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The State of New Hampshire

Department of Environmental Services

Robert R. Scott, Commissioner

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September 28, 2022

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

REQUESTED ACTION

Authorize the Department of Environmental Services (NHDES) to enter into an Agreement with HDR Engineering, Inc., (Vendor Code #169983-B001), Manchester, NH in an amount not-to-exceed $4,000,000 to provide as needed engineering and technical support services for repair/reconstruction projects on state owned dams, effective upon Governor & Council approval through December 31, 2026. Funding is 75% American Rescue Plan Act (ARPA) Funds and 25% Capital (General) Funds. This is an allowable use of ARP FRF funds under Section 602 (c)(1)(D) to make necessary investments in general government services.

Funds are available in the accounts as follows:

	FY 2023
03-44-44-440010-2657-102-500731	$3,000,000

Dept. of Environmental Services, ARPA DES Loans, Contracts for Program Services
Activity Code: 00FRF602GS4402B

03-44-44-442030-9309-034-500161	$1,000,000

Dept. of Environmental Services, L21, 107:1:V-2, Dam Repairs & Reconstruction, Capital Projects

EXPLANATION

NHDES is responsible for the operation, maintenance, repair and rehabilitation of state-owned dams per NH RSA 482:55-57. This work is largely performed on a force account basis by the NHDES Dam Bureau Engineering and Construction Staff with its three civil engineers, who design and oversee the projects, and its nine-person construction crew that performs the actual construction. Some work is also performed on a contract basis with engineering consultants and construction contractors, overseen by Dam Bureau engineers. With its current staffing, the Section has the capacity to perform approximately $4 million of dam rehabilitation projects on a force account basis per biennium; and, with the help of other Dam Bureau staff, to oversee up to another $4 million in contract design and construction work per biennium. Currently the Dam Bureau is executing $8 million of rehabilitation work on state-owned dams funded under the FY22-23 Capital Budget (Laws of 2021, Chapter 107:1:V-2).

In June 2022 NHDES was awarded $30 million in federal funds from the American Rescue Plan Act of 2021 (ARPA) to fund the rehabilitation of state-owned dams. Under the deadlines established in ARPA, funds for all work must be obligated by December 31, 2024, and fully expended by December 31, 2026. With these ARPA funds, the NHDES Dam Bureau is now responsible for executing an additional $30 million in rehabilitation of state-owned dams in less than four and a half years, which is four times the current capacity of the Bureau. To meet these deadlines, NHDES

has budgeted a large percentage of the ARPA funds into contract classes and has added additional temporary positions for management of these contracts to provide NHDES with the additional capacity needed to accomplish this work.

NHDES proposes to enter into Indefinite Delivery Indefinite-Quantity (IDIQ) Agreements with five engineering firms to assist with the engineering and design of dam rehabilitation projects, the preparation of plans, specifications and bid documents, and the oversight of the construction projects. This Agreement is one of the five proposed Agreements. Because the full extent of engineering needs cannot be identified until preliminary engineering, geotechnical, and existing conditions data have been compiled for each individual project, IDIQ agreements with the "on-demand" services they provide and a "not-to-exceed" price are the most efficient and cost-effective way to procure these needed services. In addition, the IDIQ approach enables NHDES to quickly address project unknowns as they are encountered by issuing additional task orders without delaying the project. The flexibility provided in the IDIQ approach best positions NHDES to get the ARPA funding fully obligated and expended by the required deadlines.

NHDES plans to use the ARPA funds for the rehabilitation of 12 state-owned dams as listed in Table 1 below.

Table 1. ARPA - FUNDED DAM PROJECTS

Dam Name	Town
Avery Dam	Laconia
Goose Pond Dam	Canaan
Jones Dam	New Durham
Alton Power Dam	Alton
Little Bog Dam	Odell
Little Trio Dam	Odell
Mendums Pond Dam	Nottingham
Merrymeeting Dam	New Durham
Milton 3-Ponds	Milton
Murphy Dam	Pittsburg
Northwood Lake Dam	Northwood
Sunset Lake Dam	Alton

This list is subject to change if dam safety incidents or inspections disclose conditions requiring immediate attention at any of the state's inventory of 274 dams or if NHDES determines that ARPA deadlines cannot be met at one or more of the listed dams. However, current plans are to use the ARPA funds to complete needed repairs and reconstruction of six of these dams including Goose Pond Dam, Mendums Pond Dam, Murphy Dam, Little Bog Dam, Little Trio Dam and Sunset Lake Dam.

For the Goose Pond Dam and Mendums Pond Dam rehabilitation projects, which are nearly fully designed, NHDES intends to initiate the bid process and use ARPA funds to establish construction contracts with qualified contractors, with construction oversight to be tasked under one or more of the IDIQ contracts. For Murphy Dam, NHDES will build upon work that assessed the condition of the outlet works and the electrical control system at the dam, and use the contracts to develop designs, plans and specifications and bid documents for replacements of these 82-year-old systems, as well as to contract with qualified contractors to complete the replacements. For the three other dams, Little Bog Dam, Little Trio Dam, and Sunset Lake Dam, NHDES intends to use the IDIQ contracts to provide designs and permitting, with the construction work to be performed on a force account basis by the NHDES

Dam Bureau Engineering and Construction Section.

For the other six dams NHDES intends to use the IDIQ Agreements to commission analysis, design, permitting, and preparation of bid documents, so that construction can begin on these dams as soon as future funds become available. In this way, the use of ARPA funds will ultimately help rehabilitate these dams in the timeliest manner possible.

In addition to being funded with ARPA funds, this proposed IDIQ contract will also use Capital Funds for the list of dams and related projects in Table 2 below.

Table 2. CAPITAL-FUNDED DAM PROJECTS

Project Name
Pawtuckaway Lake Dams (Nottingham)
Suncook River Assessment/Modeling
Salmon Falls River Assessment/Modeling
Asset Management Plan For State-Owned Dams
Winnipesaukee River Basin Assessment/Modeling
Highland Lake Dam (Stoddard)
Jones Pond Dike (New Durham)
Israel River Dam (Lancaster)

Several of the ARPA-funded dam projects listed in Table 1 require data that will be gathered under projects listed in Table 2. For example, design work at Avery Dam is contingent upon data and analysis that are part of the Winnipesaukee River Basin Assessment/Modeling project. Similarly, design work at Milton 3-Ponds is contingent upon data gathered as part of the Salmon Falls River Assessment/Modeling project, and design work for Northwood Lake Dam and Sunset Lake Dam relies on data and analysis from the Suncook River Assessment/Modeling project. Because of this, NHDES also intends to use the IDIQ Agreements to perform the work needed on these projects, and will issue Task Orders under the IDIQ contracts so that the projects that are connected and can progress simultaneously to the extent possible.

The procurement process for this Agreement, further detailed in Attachment A, was conducted in accordance with NH RSA 21-I:22 by issuing a Request For Qualifications (RFQ) for engineering analyses, internal review and approval of qualifications, and ranking of the most qualified firms. NHDES received responses to the RFQ from eleven firms. The six most qualified firms were identified based on the qualifications and experience with earth embankments, hydrology and hydraulics studies, seismic evaluation, dam removal analysis, grouting design, breach analysis, inundation mapping and EAP preparation, reinforced concrete design, stability analysis, overtopping protection, rock anchors, structural analysis and design, geotechnical investigations and design, foundations, gates and gate operators, flow measurement devices, penstocks and conduits through dams, seepage analysis and control plan design, site survey for feature location, topography and boundary delineation, instrumentation, wetlands area delineation, asset management/risk assessment, computational fluid dynamic modeling, and electrical design.

The selection committee interviewed the six most qualified firms and ranked them based on professional competence as evidenced by projects performed in the last ten years, experience in successfully performing the work specified in the RFQ for dam facilities, and the staffing capacity to meet project deadlines. Because of the large amount of work that needs to be accomplished in the short time allowed under ARPA, it was decided that IDIQ Agreements would be established with five consultant firms. The top five firms, as ranked by the members of

the Selection Committee, were selected. HDR Engineering, Inc., was among the top five firms. HDR Engineering demonstrated its ability to execute highly technical river modeling, its specialized expertise for certain needed tasks needed and ability to manage multiple large-scale design projects simultaneously. Therefore, NHDES expects to assign HDR Engineering with Task Orders that include the Merrymeeting River Assessment and rehabilitation designs for Jones Pond Dam and Alton Power Dam, rehabilitation design of the Headworks Dam at the outlet canal at Ossipee Lake and preparation of an Asset Management Plan for State-Owned Dams.

NHDES has negotiated terms and conditions for the services to be provided, billing rates and conditions, and a not-to-exceed cost for this Agreement with HDR Engineering, Inc. The Agreement has been approved by the Office of the Attorney General as to form, execution, and content.

We respectfully request your approval.

Robert R. Scott, Commissioner

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

AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name NH Department of Environmental Services		1.2 State Agency Address 29 Hazen Drive – PO Box 95 Concord NH 03302-0095	
1.3 Contractor Name HDR Engineering, Inc.		1.4 Contractor Address 250 Commercial Street, Suite 3007 Manchester, NH 03101	
1.5 Contractor Phone Number (603) 391-0903	1.6 Account Number 03-44-440010-2657-102-500731 03-44-442030-9309-034-500161	1.7 Completion Date December 31, 2026	1.8 Price Limitation $4,000,000
1.9 Contracting Officer for State Agency James W. Gallagher, Jr., P.E.		1.10 State Agency Telephone Number (603) 271-1961	
1.11 Contractor Signature Heather H. Ivester Date: 8/17/22		1.12 Name and Title of Contractor Signatory Heather H. Ivester, Area Manager – Vice President	
1.13 State Agency Signature Date: 9/29/22		1.14 Name and Title of State Agency Signatory Robert R. Scott - Commissioner	
1.15 Approval by the N.H. Department of Administration, Division of Personnel *(if applicable)* By:		Director, On:	
1.16 Approval by the Attorney General (Form, Substance and Execution) *(if applicable)* By:		On: 10/3/2022	
1.17 Approval by the Governor and Executive Council *(if applicable)* G&C Item number:		G&C Meeting Date:	

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2. 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 B which is incorporated herein by reference ("Services").

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.17, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.13 ("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 affected by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part. 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 reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source 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 C 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 applicable 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 employment opportunity laws. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property 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. The Contractor 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.

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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 cured, 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 give the Contractor a written notice specifying the Event of Default and 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 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

8.3. 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.

9. TERMINATION.

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, 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 B. In addition, at the State's discretion, the Contractor shall, within 15 days of notice of early termination, develop and submit to the State a Transition Plan for services under the Agreement.

10. DATA/ACCESS/CONFIDENTIALITY/ PRESERVATION.

10.1 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.

10.2 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.

10.3 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.

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.

12.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State. For purposes of this paragraph, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.2 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State. The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

13. INDEMNIFICATION. Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the

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Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. 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 continuously maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

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

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 10.2 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 ten (10) days prior to the expiration date of each insurance policy. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

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. The 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. 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.

17. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no such approval is required under the circumstances pursuant to State law, rule or policy.

18. CHOICE OF LAW AND FORUM. This Agreement shall be governed, interpreted and 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. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

19. CONFLICTING TERMS. In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and/or attachments and amendment thereof, the terms of the P-37 (as modified in EXHIBIT A) shall control.

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 or modifying provisions set forth in the attached EXHIBIT A 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 with respect to the subject matter hereof.

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EXHIBIT A
SPECIAL PROVISIONS

I. NEW HAMPSHIRE STATE AND LOCAL FISCAL RECOVERY FUNDS FEDERAL REQUIREMENTS

This Agreement is funded under a grant to the State of New Hampshire (State) and subsequently through the Governor's Office for Emergency Relief and Recovery (GOFERR) and New Hampshire Department of Environmental Services (NHDES) as approved by the Governor and Executive Council from the federal government through the Department of Treasury (Treasury) through the American Rescue Plan Act of 2021 (ARPA), with the source of funds being the State and Local Fiscal Recovery Funds (SLFRF) identified under the Catalog of Federal Domestic Assistance (CFDA) number #21.027. The Federal Award Identification Number (FAIN) for this award is SLFRP0145. This grant award is a subaward of SLFRF funds and any and all compliance requirements, as updated by Treasury, for use of SLFRF funds are applicable to the Subrecipient, without further notice. Treasury requirements are published and updated at https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds.

FEDERAL FUNDING ACCOUNTABILITY and TRANSPARENCY ACT (FFATA*).* The Subrecipient shall comply with the terms of the FFATA by providing NHDES with their Unique Entity Identifier (Unique Entity ID), and all applicable Executive Compensation Data information as required under the FFATA. A Unique Entity ID may be obtained by visiting https://www.sam.gov.

SAM REGISTRATION: The Subrecipient must have an active registration with the System for Award Management (SAM) (https://www.sam.gov).

GENERALLY ACCEPTED ACCOUNTING PROCEDURES: The Subrecipient, if a governmental entity, shall maintain project accounts in accordance with the Generally Accepted Accounting Principles (GAAP), including standards relating to the reporting of infrastructure assets as issued by the Governmental Accounting Standards Board (GASB). The full text of Governmental Accounting Reporting Standards is available through the GASB website at: http://www.gasb.org

RECORDKEEPING REQUIREMENTS: The Subrecipient must maintain records and financial documents for five years after all funds have been expended or returned to the State and/or Treasury. Treasury may request transfer of records of long-term value at the end of such period. Wherever practicable, such records should be collected, transmitted, and stored in open and machine-readable formats.

Subrecipient must agree to provide or make available such records to the State and Treasury upon request, and to the Government Accountability Office ("GAO"), Treasury's Office of Inspector General ("OIG"), and their authorized representative in order to conduct audits or other investigations.

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SINGLE AUDIT REQUIREMENTS: Recipients and subrecipients that expend more than $750,000 in Federal awards during their fiscal year will be subject to an audit under the Single Audit Act and its implementing regulation at 2 CFR Part 200, Subpart F regarding audit requirements. Recipients and subrecipients may also refer to the Office of Management and Budget (OMB) Compliance Supplements for audits of federal funds and related guidance and the Federal Audit Clearinghouse to see examples and single audit submissions.

CIVIL RIGHTS COMPLIANCE: The sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply, and shall include in every contract or agreement funded with these funds this same requirement to comply, with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.

In order to carry out its enforcement responsibilities under Title VI of the Civil Rights Act, NHDES may collect and review information from subrecipients to ascertain their compliance with the applicable requirements before and after providing financial assistance. Treasury's implementing regulations, 31 CFR part 22, and the Department of Justice (DOJ) regulations, Coordination of Non-discrimination in Federally Assisted Programs, 28 CFR part 42, provide for the collection of data and information from recipients and subrecipients (see 28 CFR 42.406).

PERIOD OF PERFORMANCE: All funds are subject to statutory requirements that they must be used for costs incurred by the recipient during the period that begins on March 3, 2021, and ends on December 31, 2024, and that award funds for the financial obligations incurred by December 31, 2024 must be expended by December 31, 2026.

PROCUREMENT, SUSPENSION AND DEBARMENT: Recipients are responsible for ensuring that any procurement using SLFRF funds, or payments under procurement contracts using such funds are consistent with the procurement standards set forth in the Uniform Guidance at 2 CFR 200.317 through 2 CFR 200.327, as applicable. The Uniform Guidance establishes in 2 CFR 200.319 that all procurement transactions for property or services must be conducted in a manner providing full and open competition, consistent with standards outlined in 2 CFR 200.320, which allows for non-competitive procurements only in circumstances where at least one of the conditions below is true: the item is below the micro-purchase threshold; the item is only available from a single source; the public exigency or emergency will not permit a delay from publicizing a competitive solicitation; or after solicitation of a number of sources, competition is determined inadequate. Subrecipients must have and use documented procurement procedures that are consistent with the standards outlined in 2 CFR 200.317

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through 2 CFR 200.320.

Subrecipient shall fully comply with Subpart C of 2 C.F.R. Part 180 entitled, "Responsibilities of Participants Regarding Transactions Doing Business With Other Persons," as implemented and supplemented by 2 C.F.R. Part 1532. subrecipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 2 C.F.R. Part 180, entitled "Covered Transactions," and 2 C.F.R. § 1532.220, includes a term or condition requiring compliance with 2 C.F.R. Part 180, Subpart C. subrecipient is responsible for further requiring the inclusion of a similar term and condition in any subsequent lower tier covered transactions. subrecipient acknowledges that failing to disclose the information required under 2 C.F.R. § 180.335 to NHDES may result in the delay or negation of this assistance agreement, or pursuance of administrative remedies, including suspension and debarment. Subrecipients may access the System for Award Management (SAM) exclusion list at https://sam.gov/SAM/ to determine whether an entity or individual is presently excluded or disqualified.

By entering into this agreement, the subrecipient certifies that the subrecipient is not debarred or suspended. Furthermore, the subrecipient certifies that no part of this contract will be subcontracted to a debarred or suspended person or firm.

DOMESTIC PREFERENCES FOR PROCUREMENTS (2 C.F.R. § 200.322) As appropriate and to the extent consistent with law, to the greatest extent practicable, there is a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT:

As required by 2 CFR 200.216, subrecipients, are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as

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critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Recipients, Subrecipients, and borrowers also may not use federal funds to purchase:

a. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

b. Telecommunications or video surveillance services provided by such entities or using such equipment.

c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Consistent with 2 CFR 200.471, costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, and cloud servers are allowable except for the following circumstances:

a. Obligating or expending funds for covered telecommunications and video surveillance services or equipment or services as described in 2 CFR 200.216 to:

(1) Procure or obtain, extend or renew a contract to procure or obtain;
(2) Enter into a contract (or extend or renew a contract) to procure; or
(3) Obtain the equipment, services, or systems. Certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the System for Award Management exclusion list which can be found at https://www.sam.gov/SAM/pages/public/index.jsf

REPORTING REQUIREMENTS: For all projects listed under the Water and Sewer Expenditure Categories (see Table below), detailed project-level information is required.

5: Infrastructure	
5.1	Clean Water: Centralized Wastewater Treatment
5.2	Clean Water: Centralized Wastewater Collection and Conveyance
5.3	Clean Water: Decentralized Wastewater
5.4	Clean Water: Combined Sewer Overflows
5.5	Clean Water: Other Sewer Infrastructure

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5.6	Clean Water: Stormwater
5.7	Clean Water: Energy Conservation
5.8	Clean Water: Water Conservation
5.9	Clean Water: Nonpoint Source
5.10	Drinking water: Treatment
5.11	Drinking water: Transmission & Distribution
5.12	Drinking water: Transmission & Distribution: Lead Remediation
5.13	Drinking water: Source
5.14	Drinking water: Storage
5.15	Drinking water: Other water infrastructure

Definitions for water and sewer Expenditure Categories can be found in the EPA's handbooks. For "clean water" expenditure category definitions, please see: https://www.epa.gov/sites/production/files/2018-03/documents/cwdefinitions.pdf. For "drinking water" expenditure category definitions, please see: https://www.epa.gov/dwsrf/drinking-water-state- revolving-fund-national-information-management-system-reports.

All Clean Water and Drinking Water infrastructure projects:

- Projected/actual construction start date (month/year)
- Projected/actual initiation of operations date (month/year)
- Location (for broadband, geospatial location data)

For water and sewer projects:

- National Pollutant Discharge Elimination System (NPDES) Permit Number (if applicable; for projects aligned with the Clean Water State Revolving Fund)
- Public Water System (PWS) ID number (if applicable; for projects aligned with the Drinking Water State Revolving Fund)

II. FEDERAL REQUIREMENTS APPLICABLE TO ARPA INFRASTRUCTURE PROJECTS OVER $10M

For projects over $10 million (based on expected total cost) a recipient shall provide a certification that, for the relevant project, all laborers and mechanics employed by contractors and subcontractors in the performance of such project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed. All contracts and subcontracts for the construction of treatment works shall insert in full in any contract the standard Davis-Bacon contract clause as specified by 29 CFR §5.5(a).

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III. OTHER SPECIAL PROVISIONS

A. In addition to the above special provisions, the following provisions as required by federal regulations apply to this Agreement:

1. ***Financial management.*** The Contractor shall comply with 2 CFR part 200 Subpart D and the specific standards regarding financial reporting, accounting records, internal control, budget control, allowable cost, source documentation, and cash management outlined therein.

2. ***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 *2 CFR part 200 Subpart E.*

3. ***Property Management.*** The Contractor shall comply with the property management and procedures detailed in 2 CFR Part 200 Subpart D.

4. ***Restrictions on Lobbying.*** The Contractor shall comply with the terms of 15 CFR part 28 and 2 CFR Part 200 Subpart E which prohibit the use of federal Contract funds to influence (or attempt to influence) a federal employee, and requires the submission of Standard Form LLL ("Disclosure of Lobbying Activities") if *non*federal funds have been used to influence (or attempt to influence) a federal employee.

5. ***Drug-Free Workplace.*** The Contractor shall comply with the terms of 2 CFR part 1329 which require that as a condition of the Agreement, certification that they maintain a drug-free workplace. By signing and submitting the Agreement, the Contractor certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity associated with the Agreement.

6. ***Protection for Whistleblowers.*** The Contractor shall comply with the terms of 41 U.S.C. §471 regarding Whistleblower protections. As described in 41 USC §471 "an employee of a contractor, subcontractor, grantee, or subgrantee or personal services contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (2) information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant."

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B. Other Changes to Standard Contract/Grant Agreements

1. 7. PERSONNEL

Replace ¶7.2 with the following:

7.2 During the term of this Agreement, and for a period of six (6) months of the completion date in block 1.7, neither party shall knowingly solicit for employment, technical or professional employees of the other party who have been directly involved in the activities covered by this Agreement without prior written approval of the other party. This clause shall not restrict in any way the right of either party to solicit generally in the media for sought after personnel, nor does it restrict employees of either party from pursuing on their own initiative employment opportunities with the other party. This provision shall survive termination of this Agreement.

2. 10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION

Amend ¶10.2 to include:

10.2.1 Any reuse or modification of such Data for purposes other than intended by the Contractor in its scope of services shall be at the State's sole risk and without liability to the Contractor.

3. 13. INDEMNIFICATION

Amend Paragraph 13 by amending only the first sentence of paragraph 13 to read as follows:

"Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the negligent acts or omissions, recklessness or intentional misconduct of the Contractor or subcontractors.

4. 25. STANDARD OF PERFORMANCE

Amend Form P-37 to include a new section:

25. STANDARD OF PERFORMANCE

25.1 Notwithstanding any other provision of any contract term between the Contractor and the State, the standard of care for all professional engineering, consulting and related services performed or furnished by Contractor and its employees under this Agreement will be the care and

skill ordinarily used by members of Contractor's profession practicing under the same or similar circumstances at the same time and in the same locality. Contractor makes no warranties, express or implied, under this Agreement or otherwise, in connection with Contractor's services.

Contractor and the State agree that no other party is an intended or unintended third-party beneficiary of this contract, and that Contractor's duties run solely to the State.

5. 26. OPINIONS OF PROBABLE COST (COST ESTIMATES)

Amend Form P-37 to include a new section:

26. OPINIONS OF PROBABLE COST (COST ESTIMATES)

26.1 Any opinions of probable project cost or probable construction cost provided by Contractor are made on the basis of information available to Contractor and on the basis of Contractor's experience and qualifications, and represents its judgment as an experienced and qualified professional engineer. However, since Contractor has no control over the cost of labor, materials, equipment or services furnished by others, or over the methods of determining prices, or over competitive bidding or market conditions, Contractor does not guarantee that proposals, bids or actual project or construction cost will not vary from opinions of probable cost Contractor prepares.

6. 27. CERTIFICATIONS

Amend Form P-37 to include a new section:

27. CERTIFICATIONS

27.1 The use of the word "certify" or "certification" by a registered professional engineer in the practice of professional engineering or land surveying constitutes an expression of professional opinion regarding those facts or findings which are the subject of the certification, and does not constitute a warranty or guarantee, either expressed or implied. Certification of analyses is a statement that the analyses have been performed correctly and in accordance with sound engineering practices. Certification of structural works is a statement that the works are designed in accordance with sound engineering practices and the State approved design loads. Certification of "as built" conditions is a statement that the structure(s) has been built according to specifically identified drawings, specifications and contract documents to the extent the structure(s) is readily observable, is in place, and is fully functioning. The definition and legal effect of any and all certifications shall be limited as stated herein.

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EXHIBIT B
SERVICES

1. WORK TO BE PERFORMED BY THE CONTRACTOR

1.1 Work Program: The Work Program, as described below in Section 2, contains certain technical and professional activities to be performed with the funds pursuant to this Agreement.

1.2 Contractor Assurance: HDR Engineering, Inc., heretofore known as the "Contractor", in consideration of the compensation to be provided pursuant to this Agreement, hereby covenants and agrees to perform and carry out in a satisfactory and proper manner, as determined by the New Hampshire Department of Environmental Services (NHDES), those activities identified and more particularly described below in the Work Program (individual work tasks and services).

1.3 Work Products: All materials, maps, plans, reports, specifications, documents and other work products specified in the Work Program for preparation and submission by the Contractor shall be submitted to NHDES on or before the due dates, and in the number of copies and format specified in the Work Program.

2. WORK PROGRAM

2.1 Title: As-needed Engineering and Technical Support Services Agreement.

2.2 Study Areas: Certain State-owned dams as authorized by NHDES.

2.3 Objective: The purpose of this agreement is to provide "as-needed" engineering and related technical assistance services for projects related to the construction, reconstruction and/or removal of certain dams owned by the State of New Hampshire.

2.4 Background/Description: The State of New Hampshire owns approximately 275 dams, including many of the largest and most economically important dams in the state. NHDES serves as "owner" to most of those dams, and is responsible for the operation and maintenance of those and most other state-owned dams. NHDES engineers provide design and permitting services for construction, reconstruction, and removal projects for most state-owned dams, including geotechnical investigations, embankment design, reinforced concrete design, hydrology and hydraulics, seepage prevention and filter design, and certain structural concrete, steel, and masonry design. Most existing dams in New

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Hampshire have long exceeded their design lives and have unique/complex outlet works and structural components that require an experienced engineering team to analyze and provide design plans, specifications, and/or recommendations for reconstruction. NHDES will be addressing challenging issues as part of dam reconstruction projects in the next few years, and an Agreement to provide engineering analysis and design is needed to assure the long-term integrity of state-owned dams. Because the extent of analysis and design projects cannot be identified until engineering, geotechnical, and existing conditions data have been compiled for each individual project, an "as-needed" Agreement with a "not-to-exceed" price is the most efficient way to provide these services.

2.5 Task Orders: Project specific Tasks Orders will be formulated by a scope of work for each individual project. When NHDES has need for engineering or technical support services, NHDES shall contact the Contractor in writing to request a proposed scope of work. An email message from NHDES shall be considered a request in writing. The Contractor shall have up to two weeks from the date of the request to provide a proposed scope of work with costs based on approved Contractor Labor Rates and Contractor Labor Categories in Table C-1 of Exhibit C and Contractor provided costs for subcontractors and expenses, and shall include a timeline for delivery of work products designated in the proposed Task Order, unless otherwise mutually agreed to in writing by all parties (an email message exchange between all parties shall be acceptable as an agreement in writing). Upon receipt of a proposed scope of work, NHDES will review the extent of engineering and/or technical support services needed for each Task Order and negotiate a final scope of work with the Contractor for the tasks, time frame and costs involved. The Contractor is not authorized to commence work, or invoice for costs, on the scope of work until it is approved in writing by NHDES. An email message from NHDES shall be considered an approval in writing. The Contractor will complete the scope of work within the time frame agreed to in each individual Task Order unless otherwise mutually agreed to in writing by all parties (an email message exchange between all parties shall be acceptable as an agreement in writing). Electronic submittals and hard copies shall be required under this contract for all technical documents and work products prepared for each assignment, including but not limited to engineering computer models and associated electronic files, CAD files, shape files, GIS files, reports, spreadsheets and memorandums. Each scope of work and budget shall include the costs for preparation and submission of letters, documents, maps, models, plans, specifications, diagrams, site-specific scopes of work, detailed budgets, invoices, and data in acceptable electronic format(s). All electronic submissions shall be searchable and editable by the Dam Bureau, without the requirement to purchase additional software. All deliverables will be submitted

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to NHDES for review prior to final approval. The types of services required may include, but are not necessarily limited to, any combination of the following:

- Engineering analysis of existing state-owned dams to assess the safety status of existing conditions and/or impacts of proposed reconstruction activities
- Provision of design recommendations for certain components of state-owned dams
- Engineering design plans and specifications for reconstruction projects
- Project report and/or other document preparation
- Provision of professional engineer stamping of plans, recommendations, and specifications as requested by NHDES
- Quality assurance of analysis and design work
- Meetings/conference calls with NHDES to review documentation and submittals as requested by NHDES

General work tasks include:

- Prepare scopes of services upon request for specific projects, within two weeks of request unless otherwise mutually agreed to by all parties.
- Conduct work under the scope of services agreements in the agreed-upon time frame and budget unless otherwise mutually agreed to by all parties.
- Prepare and submit reports, forms, and other documentation as described in the scope of work.

2.6 Subcontractors: The Contractor may use subcontractor(s) where reasonable, appropriate and consistent with industry practice as indicated herein:

- Work shall not be assigned to a subcontractor without prior approval of NHDES.
- The Contractor shall be fully responsible to the State for an acts, errors and omissions of subcontractor(s).
- Subcontractor(s) shall be bound by the same terms and conditions as those that bind the Contractor to the State, but there shall be no direct contractual relationship between the subcontractor(s) and the State.
- The State reserves the right to negotiate subcontractor service markup rates and qualifications. The Contractor shall be responsible for delivering all reports and documentation generated by any subcontractor.

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2.7 The State's Responsibilities: The State shall be responsible for providing the Contractor with the following:

- Assist the Contractor by placing at their disposal all available information pertinent to the assigned Task Order including all reports, studies, and other information relative to the site.
- Make provisions for the Contractor to enter upon NHDES owned properties to perform the work assigned under this agreement.
- Provide other assistance as needed to facilitate the completion of assigned work in a timely and cost-effective manner.

2.8 Schedule for Reports, Forms, and other Documentation: Reports, forms, and other documentation will be compiled and presented as described in project specific scopes of work.

2.9 Final Report Format: Electronic copies of all reports, forms and other documentation shall be provided to NHDES.

2.10 Program Administration: The Contractor will meet or conference call with NHDES Dam Bureau staff at the request of NHDES as needed throughout each project.

2.11 Project Duration: Governor and Council approval through December 31, 2026.

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EXHIBIT C
AGREEMENT PRICE, METHOD, AND TERMS OF PAYMENT

1. PROGRAM COSTS AND REVIEW

1.1 Program Costs: As used in this Agreement, the term "program costs" shall mean all expenses directly or indirectly incurred by HDR Engineering, Inc., heretofore referred to as the "Contractor", in the performance of the program activities, as determined by the New Hampshire Department of Environmental Services (NHDES) to be eligible and allowable for payment in accordance with this Agreement and scopes of services approved under the provisions of this Agreement. The total charges for all scopes of services agreed to under this Agreement shall not exceed $3,500,000.00.

1.2 Payment of Program Costs: Subject to the terms and conditions of this agreement, NHDES agrees to pay the Contractor all allowable program costs, provided, however, that in no event shall the total of all payments made by the NHDES pursuant to this Agreement exceed the amount of the contract price as set out in paragraph 1.8 of the General Provisions and that the program costs have been incurred prior to the completion date. Program costs may be paid if requested within 90 days after the completion date.

1.3 Payment of Reimbursable Program Costs: NHDES agrees to reimburse the Contractor for program costs, except that program costs may be retained until the NHDES determines that a particular program activity or portion of the program activity hereunder has been satisfactorily completed.

1.4 Conditions Precedent to Payment: Notwithstanding the foregoing provisions of this Section or anything to the contrary contained herein, it is understood and agreed that each payment shall be conditioned upon NHDES's determination that the project activities have been and are being performed in a satisfactory manner.

1.5 Review by NHDES; Disallowance of Costs: At any time during the performance of the program activities, and upon receipt of any interim work products, progress reports, final work products, or an audited financial report, NHDES may review all program costs incurred by the Contractor and all payments made to date. Upon such review NHDES shall disallow any expense items which are not allowable or are determined to be in excess of actual expenditures and shall, by written notice specifying the disallowed expenditures, inform the Contractor of any such disallowance. If NHDES disallows costs for which payment has not yet been made, it shall refuse to pay such costs.

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If payment has been made with respect to costs that are subsequently disallowed, NHDES may deduct the amount of disallowed costs from any future payments under this Agreement or require that the Contractor refund to the NHDES the amount of the disallowed costs.

2. PAYMENT PROCEDURE

NHDES shall pay to the Contractor the total reimbursable program costs in accordance with the following requirements:

Reimbursement requests for program costs shall be made by the Contractor. Documentation of reimbursable and matching costs may include invoices for supplies, equipment, services, contractual services, and a report of personnel, travel and indirect costs. For projects that demonstrate progress solely through the submission of interim progress reports, payments shall be made upon receipt, review and approval of the interim progress report and accompanying payment request form.

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TABLE C-1

As-needed Engineering and Technical Support Services

Unit rate is established at individual hourly rate multiplied by a factor of 3.14 to account for overhead, fringe benefits, and a 10% profit multiplier.

LABOR RATES

		Contract Approval Date - Sunday, December 31, 2023		Monday, January 1, 2024 Thursday, December 31, 2026	
LABOR	**Units**	**Direct**	**Burdened**	**Direct**	**Burdened**
CONSULTANT Labor Categories					
Principal	hrs.	$118.65	$372.56	$130.81	$410.75
Program Manager	hrs.	$80.85	$253.87	$89.14	$279.89
Senior Technical Engineer	hrs.	$103.95	$326.40	$114.60	$359.86
Structural Engineer	hrs.	$78.75	$247.28	$86.82	$272.62
Mechanical Engineer	hrs.	$78.75	$247.28	$86.82	$272.62
Geotechnical Engineer	hrs.	$78.75	$247.28	$86.82	$272.62
Hydraulic Engineer	hrs.	$78.75	$247.28	$86.82	$272.62
Electrical Engineer	hrs.	$78.75	$247.28	$86.82	$272.62
Risk Assessment Engineer	hrs.	$94.50	$296.73	$104.19	$327.14
Junior Engineer	hrs.	$57.75	$181.34	$63.67	$199.92
Senior Engineer in Training	hrs.	$42.00	$131.88	$46.31	$145.40
Engineer in Training	hrs.	$36.75	$115.40	$40.52	$127.22
Senior Environmental Scientist	hrs.	$89.25	$280.25	$98.40	$308.97
Environmental Scientist	hrs.	$68.25	$214.31	$75.25	$236.27
Junior Environmental Scientist	hrs.	$47.25	$148.37	$52.09	$163.57
CAD Designer	hrs.	$47.25	$148.37	$52.09	$163.57
CAD Technician	hrs.	$36.75	$115.40	$40.52	$127.22
GIS Technician	hrs.	$47.25	$148.37	$52.09	$163.57
Junior GIS Technician	hrs.	$36.75	$115.40	$40.52	$127.22
Accountant	hrs.	$40.95	$128.58	$45.15	$141.76
Administrative	hrs.	$36.75	$115.40	$40.52	$127.22

REIMBURSABLE EXPENSES

Vehicle mileage, tolls, meals, and lodging, black and white and color plots and copies, overnight shipping, etc. will be billed at direct cost.

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Date 8/17/22

State of New Hampshire

Department of State

CERTIFICATE

I, David M. Scanlan, Secretary of State of the State of New Hampshire, do hereby certify that HDR ENGINEERING, INC. is a Nebraska Profit Corporation registered to transact business in New Hampshire on June 17, 1985. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: **84977**

Certificate Number: **0005843536**

IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 9th day of August A.D. 2022.

David M. Scanlan

Secretary of State

CERTIFICATE

The undersigned hereby certifies that she is the Assistant Secretary of HDR Engineering, Inc., a Nebraska corporation (the "Corporation"), and that, as such, has custody of the minute books of the Corporation, and that, by Consent and Agreement of the Board of Directors, the following resolution was unanimously adopted:

> **"RESOLVED,** that effective immediately and until termination of said individual from the Corporation, or until recision by the Corporation's Board of Directors, whichever occurs first, the following individuals are hereby granted the nondelegable authority to execute or approve on behalf of the Corporation, contracts, amendments or change orders for engineering services and architectural services incidental to engineering services to be rendered by the Corporation, . . . , or releases of claim or lien in connection with such services, such contracts, amendments, change orders or releases so executed or approved shall be binding upon the Corporation:
>
> . . . Heather Ivester - Vice President"

The undersigned further certifies that the foregoing resolution has been spread in full upon the minute books of the Corporation and is in full force and effect.

DATED August 12, 2022.

HDR ENGINEERING, INC. CORPORATE SEAL NEBRASKA CORPORATION

Laurie S. Vik, Assistant Secretary

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 08/12/2022

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

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Willis Towers Watson Midwest, Inc.
c/o 26 Century Blvd
P.O. Box 305191
Nashville, TN 372305191 USA

CONTACT NAME: Willis Towers Watson Certificate Center
PHONE (A/C, No, Ext): 1-877-945-7378 FAX (A/C, No): 1-888-467-2378
E-MAIL ADDRESS: certificates@willis.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: Liberty Mutual Fire Insurance Company	23035
INSURER B: Ohio Casualty Insurance Company	24074
INSURER C: Liberty Insurance Corporation	42404
INSURER D:	
INSURER E:	
INSURER F:	

INSURED
HDR Engineering, Inc.
1917 South 67th Street
Omaha, NE 68106

COVERAGES CERTIFICATE NUMBER: W25649425 REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	[X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR [X] Contractual Liability GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [X] PRO-JECT [X] LOC [ ] OTHER:	Y	Y	TB2-641-444950-032	06/01/2022	06/01/2023	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 2,000,000 $ 1,000,000 $ 10,000 $ 2,000,000 $ 4,000,000 $ 4,000,000 $
A	AUTOMOBILE LIABILITY [X] ANY AUTO [ ] OWNED AUTOS ONLY [ ] HIRED AUTOS ONLY [ ] SCHEDULED AUTOS [ ] NON-OWNED AUTOS ONLY	Y	Y	AS2-641-444950-042	06/01/2022	06/01/2023	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 2,000,000 $ $ $ $
B	[ ] UMBRELLA LIAB [X] OCCUR [X] EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [X] RETENTION $ 0	Y	Y	EUO(23)57919363	06/01/2022	06/01/2023	EACH OCCURRENCE AGGREGATE	$ 5,000,000 $ 5,000,000 $
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N [No] (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	Y	WA7-64D-444950-012	06/01/2022	06/01/2023	[X] PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000

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

Certificate Holder is named as Additional Insured on General Liability, Automobile Liability and Umbrella/Excess Liability on a Primary, Non-contributory basis where required by written contract. Waiver of Subrogation applies on General Liability, Automobile Liability, Umbrella/Excess Liability and Workers Compensation where required by written contract and as permitted by law. Umbrella/Excess policy is follow form over General Liability, Auto Liability and Employers Liability.

CERTIFICATE HOLDER

NH Department of Environmental Services
25 Hazen Drive - PO Box 95
Concord, NH 03302-0095

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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ATTACHMENT A
Procurement Process

The procurement process for this Agreement was conducted in accordance with RSA 21-I:22. In February 2022, NHDES posted on the Department of Administrative Services and the NHDES websites a Request For Qualifications (RFQ) from professional consultants for as-needed agreements to provide engineering and technical support services for projects and activities related to state-owned dams located throughout the State.

The following eleven firms responded to the RFQ:

- AECOM Technical Services, Inc. – Chelmsford, MA
- Alden Research Laboratory – Holden, MA
- Dubois & King, Inc. - Randolph, VT
- Gannett Fleming, Inc. – Camp Hill, PA
- GEI Consultants – Woburn, MA
- GZA GeoEnvironmental, Inc. - Bedford, NH
- HDR Engineering, Inc. – Manchester, NH
- SLR International Corporation – Bedford, NH
- Stephens Associates Consulting Engineers, LLC – Brentwood, NH
- Tighe & Bond, Inc. – Portsmouth, NH
- Weston & Sampson Engineering, Inc. – Manchester, NH

An internal NHDES selection committee reviewed and ranked the responses to the RFQ. The committee consisted of:

A. James Gallagher, Jr., P.E., the Chief Engineer for the Dam Bureau with more than 48 years of experience with dam design, contracting, construction and safety;
B. Daniel Mattaini, P.E., Administrator of the Operations & Maintenance Section of the Dam Bureau who has over 30 years of experience as an engineer for hydrologic and dam related projects for the U.S. Geological Survey and the Dam Bureau;
C. Corey Clark P.E., the Administrator of the Engineering & Construction Section of the Dam Bureau who has more than 15 years of experience as a geotechnical engineer and oversees the design engineering and construction sections of the Dam Bureau;
D. Steve Doyon, P.E., Administrator of the Dam Safety Section of the Dam Bureau, who has over 30 years of experience in dam safety and operations; and
E. Kent R. Finemore, P.E., Assistant Chief Engineer of the Dam Bureau, who has over 25 years of experience as an engineer for civil design and construction.

The RFQ provided detail on the intended selection of firms and expectations for their qualifications package submittals. Six of the eleven firms that submitted qualifications packages demonstrated substantial experience with:

- earth embankments
- hydrology and hydraulics (H&H) studies
- seismic evaluation
- dam removal analysis
- grouting design
- breach analysis
- inundation mapping and EAP preparation
- reinforced concrete design
- stability analysis
- overtopping protection
- rock anchors
- structural analysis and design
- geotechnical investigations and design
- foundations
- gates and gate operators
- flow measurement devices
- penstocks and conduits through dams
- seepage analysis and control plan design
- site survey for feature location, topography, and boundary delineation
- instrumentation
- wetlands area delineation
- asset management/risk assessment
- computational fluid dynamic modeling
- statistical analysis of hydropower benefits of seasonal water control of state-owned facilities
- electrical design

The committee established a short-list of firms to complete an in-person virtual interview based on criteria provided by the team. The short-list of firms who received, and accepted, an invitation to submit a draft Statement of Work and take part in a virtual interview included:

- AECOM Technical Services, Inc. – Chelmsford, MA
- Gannett Fleming, Inc. – Camp Hill, PA
- GEI Consultants, Inc. – Woburn, MA
- HDR Engineering, Inc. – Manchester, NH
- SLR International Corporation – Bedford, NH
- Weston & Sampson Engineering, Inc. – Manchester, NH

In preparation for the interviews, the short-list firms were sent a descriptions of projects expected to be executed under the as-needed agreements and scheduled interviews. DES conducted virtual interviews of each firm in May 2022.

Members of the selection committee reviewed the proposals, conducted the interviews, and ranked the six firms. Rankings were based on:

- Professional competence as evidenced by projects performed in the last 10 years and experience in successfully performing similar work for dam facilities.
- Identification of staff with specialization or technical expertise that would be assigned to the task orders envisioned in this contract. Demonstrated capabilities to assemble a project team(s) or identify designated individual(s) that can effectively manage and complete tasks such as delineated in this RFQ, including those involving subcontractors, sub-consultants, specialized engineering, or technical expertise as may be deemed necessary or beneficial to successful completion of the task.
- Demonstration of capacity and willingness to manage multiple complex and diverse projects, start work quickly, and demonstrated experience and collaboration of team members to work together efficiently to complete projects within schedule and budget.
- Ability to work cooperatively and interact effectively with the Dam Bureau or other clients or agencies.
- Clarity, completeness and conciseness of Qualification Statement.
- Demonstrated ability of firm to access and service New Hampshire's state-owned dam inventory.

Because the availability of additional funding for state-owned dam projects increased significantly during the process of issuing the RFQ, it was decided that as-needed agreements would be established with five consultant firms. The top five firms, as ranked by the members of the Selection Committee, would be selected and NHDES would negotiate agreements with them.

A scoring summary is provided in Table AT-1. As shown in the summary, the five members of the Selection Committee were fairly consistent in their choices of the top five firms, and those firms were selected to establish agreements.

Table AT-1
Firm Rankings

Consultant Firm/Reviewers	A.	B.	C.	D.	E.	Final Score	Final Rank
AECOM	2	3	2	2	2	11	**2**
Gannett Fleming	1	1	1	1	1	5	**1**
GEI Consultants	3	4	4	3	4	18	**4**
HDR Engineering	4	2	3	4	3	16	**3**
SLR International	6	6	6	6	6	30	**6**
Weston & Sampson	5	5	5	5	5	25	**5**

Following the selection, NHDES commenced negotiations with the following firms to establish a fee schedule for future as-needed task orders.

- AECOM Technical Services, Inc.
- Gannett Fleming, Inc.
- GEI Consultants, Inc.
- HDR Engineering, Inc
- Weston & Sampson Engineering, Inc.