project management and coordination, lake management expertise
City of Manchester, EFD	16 years experience, Merrimack Watershed Coordinator, equals biologist, project management, Merrimack watershed expertise
Blue Ocean Society for Marine Conservation	23 years experience, Nonpoint source pollution specialist, BMP, public source investigation expertise, Field training of local municipalities in watershed pollution source tracking and identification
Lakes Region Planning Commission	7 years experience, Watershed Assistance Specialist, grant and contract expertise
Cocheco River Watershed Coalition	7 years experience, Nonpoint source pollution specialist, quality assurance, and stormwater BMP expertise
New Hampshire Rivers Council	12 years Watershed Assistance Outreach Coordinator, outreach and education expertise
Brenwood Conservation Commission	13 years experience, Coastal Watershed Coordinator, project management, Coastal watershed expertise
Green Mountain Conservation Group	20+ years experience, Watershed Coordinator, budgeting, planning expertise
Town of Whiteboro	23 years experience, Watershed Assistance Section Supervisor, environmental planning, general project management expertise, WMS section and 319 program expertise
Carroll Lake Protective Association	Eric Williams
Lakes Region Planning Commission	Andy Chapman
Lakes Region Planning Commission	Shara Landry
Lakes Region Planning Commission	Rob Livingston
Lakes Region Planning Commission	Jeff Marozou
Lakes Region Planning Commission	Julian McCarthy
Lakes Region Planning Commission	Barbara McMillan
Lakes Region Planning Commission	Sally Scule
Lakes Region Planning Commission	Wendy Washin
Lakes Region Planning Commission	Eric Williams

CERTIFICATE OF VOTE AND AUTHORIZATION

I, Matthew Normand, City Clerk for the City of Manchester, New Hampshire do hereby certify that the Board of Mayor and Aldermen of the City of Manchester voted on Tuesday, October 18, 2011, to accept and approve a grant from the Department of Environmental Services for \$174,000 for the restoration of the Nutt's Pond and authorized the Mayor to sign and execute all related grant agreements.

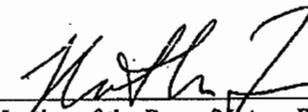
IN WITNESS WHEREOF, I have hereunto set my hand as the City Clerk of Manchester, New Hampshire this 2nd day of November, 2011.


Matthew Normand, City Clerk

STATE OF NEW HAMPSHIRE
COUNTY OF Hillsborough

On this the 2nd day of November, 2011, before me Heather Freeman undersigned officer, personally appeared Matthew Normand, City Clerk, who acknowledged herself/himself to be the City Clerk for the City of Manchester, being authorized to do so, executed the foregoing instrument for the purpose therein contained.

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


Justice of the Peace/Notary Public
Commission Expiration Date: _____

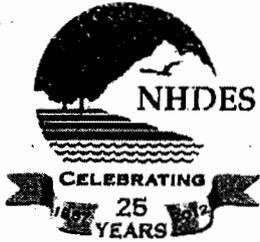
HEATHER FREEMAN, Notary Public
My Commission Expires September 23, 2014

(Seal)

**Attachment A
Budget Estimate**

Budget Item	Grant Funding	Match	Total
Salaries & Wages	\$0.00	\$10,760.00	\$10,760.00
Indirect Costs	\$670.00	\$330.00	\$1,000.00
Other (postage and printing)	\$1,000.00	\$600.00	\$1,600.00
Supplies & Services	\$600.00	\$300.00	\$900.00
Travel and Training	\$340.00	\$160.00	\$500.00
Contractual	\$51,390.00	\$28,850.00	\$80,240.00
Construction	\$120,000.00	\$75,000.00	\$195,000.00
Subtotals	\$174,000.00	\$116,000.00	\$290,000.00
Total Project Cost			\$290,000.00

COPY



The State of New Hampshire
Department of Environmental Services

Thomas S. Burack, Commissioner

*Celebrating 25 Years of Protecting
New Hampshire's Environment*



January 3, 2013

APPROVED G & C

DATE

2/6/13

ITEM #

57

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

REQUESTED ACTION

Authorize the Department of Environmental Services to amend an agreement (PO# 1020955) with the City of Manchester, NH, (VC #177433), for the *Nutt Pond Watershed Management Plan Implementation Phase 2: West Inlet & Jewett Street School Boat Management Practices* project by altering the Scope of Services and Payment Schedule to allow a change in the best management practices to be implemented. The original agreement was approved by G&C on January 11, 2012, Item # 43. 100% Federal Funds. No additional funding is requested in this amendment.

EXPLANATION

DES is requesting approval of this amendment to allow the City of Manchester to forego implementation of one group of best management practices (BMPs), and instead implement a different BMP that has become higher priority due to recent storm events. The specific changes to the Scope of Services and Payment Schedule necessary to accommodate this work are detailed in the attached Amendment. Please also see Attachment A for a copy of the original grant agreement.

Nutt Pond watershed occupies approximately 557-acres of mostly urbanized land in Manchester, New Hampshire. The pond is currently listed on the DES List of Impaired Waters for chlorides, dissolved oxygen, and chlorophyll-a. In 2008, the City completed the Nutt Pond Watershed Restoration Plan which details implementation actions to reduce phosphorus and sediment loading to the pond. The restoration plan proposed a prioritized list of BMPs to help reduce pollutant loading to the pond based on cost and pollutant removal estimates. As a result of this Restoration Plan, the City implemented several BMPs throughout the East, South and North sub-watersheds. As part of the ongoing effort to restore the pond, the current Phase 2 project is implementing further improvements throughout the West Inlet and East Inlet sub-watersheds.

During the summer of 2012, the gravel boat ramp at Nutt Pond suffered significant erosion during a storm event. Investigation of this event revealed that similar, though less severe, events had occurred in the past as well. Pollutant load reduction modeling of the amount of pollutants deposited in the pond as a result of the erosion made it clear that remediation of this problem was a higher priority than the tree box filters that were scheduled to be installed through this project. Through this amendment the City proposes to forego implementation of the tree box filters, and use the funding that was budgeted for them to design and install a new erosion-resistant public boat ramp at Nutt Pond. The new ramp will

www.des.nh.gov

29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095
(603) 271-3503 • TDD Access: Relay NH 1-800-735-2964

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Council

Page 2

improve public access and reduce pollutant loading to the pond. The tree box filters may be addressed again at a later date, and through other funding sources.

In the event that Federal Funds become no longer available, General Funds will not be requested to support this program. This amendment has been approved by the Office of the Attorney General as to form, execution, and content.

We respectfully request your approval.



Thomas S. Burack, Commissioner

COPY

Agreement for Services with the City of Manchester
Amendment No. 1

This Agreement (hereinafter called the "Amendment") dated this 25th day of August, 2012, 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 the City of Manchester, acting by and through its Mayor, Theodore L. Gatsas (hereinafter referred to as the "Grantee").

WHEREAS, pursuant to an Agreement (hereinafter called the "Agreement") approved by the Governor and Council on January 11, 2012, the Grantee 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 Grantee 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 is hereby amended as follows:
 - (A) The scope of services shall be changed to ~~remove~~ the existing Objective 2, its associated Deliverable 2, and Tasks 7 through 15, and replace them with the following revised Objective 2, Deliverable 2, and Task 7 through 15:

Objective 2: Selection, design, and installation of best Management Practice(s) that will address pollutant loads resulting from erosion of the Nutt Pond boat ramp.

Measures of Success: Measurement of sediment and pollutant removal, or load reduction modeling as appropriate to the selected final design. Prepare a SSPP for modeling of pollutant removals and document BMP removals through the use of a pollutant load reduction model (SPEPL, Simple, Eutromod) and pre- and post-construction photographs.

Deliverable 2: Provide DES with documentation of BMP selection and design, permitting, bidding, construction, and signed Operations and Maintenance Plan (where applicable) as described in the Tasks below.

Task 7: Coordinate with the City's engineer, other involved City departments, and DES, to determine the best solution to erosion and resulting pollutant loading at the Nutt Pond boat ramp.

Task 8: Complete topographical survey and prepare construction plans and technical specifications for permitting and bidding.

Task 9: Complete applicable local, state and federal wetland and shoreland protection permit submissions and obtain and necessary permits prior to undertaking construction activities.

Task 10: Prepare construction estimates and bid documents, and complete the construction bidding process in accordance with state/federal requirements. Provide copies of the bid documents and bidders list to DES. Award contract to lowest qualified and eligible bidder.

Task 11: Coordinate with the City's engineer to supervise the selected construction contractor's work in preparing the site for installation of the BMPs.

Task 12: Supervise the contractor's work to install the selected practice(s). Task includes construction administration and oversight.

Grantee Initials

Date: 11/15/12

Task 13: Supervise the contractor's work to complete final site demobilization including final grading, installation of loam, seeding, planting, and final stabilization methods as appropriate to the selected design.

Task 14: Coordinate with the City's engineer to monitor the success of the BMP and document the overall success of the objective by preparing a SSPP for modeling, completing a pollutant loading and removal model, and providing Pollutants Controlled Reports to NH DES. No modeling will take place prior to SSPP approval.

Task 15: Prepare an Operations and Maintenance (O&M) plan for each BMP component if selected practices require routine maintenance. Coordinate with the stakeholders to determine each organization's role and responsibility for maintenance. Obtain signatures indicating each organization's commitment to their role in the O&M plan as appropriate. Provide any applicable maintenance training to ensure that the BMPs will be properly maintained into the future.

(B) The Contract Price and Method of payment as set forth in Exhibit B shall be changed as follows:

Task Description	Original Payment	Revised Payment	Difference
Upon completion and DES approval of Task 1	\$28,600	\$28,600	\$0
Upon completion and DES approval of Task 2	\$12,000	\$12,000	\$0
Upon completion and DES approval of Task 3	\$58,000	\$58,000	\$0
Upon completion and DES approval of Task 4	\$2,400	\$2,400	\$0
Upon completion and DES approval of Task 5	\$10,000	\$10,000	\$0
Upon completion and DES approval of Task 6	\$2,700	\$2,700	\$0
Upon completion and DES approval of Task 7	\$1,000	\$1,000	\$0
Upon completion and DES approval of Task 8	\$8,000	\$8,000	\$0
Upon completion and DES approval of Task 9	\$1,000	\$1,000	\$0
Upon completion and DES approval of Task 10	\$15,000	\$4,000	- \$11,000
Upon completion and DES approval of Task 11	\$20,000	\$15,000	- \$5,000
Upon completion and DES approval of Task 12	\$4,000	\$20,000	+ \$16,000
Upon completion and DES approval of Task 13	\$5,000	\$5,000	\$0
Upon completion and DES approval of Task 14	\$2,300	\$2,300	\$0
Upon completion and DES approval of Task 15	\$1,000	\$1,000	\$0
Upon completion and DES approval of Tasks 16 and 17	\$3,000	\$3,000	\$0
TOTALS	\$174,000	\$174,000	\$0

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.

Grantee Initials J. g
 Date: 11/15/12

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

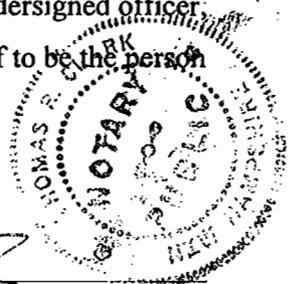
City of Manchester

By Theodore L. Gatsas Mayor
Theodore L. Gatsas, Mayor

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

On this the 15th day of November, 2012, before the undersigned officer, personally appeared Theodore L. Gatsas, Mayor, who acknowledged him/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.



COPY

Thomas R. Clark
Justice of the Peace / Notary Public
Commission Expiration Date: 10/17/17
THOMAS R CLARK

THE STATE OF NEW HAMPSHIRE
Department of Environmental Services

By Thomas S. Burack, Commissioner
Thomas S. Burack, Commissioner

Approved by Attorney General this 28 day of December, 2012

OFFICE OF ATTORNEY GENERAL

By [Signature]

CERTIFICATE OF VOTE AND AUTHORIZATION

I, Matthew Normand, City Clerk for the City of Manchester, New Hampshire do hereby certify that:

- (1) The Board of Mayor and Alderman voted on Tuesday, October 18, 2011, to accept and approve a grant from the New Hampshire Department of Environmental Services for \$174,000 for the restoration of the Nutt's Pond and authorized the Mayor to sign and execute all related grant agreements;
- (2) This authorization has not been revoked, annulled, or amended in any manner whatsoever, and remains in full force and effect as of the date hereof; and
- (3) The following individual now occupies the office of Mayor, Theodore L. Gatsas.

IN WITNESS WHEREOF, I have hereunto set my hand as the City Clerk of Manchester, New Hampshire this 27th day of November, 2012.

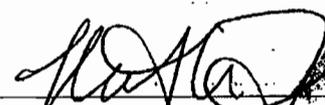

Matthew Normand, City Clerk

STATE OF NEW HAMPSHIRE.
COUNTY OF HILLSBOROUGH

On this 27th day of November, 2012, before me Heather Freeman, the undersigned officer, personally appeared Matthew Normand, City Clerk, who acknowledged herself/himself to be the City Clerk for the City of Manchester, being authorized to do so, executed the foregoing instrument for the purpose therein contained.

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

COPY


Justice of the Peace/Notary Public
Commission Expiration Date: _____
HEATHER FREEMAN, Notary Public
My Commission Expires September 23, 2014



(Seal)