Hooksett Sewer Commission Meeting Minutes November 3, 2020

This meeting was called to order at 12:00pm. Present were Chairman Sidney Baines, Commissioner Frank Kotowski, Superintendent Ken Conaty, Assistant Superintendent John Clark, Plant Consultant Bruce Kudrick, Town Engineer Bruce Thomas, David Scarpetti and Alden Beauchmin. Commissioner Richard Bairam was excused from this meeting.

Approve and Sign manifest

Approve workshop and meeting minutes from October 20, 2020: Commissioner Frank Kotowski made motion to approve the workshop and meeting minutes from October 20, 2020. Chairman Sidney Baines seconded. All in favor, the motion was carried unanimously.

Read Correspondence

Financial Report: None

Scheduled Appointments: 12:10pm Daivd Scarpetti RE: TIF District

12:25pm David Mercier RE: Amendment to Engineering Fees

** Dave Mercier was unable to attend meeting**

David Scarpetti: Each member of the TIF committee were delegated individual businesses to contact regarding connecting to the sewer. With the businesses that have been contacted thus far the main issue that seems to be of concern is cost. Due to COVID some local businesses are struggling and the cost of the sewer connection project is just too much. David Scarpetti and the Sewer Commission discussed possible financing options that could be set up to help with the cost.

Superintendents Report:

Plant: Office/Lunchroom remodel is progressing. Richardson Electric replaced the VFD for the nitrite recycling pumps. The Ishigaki screw press from NH is currently running at the plant. This will be the last pilot test.

Dryer Pilot: The dryer continues to run great, the air filters are cleaned weekly. Sunstate will be here in November to change the belts to the stainless steel ones.

Phase 3A Plant upgrades: Superintendent Ken Conaty presented the Engineering Fee Schedule to the Sewer Commission in David Mercier's absence. (Attachment #1) Commissioner Frank Kotowski made motion to approve the Engineering fee schedule in the amount of \$292,500.00. Chairman Sidney Baines seconded. All in favor, the motion was carried unanimously.

Other items:

Budget: Superintendent Ken Conaty presented the Sewer Commission approved budget to the budget committee last week.

Healthcare costs: The cost of the healthcare went up from 5% to 8.5%

Longevity pay: The Sewer Commission approved the longevity pay for 2020 to the Hooksett Wastewater Treatment Facility and Sewer Commission office staff.

401 West River Road: Legal issues have arisen from a sewer issue at this property. The sewer commission is turning over all dealings with this issue to their attorney Sheehan & Phinney.

RSA 31:105 (Attachment #5) Superintendent Conaty requested the sewer commission to adopt this RSA. Commissioner Frank Kotowski made motion for the Hooksett Sewer Commission to adopt RSA 31:105. Chairman Sidney Baines seconded. All in favor, the motion was carried unanimously.

Onpoint Construction Estimate: Superintendent Conaty presented an estimate to the commission to fix flooring and exterior doors in the Sewer Commission office building (Attachment #6). Commissioner Frank Kotowski made motion to approve the Onpoint Construction estimate. Chairman Sidney Baines seconded. All in favor, the motion was carried unanimously.

Plant Consultant Report:

Solar: The solar array is ready to go, we are just waiting on Revision Energy to give the employee tour and turn on date. Bruce has requested the O&M manual and as-built prints with components used.

Main Street Pump Station: The pump station is complete and running. We are still waiting on the American legion to set up a meeting to discuss a possible easement. Superintendent Conaty is taking care of an issue with the electrical cabinet with Square D.

Old Business: None

New Business: The next Sewer Commission meeting is November 17, 2020

Non-Public Session: The sewer commission did not go into non-public session.

Public Input: None

Adjournment: Commissioner Frank Kotowski made motion to adjourn at 1:46pm. Chairman Sidney Baines seconded. All in favor, the motion was carried unanimously.

Respectfully submitted,

Man le R. Kotaishe Trank Kotowski

Clerk

Amendment No. 1

Engineering Design Phase Contract for Professional Services for Treatment Works

Hooksett Sewer Commission, Hooksett, NH (2576)

WHEREAS, an AGREEMENT was made and entered into at Hooksett, New Hampshire, on the 22nd day July, 2020, by and between the Hooksett Sewer Commission, hereinafter called the OWNER, and Underwood Engineers, Inc. hereinafter called the ENGINEER, for professional engineering services required to initiate the preliminary design of the Phase 3A Capital Improvements, and

WHEREAS, the design scope has progressed to the Final Design stage including Project Manual and Drawings preparation, Opinion of Probable Cost, Design Review Meetings, and Topographic Survey, and

WHEREAS, an amendment is needed to modify the scope of work and fee as further defined in Attachment A.

NOW, THEREFORE, in consideration of the agreement an amendment is hereby agreed to by the OWNER and the ENGINEER as follows:

- A. That the dollar amount in Section IV, Paragraph A.2, on Page 3 be amended to read:
 - ", a fee not to exceed four hundred six thousand, nine hundred dollars (\$406,900.00)". (Previous fee = \$114,400, Increase = \$292,500).
- B. That the dollar amount in Section IV, Paragraph B.1 (Design), on Page 3 be amended to read:
 - " and shall not exceed three hundred ninety three thousand, nine hundred dollars (\$393,900.00)". (Previous fee = \$114,400, Increase = \$279,500).
- C. That the dollar amount in Section IV, Paragraph B.2 (Survey), on Page 3 be amended to read:
 - " and shall not exceed thirteen thousand dollars (\$13,000.00)". (Previous fee = \$0, Increase = \$13,000).

The C	OWNER	and the ENGIN	IEER hereby ag	ree to this A	mendm	ent.
ENG	INEER:	Underwood E	ngineers, Inc.	OWN	IER: E	looksett Sewer Commission
By:	W. Ste	ven Clifton, P.I	E., President	By:	Sidne	ey Baines, Chairman
Date:					Date:	
APPR	OVED:	Department of Water Division	Environmental	Services		
By:		Greene, P.E., V Review Section				
Date:						
obligat	iche int	ability on the St	illes, the DIVI	NICIN's anne	oval de	uthority to approve engineering bes not impose any contractual ment of Environmental Services
Approv	ved as to	form:				
Legal (Counsel					
*Signat	tures sho	uld be supporte	d by appropriat	e document.		

Hooksett Sewer Commission

Attachment A Scope of Services Final Design Engineering Phase 3A Capital Improvements Hooksett, New Hampshire

Background

The Hooksett Sewer Commission (HSC) completed an upgrade to their wastewater treatment facility in 2010. In 2011, unexpected issues occurred which resulted in backup of the system and overflow of the integrated fixed film activated sludge (IFAS) plastic media disks into the yard and ultimately to the Merrimack River. Over the last nine years, the HSC has been actively pursuing resolution to the unexpected issues and most recently completed a one-year pilot study after implementing hydraulic upgrades within IFAS Train #2 and organic loading adjustments in both trains. The pilot proved that the upgrades implemented allowed IFAS Train #2 to adequately treat and hydraulically pass an equivalent of 0.8 MGD, and its associated peak hourly flows, once a third IFAS tank is added to the train. The next steps would involve construction of similar upgrades to IFAS Train #1 and also the addition of a third IFAS tank to both IFAS trains. In addition, there are numerous other upgrades that will be required outside of the IFAS tanks themselves in order to allow the entire plant to treat and pass a total of 1.6 MGD average daily flow and to replace aged infrastructure at the plant. Preliminary engineering identified the following items which will be progressed through Final Design under this Phase 3A Capital Improvements contract:

- New coarse and fine mechanical screening
- New intermediate pumping station
- Modified BNR tanks
- New IFAS tanks and existing IFAS tank modifications
- Yard piping hydraulic improvements
- Clarifier number 1 upgrade
- New WAS pumps
- Chlorination/de-chlorination improvements
- Plant water system improvements

Scope of Services

Underwood Engineers proposes to perform the following Final Design engineering scope of services:

Task No. 1 - Project Manual Preparation

Specifications for the Phase 3A upgrade and will incorporate the necessary front end documentation to maintain funding eligibility for NHDES SRF and SAG funding. Technical specifications will be prepared in standard CSI format Two (2) hard copy sets of specifications will be provided to the HSC at 60% and 90% completion for review. An .PDF set of 90%

documents will be provided to the NHDES for review. Once all design review comments have been received and addressed, two (2) sets of 100% complete P.E.-stamped hard copy documents and a .PDF set will be provided to the HSC and a .PDF set will be provided to the NHDES.

Task No. 2 - Drawings

Construction drawings will be created for the Phase 3A upgrade project that are 22" x 34" in size so that true, half-scale drawings can be produced at an 11" x 17" size. Construction plans will consist of G (General), C (Civil), S (Structural), P (Process), M (Mechanical), E (Electrical), and I (Instrumentation) drawings. Underwood will prepare the G, C, and P drawings in-house and will coordinate and supervise the generation of the S, M, E, and I drawings with our subconsultants.

Two (2) hard copy sets of plans will be provided to the HSC at 60% and 90% completion for review. A .PDF set of 90% documents will be provided to the NHDES for review. Once all design review comments have been received and addressed, two (2) sets of 100% complete P.E.-stamped hard copy documents and a .PDF set will be provided to the HSC and a .PDF set will be provided to the NHDES.

Task No. 3 - Engineer's Cost Opinion

At 60% and 90% completion, Underwood will prepare an updated Engineer's Opinion of Probable Cost for the proposed upgrade. Underwood will then revise and finalize the Engineer's Opinion of Probable Cost at 100% design completion prior to bidding.

Task No. 4 - Design Review Meetings

At 60% and 90% completion, Underwood will meet with the staff at the Hooksett WWTF to review the documents and receive comments from the HSC. Comments received will be incorporated into updated documents.

Task No. 5 - Survey

Underwood will conduct a topographic survey of the Hooksett WWTF site within the existing fence lines, picking up major surface features, buildings, tanks, manholes, valves, etc. We will also shoot the elevation of the key hydraulic points within the process at flow control gates, weirs, etc. This survey will serve as the base plan for the bid plans to be produced.

Information to be provided by the HSC

- WWTF record drawings
- Shop drawings and O&M manuals for existing equipment
- Access to the plant

Work Not Included

- Bid phase services
- Construction phase services

Schedule

The following schedule is proposed for the work. Note that **Dewatering Evaluation** is on a separate track so that it does not hold up the schedule for the rest of the work.

Execute Preliminary Design Contract
Perform Evaluations
Issue Technical Memos and Cost Opinions
Execute Final Design Contract
Create Final Design Documents
Advertise Project for Bids
Bid Opening
Award Contract

July 2020 July – September 2020 October 2020 October 2020 – February 2021 March 2021 April 2021 May 2021

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Underwood Engineers, Inc.				4. DATE OF PROPOSAL	
5. ADDRESS OF CONTRACTOR OR SUBCONTRACTOR (Include 710)	LC mitne	<u> </u>	October 26, 2020	
99 North State Steet, Concord, New Hampshire 03301	include ZIP)	O. TYPE (JF SERVI	CE TO B	E FURNISHED
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Municipal Liability and Immunity: State Statutes



Stephen C. Buckley

This article summarizes the principal statutes that limit municipal liability and that also afford legal protections for public officials, employees and volunteers.

General Municipal Liability-RSA Chapter 507-B

In 1975 the Legislature enacted RSA Chapter 507-B regulating the liability of governmental units. The statute limits the amount of money damages a municipality can be required to pay for claims for bodily injury, personal injury or property damage, arising out of the municipality's ownership, occupation, maintenance or operation of motor vehicles and premises. "Property damage" has been held not to include real property. Cannata v. Deerfield, 132 N.H. 235 (1989). A fire department does not "occupy" premises when it is fighting a fire. Farm Family Cas. Ins. Co. v. Rollinsford, 155 N.H. 669 (2007). The plaintiff must establish a causal nexus between the injury and the municipality's ownership, occupation, maintenance or operation of a motor vehicle of premises. Crosby v. Strafford County Correctional, U.S. District Court for New Hampshire, No. 2014 DNH 100 (June 2, 2015).

The statutory limits for damages are \$275,000 per person and \$925,000 per occurrence. These limits of liability, however, do not apply if the insurance coverage applicable to any particular claim exceeds the statutory liability limits. This principle was established in Marcotte v.

Timberlane Regional School Dist., 143 N.H. 331 (1999). In that case, an improperly secured metal soccer goal located on school property tipped over and killed a second-grade pupil. The school district's liability insurance policy had a limit in excess of the statutory cap. The Court held that the policy limit, not the statutory cap, was applicable. This principle is now codified in RSA 507-B:7-a. The statute affords the same limits, and principles of coverage apply to individual officials so long as they act within the scope of their office and in good faith. See, RSA 507-B:4, III. Municipal officials should discuss with their legal and risk management advisors the advantages and disadvantages of liability insurance versus pooled risk management programs as they relate to RSA Chapter 507-B.

A municipality is not liable, in the absence of gross negligence, for hazards on its premises caused solely by snow, ice or other inclement weather if the municipality is acting under a policy or set of priorities for responding to the weather hazards. RSA 507-B:2-b.

May/June, 2018

NHARPC CORNER: Brownfields Assessment: A Path Toward Revitalization

BEST PRACTICES SERIES: Best Practices for Employers and Human Resource Professionals

NLC REPORTS: The Future of Equity in Cities

The Need for Ongoing, Nourishing Leadership in Our Local Communities

Municipal Liability and Immunity: State Statutes

AFFILIATE SPOTLIGHT: Granite State Rural Water Association

Special Judicial Protections for Municipal Officials: Official and Qualified Immunity

Recreational Immunity

Municipal Liability and Immunity in New Hampshire Historical Perspective and Evolution: Common Law and General Statutes

The Current State of an Employee's Right of Reinstatement Under the Workers' Compensation Act

Highways and Sidewalks, RSA 231:90 -: 92-a

RSA 231:90 – :92-a establishes the scope of a municipality's legal duty to travelers using public highways and sidewalks. A municipality's sole legal duty is to correct "insufficiencies." An "insufficiency" exists when a highway or sidewalk is either not safely passable by those persons or vehicles permitted to use such highway or sidewalk, or there exists a safety hazard not reasonably discoverable or reasonably avoidable by a person when using the highway or sidewalk in a reasonable, prudent and lawful manner. Even if an insufficiency does cause damage, there will be no liability (that is, no breach of duty) on the part of the municipality unless:

- The municipality had received a written notice of the insufficiency, warning it of the defect prior to the injury and failed to post warning signs about the hazard; or
- Municipal officials had actual notice or knowledge of the insufficiency and were grossly negligent or exercised bad faith in responding or failing to respond; or
- The insufficiency was created by an intentional act of a municipal officer or employee acting in the scope of his official duty while in the course of his employment, acting with gross negligence, or with reckless disregard of the hazard.

In the case of Bowden v. N.H. Dep't of Transportation, 144 N.H. 491 (1999), the plaintiffs sued the state for negligence under a theory that their motorcycle accident was caused by a road surface defect. The Court concluded that notice of the defect alleged to cause an injury is required in advance of the accident in order to trigger a potential duty on the part of the defendant and that allegations of constructive notice will not suffice.

Bad Weather: Even if the injury was caused by an insufficiency and even if the town had knowledge of the insufficiency in advance, the town will not be liable if the insufficiency was caused by bad weather, so long as the town had a written bad weather policy adopted in good faith prior to the storm and was following that policy without gross negligence or recklessness. This statutory protection, found at RSA 231:92-a, applies to public highways, bridges and sidewalks, but does not apply to public parking lots or driveways. See Johnson v. Laconia, 141 N.H. 379 (1996).

In Cloutier v. Berlin, 154 N.H. 13 (2006), the court held that the insufficiency law does not mean that the municipality can never be liable for injuries resulting from defects in a highway, whether in good weather or bad, but it does create a special standard of care that is different from the standard expected of private corporations. The court also clarified that the presence or absence of liability insurance does not change the legal duty owed to users of the highway, but instead changes the amount of monetary damages that may be recovered from a municipality if it is found liable for the injuries caused by a highway defect.

In Ford v. N.H. Dep't of Transportation, 163 N.H. 284 (2012), the severe power outage following the 2008 ice storm rendered a traffic signal at the intersection of two state highways inoperable. Local police notified the NH DOT of the problem, but it had not been repaired some 18 hours later when a crash occurred. A person injured in the crash sued both the municipality and the state for negligence. The municipality was found not liable, since it had no duty to maintain the signals on a state highway, and no duty to provide traffic control on a state highway. The state was found not liable because it was following its bad weather policy in good faith and had no additional duty under either state or federal law to provide alternative traffic direction during the period the signal remained in failure.

Good Faith Immunity for Officials, RSA 31:104

Municipal officials, acting in their official capacity and in good faith, are immune from personal liability for claims arising out of discretionary functions. The officials protected include, but are not limited to, members of governing bodies, planning boards and zoning boards of adjustment; city and town managers; county commissioners; regional planning commissioners; school superintendents; welfare officials; and town and city health officers. Note also that this section provides no protection to officials or employees who engage in an intentional tort.

Indemnification for Negligence, RSA 31:105

The governing body of a municipality may vote to indemnify from loss any municipal official or employee against whom a claim is brought after such vote. Indemnification in the context of this statute means to reimburse the official or employee for any financial loss or expense, including legal fees and costs, arising out of a claim brought against an official or employee in his or her personal capacity. Minutes of the meeting during which the vote is taken should clearly reflect the action. The vote need not be reaffirmed in subsequent years. Once adopted, the decision to indemnify is applicable only to actions constituting negligence and within the scope of the person's employment or office. Indemnification will not be available for intentional or malicious acts.

Indemnification for Civil Rights Violations, RSA 31:106

All municipalities, without the need for local approval, must indemnify officers and employees from damages and awards of attorney's fees for civil rights violations arising their employment or office unless the act or omission was committed with malice.

Protection from Attachment, RSA 31:108

Attachment of an official's or employee's personal assets to secure a judgment is not permissible in those cases where immunity has been granted (RSA 31:104) or indemnification is available (RSA 31:105 and 31:106).

Show Cause Hearing, RSA 491:24

Any time a local official is sued and bad faith is alleged, the trial court must hold a preliminary hearing within 90 days to determine whether there is any basis for the claim. If there is not, and if the judge thinks the suit was filed only to harass the local official, the official may receive his or her costs and attorney's fees incurred in defending the matter.

Immunity for Volunteers, RSA 508:17

Municipal volunteers are immune from liability for negligent acts. In order to be entitled to immunity, there must be a written record indicating that the person is, in fact, recognized by the municipality as a volunteer. The volunteer must have acted in good faith and within the scope of his or her recognized functions and the damage or injury must not have been caused by willful, wanton or grossly negligent misconduct. Be cautious of the definition of "volunteer." "Volunteer" means an individual performing services for a nonprofit organization or government entity who does not receive compensation, other than reimbursement for expenses actually incurred for such services. In the case of volunteer athletic coaches or sports officials, such volunteers shall possess proper certification or validation of competence in the rules, procedures, practices, and programs of the athletic activity.

Although RSA 508:17 no longer requires that a volunteer have prior written approval to act, NHMA recommends that cities and towns continue to require such written authorization for volunteer work. The written authorization should include, at a minimum: (a) the scope of work the volunteer is authorized to do, including the applicable time period, (b) any specific limitations on the scope of work and (c) to whom the volunteer should report.

Immunity for Fire and Rescue Members, RSA 508:12-b

Volunteer, "part paid" and "call" members of municipal fire departments and rescue squads are immune from personal liability for personal injury or property damage "arising out of any act performed or occurring in the furtherance of his [or her] official duties." Immunity is not available for damages arising out of willful misconduct, gross negligence or operation under the influence of drugs or alcohol. This statute does not affect the liability of the municipality served by these volunteers. "Call" member means any member other than a full-time paid employee who receives payment for each emergency response. "Official duties" mean emergency duties only. "Part paid" member means any member other than a full-time paid employee who receives an annual retainer or stipend of less than \$5,000 for his services as a member.

Limited Duty for Fire Departments and Firefighting, RSA 154:1-d

RSA 154:1-d establishes that firefighting or other emergency services provided by a fire department shall not create a duty to any person affected by the response or nonresponse to a call, and the tactics used in firefighting. It also provides that the decisions of fire chiefs shall be entitled to discretionary immunity and that firefighters, paid and unpaid, are covered by RSA 31:105 and :106.

Limited Liability for Skateboarding Facilities, RSA 507-B:11

In the absence of gross negligence, municipalities are immune from injuries caused by operation of a facility, without charge, for skateboarding, rollerblading, stunt biking or rollerskiing.

Immunity for Emergency Management Activities, RSA 21-P:41

Municipalities and emergency management workers are immune from liability for bodily injury and property damage arising out of activities relating to emergency management.

Frivolous Lawsuits RSA 507:15-a

Relief is provided for municipalities (and any other defendant in a civil lawsuit) when they are being sued repeatedly by a vexatious litigant. A "vexatious litigant" is defined as an individual who has been found by a judge to have filed three or more frivolous lawsuits which the judge finds, by clear and convincing evidence, were initiated for the primary purpose of harassment. SA 507:15-a, I. The court may require a vexatious litigant to (1) retain an attorney or other person of good character to represent him or her in all actions; or (2) post a cash or surety bond sufficient to cover all attorneys' fees and anticipated damages. This statute can provide some relief to a municipality which is being harassed by repeated lawsuits by ensuring the plaintiff will be able to pay the municipality its attorneys' fees and damages if the plaintiff loses and the court orders the plaintiff to pay the municipality those costs.

Stephen C. Buckley is Legal Services Counsel with the New Hampshire Municipal Association. He may be contacted at 603.224.7447 or at <u>legalinquiries@nhmunicipal.org</u>.



New Hampshire Municipal Association 25 Triangle Park Dr. Concord, NH 03301 603.224.7447 nhmainfo@nhmunicipal.org Contact NHMA Member Login Classifieds Public Notices Site Map

6

10/21/20

Onpoint Construction Estimate

Estimate prepared for Hooksett Water Works

Replace 36x80 Exterior Door with new fiberglass prehung exterior door with pvc trim on exterior

Install new vinyl plank flooring with transition strips

Front entry approx. 6x14 W. Bathroom approx. 10x7 M. Bathroom approx. 10x7 Kitchen area approx. 10x10

All materials & included \$3800.00

Steve Moreau-Onpoint Construction 37 Brown Hill RD Bow, NH 03304 (603)486-8068