



Town of Rye

PLANNING DEPARTMENT

Kimberly Reed, CFM
Planning & Zoning Administrator
kreed@town.rye.nh.us

Select Board
Town of Rye
10 Central Road
Rye NH 03870

RE: Waiver from Purchase Policy

Dear Select Board:

Please accept this request by the Planning Board and Department of Public Works to waive the purchasing policy requirements to sole source the Bailey Brook Watershed Management Plan, Part I to FB Environmental, Inc. FB Environmental, Inc is very familiar with the Town of Rye and has done great work with Parsons Creek and has recently updated the Parson Creek Watershed Plan. This will allow them to produce a similar product, an EPA nine-element watershed management plan for Bailey Brook.

As the primary drinking water source for the Town of Rye, the watershed contains three wellhead protection areas, a stratified drift aquifer, and four public water supply wells. The plan will map and identify stormwater infrastructure and provide Rye with the information and tools to better understand the watershed in the spirit of collaboration may help stormwater management and set the Town up for Phase II, to identify watershed stressors, establish baseline water quality conditions and develop strategies to protect water quality and community resilience before impacts become more severe and costly to address.

I have had informal conversations with two other firms, but the scope is not the same and the prices are not comparable.

We respectfully request that you consider and approve the request for the waiver from the purchasing policy to hire FB Environmental, Inc. for the Bailey Brook Watershed Management Plan, Phase I.

If you have any questions, please contact Kim Reed at 603-379-8081 or email at Kreed@town.rye.nh.us or Jason Rucker at 603-964-5523 or email at Jrucker@town.rye.nh.us.

Sincerely,

Kimberly Reed, CFM
Planning & Zoning Administrator

Jason Rucker
DPW Director

Pat Losik, Chair
Planning Board

www.town.rye.nh.us

SERVICES CONTRACT

FB Environmental Associates, LLC 97A Exchange Street, Suite 305, Portland, ME (hereinafter, "FBE") AND Town of Rye, 10 Central Road, Rye, NH 03870 (hereinafter, "CLIENT"), the undersigned, agree to and accept on this **26th** day of **June 2026** the following terms and further understand that such terms shall apply for the duration of this Agreement.

WHEREAS FBE is in the business of providing professional environmental consulting services; and

WHEREAS CLIENT wishes to retain FBE for those professional services in connection with the following project: **Bailey Brook Watershed Management Plan Part 1**; and

THEREFORE, the parties agree as follows:

Services Provided. FBE shall provide to CLIENT the services specifically described in the Scope of Work (Attachment A). CLIENT agrees to complete their portion of specific tasks in a timely manner to support the Project Schedule.

1. Project Schedule. FBE agrees to conduct and complete the tasks identified in the Scope of Work (Attachment A) in a timely manner upon receipt of pertinent documents or other information provided by CLIENT and as estimated in Attachment B. FBE shall not be responsible for failure to perform or for delays in the performance of work which arise out of causes beyond the control and without the fault or negligence of FBE. It is expected that this project will be completed by **June 1, 2027**.

2. Written Authorization for Amendments. All agreements are between FBE and CLIENT who authorized the service or whose signature is attached, not a third party. No amendments to this Agreement shall be effective unless it is signed by the authorized representatives of both parties and complies with all other regulations and requirements of the law.

3. Conditional Nature of Agreement. Notwithstanding anything in this Agreement to the contrary, all obligations of CLIENT herein, including without limitation, the continuance of payments herein, are contingent upon the availability or continued appropriation of funds, and in no event shall any member of CLIENT be individually liable for any payments herein in excess of such available or appropriated funds. In the event of a reduction or termination of those funds, CLIENT shall immediately notify FBE to stop services, and FBE shall be paid for work conducted prior to notification. FBE may resume services if both parties agree to a revised scope of work and schedule following a change in funds.

4. Compensation. CLIENT agrees to pay FBE **a total of \$15,000** for the completion of tasks outlined in the Scope of Work (Attachment A). FBE shall not exceed this amount without the written consent from CLIENT. FBE invoices will be submitted no more frequently than monthly, and work will be invoiced on **a percent complete basis**. CLIENT agrees to process FBE's invoices promptly within the terms set on the invoice (within 30 days). A late fee equaling 1% of the invoiced amount may be applied if the payment is overdue.

5. Personnel. FBE shall furnish competent and skilled personnel to perform the work under this contract. Personnel retained by FBE in connection with the services to be provided here shall be solely the responsibility of FBE, and FBE shall indemnify and hold harmless CLIENT with respect to any payroll and benefits, tax withholdings, workers compensation insurance, employer taxes, and any other matters relating to the work performed by such personnel.

6. Insurance. Upon request, FBE shall furnish CLIENT with certificate of insurance which evidence the following:

- (a) Commercial General Liability Insurance, with a combined single limit of not less than \$2,000,000 per occurrence and \$4,000,000 annual aggregate, and \$500,000 for property damage in any one incident.
- (b) Workers' Compensation and Employees' Liability for all employees.
- (b) Professional Liability Insurance with limits of not less than \$2,000,000 per claim and annual aggregate.

7. Term and Termination. The term of this Agreement shall be for the date of completion specified in the Project Schedule & Cost (Attachment B) or until the Scope of Work (Attachment A) is completed, whichever occurs later. This Agreement is terminable by either party for any reason upon 30 days written notice. FBE shall be entitled to compensation for the work completed up to the date of termination. If applicable, FBE shall return all unused funds advanced by CLIENT within 15 days of termination. It is agreed that all intellectual property generated in connection with this agreement shall remain the property of FBE if compensation for work is not received.

8. Dispute Resolution. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be heard and decided by a single arbitrator, who shall be a member of the State Bar, in accordance with the Commercial Rules of the American Arbitration Association. If the parties cannot agree on an arbitrator within 30 days following a written demand for arbitration, then the dispute shall be submitted to the American Arbitration Association and administered in accordance with its rules. Unless the parties otherwise agree, the arbitration shall take place in the county of the project location. The arbitrator shall have discretion to award attorneys' fees. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

9. Binding Effect. This Agreement shall be binding upon the members, managers, officers, employees, agents, successors, assigns and legal representatives of the parties and shall inure to the benefit of the parties hereto, and any subsidiary or affiliate of the parties.

10. Entire Agreement: Amendment: Waiver. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter of this Agreement and supersedes all prior representations and agreements with respect to such subject matter. This Agreement may not be amended, modified, or waived except by a written instrument duly executed by the party against whom enforcement of such amendment, modification or waiver is sought. The failure of any party to require the performance of any portion or provision of this contract, or the waiver by any party of any breach of this Agreement in any case will not prevent any subsequent enforcement of such portion or provision or to be deemed a waiver of any separate or subsequent breach.

11. Indemnification. FBE shall defend, indemnify, and hold harmless CLIENT and its directors, officers, agents and employees from all claims, demands, suits, loss, damages, injury and liability, direct or indirect (including reasonable attorney's fees, and any and all costs and expenses in connection therewith), incurred by reason of any negligent act, or failure to act, of FBE, its officers, agents, employees or any of them, under or in connection with this Agreement; and FBE agrees at its own cost, expense, and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against CLIENT or its directors, officers, agents and employees, or any of them, arising out of FBE's services, and to pay and satisfy any resulting judgments. Such indemnification includes without limitation any violation of proprietary rights, copyrights, and rights of privacy, arising out of the publication, translation, reproduction, delivery, use or disposition of any data furnished under this Agreement.

CLIENT shall defend, indemnify and hold harmless FBE and its directors, officers, agents and employees from all claims, demands, suits, loss, damages, injury and liability, direct or indirect (including reasonable attorney's fees, and any and all costs and expenses in connection therewith), incurred by reason of any negligent act, or failure to act, of CLIENT, its officers, agents, employees or any of them, under or in connection with this Agreement; and CLIENT agrees at its own cost, expense and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against FBE or its directors, officers, agents and employees, or any of them, arising out of CLIENT's services, and to pay and satisfy any resulting judgments. Such indemnification includes without limitation any violation of proprietary rights, copyrights, and rights of privacy, arising out of the publication, translation, reproduction, delivery, use or disposition of any data furnished under this Agreement.

12. Applicable Law. This agreement shall be governed by state law. If applicable to this Agreement, FBE will comply with the requirements of applicable regulatory requirements including federal, state, and local laws, rules, regulations, orders, codes, criteria, and standards. FBE shall procure the permits, certificates, and licenses necessary to perform the services.

13. Equal Employment Opportunity. FBE affirms its policy to recruit and hire employees without regard to race, age, color, religion, sex, sexual preference/orientation, marital status, citizen status, national origin or ancestry, presence of a disability, or any other legally protected status. It is FBE's policy to treat employees equally with respect to compensation, advancement, promotions, transfers and all other terms and conditions of employment.

14. Copyright and Use of Materials. No data produced under the Agreement shall be subject to copyright. All materials produced, whether finished or unfinished, will vest with FBE and CLIENT upon completion or termination of the project.

15. Debarment and Suspension. In signing this Agreement, FBE makes the relevant assertions regarding debarment and suspension (executive orders 12549 and 12689) and ability to enter into federally and state funded agreements.

16. Record-Keeping Specifications. FBE and CLIENT shall retain all records pertaining to this Agreement for 7 years after the date of submission of the final financial status report or final data of reconciliation of outstanding issues.

17. Execution Authority. This Agreement is a valid and authorized undertaking of FBE and CLIENT. The representatives of FBE and CLIENT who have signed below have been authorized to do so.

By signing below, FBE and CLIENT accept the terms and conditions set forth herein.

Town of Rye, Kimberly Reed, Planning Administrator

Forrest Bell, FB Environmental Associates

Date

Date

Address for Giving Notices:

Town of Rye
10 Central Road
Rye, NH 03870

Address for Giving Notices:

FB Environmental Associates
97A Exchange Street, Suite 305
Portland, ME 04101

ATTACHMENT A: SCOPE OF WORK

BAILEY BROOK WATERSHED MANAGEMENT PLAN | PART 1



TO: Kim Reed, Planning and Zoning Administrator, Town of Rye
FROM: Maggie Kosalek, FB Environmental Associates (FBE)
SUBJECT: **Bailey Brook Watershed Management Plan Part 1**
DATE: June 26, 2026
CC: Forrest Bell and Cayce Dalton, FB Environmental Associates

This memorandum provides the scope of work for part one of a phased approach to an EPA nine-element watershed management plan for Bailey Brook in Rye, NH. Bailey Brook is a stream that begins in wetlands to the west of West Road and meanders toward the coast, merging with Burke Pond then Eel Pond before it outlets to the Atlantic Ocean at the southern end of Jenness Beach. The Bailey Brook watershed extends from the coastline, in Rye Beach Village District, to Lafayette Road, in North Hampton.

SCOPE OF WORK

Task 1. Administration

FBE will communicate via email on an as-needed basis with the Town of Rye on project status. This task also includes invoicing and internal project budget tracking.

Deliverables: Monthly invoicing by percent task completion and project communication.

Task 2. Watershed and Stormwater Infrastructure Survey

The project will begin with a watershed field survey during which FBE will identify likely stormwater pollution sources to the brook. For each site, technical staff will document existing conditions with photographs and field notes and develop recommendations for stormwater control measures. During the field visit, FBE will collaborate with the Rye Public Works Director to assess the watershed's stormwater infrastructure. Using the Town's existing maps as a baseline, the team will inventory current assets, document newly identified infrastructure, and pinpoint strategic opportunities to optimize the management system.

Following the watershed survey, FBE will generate pollutant load reduction estimates (for phosphorus, nitrogen, and sediment) for each identified site with implementation of stormwater control measures. FBE will employ the PLET model to calculate load reduction estimates from identified gullies, streambanks, and urban stormwater control measures (USEPA, 2025). FBE will use the best available topographic data for the watershed to estimate the drainage area to each site for urban stormwater control measures, estimate the water quality volume that can be treated, and then calculate an estimated pollutant load reduction (or range) that can be achieved at each site. As with any model, load reduction estimates will be interpreted using caution and best professional judgement.

FBE will then create a summary memorandum of the sites identified during the survey with opportunities for BMP and non-point source pollution reduction measures. The memo will be accompanied with a BMP Matrix table that lists each identified site along with the recommended stormwater control measures, implementation costs, and pollutant load reductions. Sites will be prioritized based on a weighted cost reflecting the cost per mass of pollutant removed by the relative environmental impact (high = 1, moderate = 2, low = 3). Under the

weighting formula, higher impact sites that may have a slightly higher cost per mass of pollutant removed are prioritized over lower impact sites. Environmental impact will be based on proximity to surface waters, impediment to fish or other aquatic life passage (e.g., undersized or perched culvert), and habitat quality, among other factors. Since the model does not account for bacteria load, we will note any potential stormwater bacteria sources and any visible septic system risk factors, if found during the survey.

The memorandum will include a narrative description of stormwater infrastructure identified in the watershed, including culverts, catch basins, and stormwater pipes, to the best of our ability. All watershed sites and stormwater infrastructure will be mapped and described in a technical memorandum.

Deliverables: Watershed and stormwater infrastructure survey memorandum with BMP matrix and maps of nonpoint source sites and stormwater infrastructure.

Task 3. GIS Mapping and Analysis

FBE will complete a desktop aerial imagery analysis to update the land use using land cover data from the National Oceanic and Atmospheric Administration's Coastal Change Analysis Program (10-meter resolution) as a starting point. This data layer will be updated for the study area and cross referenced with the most recent available satellite imagery from ESRI and Google Earth. Any areas with questionable land uses will be checked in person in the field. FBE will develop maps of land use, conserved land, soil series and erosion hazard, and sea level rise in addition to the watershed survey sites and stormwater infrastructure maps from Task 2.

Deliverables: Up to four maps: land cover, soil series/erosion hazard, sea level rise, and conserved lands.

Task 4: Steering Committee Meetings

At the beginning of the project, FBE will participate in a kickoff meeting with a steering committee convened by the Town of Rye. FBE will gather feedback on concerns in the watershed and review the project schedule.

A second meeting with the steering committee will be held after completion of the watershed and stormwater infrastructure survey. FBE will present findings and recommendations and gather feedback from the steering committee to finalize prioritization.

This task assumes one in-person meeting and one virtual meeting.

Deliverables: Presentations for two steering committee meetings.

Task 5: Draft Sections of Watershed Management Plan

FBE will draft three sections of the Bailey Brook Watershed Management Plan under part one of the project: section 1 (introduction), section 3 (pollutant source identification), and section 4 (management strategies). We will share the draft sections with the steering committee, although any edits will be implemented under part two of the project.

Deliverables: Draft WMP section 1 (introduction), section 3 (pollutant source identification), and section 4 (management strategies).

ATTACHMENT B: PROJECT SCHEDULE & COST

BUDGET

The total cost for labor time and materials will not exceed **\$15,000**. FBE will bill monthly by percent task completion until the \$15,000 “do not exceed” is met. No time will be billed above this amount without prior approval from the Town. Table 1 lists the cost breakdown by task.

Table 1. Budget for Bailey Brook Watershed Management Plan Part 1.

Task Number	Task Name	Cost
Task 1	Administration	\$1,400
Task 2	Watershed Delineation and Survey and Stormwater Mapping	\$4,900
Task 3	GIS Mapping and Analysis	\$2,700
Task 4	Steering Committee Meetings	\$2,150
Task 5	Draft WMP Sections	\$3,600
Expenses	Travel and Equipment	\$250
Total		\$15,000

SCHEDULE

Table 2. Schedule for Bailey Brook Watershed Management Plan Part 1.

TASK #	TASK NAME	2026						2027					
		J	A	S	O	N	D	J	F	M	A	M	J
1	Administration												
2	Watershed Delineation and Survey and Stormwater Mapping												
3	GIS Mapping and Analysis												
4	Steering Committee Meetings												
5	Draft WMP Sections												