



The State of New Hampshire  
**Department of Environmental Services**

APR 16 2020 PM 1:13 DAS

**Robert R. Scott, Commissioner**



April 16, 2020

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

**REQUESTED ACTION**

Authorize the Department of Environmental Services to award a grant to the Town of Gorham (hereinafter "Gorham"), (VC#177396-B002), Gorham, NH in the amount of \$300,000 to purchase approximately 2,005 acres in the Towns of Gorham and Randolph to protect drinking water supply, effective upon Governor & Council approval through December 31, 2020. 100% Drinking Water/Groundwater Trust Fund.

Funding is available in the following account:

03-44-44-442010-3904-073-500580

Dept Environmental Services, DWGW Trust, Grants Non-Federal

FY 2020

\$300,000

**EXPLANATION**

The Drinking Water and Groundwater Trust Fund (DWGTF) was created in 2016, using \$276 million of MtBE trial judgment funds, as authorized by RSA 485-F. The purpose of the Trust Fund is to provide sustainable, long-term funding for the protection, preservation, and enhancement of the drinking water and groundwater resources of the state. The Drinking Water and Groundwater Advisory Commission was established to administer the Trust Fund and to provide guidance to the State on the use of the Trust Fund.

On December 1, 2018, the Advisory Commission voted to authorize grants for 15 drinking water source protection projects. Gorham's request for \$300,000 was selected for grant funding from the DWGTF. Gorham will use the grant funds to acquire approximately 2,005 acres within the protection areas of the Town of Gorham's water supply sources. Gorham will add this land to 4,100 acres of land that Gorham owns and will convey conservation restrictions to the Land and Community Heritage Investment Program on the entire 6,105 acres, of which 3,497 acres are water supply watershed lands.

DES Website: [www.des.nh.gov](http://www.des.nh.gov)


P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

Telephone: (603) 271-2513 • Fax: (603) 271-5171 • TDD Access: Relay NH 1-800-735-2964

The total cost for Gorham to acquire the additional land and place conservation restrictions on all the land is \$1,398,000. The DWGTF will provide \$300,000 with \$1,098,000 in match provided by Gorham. The purchase price of the additional land is based on a recent appraisal of fair market value.

Exhibit A describes the scope of the grant. Exhibit B provides the grant amount and payment terms and Exhibit C contains special provisions. Attachment A contains the conservation easement deed. The Attorney General's office has approved the attached draft deed as to form and substance, and will approve the actual deed as to execution. Attachment B contains a map of the land, which shows the land's relationship to the water supply sources being protected.

We respectfully request your approval.



Robert R. Scott  
Commissioner

**Subject: Grant Agreement for a NH Drinking Water and Groundwater Trust Fund Grant**  
**GRANT AGREEMENT**

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

**GENERAL PROVISIONS**

**1. IDENTIFICATIONS**

<b>1.1 State Agency Name</b> NH Department of Environmental Services		<b>1.2 State Agency Address</b> 29 Hazen Drive, Concord, NH 03302-0095	
<b>1.3 Grantee Name:</b> Town of Gorham		<b>1.4 Grantee Address</b> 20 Park Street, Gorham, NH 03581	
<b>1.5 Effective Date</b> Upon G&C approval	<b>1.6 Completion Date</b> 12/31/2020	<b>1.7 Audit Date</b> N/A	<b>1.8 Grant Limitation</b> \$300,000
<b>1.9 Grant Officer for State Agency</b> Holly Green NH Department of Environmental Services		<b>1.10 State Agency Telephone Number</b> (603) 271-3114	
<b>1.11 Grantee Signature</b> <i>Denise M. Vallee</i>		<b>1.12 Name &amp; Title of Grantee Signor</b> <i>Denise M. Vallee, Town Manager</i>	
<b>1.13 Acknowledgment:</b> State of <u>New Hampshire</u> , County of <u>Coos</u> On <u>9/28/2020</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.			
<b>1.13.1 Signature of Notary Public or Justice of the Peace</b> (Seal) <i>Kathleen Frenette</i>		<b>KATHLEEN F. FRENETTE</b> Notary Public - New Hampshire My Commission Expires September 27, 2022	
<b>1.13.2 Name &amp; Title of Notary Public or Justice of the Peace</b> <i>Kathleen Frenette, Notary Public</i>			
<b>1.14 State Agency Signature(s)</b> <i>Robert R. Scott</i>		<b>1.15 Name/Title of State Agency Signor(s)</b> Robert R. Scott, Commissioner	
<b>1.16 Approval by Attorney General's Office (Form, Substance and Execution)</b> By: <i>[Signature]</i> Attorney, On: <u>4/21/2020</u>			
<b>1.17 Approval by the Governor and Council</b> By: _____ 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.

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. **COMPLIANCE BY GRANTEE WITH LAWS AND REGULATIONS.** 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 termination.

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 subgranted 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. **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 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. **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.

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

#### Town of Gorham

The Town of Gorham will use the grant to acquire approximately 2,005 acres of land and add them to 4,100 acres of land owned by the Town of Gorham. A portion, approximately 3,497 acres, of the total 6,105 acres is within the protection areas of two Town of Gorham's drinking water sources. The parcels designated on current Gorham Tax Map R-7, Lots 1 and 2, Randolph Tax Map R-4, Lot 1, and Randolph Tax Map R-5, Lot 3 will be protected in perpetuity with deed restrictions (see Attachment A).

## EXHIBIT B

### GRANT AMOUNT & PAYMENT SCHEDULE

Payment in the amount of \$300,000 shall be made to the Town of Gorham upon receipt of the following:

1. Survey of the parcel of land.
2. A copy of the appraisal.
3. Title examination.
4. Acceptable stewardship plan for the property that ensures the permanent protection of the water supply.
5. Completed baseline documentation form, which indicates the current condition of the property.
6. Documentation to support the match of \$1,098,000 provided by the Town of Gorham.
7. The finalized deed with restrictions to protect water supply.

Grantee Initials DMV  
Date 1/22/2020

EXHIBIT C

SPECIAL PROVISIONS

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

Grantee Initials Dmn  
Date 1/28/2020

## CERTIFICATE OF VOTE

I, Carol T. Porter, do hereby certify that I am the Town Clerk of the Town of Gorham, a municipality in the State of New Hampshire, County of Coos, in the United States of America.

I do further certify that the Gorham Board of Selectmen voted to enter into a grant agreement with the NH Department of Environmental Services, and Denise M. Vallee is the Town Manager of the municipality and is duly authorized by the Board of Selectmen and laws of the State of New Hampshire to execute and deliver on behalf of the municipality any documents which may be necessary for this grant agreement with the State of New Hampshire for the purposes of land acquisition to protect rare habitat and wetland values and connect other protected resources. The authority was given during an official meeting of the Gorham Board of Selectmen on January 27<sup>th</sup>, 2020.

I further certify that such authority has not been repealed, rescinded, or amended.

In witness where, I have hereunto set my hand and attached the seal of the Town of Gorham on this 28<sup>th</sup> day of January, 2020.

TOWN OF GORHAM

By: Carol T. Porter  
Carol T. Porter, Town Clerk

State of New Hampshire  
County of Coos

Dated this 28 of January, 2020 personally appeared Carol T. Porter, Town Clerk who subscribed and swore to the above statement.

Kathleen Frenette  
Kathleen Frenette  
Justice of the Peace/Notary Public  
My Commission Expires: 09/27/2022





## CERTIFICATE OF COVERAGE

The New Hampshire Public Risk Management Exchange (Primex<sup>3</sup>) is organized under the New Hampshire Revised Statutes Annotated, Chapter 5-B, Pooled Risk Management Programs. In accordance with those statutes, its Trust Agreement and bylaws, Primex<sup>3</sup> is authorized to provide pooled risk management programs established for the benefit of political subdivisions in the State of New Hampshire.

Each member of Primex<sup>3</sup> is entitled to the categories of coverage set forth below. In addition, Primex<sup>3</sup> may extend the same coverage to non-members. However, any coverage extended to a non-member is subject to all of the terms, conditions, exclusions, amendments, rules, policies and procedures that are applicable to the members of Primex<sup>3</sup>, including but not limited to the final and binding resolution of all claims and coverage disputes before the Primex<sup>3</sup> Board of Trustees. The Additional Covered Party's per occurrence limit shall be deemed included in the Member's per occurrence limit, and therefore shall reduce the Member's limit of liability as set forth by the Coverage Documents and Declarations. The limit shown may have been reduced by claims paid on behalf of the member. General Liability coverage is limited to Coverage A (Personal Injury Liability) and Coverage B (Property Damage Liability) only. Coverage's C (Public Officials Errors and Omissions), D (Unfair Employment Practices), E (Employee Benefit Liability) and F (Educator's Legal Liability Claims-Made Coverage) are excluded from this provision of coverage.

The below named entity is a member in good standing of the New Hampshire Public Risk Management Exchange. The coverage provided may, however, be revised at any time by the actions of Primex<sup>3</sup>. As of the date this certificate is issued, the information set out below accurately reflects the categories of coverage established for the current coverage year.

This Certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend, or alter the coverage afforded by the coverage categories listed below.

<b>Participating Member:</b> Town of Gorham 20 Park Street Gorham, NH 03581		<b>Member Number:</b> 182	<b>Company Affording Coverage:</b> NH Public Risk Management Exchange - Primex <sup>3</sup> Bow Brook Place 46 Donovan Street Concord, NH 03301-2624	
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Type of Coverage	Effective Date (mm/dd/yyyy)	Expiration Date (mm/dd/yyyy)	Limits - NH Statutory Limits May Apply, If Not:	
<input checked="" type="checkbox"/> <b>General Liability (Occurrence Form)</b> <b>Professional Liability (describe)</b> <input type="checkbox"/> Claims Made <input type="checkbox"/> Occurrence	7/1/2019	7/1/2020	Each Occurrence	\$ 5,000,000
			General Aggregate	\$ 5,000,000
			Fire Damage (Any one fire)	
			Med Exp (Any one person)	
<input type="checkbox"/> <b>Automobile Liability</b> Deductible    Comp and Coll: \$1,000 <input type="checkbox"/> Any auto			Combined Single Limit (Each Accident)	
<input type="checkbox"/> <b>Workers' Compensation &amp; Employers' Liability</b>			Statutory	
			Each Accident	
			Disease - Each Employee	
			Disease - Policy Limit	
<input type="checkbox"/> <b>Property (Special Risk Includes Fire and Theft)</b>			Blanket Limit, Replacement Cost (unless otherwise stated)	

**Description:** Proof of Primex Member coverage only.

<b>CERTIFICATE HOLDER:</b>	<b>Additional Covered Party</b>	<b>Loss Payee</b>	<b>Primex<sup>3</sup> - NH Public Risk Management Exchange</b>  By: <i>Mary Beth Purcell</i>  Date: 1/28/2020    mpurcell@nhprimex.org Please direct inquiries to: <b>Primex<sup>3</sup> Claims/Coverage Services</b> 603-225-2841 phone 603-228-3833 fax
NH Department of Environmental Services 29 Hazen Dr Concord, NH 03301			



## CERTIFICATE OF COVERAGE

The New Hampshire Public Risk Management Exchange (Primex<sup>3</sup>) is organized under the New Hampshire Revised Statutes Annotated, Chapter 5-B, Pooled Risk Management Programs. In accordance with those statutes, its Trust Agreement and bylaws, Primex<sup>3</sup> is authorized to provide pooled risk management programs established for the benefit of political subdivisions in the State of New Hampshire.

Each member of Primex<sup>3</sup> is entitled to the categories of coverage set forth below. In addition, Primex<sup>3</sup> may extend the same coverage to non-members. However, any coverage extended to a non-member is subject to all of the terms, conditions, exclusions, amendments, rules, policies and procedures that are applicable to the members of Primex<sup>3</sup>, including but not limited to the final and binding resolution of all claims and coverage disputes before the Primex<sup>3</sup> Board of Trustees. The Additional Covered Party's per occurrence limit shall be deemed included in the Member's per occurrence limit, and therefore shall reduce the Member's limit of liability as set forth by the Coverage Documents and Declarations. The limit shown may have been reduced by claims paid on behalf of the member. General Liability coverage is limited to Coverage A (Personal Injury Liability) and Coverage B (Property Damage Liability) only. Coverage's C (Public Officials Errors and Omissions), D (Unfair Employment Practices), E (Employee Benefit Liability) and F (Educator's Legal Liability Claims-Made Coverage) are excluded from this provision of coverage.

The below named entity is a member in good standing of the New Hampshire Public Risk Management Exchange. The coverage provided may, however, be revised at any time by the actions of Primex<sup>3</sup>. As of the date this certificate is issued, the information set out below accurately reflects the categories of coverage established for the current coverage year.

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<b>Participating Member:</b> Town of Gorham 20 Park Street Gorham, NH 03581		<b>Member Number:</b> 182	<b>Company Affording Coverage:</b> NH Public Risk Management Exchange - Primex <sup>3</sup> Bow Brook Place 46 Donovan Street Concord, NH 03301-2624	
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Type of Coverage	Effective Date (mm/dd/yyyy)	Expiration Date (mm/dd/yyyy)	Limits - NH Statutory Limits May Apply, If Not	
<input type="checkbox"/> <b>General Liability (Occurrence Form)</b> <input type="checkbox"/> <b>Professional Liability (describe)</b> <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <input type="checkbox"/> Claims Made           <input type="checkbox"/> Occurrence         </div>			Each Occurrence	
			General Aggregate	
			Fire Damage (Any one fire)	
			Med Exp (Any one person)	
<input type="checkbox"/> <b>Automobile Liability</b> Deductible    Comp and Coll: <input type="checkbox"/> Any auto			Combined Single Limit (Each Accident)	
<input checked="" type="checkbox"/> <b>Workers' Compensation &amp; Employers' Liability</b>	1/1/2020	1/1/2021	<input checked="" type="checkbox"/> Statutory	
			Each Accident	\$2,000,000
			Disease – Each Employee	\$2,000,000
			Disease – Policy Limit	
<input type="checkbox"/> <b>Property (Special Risk includes Fire and Theft)</b>			Blanket Limit, Replacement Cost (unless otherwise stated)	

**Description:** Proof of Primex Member coverage only.

<b>CERTIFICATE HOLDER:</b>	<b>Additional Covered Party</b>	<b>Loss Payee</b>	<b>Primex<sup>3</sup> – NH Public Risk Management Exchange</b>
Town of Gorham 20 Park Street Gorham, NH 03581			By: <i>Tammy Denver</i>
			Date: 4/20/2020    tdenver@nhprimex.org
			Please direct inquiries to: <b>Primex<sup>3</sup> Claims/Coverage Services</b> 603-225-2841 phone 603-228-3833 fax

## ATTACHMENT A

THE STATE OF NEW HAMPSHIRE  
IS A PARTY TO THIS TRANSFER  
OF REAL ESTATE AND IS  
THEREFORE EXEMPT FROM THE  
LCHIP SURCHARGE PURSUANT  
TO RSA 478:17, II (A)

### **GRANT OF CONSERVATION RESTRICTIONS and RIGHTS OF ENFORCEMENT**

**WHEREAS** the **TOWN OF GORHAM**, a New Hampshire municipality with an address of 20 Park Street, Gorham in the County of Coos, State of New Hampshire, 03581 (hereinafter referred to as the "Grantor" or "Landowner," which word where the context requires includes the plural and shall, unless the context clearly indicates otherwise, include the Grantor's executors, administrators, legal representatives, devisees, heirs, successors and assigns), is the owner in fee simple of certain parcels of land, including any and all buildings, structures, and improvements there on, consisting of approximately XXXX acres situated on or near XXX road and XXX road in the Town of Gorham, County of Coös, State of New Hampshire, and shown on a plan entitled "XXXXXX" prepared by XXXX, dated XXXX and recorded as Plan # XXXXX at the Coös County Registry of Deeds (hereafter the "Plan") and more particularly described in Exhibit "A" attached hereto and incorporated herewith by reference (hereinafter referred to as "Property"); and

**WHEREAS** the **LAND AND COMMUNITY HERITAGE INVESTMENT PROGRAM**, a nonprofit corporation and public instrumentality of the State of New Hampshire ("LCHIP") which, unless the context clearly indicates otherwise, includes LCHIP's successors and assigns, with an address of 3 N. Spring St., Suite 100, Concord, County of Merrimack, State of New Hampshire, 03301, has awarded financial assistance to Grantor through the Land and Community Heritage Investment Program for the acquisition and protection of the Property; and

**WHEREAS**, the LCHIP financial assistance award is conditioned upon Grantor's recording of permanent Conservation Restrictions on the Property as defined in NH RSA 477:45-47 and acceptance of certain obligations pursuant to RSA 227-M and further described in the Grant Agreement attached hereto as Exhibit B; and

**WHEREAS**, the **NH DRINKING WATER AND GROUNDWATER TRUST FUND**, acting through the Department of Environmental Services, an administrative agency duly organized and existing under the laws of the State of New Hampshire, with a principal place of business at 29 Hazen Drive, City of Concord, County of Merrimack, State of New Hampshire 03302 (the "Third-Party Holder") has awarded financial assistance to Grantor through the New Hampshire Drinking Water and Groundwater Trust Fund, pursuant to NH RSA 485-F for the acquisition and protection of the Property; and

**WHEREAS** additional financial assistance was provided by the U.S. Forest Service Community Forest Program, in accordance with the Community Forest Program Project Grant # \_\_-DG-11420004-\_\_, subject to the terms and conditions attached hereto as Exhibit C and incorporated herein, and

**WHEREAS**, Grantor is the owner if fee simple of the Property which was acquired in part with the financial assistance described above,

## ATTACHMENT A

**NOW THEREFORE**, Grantor, with **WARRANTY** covenants, grants in perpetuity to LCHIP and Third-Party Holder the Conservation Restrictions hereinafter described, which shall constitute conservation restrictions as described in RSA 477:45-47, together with a Right of Enforcement to LCHIP and a Third-Party Right of Enforcement to NH DES, both as described in Section 4 "Enforcement Rights" below.

### 1. DEFINITIONS

For the purposes of this document, the following definitions shall apply:

- A. Watershed Area:** That ~XXX-acre portion of the Property located within the watersheds of Perkins Brook and Ice Gulch, meaning those portions of the Property from which water drains to a public water supply intake, said areas being critical to maintaining the existing high-quality water supply serving the Town of Gorham's public water supply system.
- B. Non-Watershed Area:** That area of the Property not included as Watershed Area.
- C. Conservation Values:** The significant natural habitat, open space, forestry, surface and groundwater and other conservation values protected by the terms of this deed described and set forth in a Baseline Documentation Report ("BDR") prepared and maintained by Grantor, with copies provided to LCHIP and Third-Party Holder (hereinafter the "Conservation Values"), which include, but are not limited to:
  - i. *Ice Gulch, a low-elevation (2,100') talus-choked gorge with late melting ice and a sub-alpine micro-climate characteristic of higher (4,000'+) elevations that supports a broad diversity of plants and natural communities including black spruce Krumholtz, some of which exceed 100 years of age, and four threatened and two endangered plant species. A 17-acre ravine forest which hosts salamanders, exceptionally clear water, and bedrock outcrops and boulder talus with potential for bear and bobcat dens, as well as numerous perched wetlands and NH Endangered Back's Sedge and associated habitat*
  - ii. *Water resources of 193 acres floodplain..., 30.2 feet of stream frontage, 177 acres wetlands....*
  - iii. *Wildlife habitat of 3907 acres ranked by NHFG WAP as Tier 1 and 2 habitat....*
  - iv. ....
- D. Forestry and Agriculture:** For the purposes of these restrictions, forestry and agriculture shall include animal husbandry, floriculture, and horticulture activities; the production of plant and animal products for domestic or commercial purposes; the growing of food crops or forest trees of any size capable of producing timber or other forest products; the constructions of roads of other access ways for the purpose of removing forest products from the Property and the sale of products produced on the Property such as firewood and maple syrup, all as not detrimental to the Purposes of this Deed.

### 2. PURPOSES

The Restrictions hereby conveyed are pursuant to NH RSA 477:45-47, RSA 227-M and RSA 485-J, exclusively for the following conservation Purposes (the "Purposes") for the public benefit:

## ATTACHMENT A

- A. Protection and improvement of the quality and sustainable yield of ground water and surface water resources on and under the Watershed Area as existing and potential future public water supplies as defined by NH RSA 485:1-a, XV, as may be amended from time to time, and
- B. Protection of the natural habitat or ecosystems of the Property, including the biological diversity and native flora and fauna that exists on and in the Property, and
- C. Establishment of a community forest that provides community benefits, as described in Exhibit C,
- D. Protection of the Property's productive forest land for sustainable forestry and timber management,
- E. Protection of the Property for transitory, low-impact, outdoor recreation and educational uses and other appropriate activities by the general public, as determined by the people of the Town of Gorham.

These purposes are consistent with the intent of NH RSA 227-M:1 which states, inter alia: "the intent of the Program is to conserve and preserve this state's most important natural, cultural and historical resources through the acquisition of lands and cultural and historical resources, or interests therein, of local, regional and statewide significance, in partnership with the state's municipalities and the private sector, for the primary purposes of protecting and ensuring the perpetual contribution of these resources to the state's economy, environment and overall quality of life;" with the United States Internal Revenue Code, Section 170(h).",

and with New Hampshire RSA Chapter 79-A:1 "Declaration of Public Interest," which states: "It is hereby declared to be in the public interest to encourage the preservation of open space, thus providing a healthful and attractive outdoor environment for work and recreation of the state's citizens, maintaining the character of the state's landscape, and conserving the land, water, forest, agricultural and wildlife resources."

Furthermore, the protection of this Property is consistent and in accordance with the U.S. Internal Revenue Code, Section 170(h).

The Town of Gorham (Landowner), New Hampshire Department of Environmental Services (Third-Party Holder) and LCHIP, together hereinafter may be referred to as "the Parties."

### **3. CONSERVATION RESTRICTIONS**

The Property shall be subject to the following restrictions, which shall run with the land and be enforceable as permanent conservation restrictions as defined in NH RSA 477:45-47.

The Parties acknowledge that, in view of the perpetual nature of the restrictions conveyed herein, they are unable to foresee all potential future land uses, future technologies and future evolution of the land and other natural resources, and other future occurrences affecting the Conservation Values. Therefore, the Parties together shall determine whether proposed uses, activities, or improvements not contemplated by or addressed in this Deed are consistent with the Purposes stated herein.

#### **A. PUBLIC TRUST**

Pursuant to RSA 227-M the Property shall be in the public trust. No deviation in the uses of the Property to uses or purposes not consistent with the intent of NH RSA 227-M shall be permitted, and

## ATTACHMENT A

the sale, transfer, conveyance, or release of this Property from public trust is prohibited, except as provided in NH RSA 227-M:13.

### **B. FOREST STEWARDSHIP PLAN**

All uses of the Property must be undertaken in accordance with the "*Forest Stewardship Plan for the Paul T. Doherty Memorial Town Forest, Gorham, NH*", Revised Nov. 2, 2017", as may be amended from time-to-time ("Forest Stewardship Plan") and which is incorporated herein as reference.

Written notice shall be provided to LCHIP and Third-Party Holder at least thirty (30) days prior to Landowner commencing any process to revise, update or modify the Forest Stewardship Plan. Grantor agrees that the Forest Stewardship Plan shall not include any provisions inconsistent with the Purposes of this Deed and shall comply with the U.S. Forest Service' Community Forest Program requirements for Community Forest Plans.

### **C. MANAGEMENT ACTIVITIES**

Any acts, uses or management activities undertaken on the Property shall be carried out in accordance with State of New Hampshire best management practices then applicable, shall not materially impair the Conservation Values of the Property nor harm state or federally recognized rare, threatened, endangered species or other species of conservation concern, or exemplary natural communities, such determination of harm to be based upon information from the New Hampshire Natural Heritage Bureau or the agency then recognized by the State as having responsibility for identification and/or conservation of such species, nor harm state or federally recognized historical or archeological resources, such determination of harm to be made based upon information from the New Hampshire Division of Historical Resources or the agency then recognized by the State as having responsibility for identification and/or preservation of such resources.

All commercial or industrial forestry and forest management activities shall be carried out in accordance with a written forest management plan consistent with this Deed and prepared by a licensed professional forester or by other qualified person approved in advance and in writing by LCHIP. Said forest management plan shall have been prepared not more than ten years prior to the date any timber harvest is expected to commence, or shall have been reviewed and updated as required by such a forester or other qualified person at least thirty (30) days prior to that date.

### **D. WATERSHED AREA**

Landowner reserves the right to withdraw surface water and/or groundwater on a sustainable yield basis and to remove said water from the Watershed Area only for the purpose of supplying a public water system, as defined by N.H. RSA 485:1-a, XV, as it may be amended from time to time, and no other restriction, easement, agreement, or encumbrance may preclude such use. "Sustainable yield" shall mean a rate of annual water withdrawal that does not cause adverse impacts to water resources or users. Withdrawal or removal of groundwater for private commercial purposes not served by a public water system is expressly prohibited.

Activities within the Watershed Area shall not degrade water quality such that the standards set for public drinking water by the N.H. Department of Environmental Services would be threatened, or cause an unsustainable quantity of water to be withdrawn. This restriction shall not apply to the Non-Watershed Area.

### **E. NO STRUCTURES OR IMPROVEMENTS**

## ATTACHMENT A

i. There shall be no structure or improvement constructed, placed, or introduced onto the Property, except for structures and improvements which are permitted under the Forest Stewardship Plan, are necessary in the accomplishment of Property uses or activities that are consistent with the purposes of NH RSA 227-M or 485-F, *or are undertaken within the Watershed Area in conjunction with a groundwater withdrawal development project.*

ii. Landowner reserves the right to maintain infrastructure on the Property, including (*buildings, structures, dams, catchment areas, etc.*) that exist as of the date of this deed, as documented in the BDR.

### **F. NO INDUSTRIAL OR COMMERCIAL USE**

The Property shall be maintained in perpetuity as open space without there being conducted thereon any industrial or commercial activities, except those activities necessary or desirable in carrying out the agriculture, forestry, and outdoor recreation and educational uses of the Property, and the water supply and groundwater withdrawal uses of the Watershed Area, and provided that such activities shall not cause soil erosion or pollution of surface or subsurface waters, and that the productive capacity of the Non-Watershed Area to produce forest and/or agricultural crops shall not be degraded by on-site activities, and that activities within the Watershed Area shall not threaten water supply protection.

Notwithstanding the above, Landowner may collect reasonable fees for or from small-scale commercial enterprises conducted on the Property that are consistent with the intent of NH RSA 227-M or 485-F and do not harm the Conservation Values or future viability of the Conservation Values of the Property.

### **G. NO DUMPING, MINING, OR DISTURBANCE**

There shall be:

- i. no dumping, storage, injection, application, burning or burial of man-made materials, building demolition or construction debris, trash, tires, municipal plowed snow, vehicle bodies or parts or similar materials, wastes generated off the Property, or materials known to be environmentally hazardous is permitted on the Property, except in conjunction with the agriculture, forestry, or outdoor recreation and educational uses of the Property permitted by this deed, or the water supply or groundwater withdrawal uses of the Watershed Area, and provided such uses are not detrimental to the Conservation Values, are permitted by the Forest Stewardship Plan; and do not threaten water supply protection within the Watershed Area;
- ii. no mining, quarrying, excavation, or removal of rocks, minerals, gravel, sand, topsoil, or other similar materials on or from the Property, except as may be necessary in furtherance of uses or activities consistent with the intent of NH RSA 227-M and RSA 485-F, shall be permitted, and in no case shall any rocks, minerals, gravel, sand, topsoil, or other similar materials be marketed for sale from the Property, except that Landowner may conduct limited activities to remove bank gravel, if any exists, exclusively for use on the Property. Any such extraction activities shall be conducted in accordance with the Forest Stewardship Plan, shall be limited to a small, defined area or acreage, and shall not adversely impact the

## ATTACHMENT A

Conservation Values of the Property. Once such extractions are completed, Landowner shall promptly restore the affected area..

- iii. no disturbance of the surface or alteration of the topography of any portion of the Property shall be permitted, except as may be necessary in furtherance of uses or activities consistent with the intent of NH RSA 227-M and 485-F.

Notwithstanding the above, Landowner shall have the right to maintain, relocate or expand existing recreational trails, including OHRV trails, within the Non-Watershed Area, so long as such activity is conducted in accordance with the Forest Stewardship Plan. Trail making and management activities shall be carried out in accordance with all applicable local, state and federal laws and regulations, and, to the extent reasonably practicable, in accordance with the then current, generally accepted best management practices for the sites, soils and terrain of the Property.

### **H. FUTURE ENCUMBRANCE OR CONVEYANCE**

Landowner shall not give, grant, sell, convey, transfer, mortgage, pledge, or in any way encumber the Property without the prior written approval of LCHIP and without the express restatement of these conservation restrictions, which shall run with the land and bind the Landowner's successors and assigns in perpetuity. Further, any future easement or restriction shall not diminish the Conservation Values of the Property, shall be consistent with the intent of NH RSA 227-M and 485-F and the Forest Stewardship Plan, and shall be conveyed to and accepted and recorded by either the State of New Hampshire, the U.S. Government, or any subdivision of either of them, consistent with section 170(c)(I) of the U.S. Internal Revenue Code of 1986, as amended, or any qualified organization within the meaning of Section 170(h)(3) of said Code, which organization has among its purposes the conservation and preservation of land and water areas, and which agrees to and is capable of enforcing the conservation restrictions of this or any future Deed.

Landowner shall provide the names, addresses, and phone number of any successors in title to the Property or any interest in the Property to LCHIP and Third-Party Holder no more than thirty days following any sale, transfer or conveyance of any portion of same.

### **I. NO SUBDIVISION**

Landowner shall not subdivide, or undertake any action that would have the effect of subdividing, any part of the Property, and the Property shall be conveyed only in its entirety unless prior written approval is obtained from LCHIP, except that a short-term lease of not more than ten (10) years for uses consistent with the intent of NH RSA 227-M shall not be considered a breach of this restriction.

### **J. NO USE OF PROPERTY TO SATISFY LAND USE REGULATIONS**

The Property shall in no way be used to satisfy the requirements of any applicable zoning ordinance or subdivision regulation, including but not limited to density, frontage or open space requirements, with respect to the development of any other property.

### **K. PUBLIC ACCESS**

Pursuant to RSA 227-M:15, there is hereby conveyed the right of pedestrian access to, on, and across the Property by members of the public for hunting, fishing, and transitory passive recreational purposes (not including camping), except that Landowner may post against or limit such access, with



## ATTACHMENT A

prior approval of LCHIP, if such activities become inconsistent with the purposes for protecting the Property and/or when public safety would be at risk.

Notwithstanding the above, Landowner shall have the right to post against vehicles, motorized or otherwise, against access to active livestock fields, against access to agricultural cropland during the planting and growing season, and against access to forest land during harvesting, establishment of plantations or other active management activities and may temporarily restrict public access during an emergency situation where public safety could be at risk. Notwithstanding the above, nothing herein shall prohibit Landowner from disallowing specific individuals or entities access under lawful court orders or injunctive relief.

### **L. MOTORIZED VEHICLES**

Pursuant to NH RSA 485-F, no recreational use of motorized vehicles shall be allowed within the Watershed Area, except that snowmobiles, as defined in NH RSA 215-A:1, XIII may be allowed if they are operated only on snow and ice outside of the sanitary protective area of public water supply well(s), more than 250 feet from a surface water body being used as a public water supply; more than 100 feet from tributaries contributing to such water bodies except when crossing such tributaries, and only on designated trails depicted on a plan approved by the N.H. Department of Environmental Services.

Notwithstanding the above, Landowner reserves the right to manage use of motorized vehicles within the Non-Watershed Area so long as such use does not materially degrade the Conservation Values, is not inconsistent with the Purposes of this Deed, and is undertaken in accordance with the Forest Stewardship Plan.

### **M. SIGNS**

Landowner reserves the right to post signs on the Property to describe permitted uses of the Property, to identify trails, property boundaries, and other points of interest, to identify the Landowner and other parties holding an interest in the Property, and to notify the public of any permitted limitations placed on public access and use of the Property which are not inconsistent with the terms and conditions hereof. This shall not be considered as the right to post the entire Property against pedestrian access.

## **4. ENFORCEMENT RIGHTS**

### **A. ACCESS**

LCHIP and Third-Party Holder shall have reasonable access to the Property and all of its parts for such inspection as either party finds necessary to determine compliance with and enforce the terms contained herein, to exercise the rights conveyed hereby, to carry out the duties assumed by each, and to maintain the Property boundaries if either party so chooses. In the event of an emergency, either party may enter the Property to prevent, terminate, or mitigate a potential or unaddressed violation of these restrictions and will give notice to Landowner or Landowner's representative at the earliest practicable time.

### **B. LCHIP RIGHT OF ENFORCEMENT**

Should Landowner cease to adhere to the conditions in this Deed or to perform their obligations under this Deed within thirty (30) days after receipt of written notice of a material breach, delivered in hand

## ATTACHMENT A

or by certified mail, return receipt requested, from LCHIP, or if Landowner fails to continue diligently to cure any breach until finally cured, then LCHIP shall have the right to enforce the conditions of this Deed by administrative proceedings as may be provided by law, or by an action at law or in equity in a court of competent jurisdiction.

### **C. LCHIP RECOVERY OF COSTS**

In the event LCHIP exercises its Right of Enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Deed or to Landowner's acts or failure to act, including, but not limited to, attorney and consultant fees, staff costs, and other reasonable expenses. However, if LCHIP initiates action against the Landowner to enforce the terms of this Deed or to exercise its rights under this Deed, and if the court determines that a material breach has not been established, each party shall bear its own costs. Notwithstanding the foregoing, if the court determines that LCHIP acted without reasonable cause or in bad faith, then the court may require LCHIP reimburse the Landowner's reasonable costs incurred in defending the action including, but not limited to, attorney and consultant fees, staff costs, and other reasonable expenses.

Nothing herein shall be construed to entitle LCHIP to institute any enforcement proceedings against the Landowner, or to recover costs or attorney's fees from Landowner, for any changes to the Property due to causes beyond the Landowner's control, such as changes caused by fire, flood, storm, earthquake or the unauthorized wrongful acts of third persons, and any such occurrence shall not be deemed a material breach entitling LCHIP to exercise its power of termination hereunder.

### **D. STATE OF NEW HAMPSHIRE'S RIGHT OF ENFORCEMENT**

If LCHIP ceases to enforce these restrictions conveyed hereby or fails to enforce it within thirty (30) days after receipt of written notice from the Third Party Holder requesting such, then the notifying Third Party Holder shall have all the rights heretofore granted to the LCHIP to enforce these restrictions and be entitled to recover the costs of such enforcement from the Landowner or LCHIP or both. "IN ACCORDANCE WITH PARAGRAPH 4C above."

### **E. MAINTENANCE, LIENS, AND PAYMENT OF TAXES**

Neither LCHIP or Third-Party Holder shall be under any obligation to maintain the Property or to pay any taxes, liens or assessments thereon.

### **F. ASSIGNMENT OF INTERESTS**

The interests held by LCHIP are assignable or transferable to any party qualified by the State of New Hampshire to become LCHIP's assignee or transferee, who shall have like power upon such assignment or transfer.

The interests held by the Third-Party Holder are assignable or transferable to any party qualified by the State of New Hampshire to become the Third-Party Holder's assignee or transferee. Any such assignee or transferee shall have like power of assignment or transfer.

Any holder of an interest in this Property desiring to transfer or assign its interest shall send written notice describing said intention to all other holders of any interest in this Property at least thirty (30) days prior to such transfer or assignment taking effect.

### **G. SOVEREIGN IMMUNITY**

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Nothing herein shall be construed as a waiver of sovereign immunity by the State of New Hampshire, such immunity being hereby specifically reserved. If the interests held by the State of New Hampshire herein are assigned or transferred to a qualified party other than the State of New Hampshire or agency thereof, as allowed by Section D above, this Section G ("Sovereign Immunity") shall not apply to the assignee or transferee.

### 5. AMENDMENT

If circumstances arise under which an amendment to or modification of this Deed would be appropriate the Parties may, by mutual written agreement, jointly amend this Deed. Any such amendment shall serve to further the protection of the Conservation Values of the Property and the purposes of the Grant, shall not permit any private inurement to any person or entity, and shall not adversely impact the overall conservation and natural resource values protected by the Deed. Nothing in this paragraph shall require the Parties to agree to any amendment or to consult or negotiate regarding any proposed amendment.

### 6. FUTURE MERGER

The Parties explicitly agree that it is their express intent, forming a part of the consideration hereunder, that the provisions of the Deed set forth herein are to last in perpetuity and that, to that end, no acquisition of the fee interest in the Property by LCHIP or Third-Party Holder shall be deemed to eliminate the covenants, restrictions or terms of this Deed, or any portion thereof, pursuant to the doctrine of "merger" or any other legal doctrine. Should LCHIP or Third-Party Holder acquire the fee interest in the Property, the Property secured thereby shall continue to be subject to all of the restrictions and other terms and conditions set forth in this Deed. The restrictions above shall be enforceable in perpetuity by actions at law or by proceedings in equity.

### 7. SEVERABILITY

This Deed shall be interpreted under and governed by the laws of the State of New Hampshire, and shall be liberally construed to effect the Purposes of NH RSA 227-M and 485-F. If any provision of this Deed, or the application thereof to any person or circumstance, is found to be invalid by a court of competent jurisdiction the remainder of the provisions of this Deed or the application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby. To this end the provisions of this Deed are declared to be severable.

### 8. NO WAIVER OF RIGHT TO TAKE ACTION

LCHIP and Third-Party Holder do not waive or forfeit the rights granted herein to take action as may be necessary to insure compliance with this Deed by any prior failure to act and Landowner hereby waives any defense of laches with respect to any delay or omission by LCHIP or Third-Party Holder in acting to enforce any restriction or exercise any rights under this deed, any such delay or omission shall not impair either LCHIP or Third-Party Holder's rights or remedies or be construed as a waiver.

### 9. INTERPRETATION

Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of Property shall not apply in the construction or interpretation of this Deed, and this instrument shall be interpreted broadly to effect its purposes and the restrictions and obligations herein contained. Nothing contained herein shall be interpreted to authorize or permit Landowner to violate any law, ordinance or regulation. In the event of any conflict between any such ordinance or regulation and the terms hereof, Landowner

## ATTACHMENT A

shall promptly notify LCHIP and Third-Party Holder of such conflict and shall cooperate with LCHIP and Third-Party Holder and the applicable governmental entity to accommodate the purposes of both this Deed and such ordinance or regulation.

To the extent that any action taken by LCHIP or Third-Party Holder pursuant to this Deed gives rise to a claim of breach of contract, the Parties agree that the sole remedy on the part of the Landowner shall be reimbursement of actual direct out-of-pocket expenses reasonably incurred by the Landowner as a result of such breach and that Landowner shall not have any right to indirect, consequential or monetary damages in excess of such actual direct out-of-pocket expenses.

### 10. REQUESTS FOR APPROVAL

Where LCHIP or Third-Party Holder approval is required, Landowner shall submit a detailed written request to that party, delivered in hand or by certified mail, or by other method as agreed to by the Parties, and containing information sufficiently detailed (including, but not limited to, documents, maps, plans, specifications, and designs where appropriate) to reasonably evaluate the proposed activity, no less than forty-five (45) days prior to the start of the proposed activity. Such approval shall not be unreasonably withheld, delayed, or conditioned and approval or denial of the request, or a request for additional information as may be required to evaluate the request, shall be provided no later than thirty (30) days following receipt of Landowner's request. LCHIP and Third-Party Holder reserve the right to consult with governmental agencies, nonprofit conservation or preservation organizations, and/or other consultants or advisors as it may choose concerning any approval request. Landowner shall not undertake any activity requiring such approval until a letter detailing such approval has been received from the appropriate party.

### 11. CONDEMNATION / EXTINGUISHMENT

#### A. EXTINGUISHMENT

If circumstances arise in the future so as to render the Purposes of the Restrictions herein impossible or impracticable to accomplish, the Restrictions can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, after review by the Charitable Trust Unit of the New Hampshire Department of Justice. All expenses reasonably incurred by Landowner, LCHIP or Third-Party Holder in connection with such action shall be paid out of the amount recovered, the balance of which shall hereinafter be referred to as the "Net Proceeds", which shall then be allocated among the Parties in accordance with subsection XX below.

It is the specific and considered intent of the Parties that any such change in economic conditions shall not be deemed to be circumstances justifying the termination or extinguishment of the Restrictions contained herein pursuant to this section."

#### B. CONDEMNATION

If all or any part of the Property is taken, in whole or in part, by exercise of the power of eminent domain by public, corporate or other authority so as to extinguish these Restrictions, in whole or in part, or if all or a part of the Property is lawfully sold without the restrictions imposed hereunder in lieu of the exercise, and under the threat, of eminent domain (both subsequently referred to as a "taking"), the Parties shall act jointly to recover the full value of the Property subject to the taking or in lieu purchase and to recover all direct or incidental damages resulting there from. Following such taking, all expenses reasonably incurred by Landowner, LCHIP or Third-Party

## ATTACHMENT A

Holder in connection with such action shall be paid out of the amount recovered, the balance of which shall hereinafter be referred to as the "Net Proceeds".

### C. ALLOCATION OF PROCEEDS

The Net Proceeds shall be allocated among the Parties based on the relative contribution of each of the Parties towards the total cost of acquisition and protection of the Property (the "project cost") as follows: to LCHIP \_\_\_\_ % (XX percent) of the Net Proceeds, to Third-Party Holder, \_\_\_\_ % (XX percent) of the Net Proceeds, and to the Landowner \_\_\_\_ % (XX percent) of the Net Proceeds. Until such time as LCHIP and Third-Party Holder each receives their share of the Net Proceeds from the Landowner or Landowner's successor or assigns, each shall have a lien against the Property for the amount due.

Landowner shall use its share of the proceeds in a manner consistent with and in furtherance of one or more of the Purposes set forth herein.

### 12. BENEFITS AND BURDEN

The burden of the conditions conveyed hereby shall run with the Property and shall be enforceable against all future owners and tenants in perpetuity; the benefits of this Deed shall not be appurtenant to any particular parcel of land but shall be in gross and assignable or transferable only to the State of New Hampshire, the U.S. Government, or any subdivision of either of them, consistent with Section 170(c)(1) of the U.S. Internal Revenue Code of 1986, as amended, or to any qualified organization within the meaning of Section 170(h)(3) of said Code, which organization has among its purposes the conservation and preservation of land and water areas and agrees to and is capable of enforcing the terms contained herein.

### 13. GENERAL DISCLAIMER

LCHIP, and the State of New Hampshire, acting through the Third-Party Holder, and the employees, agents, and assigns of each, disclaim and will not be held responsible for Landowner's negligent acts or omissions or Landowner's breach of any representation, warranty, covenant, or agreements contained in this Deed, or violations of any Federal, State, or local laws, including all Environmental Laws including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which LCHIP or the State of New Hampshire may be subject or incur relating to the Property.

### 14. ENVIRONMENTAL WARRANTY

Landowner warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Landowner warrants that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Property. Landowner further warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable Federal and State law. Moreover, Landowner hereby promises to hold harmless and indemnify LCHIP and the State of New Hampshire against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any hazardous materials on, at, beneath or from the Property, or

## ATTACHMENT A

arising from or connected with a violation of any Environmental Laws by Landowner or any other prior owner of the Property. Landowner's indemnification obligation will not be affected by any authorizations or approvals provided by LCHIP or the State of New Hampshire to Landowner with respect to the Property.

"Environmental Law" or "Environmental Laws" means any and all Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection, and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect. "Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution, or substance that may pose a present or potential hazard to human health or the environment.

ATTACHMENT A

**GRANTOR: TOWN OF GORHAM**

By

\_\_\_\_\_  
TYPE IN NAME AND TITLE

\_\_\_\_\_  
Date

STATE OF NEW HAMPSHIRE  
COUNTY OF COÖS ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me personally appeared  
\_\_\_\_\_ known to me (or satisfactorily proven) to be the person  
whose name appears above, and s/he acknowledged that s/he executed this document in the  
capacity indicated above.

\_\_\_\_\_  
Justice of the Peace/Notary Public

My commission expires:

ATTACHMENT A

**ACCEPTED: LAND AND COMMUNITY HERITAGE INVESTMENT PROGRAM**

By

\_\_\_\_\_  
Dorothy T. Taylor, Executive Director  
Land and Community Heritage Investment Program

\_\_\_\_\_  
Date

STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me personally appeared Dorothy T. Taylor known to me (or satisfactorily proven) to be the person whose name appears above, and she acknowledged that she executed this document in the capacity indicated above.

\_\_\_\_\_  
Justice of the Peace/Notary Public

My commission expires:

**ACCEPTED: STATE OF NEW HAMPSHIRE**

By

\_\_\_\_\_  
Robert R. Scott, Commissioner  
New Hampshire Department of Environmental Services

\_\_\_\_\_  
Date

STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me personally appeared Robert R. Scott, Commissioner of the New Hampshire Department of Environmental Services known to me (or satisfactorily proven) to be the person whose name appears above, and he acknowledged that he executed this document in the capacity indicated above.

\_\_\_\_\_  
Justice of the Peace/Notary Public

My commission expires:



**ATTACHMENT A**

**EXHIBIT A**

**LEGAL DESCRIPTION**

*Include description of Watershed and Non-Watershed Areas?*

ATTACHMENT A

**EXHIBIT B**

**LCHIP GRANT AGREEMENT**

ATTACHMENT A

EXHIBIT C

CFP Grant Requirements

NOTICE OF GRANT REQUIREMENT

This property was acquired with Federal funds under the U.S. Forest Service, Community Forest Program, in accordance with the Community Forest Program Project Grant #\_\_-DG-11420004-\_\_\_\_.

The property described in this deed is being acquired by Grantee with Federal funds

**Purpose:**

The purpose of this acquisition is to effect the U.S. Forest Service Community Forest Program authorized by Section 8003 of the Food, Conservation, and Energy Act of 2008 (16 U.S.C. 2103d) for the purposes of establishing community forests that provide community benefits by acquiring and protecting private forestlands. This authority continues indefinitely. Program delivery is guided by the Community Forest Program regulations (36 CFR Part 230 Subpart A) (published 10/20/2011; 76 FR 65121).

**Reversion:**

This property was acquired with Federal funds under the U.S. Forest Service, Community Forest Program, in accordance with the Community Forest Program Project Grant #\_\_-DG-11420004-\_\_\_\_. In the event the property conveyed herein is sold or converted to nonforest uses or a use inconsistent with the purpose of the U.S. Forest Service Community Forest Program, the grant recipient or subsequent owner of the property shall: (1) pay the United States an amount equal to the current sale price or the current appraised value of the parcel, whichever is greater; and (2) not be eligible for additional grants under the U.S. Forest Service Community Forest Program.

Name and Address of Grant Recipient and Authorized Title Holder:

Town of Gorham

Address

Address

## ATTACHMENT A

## Attachment B - Map

# Town of Gorham - Ice Gulch & Perkins Brook Project

Ice Gulch & Perkins Brook Project Proposed Conservation Lands

Conservation Lands

Wellhead Protection Areas

Hydrologic Areas of Concern

Public Water Supply Wells

Hydrography

Town Boundaries

Roads

0 2,050 4,100 8,200 Feet

Total Acres= 5924.0 Ac.  
Eligible Acres= 3497.0 Ac.

The coverages presented are under constant revision as new sites or facilities are added. They may not contain all of the potential or existing sites or facilities. NHDES is not responsible for the use or interpretation of this information. Not intended for legal purposes.

9/30/2019

