

COAKLEY EXECUTIVE COMMITTEE
Wednesday, November 4, 2020
10:00 a.m., Teleconference
Meeting Minutes

The Coakley Executive Committee (EC) Teleconference call commenced at 10:04 a.m.

Conferenced in by phone: Chairman Eric Spear, Seth Jaffe, Esq., Curtis Shipley, Esq., Robert Sullivan, Esq. Peter Britz, Dan MacRitchie, Joe Montello and Marian Steimke.

Guests conferenced in by phone: Michael Tully, Town Administrator of North Hampton

Chairman Spear read the following:

Per NH RSA 91-A:2, III (b) the Chair has declared COVID-19 outbreak an emergency and has waived the requirement that a quorum be physically present at the meeting pursuant to the Governor's Executive Order 2020-04, Section 8, as extended by Executive Order 2020-20, and Emergency Order #12, Section 3. Members will be participating remotely and will identify their location and any person present with them at that location. All votes will be by roll call.

- I. Review the minutes of the September 30, 2020 Coakley Teleconference call.

Attorney Seth Jaffe moved to approve the minutes of the September 30, 2020 meeting; Attorney Curtis Shipley seconded this motion.

On a roll call 3-0 vote, the Committee voted to approve the September 30, 2020 minutes.

OU-1

II. **BILLS**

City of Portsmouth

- | | | |
|----|--|----------------|
| A. | Invoice #2900573590 dated 10/15/2020 | 50% \$2,750.00 |
| | Peter Britz & Financial services - 10/2020 | |

Attorney Seth Jaffe moved to approve item II – A for payment; Attorney Curtis Shipley seconded this motion.

On a roll call 3-0 vote, the Committee voted to approve Item II – A for payment.

<u>CES, Inc.</u>	Payment Certifications dated:	11/4/2020
	Invoices dated:	9/21/2020
	Services rendered through:	8/30/2020

- | | | |
|---|------------------------------|--------------|
| B | Invoice #20203752 | 35% \$662.38 |
| | General technical assistance | |

- | | | |
|----|---|-----------------|
| C. | Invoice #20203750 | 100% \$1,978.65 |
| | Stormwater Work Plan, Fall 2018 Sampling & Out of Scope | |

D.	Invoice #20203749 2019 Spring Sampling	35%	\$1,546.12
E.	Invoice #20203748 2019 Fall Sampling	35%	\$210.73
F.	Invoice #20203753 2020 Spring Sampling	35%	\$3,573.40

Peter Britz described the work performed in the CES invoices.

- Item B included correspondence with DES, discussions about rebedding carbon and follow-up with NHDOT regarding temporary access agreement.
- Item C was for work on the surface water treatment memo, approach to that treatment and agreement with USDA on beaver control.
- Item D related to gathering data for annual report revised sections.
- Item E was for work on revising the annual report to reflect recent work done.
- Item F was for preparation of analytical results tables and work of validators.

Attorney Seth Jaffe moved to approve items II – B-F for payment; Attorney Curtis Shipley seconded this motion.

On a roll call 3-0 vote, the Committee voted to approve Items II – B-F for payment.

<u>CES, Inc.</u>	Payment Certifications dated:	11/4/2020
	Invoices dated:	10/21/2020
	Services rendered through:	9/27/2020

G.	Invoice #20204302 General technical Support	35%	\$924.00
H.	Invoice #20204300 Stormwater Work Plan, Fall 2018 Sampling & Out of Scope	100%	\$1,217.50
I.	Invoice #20204303 2020 Spring Sampling	35%	\$2,828.60
J.	Invoice #20204299 Fall 2020 Sampling	35%	\$6,886.15

Peter Britz described the work performed in the CES invoices.

- Item G again related to more correspondence with the regulators and coordination with DOT.
- Item H involved a memo to regulators and concepts for installation.
- Item I included preparation of results tables before publishing.
- Item J work included stormwater measurements and collection of samples.

Attorney Seth Jaffe moved to approve items II – G-J for payment; Attorney Curtis Shipley seconded this motion.

On a roll call 3-0 vote, the Committee voted to approve Items II – G-J for payment.

III. **OU - 1 ACTION ITEMS**

There were no action items.

IV. **OU - 1 RECORD ITEMS**

A. OU – 1 Balance as of 10/30/2020: **\$319,870.85**

OU-2

V. **BILLS**

City of Portsmouth

A.	Invoice #2900573590 dated 10/15/2020	50%	\$2,750.00
	Peter Britz & Financial services - 10/2020		

Attorney Seth Jaffe moved to approve item V – A for payment; Attorney Curtis Shipley seconded this motion.

On a roll call 3-0 vote, the Committee voted to approve Item V – A for payment.

<u>CES, Inc.</u>	Payment Certifications dated:	11/4/2020	
	Invoices dated:	9/21/2020	
	Services rendered through	8/30/2020	
B.	Invoice #20203752	65%	\$1,230.12
	General technical Support		
C.	Invoice #20203751	100%	\$8,778.95
	Bedrock Investigation Work Plan & Services		
D.	Invoice #20203749	65%	\$2,871.38
	2019 Spring Sampling		
E.	Invoice #20203748	65%	\$391.37
	2019 Fall Sampling		
F.	Invoice #20203753	65%	\$6,636.33
	2020 Spring Sampling		

Peter Britz described the work performed in the CES invoices. He said most of these invoices are split between OU-1 and OU-2 and the descriptions were already covered, except for Item C.

- Item C included work on the pump test work plan, coordination, investigation of MW-6, samples from that well, and a viability memo.

Attorney Seth Jaffe moved to approve items V – B-F for payment; Attorney Curtis Shipley seconded this motion.

On a roll call 3-0 vote, the Committee voted to approve Items V – B-F for payment.

<u>CES, Inc.</u>	Payment Certifications dated:	11/4/2020	
	Invoices dated:	10/21/2020	
	Services rendered through	9/27/2020	
G.	Invoice #20204302 General technical Support	65%	\$1,716.00
H.	Invoice #20204301 Bedrock Investigation Activities	100%	\$16,927.21
I.	Invoice #20204303 2020 Spring Sampling	65%	\$5,253.10
J.	Invoice #20204299 Fall 2020 Sampling	65%	\$12,788.55

Peter Britz described the work performed in the CES invoices. He said the invoices are split between OU-1 and OU-2 except for Item H.

- Item H involved the pump test work plan, access agreement for the new well that is going in, owner correspondence to put the well in, review of MW-6 results from pump tests, and investigation scope.

Attorney Jaffe asked if the EPA needs to be called in for the access. Peter said NHDOT provided access on the culvert clearing and beaver work, this access being requested for installation of a new well. The DOT has been responsive to CES. The AG was going to come in and sign off on it this week, last we heard, he said. CES has been helpful in pushing that along.

Attorney Jaffe asked when we expect to do the expensive work. Peter said a new well is expected to be put in on November 25th. He did not think they would do packer sampling on the new well. After that they would do the pump test, CES can make that work even in the cold weather. It is a 96 hour pump test. The bills will follow a month or so later.

Attorney Seth Jaffe moved to approve items V – G-J for payment; Attorney Curtis Shipley seconded this motion.

On a roll call 3-0 vote, the Committee voted to approve Items V – G-J for payment

VI. **OU - 2 RECORD ITEMS**

A. OU-2 Balance as of 10/30/2020: **\$781,666.22**

COMBINED OU-1 & OU-2**VII. COMBINED OU – 1 & OU – 2 ACTION ITEMS****A. Report of Peter Britz of the City of Portsmouth dated 11/4/2020 with two attachments:**

- CES Contract Amendment for surface water treatment and beaver mitigation, dated 10/23/2020 – Requires approval by CLG and signature.
- CES Contract amendment culvert blockage removal dated 10/2/2020 and signed by P. Britz on 10/21/2020. This is also Record Item VIII-B below

Peter summarized the activity report:

Surface water treatment:

CES coordinated with the vendor. They came up with a pilot program. Peter said the filtration blankets would go in the next day.

Attorney Jaffe asked when we got agency approval to do this work. If there is no letter back, he asked Peter to send an email summarizing that we submitted the plan and we expect to be out in the field and implement on 11/5/2020 date.

Attorney Jaffe asked if the Feds said they would not approve the work, and Peter said the Feds did not say they were not going to approve.

Attorney Jaffe said they need to confirm the EPA's understanding and said this is a pilot test. EPA concurred this is work to be done under the consent decree, he added. Peter will make sure the work doesn't go ahead until EPA and NHDES concur with work.

Attorney Jaffe said if they agreed orally, we can document in writing. Otherwise, he would be leery of doing work without their approval.

Attorney Shipley said he has not seen anything in writing from DES. He agreed that they at least need an approval email. They can't do work under the decree without approval from EPA.

Attorney Shipley said the plan talked about getting three rounds of sampling done before cold weather sets in. Peter said it was uncertain that weather conditions would permit this.

Joe Montello asked if impact from the drought affects water sampling. Peter said all the water goes through one location. That water will come in contact with those blankets. That is a benefit of drought. He said the water level is still pretty low but he was not sure of drought status and will give updates.

Deep bedrock study:

New well installation has been scheduled. Some work will still need to be done after the installation, which will not take too long – then they can do the pump test.

DOJ bill:

Peter stated we went from a six month to a full year invoice. We had to collect background data from CES. The amount of Invoice 12 will be \$97,078.62.

CES contracts:

- 1) CES Contract Amendment for surface water treatment and beaver mitigation, dated 10/23/2020 – Required approval by CLG and signature.
- 2) CES Contract amendment culvert blockage removal dated 10/2/2020 and signed by P. Britz on 10/21/2020. (*This is also Record Item VIII-B below*).

Peter said a signature was needed for Item 1. According to the wildlife biologist, beavers sometimes leave and then come back, he said. Attorney Jaffe said if they don't do anything, we don't pay anything – we pay only for services provided.

Attorney Seth Jaffe moved to authorize Chair Spear to sign the contract extension; Attorney Curtis Shipley seconded this motion.

On a roll call 3-0 vote, the Committee approved this motion.

Peter said the second contract related to backhoes needed to remove blockage.

B. Update on meetings with two CPA firms:

- Leslie Walker of Mason & Rich, PA
- Frank Saglio of Wipfli LLP

Attorney Sullivan had asked what work the firms do. He said he preferred the Wipfli firm.

In referencing the email chain (re: Coakley / Trusts & Taxes) from 10/27 and 10/28/2020, Attorney Shipley said assuming Wipfli's analysis was correct, we have two trusts that we are treating differently for tax purposes, and he does not know why they are being treated differently. If one is correctly being treated as a QSF, are there additional administrative expenses that should be deducted? If so, we should not ever have a tax payment.

Attorney Jaffe asked if it is legitimate to treat both differently – one being a QSF and the other being only a grantor trust. He asked if we can deduct Peter's services, and would that mean we would not pay any taxes. He would like to know if what we have been doing is legitimate and he would pay money upfront to have an accounting firm advise the Group on this. If there is flexibility in tax treatment of the trusts, then keep the status quo, he said. But if we can't deduct the expenses for Peter's services, then he would change the status so we don't pay taxes. Attorney Shipley agreed.

Attorney Sullivan said we should start with the accountant we have right now and ask if they can answer the question.

Marian will contact the existing CPA firm and ask if they can answer this question: "Based on the terms of the Participation Agreements and Trust Agreements for OU-1 and OU-2, is it legitimate to treat one trust as a QSF and one as not."

Attorney Jaffe said they are both grantor trusts. He believes OU-1 is being treated as the QSF. They are being taxed under different sections of the tax code. What kind of trusts are they really, and how (and can) must they be treated? If we don't have to pay taxes in the future, we want to be able to avoid that, he added.

VIII. **COMBINED OU – 1 & OU – 2 RECORD ITEMS**

- A. CES Proposal for Fall 2020 Sampling and Reporting dated 9/23/2020; executed by Chair Spear 10/5/2020.
- B. Proposal for Surface Water Treatment, Access Agreement Preparation and Beaver Mitigation Contract Management Contract Amendment No 10424020-04, dated 10/2/2020; executed by Peter Britz 10/21/2020.
- C. Contract Amendment for Additional MW-6 Investigative Tasks, Contract # 10424016-05 dated 9/9/2020; executed by Chair Spear 9/30/2020.

IX. **OTHER BUSINESS**

X. **SCHEDULE THE NEXT COAKLEY EXECUTIVE COMMITTEE MEETING**

The next meeting is scheduled for Wednesday, December 9, 2020, 10:00 a.m. It is planned to be held via teleconference.

Attorney Jaffe moved to adjourn the meeting, and Attorney Shipley seconded. On a roll call 3-0 vote, the motion passed and the meeting adjourned at 10:43 a.m.

Dated: 12/9/2020 _____

DocuSigned by:

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Eric Spear, Chair
Coakley Executive Committee

Respectfully Submitted,
Marian Steimke