NHDES

The State of New Hampshire

DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

March 14, 2013

Her Excellency, Governor Margaret Wood Hassan and The Honorable Council State House Concord, NH 03301

REQUESTED ACTION

Authorize the Department of Environmental Services to enter into an agreement with Franklin Pierce University, Rindge NH, (VC #176669) in the amount of \$56,900 to complete the *Pearly Pond Watershed Management Development Project*, effective upon Governor and Council approval through December 31, 2015. 100% Federal Funds.

Funding is available in the account as follows:

EXPLANATION

The Department of Environmental Services (DES) issued a Request For Proposals (RFP) for the 2013 Watershed Assistance Grants program. Fifteen proposals were received. The proposals were ranked based on the criteria included in the RFP: water quality improvement or protection; cost/benefit ratio; local capacity to complete the project; relative value or significance of the water body; and, general quality and thoroughness of the proposal. Bonus points were available for projects that: implemented a watershed management plan; reduced nitrogen loading to Great Bay; or, addressed waters impaired by hydro-modification. Based on results of the selection process and available federal grant funding levels, the nine highest ranked projects were selected to receive funding. Please see Attachment B for a list of project rankings and review team members.

The Watershed Assistance Grants focus on the reduction of nonpoint source (NPS) pollution. NPS pollution occurs when rainfall, snowmelt, or irrigation water runs over land or through the ground, transporting materials which are then deposited into rivers, lakes, and coastal waters, or introduced into the groundwater. Pollutants can include chemicals, sediments, nutrients, and toxics. These materials can have harmful effects on drinking water supplies, recreation, fisheries, and wildlife. Land development or changes in land use can also cause NPS pollution by disrupting the natural hydrology of

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a water body, increasing impervious surfaces, and contributing to the loss of aquatic habitat. Watershed Assistance programs address NPS pollution by managing land use and drainage on a watershed scale.

Pearly Pond is a 191-acre lake in Rindge, NH. Most of the watershed for Pearly Pond is undeveloped, though Franklin Pierce University and 52 residences are located near the lake. Pearly Pond beach has been closed to swimming on several occasions because of cyanobacteria blooms, attributed to excessive phosphorus. Much of the phosphorus exists in the sediments, as a result of past permitted wastewater discharges. Additional sources of phosphorus may include Canada geese, septic systems, and nonpoint source pollution from fertilizer, erosion, roads and other sources. The lake is currently classified by DES as an impaired waterbody, because it does not meet its water quality goals for aquatic life and recreational uses.

Through this grant, Franklin Pierce University and their project partners will create a watershed management plan which will identify specific water quality goals, and identify and prioritize actions needed to reduce phosphorus to the levels that will eliminate the algae blooms and restore the pond's designated uses. The project partners will also produce educational and outreach events and materials for area residents and other stakeholders. The outcomes of the project will include recommendations for specific best management practices to control non-point source pollution and phosphorus loading, as well as cost estimates and an identification of potential funding sources for future phases of implementation.

The total project costs are budgeted at \$94,852. DES will provide \$56,900 (60%) of the project costs through a federal grant and Franklin Pierce University will provide the remaining costs through cash and in-kind services. A budget breakdown is provided in Attachment A. As required by Section 319 of the Clean Water Act, federal funds provided to this project must be matched by a local, state, or private share of at least 40 percent. In the event that Federal Funds become no longer available, General Funds will not be requested to support this program.

The agreement has been approved by the Office of the Attorney General as to form, execution, and content. We respectfully request your approval.

Thomas S. Burack, Commissioner

GRANT AGREEMENT

Subject: Pearly Pond Watershed Management Plan Development

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

GENERAL PROVISIONS

1.1 State Agency Name Department of Environ	mental Services	1.2 State Agency Address 29 Hazen Drive Concord, NH 03301		
1.3 Grantee Name Franklin Pierce Univers	ity	1.4 Grantee Address 40 University Drive Rindge, NH 03461		
1.5 Effective Date Upon G&C approval	1.6 Completion Date December 31, 2015	1.7 Audit Date N/A	1.8 Grant Limitation \$56,900	
1.9 Grant Officer for State Eric Williams, Waters Supervisor	e Agency shed Assistance Section	1.10 State Agency Telepho 603-271-2		
1.11 Grantee Signature	ANDA .	1.12 Name & Title of Gran	ntee Signor	
On 3 /// 2013 b or satisfactorily proven to b	ate of New Hampshire, Cou efore the undersigned officer e the person whose name is s he capacity indicated in block	r, personally appeared the personally appeared the personal in block 1.11., and acknowledges	on identified in block 1.12.,	
1.13.1 Signature of Notary	Public or Justice of the Pe	ace DEBORAH MARTI My Commission Exp	IN, Notary Public bires June 17, 2014	
£13.2 Name & Title of No	tary Public or Justice of th	e Peace		
Deborah	Martin Adn	nin. Asst. for Fin	iance + Administr	ati
1.14 State Agency Signatu	re(s)	1.15 Name/Title of	State Agency Signor(s)	
Thomas s	L. Zunad	Thomas S. Burack,	Commissioner	
1.16 Approval by Attorne By:	y General's Office (Form, S	Substance and Execution) Attorney, On: 3 / 26 / 1	3	
1.17 Approval by the Gov	ernor and Council			
D		On: / /		

- 2. 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"), pursuant to RSA 21-O, 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 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 in block 1.5 or on the date of approval of this Agreement by the Governor and Council of the State of New Hampshire whichever is later (hereinafter referred to as "the Effective Date").
- 4.2 Except as otherwise specifically provided for herein, the Project, including all reports required by this Agreement, shall be completed in ITS entirety prior to the date in block 1.6 (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 B, attached hereto.
- 5.2 The manner of, and schedule of payment shall be as set forth in EXHIBIT B.
- 5.3 In accordance with the provisions set forth in EXHIBIT B, 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.
- 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, compensation 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. <u>COMPLIANCE BY GRANTEE WITH LAWS AND</u>
 <u>REGULATIONS.</u> 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.

7. RECORDS AND ACCOUNTS.

- 7.1 Between the Effective Date and the date seven (7) years after the Completion Date 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, 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 or 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 general 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 such 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 or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.
- 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 OF 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
- 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 entitle the Grantee to receive that portion of the Grant amount earned to and including the date of termination.
- 12.3 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.
- 12.4 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.
- 13. CONFLICT OF INTEREST. No officer, member or employee of the Grantee and no representative, officer of 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 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 interests 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, worker'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 subgranteed by the Grantee other than as set forth in Exhibit A 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 of 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 AND BOND.

- 17.1 The Grantee shall, at its sole 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 worker's compensation and employees liability insurance for all employees engaged in the performance of the Project, and
- 17.1.2 comprehensive public liability insurance against all claims of bodily injuries, death or property damage, in amounts not less than \$2,000,000 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. Each policy shall contain a clause prohibiting cancellation of modification of the policy earlier than ten (10) days after written notice has been received by the State.
- 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 or 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. <u>AMENDMENT.</u> 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.
- 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. <u>THIRD PARTIES.</u> 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.



Exhibit A Scope of Services

Franklin Pierce University (FPU) shall perform the following tasks as described in the detailed proposal titled *Pearly Pond Watershed Management Plan Development* submitted by FPU, dated November 21, 2012:

<u>Objective 1</u>: Preliminary Planning, Identify and secure consultants for the project.

<u>Measures of Success:</u> Request for Proposal (RFP) is developed, consultants interviewed, qualified and cost-effective consultant hired. The RFP may solicit consultant qualifications to assist with the selection process.

Deliverable 1A: Provide DES with copies of draft and approved RFP documents.

Task 1: Assemble Pearly Pond Management Advisory Committee (PPMAC); review project goals; develop RFP in accordance with State and Federal requirements. Provide draft RFP and solicitation language to DES for approval prior to publication. Publish RFP.

Task 2: Review consultant applications, conduct interviews, identify most qualified candidate. Provide RFP submittal summary and selection notification in semi-annual report.

Task 3: Work with the selected consultant to draft a contract agreement and Scope of Work between Franklin Pierce University (FPU) and the consultant. The Scope of Work shall, at a minimum, include all tasks outlined in objectives 2-7, with the understanding that Objective 7 education and outreach tasks will be carried out with the assistance of volunteers.

Task 4: Submit draft contract agreement, scope of work, and project budget to DES for review and approval prior to execution of the contract. Scope of work should clearly identify grant agreement tasks to be completed by the consultant.

Deliverable 1B: Provide DES with copies of the signed contract and Scope of Work with consultant.

Task 5: Execute the contract agreement with the selected consulting firm.

Task 6: Kick off Watershed Management Plan (WMP) project. Develop list of all landowners and other stakeholders in the watershed, including other local lake associations. Hold two kick-off meetings with stakeholders to educate about the problem; explain the planning process; project responsibilities for each phase of the process; develop plan to communicate with stakeholders on a regular basis.

<u>Objective 2</u>: Preparation of Site Specific Project Plan (SSPP)

<u>Measures of Success:</u> SSPP according to Generic Section 319 Watershed Planning QAPP is prepared and approved by DES.

Deliverable 2: Provide DES with copies of Watershed Management Plan/Model Development SSPP developed according to NHDES guidance. The SSPP shall also address internal phosphorus loading estimates and septic system survey and phosphorus load estimates.

Task 7: Draft the SSSP according to DES specifications with Advisory Committee input. For SSPP specifications, see Section 4, Project Tasks from DES' "Guidance for Developing Watershed Management Plans" and Attachment A, "Pollutant Loading Analysis Site Specific Project Plan for BMP

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Implementation Projects and Watershed Management Planning Projects." The SSPP shall also address internal phosphorus loading estimates and septic system survey and phosphorus load estimates.

Task 8: Provide draft SSPP to Steering Committee and DES for review.

Task 9: Coordinate with the consultant to address Advisory Committee and DES comments on the draft SSPP; incorporate comments and prepare the final SSPP.

Task 10: Submit the final SSPP to DES for approval. No data collection or manipulation shall precede DES approval of the SSPP.

Objective 3: Assemble additional water quality and septic survey data and determine the pond's assimilative capacity for phosphorus.

Measures of Success: A revised draft Total Maximum Daily Load (TMDL) Model spreadsheet (ENSR-LLRM) based on additional water quality and survey data has been reviewed and approved by DES. This revision will be used to complete the remaining EPA elements of the WMP project.

Deliverable 3: Provide DES with copies of: (a) A revised TMDL Model spreadsheet (ENSR-LLRM) and report identifying the current and future pollution source loads by land use type and source group by subwatershed for phosphorus; (b) Report summarizing internal phosphorus loads; (c) Report summarizing of the age and condition of septic systems around Pearly Pond; and (d) Report summarizing details of any adjustments to Subwatershed boundaries or more detailed drainage areas/ stormwater pathways within subwatersheds.

Task 11: Review the most current draft of the NHDES TMDL report for Pearly Pond. Review and verify annual load allocations for each subwatershed using the ENSR-LLRM Model for forested, current and future watershed conditions. Coordinate with the consultant to use aerial photography and Landsat imagery to characterize watershed (NOAA; C-CAP; NH GRANIT Mapper, etc.). Submit documentation that current annual pollution source load estimates are as specified in the draft TMDL. Should annual pollution source estimates differ from the draft TMDL, particularly those where additional data is collected (Subwatershed drainage areas, internal P loads, septic systems) submit a summary report(s) and revised TMDL model spreadsheet to DES for review and approval.

Task 12: Coordinate volunteers, under the guidance of consultant, to conduct ground-truthing of land use in watershed from on-line and readily available mapping sources as well as aerial photography. Task 13: Coordinate volunteers, under the guidance of consultant to use existing maps and ground-truthing to map drainage pathways from impervious surfaces such as roadways and parking lots that are in proximity to the shoreline or tributaries, in order to refine subwatershed boundaries and identify BMP locations.

Task 14: Consult with DES to develop a survey to assess septic system condition and maintenance which will allow the consultant to estimate pollutant loads to the pond.

Task 15: Coordinate volunteers under the guidance of consultant, to conduct door-to-door survey on septic systems bordering lake shoreline and tributaries, including usage frequency, age, construction, and location. Volunteers will also ask about shoreline management practices and knowledge, and provide information on shoreline buffers and septic system maintenance.

Task 16: Using in-lake response models (Vollenweider, etc.) as provided in the draft TMDL in combination with empirical data, estimate forested, current and future in-lake phosphorus concentration and associated chlorophyll a concentration, Secchi transparency and probability of algal blooms. Submit results/ revised TMDL model spreadsheet to DES for review and approval.

Task 17: Run additional modeling scenarios including near term, planned future development, and full build-out under current zoning, to demonstrate what pollutant load reductions are needed to meet water quality target in the future. Submit results to DES and Steering Committee for review and approval.



Task 18: Conduct additional water quality sampling according to VLAP protocol and approved SSPP. Task 19: Incorporate additional water quality and survey data into a revised TMDL Model spreadsheet and provide specific comments to NHDES TMDL Program. If no comments/revisions are necessary provide a correspondence of communication to that affect.

Task 20: Coordinate with DES staff to verify final pollutant loads, predicted in-lake phosphorus concentration and assimilative capacity. Upon consensus by DES, FPU and PPMAC proceed with remaining EPA elements for developing a WMP.

<u>Objective 4</u>: Establish the water quality target for phosphorus and other water quality parameters <u>Measures of Success</u>: Water quality goal is accepted by all stakeholders

Deliverable 4: Provide DES with documentation of the process used to arrive at the water quality goal, and documentation of the goal.

Task 21: Create a Water Quality subcommittee to analyze existing data and set a water quality goal. The subcommittee should represent a cross-section of those ultimately responsible for implementing water quality improvement measures.

Task 22: Establish process: Outline the process for determining the water quality goal.

Task 23: Implement process. Carry out the process for determining the water quality goal.

Task 24: Document goal. Formally document the water quality goal in a memorandum.

<u>Objective 5</u>: Estimate pollution reductions needed to maintain the water quality target and future watershed conditions.

<u>Measures of Success:</u> Required phosphorus load reductions to meet or maintain the water quality goal are estimated.

Deliverable 5: Provide DES with documentation of the estimated total phosphorus load reduction needed to meet or maintain the water quality goal for future watershed conditions.

Task 25: Using watershed and in-lake phosphorus models, determine watershed phosphorus load reductions needed to achieve the in-lake phosphorus water quality goal for current and future watershed conditions.

Task 26: Publicize and hold stakeholder meeting to communicate results of objectives 3-5 and provide a preliminary overview of the priority areas in the watershed where action is needed.

Objective 6: Determine the actions needed to reduce current and potential pollution source loads in order to maintain the water quality goal.

Measures of Success: Required reductions to meet and maintain the water quality goal are identified.

Deliverable 6: Provide a summary report to be used in the WMP that provides a description of the recommended BMPs that will be used to achieve the future load reduction. This should include both the structural BMPs, identified by map and description and potential watershed ordinances necessary to protect the pond.

Task 27: Review and assess ordinances and regulations within the watershed for water quality protection



- "gaps." Review other town ordinances protective of water quality and compare to zoning and planning (subdivision/site plan) ordinances and regulations for Towns in the Pearly Pond watershed that can have a beneficial impact on lake water quality and provide recommendations for changes.
- Task 28: Use TMDL model developed earlier to prioritize subwatershed or drainage areas for greatest pollutant load reduction potential to meet the water quality goal.
- Task 29: Identify and select between 25 and 30 sites for potential BMPs. Sites should have the greatest potential for success to reduce pollutant loads. Provide estimates of design costs, construction costs and pollutant load reduction.
- Task 30: Estimate the amounts of technical and financial assistance needed, associated costs, and/or the sources and authorities that will be relied upon, to implement the management measures in the watershed management plan. Incorporate information into the WMP.
- Task 31: Develop a schedule for implementing the NPS management measures identified in this plan
- Task 32: Develop and describe interim, measurable milestones for determining whether NPS management measures or other control actions are being implemented.
- Task 33: Publicize and hold stakeholder meeting to communicate results of this objective and to gather input on preferred options, constraints and other issues.

Objective 7: Develop outreach and education components for project

<u>Measures of Success:</u> Publication and distribution of informational materials; educate the community on septic system maintenance, shoreline management and other BMPs.

Deliverable 7: Provide DES with copies, links or summary reports of: (a) website; (b) educational brochure; and, (c) as appropriate, initiation of a formal, local, collaborative policy review to address issues identified during the management planning process.

Task 34: Develop website. Determine appropriate placement of information on website; develop educational information, describe planning process, provide contact information, etc. Link put on Town of Rindge page, sent to email list. Develop other social media outreach and education opportunities. Task 35: Create brochure on pollution reduction measures for Pearly Pond, with DES approval, dealing with septic system maintenance, shoreline management, stormwater management, and other areas as needed. Include information on the website as it is developed; email to stakeholders; distribute hardcopies.

Task 36: Form a local, collaborative policy review team to address issues identified during the management planning process.

<u>Objective 8</u>: Deliver draft and final watershed management plan <u>Measures of Success:</u> Draft WMP reviewed and revised; final WMP delivered to DES

Deliverable 8: Provide DES with copies of the draft and final watershed management plan.

Task 37: Submit draft watershed management plan to DES and Steering Committee for initial review and comment.

Task 38: Hold final meeting with stakeholders for review and comments; review with Planning Board, Conservation Commission, and Highway Dept.

Task 39: Provide draft watershed management plan to the Steering Committee and project managers, and provide comments to consultant.

Task 40: Submit second draft watershed management plan to DES and Steering Committee for final review and comment.

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Task 41: Submit two hard copies and an electronic copy of the final watershed management plan to DES.

Task 42: Meet with Rindge Conservation Commission, Planning Board, Selectboard to share plan results

Objective 9: BMP Design

<u>Measures of Success</u>: Designs are delivered that can be readily implemented at specific locations in the watershed.

Deliverable 9: Provide DES with copies of draft BMP design plans.

Task 43: Hold public meeting with stakeholders to discuss proposed BMPs.

Task 44: After public discussion, choose 4-6 BMPs and draft specific designs, estimate costs. Provide bid documents for construction if needed.

Objective 11: Provide Section 319 Grant Reports

Measures of Success: Delivery of acceptable grant reports.

Deliverable 11: Provide DES with copies of the required semi-annual and final grant reports.

Task 45: Submit electronic semi-annual reports documenting all work performed on the project at the end of each June and December of the project period. The semi-annual reports will include a Pollutants Controlled Report when structural BMPs have been implemented during the reporting period. Task 46: Submit a comprehensive final report in both electronic and hard-copy to DES on or before the project completion date. The final report shall include load reduction estimates, design sets for proposed BMPs, O & M plans for proposed BMPs, and comply with the DES and EPA requirements found in the final report guidance documents.

Additional Requirements of the Agreement

Quality Assurance

All project activities which are to be guided by a Quality Assurance document such as a Quality Assurance Project Plan (QAPP) or Site Specific Project Plan (SSPP) must **not** begin prior to DES/EPA approval of that QA document. In the event that sampling, modeling, or other such activities precede QA document approval, the data will not be considered valid, and the grantee will forfeit the ability to receive payment for those activities.

Outreach Materials

All materials produced for public distribution shall be reviewed and approved by DES prior to distribution and shall include the DES logo and the following citation: "Funding for this project was provided in part by a Watershed Assistance Grant from the NH Department of Environmental Services with Clean Water Act Section 319 funds from the U.S. Environmental Protection Agency".

Operations and Maintenance

Management practices implemented as agreed upon in the scope of services of this grant agreement and with grant funds or matching funds under a Section 319 Watershed Grant, shall be properly operated and maintained for the intended purposes during the life span of the project. The life span of a project shall be determined by the Grantee, tailored to the types of practices expected to be funded in this project, and agreed upon by DES. The Grantee shall provide DES with an engineering estimate of the design life of the best management practice(s)



(BMPs), or in the case of small-scale BMPs which do not have a design life estimation completed by an engineer, the design life of that practice shall be estimated to be ten years.

Operation includes the administration, management, and performance of non-maintenance actions needed to keep the completed practice safe and functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail. The Grantee shall obtain written operation and maintenance (O&M) agreements from landowners of properties where BMPs are implemented. The Grantee shall assure that any O&M agreement or sub-award of Section 319 funds shall likewise include the same O&M requirements and conditions as this Agreement. Additionally, both EPA and DES reserve the right to periodically inspect a practice during the life span of the project to ensure that operation and maintenance are occurring. If it is determined that the participants are not operating and maintaining these practices in an appropriate manner, DES may request a refund for that practice supported by the grant.



Exhibit B Contract Price and Method of Payment

No Tasks shall be eligible for payment until the Grantee receives written notification from DES that project work may begin. All services shall be performed to the satisfaction of DES before payment is made. All payments shall be made upon receipt and approval of stated outputs and upon receipt of an associated invoice. Documentation of match costs (including the value of volunteer labor) shall be provided with each payment request. The final invoice shall include total match cost documentation of \$37,952. Payment shall be made in accordance with the following schedule based upon completion of specific tasks described in Exhibit A:

Upon completion and DES approval of Objective 1, Tasks 1 through 6		\$1,000
Upon completion and DES approval of Objective 2, Tasks 7 through 10		\$1,000
Upon completion and DES approval of Objective 3, Tasks 11 through 20		\$16,300
Upon completion and DES approval of Objective 4, Tasks 21 through 24		\$2,400
Upon completion and DES approval of Objective 5, Tasks 25 and 26		\$2,000
Upon completion and DES approval of Objective 6, Tasks 27 through 33		\$15,400
Upon completion and DES approval of Objective 7, Tasks 34 through 36		\$500
Upon completion and DES approval of Objective 8, Tasks 37 through 42		\$10,100
Upon completion and DES approval of Objective 9, Tasks 43 and 44		\$6,000
Upon completion and DES approval of Objective 10, Tasks 45 and 46	_	\$2,200
	Total	\$56,900

Funding is provided through a Watershed Assistance Grant from the NH Department of Environmental Services with Clean Water Act Section 319 funds from the U.S. Environmental Protection Agency.



Exhibit C Special Provisions

Subparagraph 1.7 of the General Provisions shall not apply to this Agreement.

Federal Funds paid under this agreement are from a Grant Agreement to the State from the US Environmental Protection Agency, Impaired Waters Restoration Grant under CFDA # 66.605. All applicable requirements, regulations, provisions, terms and conditions of this Federal Grant Agreement are hereby adopted in full force and effect to the relationship between this Department and the grantee. Additionally, the Grantee shall comply with the terms of the Federal Funding Accountability and Transparency Act (FFATA) by providing DES with their Data Universal Numbering System (DUNS) number. Grantee's DUNS number is: 0699/0503

In addition to the General Provisions of Paragraph 1 through 23, the following provisions as required by federal regulations apply to this Agreement:

- I) *Nondiscrimination*. The Grantee shall comply with 40 CFR part 7 which prohibits discrimination under any program or activity receiving EPA assistance on the basis of race, color, national origin, or gender, and 40 CFR part 12 which prohibits discrimination based on handicap.
- II) *Financial management*. The Grantee shall comply with 40 CFR 31.20 and the specific standards regarding financial reporting, accounting records, internal control, budget control, allowable cost, source documentation, and cash management outlined therein.
- III) *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 40 CFR part 31.22; and OMB Circular A-87.
- IV) *Matching funds*. All matching funds contributed by the Grantee shall conform to the same laws, regulations, and grant conditions as the federal funds in the Agreement and referenced in 40 CFR 31.24 and OMB Circular A-87.
- V) *Property Management*. The Grantee shall comply with the property management and procedures detailed in 40 CFR 31.32 and 40 CFR 31.33.
- VI) *Debarrment and Suspension.* The grantee shall comply with 40 CFR part 31.35. By signing and submitting the Agreement, the Grantee certifies that they have not been debarred or suspended by a government agency. The Grantee will not make any award or permit any award (subgrant or subcontract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."
- VII) **Procurement.** When purchasing goods or services with grant or match funds, the Grantee shall comply with procurement regulations as detailed in 40 CFR 31.36 which include procurement standards, competition, methods of procurement, contract cost and price, agency review, bonding requirements, and contract provisions.
 - **a.** Assignment of Subcontracts. The Contractor shall not assign, or otherwise transfer any interest in this contract without the prior written consent of the Contract Owner and the State.
 - **b.** Subcontracts. The Contractor shall:
 - i. Ensure that every subcontract includes provisions for compliance with Federal and State standards applicable to the contract;



- ii. Ensure that every subcontract includes any clauses required by Federal statute and executive orders and their implementing regulations; and
- iii. Ensure that subcontractors are aware of requirements imposed upon them by State and Federal statutes and regulations.
- c. Payment to consultants. Grant payments to individual consultants retained by the Contractor (excluding overhead) are limited to the maximum daily rate for Level IV of the Executive Schedule (formerly GS-18). Maximum daily rates may change annually or more often. As of January 1, 2010, the limit is approximately \$598 per day and \$74.75 per hour. This amount does not include transportation and subsistence costs, in accordance with normal travel reimbursement practices. The Contractor may pay consultants more than this amount, but the excess amount shall not be paid with federal grant funds. Contracts with firms for services which are awarded using the procurement requirements in 40 CFR 31.36 are not affected by this limitation.
- VIII) *Participation by Disadvantaged Business Enterprises.* The Grantee shall comply with the terms of 40 CFR Part 33 Subpart C, which requires that organizations conduct a competitive procurement process making a good faith effort to utilize goods and services provided by disadvantaged businesses.
- IX) *New Restrictions on Lobbying: Interim Final Rule*. The Grantee shall comply with the terms of 40 CFR part 34 and OMB Circular A-87 which prohibit the use of federal grant funds to influence (or attempt to influence) a federal employee, and requires the submission of Standard Form LLL ("Disclosure of Lobbying Activities") if *non*federal funds have been used to influence (or attempt to influence) a federal employee.
- X) *Drug-Free Workplace*. The Grantee shall comply with the terms of 40 CFR Part 36 which require that as a condition of the Agreement, certification that they maintain a drug-free workplace. By signing and submitting the Agreement, the Granteee 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.
- XI) **Bonding requirements.** For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold (currently \$100,000), the minimum requirements shall be as follows:
 - **a.** A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
 - **b.** A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
 - **c.** A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.
- XII) Additional contract provisions. The Grantee shall comply with the following as applicable:
 - a. Comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their subcontractors)
 - **b.** Comply with the **Copeland "Anti-Kickback" Act** (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subcontracts for construction or repair)
 - c. Comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subcontractors in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers.)



- **d.** Comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Subcontracts in excess of \$100,000)
- e. Comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 871).
- XIII) Federal Funding Accountability and Transparency Act (FFATA). The Grantee shall comply with the terms of the FFATA by providing DES with their Data Universal Numbering System (DUNS) number, and all applicable Executive Compensation Data information as required under the FFATA.



State of New Hampshire Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that Franklin Pierce University is a New Hampshire nonprofit corporation formed November 14, 1962. I further certify that it is in good standing as far as this office is concerned, having filed the return(s) and paid the fees required by law.



In TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 20th day of February A.D. 2013

William M. Gardner Secretary of State



RESOLUTION CERTIFICATE OF AUTHORITY

Be it resolved this 8th day of March, 2013 by the Board of Trustees of Franklin Pierce University that:

- (1) Franklin Pierce University Board of Trustees voted to accept DES funds and to enter into a contract with the Department of Environmental Services;
- (2) Franklin Pierce University further authorized the President and/or the VP for Finance and Administration and CFO to execute any documents which may be necessary for this contract;
- (3) This authorization has not been revoked, annulled, or amended in any manner whatsoever, and remains in full force and effect as the date hereof; and
- (4) The following persons has been appointed to and now occupies the offices indicated in (3) above:

James F. Birge, President of Franklin Pierce University
Richard Marshall, Vice President for Finance & Administration and CFO

IN WITNESS WHEREOF, I have hereunto set my hand as the Clerk of the Corporation of the Board of Trustees of Franklin Pierce University, this 11 day of Much 2013.

Ronald B. Hammond, Clerk of Corporation

STATE OF NEW HAMPSHIRE

County of Cheshire

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

Name of Notary Public (signature above)

Commission, Expiration Date:

(Seal)

VICTORIA A. RANK NOTARY PUBLIC State of New Hampshrie My Commission Expires February 2, 2018



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 02/04/2013

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

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(les) must be endorsed. If SUBROGATION IS WAIVED, subject to

the terms and conditions of the policy, certificate holder in lieu of such endors			ndorsement. A sta	tement on tr	ils certificate does not c	onter rig	gnts to the
ODUCER		(508) 852-8500	CONTACT NAME:				
otector Group Ins. Agency		, ,	PHONE (A/C, No, Ext):		FAX (A/C, No):		
D Front Street, Suite 800 proester, MA 01608-1435			E-MAIL ADDRESS:				
Trester, MA 01000-1435			_	SURER(S) AFFO	RDING COVERAGE		NAIC#
			INSURER A : Philade				11740 #
Franklin Pierce University	,			•	ity Co. of Connecticut		
40 University Drive,	'		INSURER C :				
Rindge, NH 03461			INSURER D :			-	
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			INSURER F :				
OVERAGES CERT	TIFICATE	E NUMBER:	INSURER F :		REVISION NUMBER:		
THIS IS TO CERTIFY THAT THE POLICIES INDICATED. NOTWITHSTANDING ANY RECERTIFICATE MAY BE ISSUED OR MAY FEXCLUSIONS AND CONDITIONS OF SUCH I	QUIREME PERTAIN, POLICIES.	NT, TERM OR CONDITION THE INSURANCE AFFORD LIMITS SHOWN MAY HAVE	OF ANY CONTRACT	OR OTHER	DOCUMENT WITH RESPE D HEREIN IS SUBJECT TO	CT TO W	VHICH THIS
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GENERAL LIABILITY			, , , , , , , , , , , , , , , , , , , ,		EACH OCCURRENCE	\$	1,000,000
X COMMERCIAL GENERAL LIABILITY		PHPK883681	07/01/2012	07/01/2013	DAMAGE TO RENTED PREMISES (Ea occurrence)	\$	100,000
CLAIMS-MADE X OCCUR					MED EXP (Any one person)	\$	5,000
					PERSONAL & ADV INJURY	\$	1,000,000
					GENERAL AGGREGATE	\$	3,000,000
GEN'L AGGREGATE LIMIT APPLIES PER:					PRODUCTS - COMP/OP AGG	\$	3,000,000
POLICY PRO- JECT LOC						\$	
AUTOMOBILE LIABILITY					COMBINED SINGLE LIMIT (Ea accident)	\$	1,000,000
X ANY AUTO		PHPK883681	07/01/2012	07/01/2013	BODILY INJURY (Per person)	\$	
ALL OWNED SCHEDULED AUTOS AUTOS					BODILY INJURY (Per accident)	\$	
HIRED AUTOS NON-OWNED AUTOS					PROPERTY DAMAGE (PER ACCIDENT)	\$	
					[\$	
UMBRELLA LIAB OCCUR					EACH OCCURRENCE	\$	20,000,000
X EXCESS LIAB CLAIMS-MADE		PHUB386782	07/01/2012	07/01/2013	AGGREGATE	\$	20,000,000
DED X RETENTION\$ 10,000						\$	
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY					X WC STATU- TORY LIMITS OTH- ER		
ANY PROPRIETOR/PARTNER/EXECUTIVE	N/A	UB9BB06905912	07/01/2012	07/01/2013	E.L. EACH ACCIDENT	\$	500,000
(Mandatory in NH)	"/"				E.L. DISEASE - EA EMPLOYEE	\$	500,000
If yes, describe under DESCRIPTION OF OPERATIONS below					E.L. DISEASE - POLICY LIMIT	\$	500,000
SCRIPTION OF OPERATIONS / LOCATIONS / VEHICL neral Liability includes Medical Profe Idents in the Physician Assistant Pro	ssional l	Liability for Nurses, Psy	chologists, Thera	oists, Athleti			
ERTIFICATE HOLDER			CANCELLATION				
NH Departement of Environment 29 Hazen Drive, PO Box 9 Concord, NH 03302-0095		Il Services	SHOULD ANY OF	N DATE THE	ESCRIBED POLICIES BE C EREOF, NOTICE WILL E CY PROVISIONS.		
3011cord, 1411 03302-0033			AUTHORIZED REPRESE	NTATIVE			
				2			

Attachment A Budget Estimate

Budget Item	Grant Funding	Match	Total
Salries and wages	\$0.00	\$34,386.00	\$34,386.00
Travel and Training	\$0.00	\$423.00	\$423.00
Contractual	\$56,900.00	\$0.00	\$56,900.00
Other Direct Costs (printing, mailing,			
sample analyses)	\$0.00	\$3,143.00	\$3,143.00
Subtotals	\$56,900.00	\$37,952.00	\$94,852.00
Total Project Cost			\$94,852.00

Attachment B: Watershed Assistance and Restoration Grant Ranking

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and 319 program supervisor.	Eric Williams
23 years experience, Watershed Assistance Section Supervisor, environmental planner, general project management expertise, WAS section	
20+ years experience, Watershed Coordinator, budgeting, planning expertise	Wendy Waskin
13 years experience, Coastal Watershed Coordinator, project management, Coastal watershed expertise	Sally Soule
education expertise.	Barbara McMillan
12 years Watershed Assistance Outreach Coordinator, outreach and	
and stormwater BMP expertise.	Jillian McCarthy
7 years experience, Nonpoint source pollution specialist, quality assurance,	
expertise	Jeff Marcoux
7 years experience, Watershed Assistance Specialist, grant and contract	
watershed pollution source tracking and identification	Rob Livingston
23 years experience, Nonpoint source pollution specialist, BMP, pollution source investigation expertise, Field training of local municipalities in	
project management, Merrimack watershed expertise	Steve Landry
16 years experience, Merrimack Watershed Coordinator, aquatic biologist,	
project management and coordination, takes management expertise	Andy Chapman
15 years experience, Clean Lakes Program Coordinator, aquatic biologist,	
Cisal Floridors.	Marria