



The State of New Hampshire
Department of Environmental Services

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Robert R. Scott, Commissioner

November 21, 2023

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

REQUESTED ACTION

Authorize the New Hampshire Department of Environmental Services (NHDES) to amend an Aquatic Resource Mitigation (ARM) Fund grant (PO # 1085347) to the Town of Lee, NH (Vendor Code #177231-B003) by increasing the grant amount by \$108,500 to \$353,500 from \$245,000 for the purpose of replacing a deficient culvert for stream restoration and extending the completion date to December 31, 2028 from December 31, 2027, effective upon G&C approval. The original agreement was approved by Governor and Council on April 20, 2022, item #87. 100% Federal Funds.

Funding is available in the following account:

03-44-44-440010-2476-072-500574
Dept. Environmental Services, ARPA DES Loans, Grants Federal
Activity Code: 00FRF602WB44010

FY 2024
\$108,500

EXPLANATION

NHDES is requesting approval of an amendment to the Aquatic Resource Mitigation (ARM) grant agreement to provide the Town of Lee additional funds through the American Rescue Plan Act (ARPA) to complete the agreed upon scope of services for the Chesley Brook Geomorphic Culvert Replacement Project in Lee, NH. Upon receipt of the ARM grant in 2022, the Town conducted the design and permitting for the project. The project has experienced unforeseen increased construction costs and gap funding is needed to ensure construction and project completion. The request for \$108,500 in ARPA funding will be applied to the increased construction and associated costs to complete the construction of an improved crossing that passes the 100-year storm event and allows aquatic organism passage. This is an allowable use of ARPA funds under Section 602 (c)(1)(D) to make necessary investments in water, sewer, or broadband infrastructure. The extension to the completion date from December 31, 2027 to December 31, 2028 will accommodate the five (5) year post-construction monitoring period required to document success of the project and fully meet the ARM Fund program goals. To date, none of the original \$245,000 grant has been spent.

New Hampshire RSA 482-A:3 and Federal law require a wetland permit for any proposed project that involves dredging or filling of a wetland. Before a wetland permit is issued, applicants must show that the proposed project will avoid adverse impacts to wetlands and will minimize and provide compensation for those wetland impacts which are unavoidable. The Aquatic Resource Mitigation Fund (ARM) authorizes the collection of mitigation funds in lieu of other forms of wetland mitigation as part of a Wetlands Permit Application. As sponsor of the New Hampshire In-Lieu Fee Program, the ARM Fund is responsible for ensuring the successful completion of compensatory mitigation projects to meet the State's obligations to the U.S. Army Corps of Engineers. Supplemental funding to complete this compensatory mitigation project is necessary to successfully accomplish the project objectives and outcome.

The ARPA of 2021 is a \$1.9 trillion economic stimulus bill passed by the 117th United States Congress and signed into law by President Biden on March 11, 2021, to speed up the United States' recovery from the economic health

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effects of the COVID-19 pandemic and the resultant recession. The Act defines eligible uses of the state and local funding, including responding to public health emergencies, responding to workers performing essential work during the COVID-19 emergency, providing revenue relief to states and making investments in water, sewer, and broadband infrastructure.

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

We respectfully request your approval.


for Robert R. Scott, Commissioner

Agreement for Services with Town of Lee
Amendment No. 1

This Agreement (hereinafter called the "Amendment") dated this 14th day of November 2023, 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 Town of Lee, acting by and through the Select Board Chair, Katrin Kasper (hereinafter referred to as the "Grantee").

WHEREAS, pursuant to an Agreement (hereinafter called the "Agreement") approved by the Governor and Executive Council on April 20, 2022, 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 Completion Date as set forth in Item 1.6 of the Agreement shall be changed from December 31, 2027, to December 31, 2028.
 - (B) The Grant Limitation as set forth in Item 1.8 of the Agreement shall be changed from \$245,000 to \$353,500.
 - (C) Grant Officer for State Agency as set forth in Item 1.9 of the Agreement shall be changed from Lori Sommer to Emily Nichols.
 - (D) The grant period as set forth in sub-paragraph B of Exhibit B shall be changed from December 31, 2027, to December 31, 2028.
 - (E) The grant award as set forth in sub-paragraph C of Exhibit C shall be changed from 245,000 to \$353,500.
 - (F) Exhibit A shall be replaced with the attached Amendment 1-Exhibit A Special Provisions.
 - (G) The project scope and project monitoring as set forth in sub-paragraphs F and G in Exhibit B shall be replaced with the attached Amendment 1- Exhibit B, Scope of Services.
 - (H) The Budget Payment Method as set forth in Exhibit C shall be replaced with the attached Amendment 1-Exhibit C, Budget & Payment Method.
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.

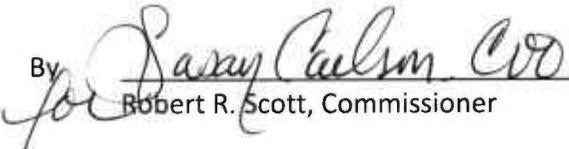
IN WITNESS WHEREOF, the parties have hereunto set their hands as of the day and year first above written.

Town of Lee, New Hampshire

By 
Katrin Kasper, Select Board Chair

Date 11/14/23

THE STATE OF NEW HAMPSHIRE
Department of Environmental Services

By 
for Robert R. Scott, Commissioner

11/21/23
Date

Approved by Attorney General this 22nd day of November, 2023

As to form, substance + execution

OFFICE OF ATTORNEY GENERAL

By 
Melissa Fales

AMENDMENT 1 - 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 to conduct audits or other investigations.

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 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



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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 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:

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- (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
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).

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 *nonfederal* 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."

AMENDMENT 1 - EXHIBIT B
SCOPE OF SERVICES

A. Project Title:

Chelsey Brook Geomorphic Culvert Replacement Project

B. Project Period:

January 1, 2022 through December 31, 2028

C. Grant Amount:

Total funds available for payment of allowable costs incurred under this Grant Agreement shall not exceed \$353,000. The Town of Lee will use the American Recovery Plan Act (ARPA) grant funds and Aquatic Resource Mitigation (ARM) Funds to restore aquatic connectivity and improve geomorphic processes on Chesley Brook at the Packer's Falls crossing in Lee, NH. The New Hampshire Department of Environmental Services (NHDES) will not reimburse the Town of Lee (the GRANTEE) for costs exceeding the amount specified in this paragraph.

D. Effective Date and Commencement of Work:

This Grant Agreement and all obligations of the parties hereunder shall become effective on the date the Governor and Executive Council of the State of New Hampshire approve this Agreement ("Effective Date") and shall end on December 31, 2028. Any work performed by the GRANTEE prior to the Effective Date shall be at the **sole risk** of the GRANTEE. In the event this Grant Agreement does not become effective, NHDES shall be under no obligation to pay the GRANTEE for any costs incurred or work performed; however, if this Agreement becomes effective, costs incurred prior to the Effective Date that would otherwise be allowable are eligible for payment under the terms of this Agreement.

E. Objectives:

The Chelsey Brook Geomorphic Culvert Replacement Project (the PROJECT) will restore aquatic connectivity and improve geomorphic processes on Chesley Brook at the Packer's Falls crossing in Lee, NH. The current stream crossing is a steel-pipe arch that is undersized for the natural bankfull width of Chelsey Brook and has caused channel scour and bank erosion. The current deficient crossing is a complete barrier to AOP due to the outlet perch and the large scour pool that has formed downstream is poor habitat for the notable fish species at this site. With funds from this grant, the metal pipe will be replaced with an embedded box culvert that accommodates the natural bankfull width and sediment transport at the site. This larger span will meet the NH Stream Crossing Guidelines and provide velocities and substrate consistent with the rest of the stream. Replacing the stream crossing will result in connectivity of the first 1.8 miles of the stream which is habitat for two state-listed species of special concern: American Eel and Sea Lamprey. At the outlet, a log cross vane will be installed to provide low-flow depths and protect both the banks and stream channel from erosion. Downstream from the log vane, the existing large, deep scour pool will be filled with substrate matching that of the existing stream, reducing the susceptibility of aquatic species to predators and improving habitat for American Brook Lamprey. Invasives found near the project will be removed in full, and all disturbed lands plus stream banks at the outlet will be reseeded and planted with native, riparian species to provide cover.

F. Scope of Work:

The GRANTEE agrees to complete the following under this grant agreement with the New Hampshire Department of Environmental Services (NHDES):

Task 1: Design, permitting, and technical assistance

The GRANTEE, with partners, will expand the current design plans for the Packer's Falls Road crossing and develop final Professional Engineer stamped designs for permitting, GRANTEE bidding, and construction. The GRANTEE and project partners will participate in a NHDES Wetlands Bureau pre-application meeting to ensure the design is in full compliance with NH Stream Crossing Guidelines to include stream simulation for fish and wildlife passage, accommodate natural sediment and water transport processes, and meet hydraulic capacity requirements for the site. The GRANTEE will work with the NHDES Wetlands Bureau permitting staff to finalize the design, construction timeline, permit and grant conditions, and submit a Wetlands Permit in 2022. The GRANTEE will complete bid administration and construction contracting. The GRANTEE will participate in a pre-construction meeting before any site work begins, that will include NHDES Wetlands Bureau staff and project partners to review permit conditions and verify the construction timeline. During the pre-construction meeting the GRANTEE will designate a QUALIFIED PROFESSIONAL(S) (as defined in Env-Wt 802.06) with expertise in stream restoration to supervise and be on-site during construction to ensure that all work is constructed in accordance with the approved design plans.

Task 2: Box culvert installation, construction oversight, site stabilization, and as-built survey and report

The GRANTEE will contact the NHDES Wetlands Bureau Mitigation staff at least 5 state business days prior to starting any work under this task to notify of the date on which work under this agreement is expected to start. The GRANTEE will remove the existing pipe culvert and replace with a +/-15-foot-wide concrete embedded box culvert. Work under this task includes: site preparation and mobilization, removal of the old pipe culvert, excavating the site, installation of footers, abutments, in-stream structures, and the new crossing. Following construction completion, the GRANTEE will remove temporary staging areas, complete final grading, and stabilize the site with seed and hay, and riparian plantings. Restoration of areas where temporary impacts occur will be addressed per the NHDES permit conditions.

The designated QUALIFIED PROFESSIONAL(S) will supervise the construction and submit reports to the NHDES Wetlands Bureau staff via email every 2-3 days during active construction and will include 1) activities completed, 2) photos of the work site, and 3) questions or concerns. Following construction, the GRANTEE will conduct one as-built survey of the site to establish baseline conditions of the site topography, crossing elevations, stream channel geometry, and plantings. The as-built survey will include photos of the stream channel and banks, and the new stream crossing. One As-Built report will be submitted to the NHDES Wetlands Bureau Mitigation staff within 60 days of construction completion.

Task 3: Post-construction site monitoring

The GRANTEE will report annually to NHDES Wetlands Bureau staff any flooding issues at the site that may occur between summer 2023 and December 31, 2028, with photo documentation and narratives provided by the town or local landowners. The NHDES Wetlands Bureau staff will survey the new box culvert annually from 2023-2028 to evaluate AOP, stream conditions, and bank stability. The NHDES Wetlands Bureau staff will provide monitoring reports to the GRANTEE and project partners to review. Fish and habitat monitoring will be done by the GRANTEE in partnership with New Hampshire Fish and Game Department and provide summary reports to the NHDES Wetlands Bureau staff. The GRANTEE, NHDES Wetlands Bureau staff, and project partners will collaboratively review the monitoring results on an annual basis during project meetings and site walks, to evaluate whether the site is meeting the expected performance standards.

Task 4: Long-term maintenance and adaptive management

Based upon review of the monitoring results, the GRANTEE will develop a plan and implement remedial actions if necessary for the site to maintain fish passage and accommodate streamflow and sediment transport. If adaptive management is needed the plan would be reviewed and approved by the NHDES Wetlands staff and the GRANTEE would be responsible to implement the work outlined in the plan. Work under this task may include engineer consultation and design plans to address any corrective measures, materials, additional construction work upstream or downstream of the bridge, plantings, and bank stabilization. Work under this task may include engineer consultation and design plans to address any corrective measures, additional restoration work upstream or downstream of the bridge, plantings, and bank stabilization. The GRANTEE will submit photos and a summary of the adaptive management activities done via email to NHDES within 60 days of any work performed.

Task 5: Project Monumentation

The GRANTEE will install a sign on or near the PROJECT location to acknowledge the NHDES support for the stream crossing replacement. The sign will contain the NHDES logo and a statement that the PROJECT has been completed with assistance from the New Hampshire Department of Environmental Services Aquatic Resource Mitigation Fund and American Recovery Place Act (ARPA) Funds. Should the NHDES sign be damaged or destroyed, the GRANTEE agrees to work with NHDES to repair or replace it to the extent practicable.

G. Deliverable Schedule:

Task	Deliverable	Anticipated Due Date
1	Engineering designs and NHDES wetlands permit	6/30/2022
1	Pre-application meeting and designate the Qualified Professional	6/30/2022
2	Culvert installation, construction oversight, and site stabilization	10/31/2024
2	As-built survey and report	12/31/2024
3	Annual performance monitoring meetings	December 2024, 2025, 2026, 2027, and 2028
3	Fish and habitat assessment reports	Due December 2024, 2026, and 2028
4	Long-term maintenance and adaptive management activities with update reports	Submitted as needed 2023-2028
5	Posted sign	October 2024

H. Project Monitoring:

The new box culvert will be monitored by NHDES on an annual basis between August 2024 and October 2028, to evaluate the success of the activities taken and to ensure that no actions are occurring which could be detrimental to the attributes of the Project. NHDES will provide a copy of the annual monitoring report to the GRANTEE to review site conditions and to design and execute any remedial measures as needed.



Grantee Initials KK
Date 11/14/23

EXHIBIT C
METHOD OF PAYMENT

The GRANTEE shall submit requests for payment after completing each task and submitting evidence of the associated deliverable. Budgeted amounts by Task are estimated. The Grantee is authorized to move funds between Tasks based on actual expenses incurred by Task with an award amount not to exceed \$353,500.

The ARPA grant is in concert with \$245,000 in ARM Fund grant. Each disbursement request will be paid 100% of eligible expenses as ARPA grant funds not to exceed \$108,500. To the greatest extent possible, ARPA grant funds shall be fully disbursed prior to other funding sources. All ARPA funds must be spent by September 1, 2026.

Upon receipt and approval by NHDES of the invoices, NHDES shall issue payment to the GRANTEE in accordance with the following:

Task 1: Design, permitting, and technical assistance	\$30,000
Task 2: Culvert installation, construction oversight, site stabilization, and as-built survey and report	\$303,000
Task 3: Post-construction site monitoring	\$10,000
Task 4: Long-term maintenance and adaptive management	\$10,000
Task 5: Project Monumentation	\$500
TOTAL NHDES ARM FUNDS	\$245,000
TOTAL ARPA FUNDS	\$108,500
<u>Total amount to be authorized following approval by the Governor and Executive Council:</u>	<u>\$353,500</u>

Payments shall be made by NHDES to the GRANTEE upon approval of stated outputs and verification of the value of completed work through submittal of invoices for services rendered. Invoices shall be approved by the Contract Officer before payment is processed. NHDES will pay the GRANTEE within 30 days of receiving the invoice.

The payments listed above are inclusive of project labor and expenses. Invoices shall be formatted to note completion of services.

The billing address shall be as follows:

NH Department of Environmental Services
29 Hazen Drive, PO Box 95
Concord, NH 03302-0095
ATTN: Emily Nichols, Wetlands Bureau, ARM Fund Program
Emily.P.Nichols@des.nh.gov

Certificate of Authority

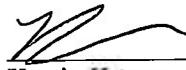
The Select Board of Lee, NH does hereby certify that:

- (1) They are the duly elected Select Board of the Town of Lee, NH;
- (2) The Lee Select Board has agreed to accept funds and enter into a contract with the New Hampshire Department of Environmental Services for the **Chelsey Brook Geomorphic Culvert Replacement Project**;
- (3) The Lee Select Board further authorizes the Select Board Chairman to execute any documents which may be necessary for this contract;
- (4) 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
- (5) The following person has been elected and now occupies the office indicated in (3) above:

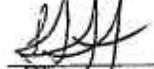
Katrin Kasper
Name

Select Board Chair
Title

IN WITNESS WHEREOF, we hereunto set our hands as the Lee Select Board this 13 day of November 2023.



Katrin Kasper



Rebecca Hawthorne



Scott Bugbee

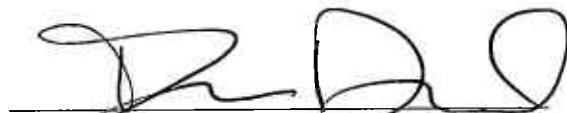
STATE OF NEW HAMPSHIRE

County of Strafford, Town of Lee,

On this the 13 day of November in 2023 before me Denise Duval
(Notary Public name)

the undersigned officer, personally appeared Katrin Kasper who acknowledged himself to be the Chairman of the Lee Select Board, Town of Lee, New Hampshire, being authorized so to do, executed the foregoing instrument for the purpose therein contained.

In witness whereof I have set my hand and official seal.



(Notary Public Signature)

Commission Expiration Date Denise Duval
NOTARY PUBLIC
State of New Hampshire
My Commission Expires 9/6/2028

(Seal)



CERTIFICATE OF COVERAGE

The New Hampshire Public Risk Management Exchange (Primex³) is organized under the New Hampshire Revised Statutes Annotated, Chapter 5-B, Pooled Risk Management Programs. In accordance with those statutes, its Trust Agreement and bylaws, Primex³ is authorized to provide pooled risk management programs established for the benefit of political subdivisions in the State of New Hampshire.

Each member of Primex³ is entitled to the categories of coverage set forth below. In addition, Primex³ may extend the same coverage to non-members. However, any coverage extended to a non-member is subject to all of the terms, conditions, exclusions, amendments, rules, policies and procedures that are applicable to the members of Primex³, including but not limited to the final and binding resolution of all claims and coverage disputes before the Primex³ Board of Trustees. The Additional Covered Party's per occurrence limit shall be deemed included in the Member's per occurrence limit, and therefore shall reduce the Member's limit of liability as set forth by the Coverage Documents and Declarations. The limit shown may have been reduced by claims paid on behalf of the member. General Liability coverage is limited to Coverage A (Personal Injury Liability) and Coverage B (Property Damage Liability) only, Coverage's C (Public Officials Errors and Omissions), D (Unfair Employment Practices), E (Employee Benefit Liability) and F (Educator's Legal Liability Claims-Made Coverage) are excluded from this provision of coverage.

The below named entity is a member in good standing of the New Hampshire Public Risk Management Exchange. The coverage provided may, however, be revised at any time by the actions of Primex³. As of the date this certificate is issued, the information set out below accurately reflects the categories of coverage established for the current coverage year.

This Certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend, or alter the coverage afforded by the coverage categories listed below.

Participating Member: Town of Lee 249 Calef Hwy Lee, NH 03861	Member Number: 218	Company Affording Coverage: NH Public Risk Management Exchange - Primex ³ Bow Brook Place 46 Donovan Street Concord, NH 03301-2624
---	------------------------------	--

X	Type of Coverage	Effective Date (mm/dd/yyyy)	Expiration Date (mm/dd/yyyy)	Limits - NH Statutory Limits May Apply, If Not:	
	General Liability (Occurrence Form) Professional Liability (describe) <input type="checkbox"/> Claims Made <input type="checkbox"/> Occurrence	7/1/2023	7/1/2024	Each Occurrence	\$ 2,000,000
				General Aggregate	\$ 10,000,000
				Fire Damage (Any one fire)	
				Med Exp (Any one person)	
X	Automobile Liability Deductible Comp and Coll: \$1,000 <input type="checkbox"/> Any auto	7/1/2023	7/1/2024	Combined Single Limit (Each Accident)	\$2,000,000
				Aggregate	\$10,000,000
X	Workers' Compensation & Employers' Liability	7/1/2023	7/1/2024	X Statutory	
				Each Accident	\$2,000,000
				Disease -- Each Employee	\$2,000,000
				Disease -- Policy Limit	
X	Property (Special Risk includes Fire and Theft)	7/1/2023	7/1/2024	Blanket Limit, Replacement Cost (unless otherwise stated)	Deductible: \$1,000

Description: Proof of Primex Member coverage only. Pollution and hazardous waste related liabilities, expenses and claims are excluded from coverage in the coverage document.

CERTIFICATE HOLDER:	Additional Covered Party	Loss Payee	Primex³ - NH Public Risk Management Exchange
NH Department of Environmental Services 29 Hazen Drive PO Box 95 Concord, NH 03302-0095			By: <i>Mary Beth Purcell</i>
			Date: 10/31/2023 mpurcell@nhprimex.org
			Please direct inquires to: Primex³ Claims/Coverage Services 603-225-2841 phone 603-228-3833 fax



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

March 4, 2022

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

APPROVED G & C

DATE 26 April 2022
 ITEM # 87

REQUESTED ACTION

Authorize the New Hampshire Department of Environmental Services (NHDES) to award an Aquatic Resource Mitigation (ARM) Fund grant to the Town of Lee, NH (Vendor Code #177231-B003) in the amount of \$245,000 to replace a deficient culvert for stream restoration, effective upon Governor and Council approval through December 31, 2027. 100% ARM Funds.

Funding is available in the account as follows:

	<u>FY'22</u>
03-44-44-442010-38710000-073-500581	\$245,000
Dept. Environmental Services, In-Lieu Wetland Mitigation, Grants – Non - Federal	

EXPLANATION

New Hampshire RSA 482-A:3 requires a wetland permit for any proposed project that involves dredging or filling of a wetland. Before a wetland permit is issued, applicants must show that the proposed project will avoid adverse impacts to wetlands and will minimize and provide compensation for those wetland impacts which are unavoidable.

The NHDES wetlands program adopted mitigation rules that establish what is necessary for an applicant to provide wetland compensation. The current department rules spell out ratios for wetland compensation that include creating a new wetland, restoring a former wetland site, or protecting a high-quality aquatic resource by preserving adjacent upland habitat. For projects that have difficulty in finding suitable local mitigation, payment may be made to the ARM Fund to compensate for losses to aquatic resources, and their functions and values, from a project. The ARM Fund authorizes the collection of mitigation funds in-lieu of other forms of wetland mitigation as part of a Wetlands Permit Application.

The Department issued the request for proposals for ARM Funds available in the Salmon Falls-Piscataqua watershed in February, 2021. The Department received seven applications and on November 9, 2021, NHDES announced the decision to fund all seven applications including the Town of Lee project. The review of the awards by the Army Corps of Engineers and the New Hampshire Wetland Council resulted

His Excellency, Governor Christopher T. Sununu
and The Honorable Council

Page 2 of 2

in full support of the recommendations. Attachment A lists the seven proposals received and the Committee members involved in the decision.

The Chelsey Brook Geomorphic Culvert Replacement Project will restore aquatic connectivity and improve geomorphic processes in Chesley Brook at the Packer's Falls crossing in Lee, NH. The current stream crossing is a steel-pipe arch that is undersized and has caused significant erosion. The current deficient crossing is a complete barrier to fish and wildlife passage due to the outlet perch and the large scour pool that has formed downstream is poor habitat for the notable fish species at this site. With funds from this grant, the metal pipe will be replaced with an embedded box culvert that accommodates the natural bankfull width and sediment transport at the site. Replacing the stream crossing will result in connectivity for two state-listed species of special concern; American Eel and Sea Lamprey. Attachment B includes a map of the project location in Lee, NH.

In the event that other funds no longer become available, general funds will not be requested to support this program. This agreement has been approved as to form, content, and execution by the Attorney General's Office.

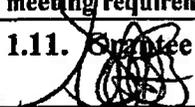
We respectfully request your approval.


Robert R. Scott, Commissioner

GRANT AGREEMENT

The State of New Hampshire and the Grantee hereby
Mutually agree as follows:
GENERAL PROVISIONS

1. Identification and Definitions.

1.1. State Agency Name NH Department of Environmental Services		1.2. State Agency Address 29 Hazen Drive, Concord, NH 033 02-0095	
1.3. Grantee Name The Town of Lee		1.4. Grantee Address 249 Calef Highway, Lee NH 03861	
1.5 Grantee Phone # (603) 738-5963	1.6. Account Number 03-44-44-442010- -38710000-073-500581	1.7. Completion Date 12/31/2027	1.8. Grant Limitation \$245,000
1.9. Grant Officer for State Agency Cheryl Bondi, NHDES Wetlands Bureau		1.10. State Agency Telephone Number (603) 271-0727	
If Grantee is a municipality or village district: "By signing this form we certify that we have complied with any public meeting requirement for acceptance of this grant, including if applicable RSA 31:95-b."			
1.11. Grantee Signature 1 		1.12. Name & Title of Grantee Signor 1 SCOTT BURGESS SELECTMAN	
Grantee Signature 2 		Name & Title of Grantee Signor 2 Cheryl Bondi	
Grantee Signature 3 		Name & Title of Grantee Signor 3 Katrin Kasper Select Person	
1.13 State Agency Signature(s) 		1.14. Name & Title of State Agency Signor(s) Robert R. Scott, Commissioner NHDES	
1.15. Approval by Attorney General (Form, Substance and Execution) (if G & C approval required)			
By: 		Assistant Attorney General, On: 4/11/2022	
1.16. Approval by Governor and Council (if applicable)			
By:		On: / /	

1. **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"), 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 hereinafter 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 on the date of approval of this Agreement by the Governor and Council of the State of New Hampshire if required (block 1.16), or upon signature by the State Agency as shown in block 1.14 ("the Effective Date").
 - 4.2. Except as otherwise specifically provided herein, the Project, including all reports required by this Agreement, shall be completed in ITS entirety prior to the date in block 1.7 (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 C, attached hereto.
 - 5.2. The manner of, and schedule of payment shall be as set forth in EXHIBIT C.
 - 5.3. In accordance with the provisions set forth in EXHIBIT C, 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 payment to the Grantee for all expenses, of whatever nature, incurred by the Grantee in the performance hereof, and shall be the only, and the complete, compensation to the Grantee for the Project. The State shall have no liabilities to the Grantee other than 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 and RSA 31-95-b.
7. RECORDS and ACCOUNTS.
 - 7.1. Between the Effective Date and the date seven (7) years after the Completion Date, unless otherwise required by the grant terms or the Agency, 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, unless otherwise required by the grant terms or the Agency pursuant to subparagraph 7.1, 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 of 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 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 the 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 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, paper, 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, disposal, or for any other purpose whatsoever.
- 9.3. No data shall be subject to copyright in the United States or any other country by anyone other than the State.
- 9.4. On and after the Effective Date 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, whichever shall first occur.
- 9.5. 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 OR 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. 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.
 - 12.2. 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 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.
 - 12.3. 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.
 - 12.4. CONFLICT OF INTEREST. No officer, member of 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

Grantee Initials

Date 2/22/22

EXHIBIT A
SPECIAL TERMS AND PROVISIONS

This section is intentionally left blank.

EXHIBIT B
SCOPE OF SERVICES

A. Project Title:

Chelsey Brook Geomorphic Culvert Replacement Project

B. Project Period:

January 1, 2022 through December 31, 2027

C. Grant Amount:

Total funds available for payment of allowable costs incurred under this Grant Agreement shall not exceed \$245,000. The New Hampshire Department of Environmental Services (NHDES) will not reimburse the Town of Lee (the GRANTEE) for costs exceeding the amount specified in this paragraph.

D. Effective Date and Commencement of Work:

This Grant Agreement and all obligations of the parties hereunder shall become effective on the date the Governor and Executive Council of the State of New Hampshire approve this Agreement ("Effective Date") and shall end on December 31, 2027. Any work performed by the GRANTEE prior to the Effective Date shall be at the **sole risk** of the GRANTEE. In the event this Grant Agreement does not become effective, NHDES shall be under no obligation to pay the GRANTEE for any costs incurred or work performed; however, if this Agreement becomes effective, costs incurred prior to the Effective Date that would otherwise be allowable are eligible for payment under the terms of this Agreement.

E. Objectives:

The Chelsey Brook Geomorphic Culvert Replacement Project (the PROJECT) will restore aquatic connectivity and improve geomorphic processes on Chelsey Brook at the Packer's Falls crossing in Lee, NH. The current stream crossing is a steel-pipe arch that is undersized for the natural bankfull width of Chelsey Brook and has caused channel scour and bank erosion. The current deficient crossing is a complete barrier to AOP due to the outlet perch and the large scour pool that has formed downstream is poor habitat for the notable fish species at this site. With funds from this grant, the metal pipe will be replaced with an embedded box culvert that accommodates the natural bankfull width and sediment transport at the site. This larger span will meet the NH Stream Crossing Guidelines and provide velocities and substrate consistent with the rest of the stream. Replacing the stream crossing will result in connectivity of the first 1.8 miles of the stream which is habitat for two state-listed species of special concern: American Eel and Sea Lamprey. At the outlet, a log cross vane will be installed to provide low-flow depths and protect both the banks and stream channel from erosion. Downstream from the log vane, the existing large, deep scour pool will be filled with substrate matching that of the existing stream, reducing the susceptibility of aquatic species to predators and improving habitat for American Brook Lamprey. Invasives found near the project will be removed in full, and all disturbed lands plus stream banks at the outlet will be reseeded and planted with native, riparian species to provide cover.

KK Sood
2/2/22

- approval of the undertaking or carrying out of such Project, shall participate in any decision relating to this Agreement which affects his or her personal interest 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, workmen'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 B 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.
 - 17.1 The Grantee shall, at its own 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 workers' compensation and employees liability insurance for all employees engaged in the performance of the Project, and
 - 17.1.2 General liability insurance against all claims of bodily injuries, death or property damage, in amounts not less than \$1,000,000 per occurrence and \$2,000,000 aggregate 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. Grantee shall furnish to the State, certificates 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.
 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 of 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 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 Council of the State of New Hampshire, if required or by the signing State Agency.
 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 contents of the "subject" blank are used only as a matter of convenience, and are not to be considered a part of this Agreement or to be used in determining the intent of the parties hereto.
 22. 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.
 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 supersedes all prior agreements and understandings relating hereto.
 24. SPECIAL PROVISIONS. The additional or modifying provisions set forth in Exhibit A hereto are incorporated as part of this agreement.

Grantee Initials 
Date 2/22/22

F. Scope of Work:

The GRANTEE agrees to complete the following under this grant agreement with the New Hampshire Department of Environmental Services (NHDES):

Task 1: Design, permitting, and technical assistance

The GRANTEE, with partners, will expand the current design plans for the Packer's Falls Road crossing and develop final Professional Engineer stamped designs for permitting, GRANTEE bidding, and construction. The GRANTEE and project partners will participate in a NHDES Wetlands Bureau pre-application meeting to ensure the design is in full compliance with NH Stream Crossing Guidelines to include stream simulation for fish and wildlife passage, accommodate natural sediment and water transport processes, and meet hydraulic capacity requirements for the site. The GRANTEE will work with the NHDES Wetlands Bureau permitting staff to finalize the design, construction timeline, permit and grant conditions, and submit a Wetlands Permit in 2022. The GRANTEE will complete bid administration and construction contracting. The GRANTEE will participate in a pre-construction meeting before any site work begins, that will include NHDES Wetlands Bureau staff and project partners to review permit conditions and verify the construction timeline. During the pre-construction meeting the GRANTEE will designate a QUALIFIED PROFESSIONAL(S) (as defined in Env-Wt 802.06) with expertise in stream restoration to supervise and be on-site during construction to ensure that all work is constructed in accordance with the approved design plans.

Task 2: Box culvert installation, construction oversight, site stabilization, and as-built survey and report

The GRANTEE will contact the NHDES Wetlands Bureau Mitigation staff at least 5 state business days prior to starting any work under this task to notify of the date on which work under this agreement is expected to start. The GRANTEE will remove the existing pipe culvert and replace with a +/-15-foot-wide concrete embedded box culvert. Work under this task includes: site preparation and mobilization, removal of the old pipe culvert, excavating the site, installation of footers, abutments, in-stream structures, and the new crossing. Following construction completion, the GRANTEE will remove temporary staging areas, complete final grading, and stabilize the site with seed and hay, and riparian plantings. Restoration of areas where temporary impacts occur will be addressed per the NHDES permit conditions.

The designated QUALIFIED PROFESSIONAL(S) will supervise the construction and submit reports to the NHDES Wetlands Bureau staff via email every 2-3 days during active construction and will include 1) activities completed, 2) photos of the work site, and 3) questions or concerns. Following construction, the GRANTEE will conduct one as-built survey of the site to establish baseline conditions of the site topography, crossing elevations, stream channel geometry, and plantings. The as-built survey will include photos of the stream channel and banks, and the new stream crossing. One As-Built report will be submitted to the NHDES Wetlands Bureau Mitigation staff within 60 days of construction completion.

Task 3: Post-construction site monitoring

The GRANTEE will report annually to NHDES Wetlands Bureau staff any flooding issues at the site that may occur between summer 2022 and December 31, 2027, with photo documentation and narratives provided by the town or local landowners. The NHDES Wetlands Bureau staff will survey the new box culvert annually from 2022-2027 to evaluate AOP, stream conditions, and bank stability. The NHDES Wetlands Bureau staff will provide monitoring reports to the GRANTEE and project partners to review. Fish and habitat monitoring will be done by the GRANTEE in partnership with New Hampshire Fish and Game Department and provide summary reports to the NHDES Wetlands Bureau staff. The GRANTEE,

AK SOB
2/22/22

NHDES Wetlands Bureau staff, and project partners will collaboratively review the monitoring results on an annual basis during project meetings and site walks, to evaluate whether the site is meeting the expected performance standards.

Task 4: Long-term maintenance and adaptive management

Based upon review of the monitoring results, the GRANTEE will develop a plan and implement remedial actions if necessary for the site to maintain fish passage and accommodate streamflow and sediment transport. If adaptive management is needed the plan would be reviewed and approved by the NHDES Wetlands staff and the GRANTEE would be responsible to implement the work outlined in the plan. Work under this task may include engineer consultation and design plans to address any corrective measures, materials, additional construction work upstream or downstream of the bridge, plantings, and bank stabilization. Work under this task may include engineer consultation and design plans to address any corrective measures, additional restoration work upstream or downstream of the bridge, plantings, and bank stabilization. The GRANTEE will submit photos and a summary of the adaptive management activities done via email to NHDES within 60 days of any work performed.

Task 5: Project Monumentation

The GRANTEE will install a sign on or near the PROJECT location to acknowledge the NHDES support for the stream crossing replacement. The sign will contain the NHDES logo and a statement that the PROJECT has been completed with assistance from the New Hampshire Department of Environmental Services Aquatic Resource Mitigation Fund. Should the NHDES sign be damaged or destroyed, the GRANTEE agrees to work with NHDES to repair or replace it to the extent practicable.

G. Deliverable Schedule:

Task	Deliverable	Anticipated Due Date
1	Engineering designs and NHDES wetlands permit	6/30/2022
1	Pre-application meeting and designate the Qualified Professional	6/30/2022
2	Culvert installation, construction oversight, and site stabilization	10/31/2022
2	As-built survey and report	12/31/2022
3	Annual performance monitoring meetings	December 2023, 2024, 2025, 2026, and 2027
3	Fish and habitat assessment reports	Due December 2023, 2025, and 2027
4	Long-term maintenance and adaptive management activities with update reports	Submitted as needed 2023-2027
5	Posted sign	October 2022

H. Project Monitoring:

The new box culvert will be monitored by NHDES on an annual basis between August 2023 and October 2027, to evaluate the success of the activities taken and to ensure that no actions are occurring which could be detrimental to the attributes of the Project. NHDES will provide a copy of the annual monitoring report to the GRANTEE to review site conditions and to design and execute any remedial measures as needed.

[Handwritten Signature]
2/22/22

EXHIBIT C
METHOD OF PAYMENT

The GRANTEE shall submit requests for payment after completing each task and submitting evidence of the associated deliverable. Upon receipt and approval by NHDES of the invoices, NHDES shall issue payment to the GRANTEE in accordance with the following:

Task 1: Design, permitting, and technical assistance	\$30,000
Task 2: Culvert installation, construction oversight, site stabilization, and as-built survey and report	\$194,500
Task 3: Post-construction site monitoring	\$10,000
Task 4: Long-term maintenance and adaptive management	\$10,000
Task 5: Project Monumentation	\$500
TOTAL NHDES ARM FUNDS	\$245,000
<u>Total amount to be authorized following approval by the Governor and Executive Council:</u>	<u>\$245,000</u>

Payments shall be made by NHDES to the GRANTEE upon approval of stated outputs and verification of the value of completed work through submittal of invoices for services rendered. Invoices shall be approved by the Contract Officer before payment is processed. NHDES will pay the GRANTEE within 30 days of receiving the invoice.

The payments listed above are inclusive of project labor and expenses. Invoices shall be formatted to note completion of services.

The billing address shall be as follows:

NH Department of Environmental Services
29 Hazen Drive, PO Box 95
Concord, NH 03302-0095
ATTN: Cheryl Bondi, Wetlands Bureau
Cheryl.bondi@des.nh.gov

Certificate of Authority

The Select Board of Lee, NH does hereby certify that:

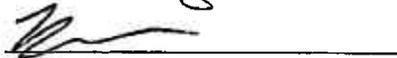
- (1) They are the duly elected Select Board of the Town of Lee, NH;
- (2) The Lee Select Board has agreed to accept funds and enter into a contract with the New Hampshire Department of Environmental Services for the **Chelsey Brook Geomorphc Culvert Replacement Project**;
- (3) The Lee Select Board further authorizes the Select Board Chairman to execute any documents which may be necessary for this contract;
- (4) 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
- (5) The following person has been elected and now occupies the office indicated in (3) above:

Carey S. Brown
Name

Select Board Chair
Title

IN WITNESS WHEREOF, we hereunto set our hands as the Lee Select Board this 10 day of January 2022


Carey Brown


Katrin Kasper


Scott Bugbee

STATE OF NEW HAMPSHIRE

County of Strafford, Town of Lee,

On this the 10 day of January in 2022 before me Denise Duval
(Notary Public name)

the undersigned officer, personally appeared Carey S. Brown who acknowledged himself to be the Chairman of the Lee Select Board, Town of Lee, New Hampshire, being authorized so to do, executed the foregoing instrument for the purpose therein contained.

In witness whereof I have set my hand and official seal.


DENISE A. DUVAL, Notary Public
State of New Hampshire

(Notary Public Signature)

Commission Expiration Date: _____ My Commission Expires September 5, 2023

(Seal)



CERTIFICATE OF COVERAGE

The New Hampshire Public Risk Management Exchange (Primex³) is organized under the New Hampshire Revised Statutes Annotated, Chapter 5-B, Pooled Risk Management Programs. In accordance with those statutes, its Trust Agreement and bylaws, Primex³ is authorized to provide pooled risk management programs established for the benefit of political subdivisions in the State of New Hampshire.

Each member of Primex³ is entitled to the categories of coverage set forth below. In addition, Primex³ may extend the same coverage to non-members. However, any coverage extended to a non-member is subject to all of the terms, conditions, exclusions, amendments, rules, policies and procedures that are applicable to the members of Primex³, including but not limited to the final and binding resolution of all claims and coverage disputes before the Primex³ Board of Trustees. The Additional Covered Party's per occurrence limit shall be deemed included in the Member's per occurrence limit, and therefore shall reduce the Member's limit of liability as set forth by the Coverage Documents and Declarations. The limit shown may have been reduced by claims paid on behalf of the member. General Liability coverage is limited to Coverage A (Personal Injury Liability) and Coverage B (Property Damage Liability) only. Coverage's C (Public Officials Errors and Omissions), D (Unfair Employment Practices), E (Employee Benefit Liability) and F (Educator's Legal Liability Claims-Made Coverage) are excluded from this provision of coverage.

The below named entity is a member in good standing of the New Hampshire Public Risk Management Exchange. The coverage provided may, however, be revised at any time by the actions of Primex³. As of the date this certificate is issued, the information set out below accurately reflects the categories of coverage established for the current coverage year.

This Certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend, or alter the coverage afforded by the coverage categories listed below.

Participating Member: Town of Lee 7 Mast Road Lee, NH 03861	Member Number: 218	Company Affording Coverage: NH Public Risk Management Exchange - Primex ³ Bow Brook Place 46 Donovan Street Concord, NH 03301-2624
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	Coverage Category	Effective Date	Expiration Date	NH Statutory Limits	Other Limits
<input checked="" type="checkbox"/>	General Liability (Occurrence Form) Professional Liability (describe) <input type="checkbox"/> Claims Made <input type="checkbox"/> Occurrence	7/1/2021	7/1/2022	Each Occurrence General Aggregate	\$ 5,000,000 \$ 5,000,000
				Fire Damage (Any one fire) Med Exp (Any one person)	
<input checked="" type="checkbox"/>	Automobile Liability Deductible Comp and Coll: \$1,000 Any auto	7/1/2021	7/1/2022	Combined Single Limit (Each Accident) Aggregate	\$5,000,000 \$5,000,000
<input checked="" type="checkbox"/>	Workers' Compensation & Employers' Liability	7/1/2021	7/1/2022	<input checked="" type="checkbox"/> Statutory Each Accident Disease - Each Employee Disease - Policy Limit	 \$2,000,000 \$2,000,000
<input checked="" type="checkbox"/>	Property (Special Risk includes Fire and Theft)	7/1/2021	7/1/2022	Blanket Limit, Replacement Cost (unless otherwise stated)	Deductible: \$1,000

Description: Proof of Primex Member coverage only.

CERTIFICATE HOLDER:	Additional Covered Party	Loss Payee	Primex ³ - NH Public Risk Management Exchange
			By: <i>Mary Beth Purcell</i>
NH Department of Environmental Services PO Box 95 Concord, NH 03302-0095			Date: 12/14/2021 mpurcell@nhprimex.org
			Please direct Inquires to: Primex³ Claims/Coverage Services 603-225-2841 phone 603-228-3833 fax

**ATTACHMENT A
2021 Aquatic Resource Mitigation Fund Grants**

Applications and Funding Amounts

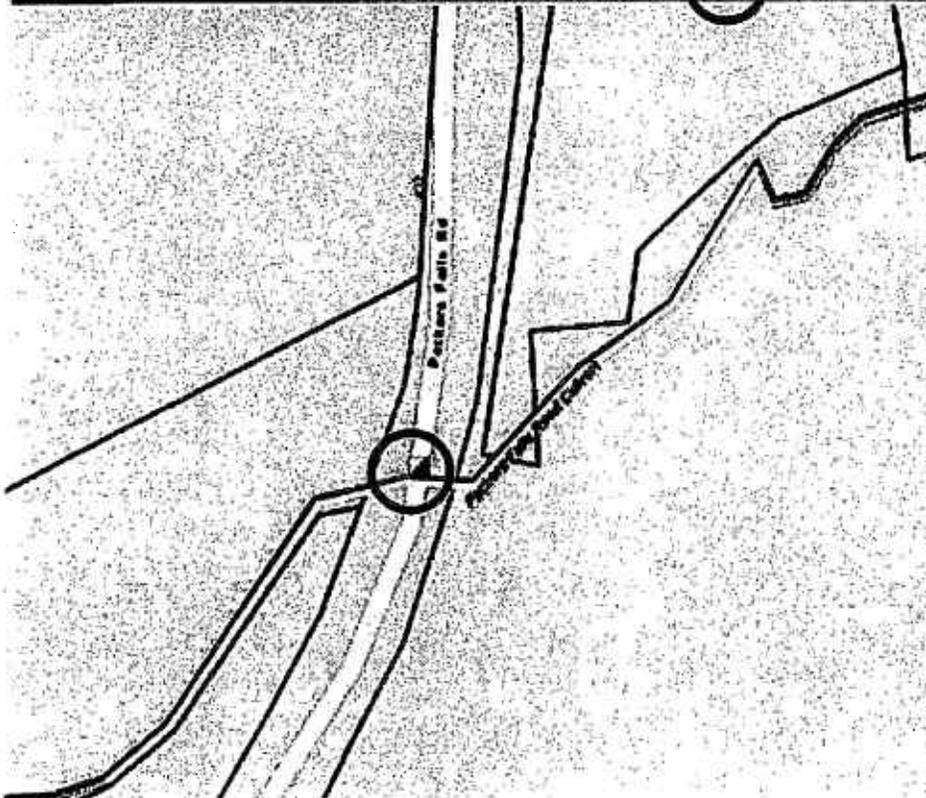
Grant Applicant	Town	Requested Funding Amount	Approved for Funding
The Society for the Protection of New Hampshire Forests	Rochester	\$110,000	Yes – full funding
Town of Lee	Lee	\$245,000	Yes – full funding
Southeast Land Trust of New Hampshire	Milton	\$475,000	Yes – full funding
City of Portsmouth	Portsmouth	\$419,306	Yes – full funding
The Nature Conservancy	Barrington	\$300,000	Yes – full funding
Southeast Land Trust of New Hampshire	Durham	\$220,000	Yes – full funding
Strafford County Conservation District	Milton	\$97,000	Yes – full funding

(Note: Each Committee member scores the projects and their scores are combined to create the total score.)

Site Selection Committee List

Name	Agency/Organization	Title	Years of Experience
Peter Bowman	NH Department of Natural and Cultural Resources	Ecological Information Specialist	23
Michael Marchand	NH Fish and Game Department	Nongame and Endangered Species Coordinator	19
Michael Burke	NH Rivers Council/ American Rivers	Water Resources Engineer	17
Tracy Tarr	NH Association of Natural Resource Scientists	Wetland Scientist	21
Jennifer Gilbert	Office of Strategic Initiatives	State Floodplain Manager	24
Bill Thomas	NH Department of Environmental Services Dam Bureau	River Restoration Coordinator	22

ATTACHMENT B
Chelsey Brook Geomorphic Culvert Replacement Project, Lee NH



Aquatic Organism Passage Score

- ▲ Full Passage
- ▲ Reduced Passage
- ▲ Passage only for Adult Trout
- ▲ No Passage
- ▲ Other

Geomorphic Compatibility Score

- ▲ Wetland Crossing
- ▲ Lake/Pond Crossing
- ▲ Fully Compatible
- ▲ Mostly Compatible
- ▲ Partially Compatible
- ▲ Mostly Incompatible
- ▲ Fully Incompatible
- ▲ Other

Fish and Game Restoration Interest Areas

American Lamprey Habitat

—

Species of Concern

— P

Wild Eastern Brook Trout

—