



# New Hampshire Fish and Game Department

**HEADQUARTERS:** 11 Hazen Drive, Concord, NH 03301-6500  
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August 13, 2015

Her Excellency, Governor Margaret Wood Hassan  
And the Honorable Council  
State House  
25 Capitol Street  
Concord, New Hampshire 03301

### ***Requested Action***

Authorize the New Hampshire Fish and Game Department to enter into a contract with XI Northeast Fisheries Sector, Inc. (Vendor Code 267133), Portsmouth, NH, 03802 in the amount of \$180,000 in order for the XI Northeast Fisheries Sector, Inc. (Sector) to purchase a federal Northeast Multispecies permit(s) for use by the enrolled members of NH Commercial Ground Fish fleet from date of Governor and Council approval through June 30, 2016. 100% federal funds.

Funds to support this request are anticipated to be available in the following account in State Fiscal Year 2016 upon the availability and continued appropriation of funds in the future operating budget.

03 75 75 753020-2288 - Marine Resources Program-Marine Fisheries Management

020-07500-22880000-072-500572 Grants-Federal FY 16  
\$180,000

### ***Explanation***

In September 2012, Acting Secretary of Commerce Rebecca Blank declared the Northeast multispecies groundfish fishery a commercial fishery failure under Section 312(a) of the Magnuson-Stevens Act as a result of 50-75% reductions in quotas of some groundfish species. In 2014, Congress appropriated \$75 million for federal fisheries disasters across the country and \$32.8 million of those funds were allocated to the Northeast multispecies groundfish fishery. NH Fish and Game Department received \$1,136,400 in the form of a State Specific Grant to distribute to NH's Groundfish industry to help address both the immediate needs and the long term viability of its small boat Groundfish fleet, for-hire fleet, and infrastructure.

NH Fish Game's Marine Fisheries Division worked with NH's Groundfish industry to develop a spend plan for these funds that included direct assistance to commercial, party and charter boat owners that rely on Groundfish as well as funds for infrastructure that supports their businesses.

This contract will provide funds to XI Northeast Fisheries Sector, Inc. to help members acquire more annual catch entitlement of groundfish species to continue fishing for groundfish.

Respectfully submitted,

Glenn Normandeau  
Executive Director

Kathy Ann LaBonte  
Chief, Business Division

**REGION 1**  
629B Main Street  
Lancaster, NH 03584-3612  
(603) 788-3164  
FAX (603) 788-4823  
email: reg1@wildlife.nh.gov

**REGION 2**  
PO Box 417  
New Hampton, NH 03256  
(603) 744-5470  
FAX (603) 744-6302  
email: reg2@wildlife.nh.gov

**REGION 3**  
225 Main Street  
Durham, NH 03824-4732  
(603) 868-1095  
FAX (603) 868-3305  
email: reg3@wildlife.nh.gov

**REGION 4**  
15 Ash Brook Court  
Keene, NH 03431  
(603) 352-9669  
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email: reg4@wildlife.nh.gov

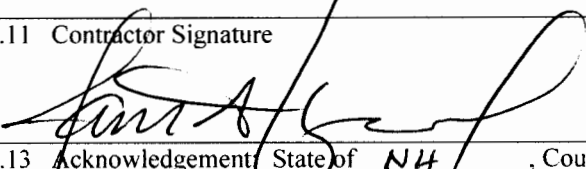
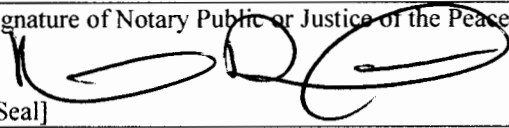
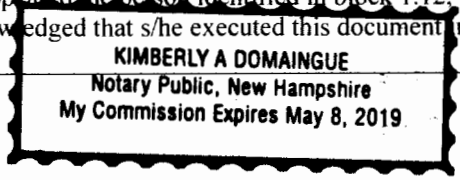
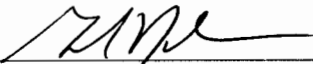
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name NH Fish and Game Department		1.2 State Agency Address 225 Main Street, Durham, NH 03824	
1.3 Contractor Name XI Northeast Fisheries Sector, Inc.		1.4 Contractor Address P.O. Box 118, Portsmouth, NH 03802	
1.5 Contractor Phone Number 207-752-4479	1.6 Account Number 20-07500-22880000-072	1.7 Completion Date June 30, 2016	1.8 Price Limitation \$180,000
1.9 Contracting Officer for State Agency Glenn Normandeau, Executive Director		1.10 State Agency Telephone Number 603-271-2741	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory James A. Hayward, President	
1.13 Acknowledgement, State of <u>NH</u> , County of <u>ROCKINGHAM</u> On <u>July 22</u> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace  [Seal]			
1.13.2 Name and Title of Notary or Justice of the Peace <u>Kimberly Domainque Financial Service Rep</u>			
1.14 State Agency Signature  Date: <u>8/31/15</u>		1.15 Name and Title of State Agency Signatory <u>Glenn Normandeau Ex. Dir</u>	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By: <u>Janette</u> On: <u>9/1/2015</u>			
1.18 Approval by the Governor and Executive Council (if applicable) By: _____ On: _____			

**2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED.** The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.**

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.18, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.14 ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

**4. CONDITIONAL NATURE OF AGREEMENT.**

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated 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 Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

**5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.**

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision 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 Price Limitation set forth in block 1.8.

**6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.**

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. This may include the requirement to utilize auxiliary aids and services to ensure that persons with communication disabilities, including vision, hearing and speech, can communicate with, receive information from, and convey information to the Contractor. In addition, the Contractor shall comply with all applicable copyright laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

**7. PERSONNEL.**

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this

Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

## 8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor 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 Contractor notice of termination;

8.2.2 give the Contractor 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 contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

## 9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 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.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

**10. TERMINATION.** In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

**11. CONTRACTOR'S RELATION TO THE STATE.** In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

**12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.** The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice and consent of the State. None of the Services shall be subcontracted by the Contractor without the prior written notice and consent of the State.

**13. INDEMNIFICATION.** The Contractor 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 or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. 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 in paragraph 13 shall survive the termination of this Agreement.

## 14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than thirty (30) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than thirty (30) days prior written notice of cancellation or modification of the policy.

**15. WORKERS' COMPENSATION.**

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

**16. 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 of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default 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 Event of Default on the part of the Contractor.

**17. 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 given in blocks 1.2 and 1.4, herein.

**18. AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no

such approval is required under the circumstances pursuant to State law, rule or policy.

**19. CONSTRUCTION OF AGREEMENT AND TERMS.**

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

**20. THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

**21. HEADINGS.** The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

**22. SPECIAL PROVISIONS.** Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

**23. SEVERABILITY.** In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

**24. 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**  
**PROJECT SCOPE OF WORK**

Project Title: Funds for Sector XI Permit Bank

This Scope of Services describes activities that have been agreed to between the New Hampshire Fish and Game Department (NHFG) and XI Northeast Fisheries Sector, Inc. (XINEFS) to provide funding for purchase of federal Northeast Multispecies permit(s) for use by members of New Hampshire's commercial groundfish fleet that are enrolled in NEF Sector XI. These funds are made available by NOAA Fisheries through the State Specific Grant portion of the Greater Atlantic Fisheries Disaster funds program.

The project activities will be carried out by XI Northeast Fisheries Sector, Inc.

This agreement will become effective upon approval by Governor and Council. The project completion date is June 30, 2016 ("Completion Date").

For the purposes of this Agreement, NHFG and XINEFS agree as follows:

1. NHFG will extend a conditional grant to XINEFS in the amount of \$180,000 to purchase federal Northeast Multispecies permit(s) to be placed in the Sector XI Permit Bank for use by members of New Hampshire's commercial groundfish fleet that are enrolled in NEF Sector XI.
2. XINEFS agrees to purchase the item(s) listed in #1 and will provide NHFG the following items within 30 days following the purchase of a permit:
  - A. A copy of the permit purchased.
  - B. A copy of the Confirmation of Permit History document when the permit goes into the XINEFS Permit Bank.
  - C. A copy of the Application for Vessel Replacement, Upgrade and Confirmation of Permit History document.
  - D. A copy of the Purchase Agreement for the permit purchased that includes at a minimum how much money was transacted and identifies the permit purchased.
3. NHFG is granted a purchase money security interest or other lien on the permit(s) purchased under this agreement to secure XINEFS obligations hereunder, including, without limitation those specified in paragraphs 7, 11 and 12 below.
4. Within six months of receipt of the grant funds, XINEFS will provide NHFG a complete accounting of the expenditure made with the grant funds.
5. XINEFS agrees to provide the use of the allowable catch entitlements (ACE) associated with the permit(s) only by members of NEF Sector XI.
6. XINEFS shall not sell any Northeast Multispecies permit(s) purchased with the grant funds allocated to XINEFS in this contract.
7. In the event that XINEFS ceases to exist, ownership of the permit(s) purchased with these grant funds will be immediately transferred to the NH State Permit Bank that is operated by

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the New Hampshire Fish and Game Department. This must be conducted prior to the dissolution of the Sector due to a vessel owned by the Sector must be used to transfer the permit(s) to the NH State Permit Bank.

8. XINEFS shall not use grant funds for any costs not specified in Exhibit A, Scope of Work, of this Agreement.
9. XINEFS shall complete all activities, reports, and work products specified in Exhibit A, Scope of Work, of this Agreement.
10. The Agreement may be amended only with the mutual written consent of both NHFG and XINEFS.
11. Should XINEFS terminate this Agreement prior to completion of all obligations specified in Exhibit A through the Completion Date, XINEFS will repay the State of New Hampshire for any grant funds received.
12. NHFG may terminate this Agreement prior to the Completion Date for failure by XINEFS to comply fully with the terms hereof. In such event, XINEFS shall repay the State of New Hampshire for any grant funds received.

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**EXHIBIT B**  
**PAYMENT SCHEDULE**

1. Payments under this agreement are not to exceed \$180,000.
2. NHFG will provide the State Specific Grant portion of the Greater Atlantic Fisheries Disaster funds program to XINEFS, in the amount approved by the Governor and Executive Council, following approval of the agreement by the Governor and Executive Council.
3. At any time during the life of this agreement, NHFG may review all invoices for reconciliation between all project costs incurred by XINEFS and all payments made to date.
4. All obligations of NHFG and the State of New Hampshire are contingent upon availability and continued appropriation of funds.

**EXHIBIT C**  
**SPECIAL PROVISIONS**

NHFG is waiving the insurance request in contract requirement 14.1.

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XI Northeast Fisheries Sector, Inc.  
P.O. Box 118  
Portsmouth, NH 03802

CERTIFICATE OF VOTE

I, Joe Bills Secretary of XI Northeast Fisheries Sector, Inc. do hereby certify that:

1. I am the duly elected Secretary of XI Northeast Fisheries Sector, Inc.
2. The following are true copies of two resolutions duly adopted at a meeting of the Board of Directors of XI Northeast Fisheries Sector, Inc. duly held on May 12, 2015.

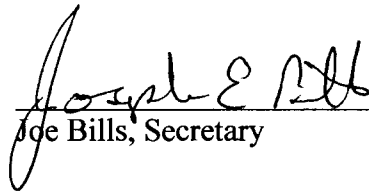
RESOLVED that this organization enters into a contract with the State of New Hampshire, acting through its Fish and Game Department.

RESOLVED that the President and Vice President are hereby authorized on behalf of this Organization to enter into a contract with the State and to execute any and all documents, agreements and other instruments, and any amendments, revisions or modifications thereto, as he may deem necessary or desirable to effect the purpose of these resolutions.

3. The foregoing resolutions have not been amended or revoked and remain in full force and effect as of May 12, 2015.

4. James Hayward is the duly appointed President and Randy Gauron is the duly appointed Vice President of the Organization.

IN WITNESS WHEREOF, I have hereunto set my hand as the XI Northeast Fisheries Sector, Inc, this 22<sup>nd</sup> the day of July, 2015.

  
Joe Bills, Secretary

State of NH, County of Rockingham

On this the 22<sup>nd</sup> day of July 2015, before me Kimberly Domaingue the undersigned officer, personally appeared Joseph Bills, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same for the purposes therein contained. In witness whereof, I hereunto set my hand and official seal.

