



The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**

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**Thomas S. Burack, Commissioner**

October 16, 2015

Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

**REQUESTED ACTION**

Authorize the New Hampshire Department of Environmental Services (DES) to amend a Grant Agreement with the City of Keene, Keene, NH (Vendor Code #177417) by extending the end date to June 30, 2017 from December 31, 2015, effective upon Governor and Council approval. The original Grant Agreement was approved by the Governor and Council on March 26, 2014, (Item #52). No additional funding is requested as part of this amendment. 100% ARM Funds.

**EXPLANATION**

The Agreement with the City of Keene will provide Aquatic Resource Mitigation funds to complete the project involving the restoration of approximately one acre of emergent/scrub-shrub wetlands previously disturbed at Woodlawn Cemetery. The agreement presently expires on December 31, 2015. This proposed Agreement extension is requested to extend the contract to June 30, 2017. The extension is needed to complete the construction work.

This amendment to the original agreement has been approved as to form, content, and execution by the Attorney General's Office. In the event that other funds no longer become available, general funds will not be requested to support this program.

We respectfully request your approval.

  
Thomas S. Burack, Commissioner

**Agreement for Services with the City of Keene**  
Amendment No. 1

This Agreement (hereinafter called the "Amendment") dated this 22<sup>nd</sup> of September 2015 is by and between the State of New Hampshire, acting by and through its Department of Environmental Services (hereinafter referred to as the "State") and the City of Keene, acting by and through its City Manager, John MacLean (hereinafter referred to as the "Grantee").

WHEREAS, pursuant to an Agreement (hereinafter called the "Agreement") approved by the Governor and Council on March 26, 2014, Agenda Item 52, the Grantee agreed to perform certain services upon the terms and conditions specified in the Agreement and in consideration of payment by the State of certain sums as specified therein; and

WHEREAS, The Grantee and the State have agreed to amend the Agreement in certain respects;

NOW THEREFORE, in consideration of the foregoing, and the covenants and conditions contained in the Agreement and set forth herein, the parties hereto do hereby agree as follows:

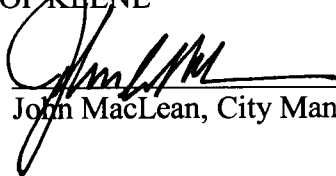
1. Amendment and Modification of Agreement: The Agreement is hereby amended as follows:
  - (A) The Completion Date as set forth in sub-paragraph 1.6 of the agreement shall be changed from December 31, 2015 to June 30, 2017.
  - (B) Exhibit C Special Provisions shall be amended to include the following provision: Subparagraph 17.1.2 of the General Provisions shall be changed to read: "comprehensive public liability insurance against all claims of bodily injuries, death or property damage, in amounts not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate; and"
2. Effective Date of Amendment: This Amendment shall take effect upon the date of approval of this Amendment by the Governor and Executive Council of the State of New Hampshire.
3. Continuance of Agreement: Except as specifically amended and modified by the terms and conditions of this Amendment, the Agreement, and the obligations of the parties thereunder, shall remain in full force and effect in accordance with the terms and conditions set forth therein.

Contractor Initials

Date 9/22/15

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the day and year first above written.


CITY OF KEENE

By   
John MacLean, City Manager

STATE OF NEW HAMPSHIRE  
COUNTY OF CHESHIRE


On this the 30<sup>th</sup> day of September, 2015, before the undersigned officer, personally appeared John MacLean, who acknowledged himself to be the person who executed the foregoing instrument for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
Signature of Notary public/~~TOP~~  
**Vicki E. D. Flanders, Notary Public**  
**My commission expires October 26, 2016**  
Print Name of Notary public/~~TOP~~

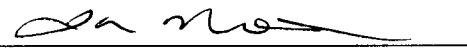
My Commission Expires: 10-26-2016


THE STATE OF NEW HAMPSHIRE  
Department of Environmental Services

By   
Thomas S. Burack, Commissioner

Approved by Attorney General this 26<sup>th</sup> day of October, 2015

OFFICE OF ATTORNEY GENERAL  
*Sr. Assistant Attorney General*

By 

Contractor Initials   
Date 9/23/15

CERTIFICATE

I, John MacLean, City Manager of the City of Keene, do hereby certify that:

- (1) I am the duly appointed City Manager;
- (2) at the meeting held on November 21, 2013, the City of Keene City Council voted to accept DES funds and to enter into a contract with the Department of Environmental Services;
- (3) the City of Keene City Council further authorized the City Manager to execute any documents which may be necessary for this contract;
- (4) this authorization has not been revoked, annulled, or amended in any manner whatsoever, and remains in full force and effect as of the date hereof; and
- (5) the following person has been appointed to and now occupies the office indicated in (3) above:

John MacLean

IN WITNESS WHEREOF, I have hereunto set my hand as the City Manager of the City of Keene, this 23<sup>rd</sup> day of September, 2015.

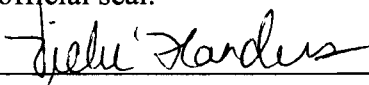
  
\_\_\_\_\_  
Signature of Certifying Officer

John A. MacLean  
\_\_\_\_\_  
Printed name of Certifying Officer

STATE OF NEW HAMPSHIRE  
County of Cheshire

On this the 30<sup>th</sup> day of September, 2015, before me, Vicki E. D. Flanders (~~Notary~~  
~~name of the Notary Public~~) the undersigned officer, personally appeared  
John A MacLean (~~certifying officer~~) who acknowledged  
himself/~~herself~~ to be the City Manager of the City of Keene being authorized so to do, executed  
the foregoing instrument for the purpose therein contained.

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

  
\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed name of Notary Public

Commission Expiration Date:  
(Seal)

Vicki E. D. Flanders, Notary Public  
My commission expires **October 28, 2016**



## 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> City of Keene 3 Washington Street Keene, NH 03431-3191	<b>Member Number:</b> 210	<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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Coverage Category	Effective Date	Expiration Date	Limits and Conditions								
<input checked="" type="checkbox"/> <b>General Liability (Occurrence Form)</b> <b>Professional Liability (describe)</b> <input type="checkbox"/> Claims Made <input type="checkbox"/> Occurrence	7/1/2015	7/1/2016	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>Each Occurrence</td> <td style="text-align: right;">\$ 5,000,000</td> </tr> <tr> <td>General Aggregate</td> <td style="text-align: right;">\$ 5,000,000</td> </tr> <tr> <td>Fire Damage (Any one fire)</td> <td style="text-align: right;">\$</td> </tr> <tr> <td>Med Exp (Any one person)</td> <td></td> </tr> </table>	Each Occurrence	\$ 5,000,000	General Aggregate	\$ 5,000,000	Fire Damage (Any one fire)	\$	Med Exp (Any one person)	
Each Occurrence	\$ 5,000,000										
General Aggregate	\$ 5,000,000										
Fire Damage (Any one fire)	\$										
Med Exp (Any one person)											
<input checked="" type="checkbox"/> <b>Automobile Liability</b> Deductible    Comp and Coll: \$1,000 <input type="checkbox"/> Any auto	7/1/2015	7/1/2016	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>Combined Single Limit (Each Accident)</td> <td style="text-align: right;">\$5,000,000</td> </tr> <tr> <td>Aggregate</td> <td style="text-align: right;">\$5,000,000</td> </tr> </table>	Combined Single Limit (Each Accident)	\$5,000,000	Aggregate	\$5,000,000				
Combined Single Limit (Each Accident)	\$5,000,000										
Aggregate	\$5,000,000										
<input checked="" type="checkbox"/> <b>Workers' Compensation &amp; Employers' Liability</b>	1/1/2015	1/1/2016	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td><input checked="" type="checkbox"/> Statutory</td> <td></td> </tr> <tr> <td>Each Accident</td> <td style="text-align: right;">\$2,000,000</td> </tr> <tr> <td>Disease – Each Employee</td> <td style="text-align: right;">\$2,000,000</td> </tr> <tr> <td>Disease – Policy Limit</td> <td style="text-align: right;">\$</td> </tr> </table>	<input checked="" type="checkbox"/> Statutory		Each Accident	\$2,000,000	Disease – Each Employee	\$2,000,000	Disease – Policy Limit	\$
<input checked="" type="checkbox"/> Statutory											
Each Accident	\$2,000,000										
Disease – Each Employee	\$2,000,000										
Disease – Policy Limit	\$										
<input checked="" type="checkbox"/> <b>Property (Special Risk includes Fire and Theft)</b>	7/1/2015	7/1/2016	Blanket Limit, Replacement Cost (unless otherwise stated) Deductible: 1,000								

**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>
NH Dept of Environmental Services 29 Hazen Drive Concord, NH ATTN: Lori Sommer, Wetlands Bureau			<b>By:</b> <i>Tammy Denver</i>
			<b>Date:</b> 8/7/2015    tdenver@nhprimex.org Please direct inquires to: <b>Primex<sup>3</sup> Claims/Coverage Services</b> 603-225-2841 phone 603-228-3833 fax

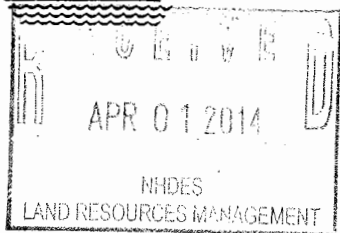
Lori Sommer



The State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner



March 6, 2014

APPROVED G&C

Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

DATE: 3/26/14

ITEM #: 52

**REQUESTED ACTION**

Authorize the New Hampshire Department of Environmental Services (DES) to award an Aquatic Resource Mitigation (ARM) Fund grant to the City of Keene, Keene, NH (hereinafter "City") (Vendor Code #177417) in the amount of \$277,707 to restore approximately one acre of wetlands and re-direct a section of a stream that is a tributary to Beaver Brook to improve flood storage, wildlife habitat, and nutrient retention, effective upon G&C approval through December 31, 2015. 100% Aquatic Resource Mitigation Funds.

Funding is available in the account as follows:

	<u>FY'14</u>
03-44-44-442010-38710000-073-500580	\$277,707
Dept. Environmental Services, In-Lieu Wetland Mitigation, Grants – Non - Federal	

**EXPLANATION**

New Hampshire RSA 482-A:3 requires a wetland permit for any proposed project that involves dredging or filling of a wetland. Before a wetland permit is issued, applicants must show that the proposed project will avoid adverse impacts to wetlands and will minimize and provide compensation for those wetland impacts which are unavoidable.

The DES wetlands program adopted a set of mitigation rules that establish what is necessary for an applicant to provide for wetland compensation. The current department rules spell out ratios for wetland compensation that include creating a new wetland, restoring a former wetland site, or protecting a high-quality aquatic resource by preserving adjacent upland habitat. The newest improvement to the mitigation options is commonly referred to as an *in-lieu fee program*. This mitigation option is ideal for projects that have difficulty in locating an appropriate mitigation site. The Aquatic Resource Mitigation Fund (ARM) authorizes the collection of mitigation funds in lieu of other forms of wetland mitigation as part of a Wetlands Permit Application. The ARM program was authorized in legislation that became effective in August, 2006.

The Department issued the request for proposals for ARM Funds available in the Lower Connecticut River watershed in April, 2012. Three proposals were received and on November 27, 2012 DES announced the decision to fund two projects. The project proposed by the City of Keene was recommended for funding by the ARM Fund Site Selection Committee. Attachment A lists the proposals received and Committee members involved in the decision. The review of the awards by the Army Corps of Engineers and the New Hampshire Wetland Council resulted in full support of the recommendations.

Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Council

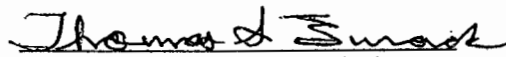
Page 2

The City of Keene will utilize its ARM funds to restore approximately one acre of emergent/scrub-shrub wetlands previously disturbed at Woodlawn Cemetery. The restoration work includes stream improvements to a tributary of Beaver Brook. The work will involve redirecting the stream flow into a large wetland system on a City owned parcel to improve flood storage, wildlife habitat, and nutrient retention. The City will also be reviewing the deeds of two properties to determine whether the parcels are protected or could be protected as conservation land. Attachment B includes a map of the property.

In the event that other funds no longer become available, general funds will not be requested to support this program. Exhibit A describes the scope of services. Exhibit B provides the budget and payment terms. Exhibit C addresses special provisions.

This agreement has been approved as to form, content, and execution by the Attorney General's Office.

We respectfully request your approval.

  
Thomas S. Burack, Commissioner

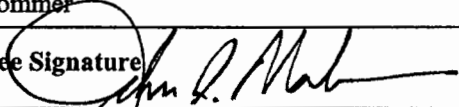
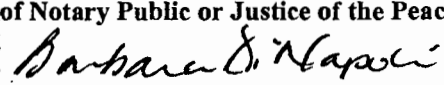
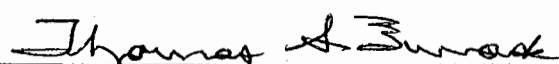
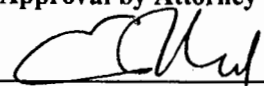
**Subject:** Grant agreement for a NHDES Aquatic Resource Mitigation Fund Award

**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> City of Keene, New Hampshire		<b>1.4 Grantee Address</b> 3 Washington Street, Keene, NH 03431	
<b>1.5 Effective Date</b> Upon G&C approval	<b>1.6 Completion Date</b> December 31, 2015	<b>1.7 Audit Date</b> N/A	<b>1.8 Grant Limitation</b> \$277,707
<b>1.9 Grant Officer for State Agency</b> Lori Sommer		<b>1.10 State Agency Telephone Number</b> (603) 271-4059	
<b>1.11 Grantee Signature</b> 		<b>1.12 Name &amp; Title of Grantee Signor</b> John A. MacLean, Keene City Manager	
<b>1.13 Acknowledgment: State of New Hampshire, County of Cheshire</b> On <u>2/21/2014</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) 			
<b>1.13.2 Name &amp; Title of Notary Public or Justice of the Peace</b> BARBARA DINAPOLI, Notary Public My Commission Expires July 28, 2015			
<b>1.14 State Agency Signature(s)</b> 		<b>1.15 Name/Title of State Agency Signor(s)</b> Thomas S. Burack, Commissioner	
<b>1.16 Approval by Attorney General's Office (Form, Substance and Execution)</b> By:  Attorney, On: <u>3/10/2014</u>			
<b>1.17 Approval by the Governor and Council</b> By: _____ On: <u> / /</u>			



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 continuation 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.**

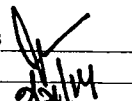
11.1 Any one or more of the following acts or omissions of the Grantee shall constitute an event of default hereunder (hereinafter referred to as "Events of Default"):

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

A handwritten signature and date are present in the bottom right corner of the page. The signature is written in dark ink and appears to be "A. H. M.". Below the signature, the word "Date" is printed, followed by a horizontal line for the date to be written.

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 or 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.

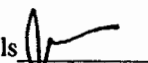
19. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses first above given.

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.

  
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## PROJECT AGREEMENT

Between the  
STATE OF NEW HAMPSHIRE, Department of Environmental Services  
and the City of Keene, New Hampshire

1. This Project Agreement (hereinafter "Agreement") is entered into by the State of New Hampshire, Department of Environmental Services, (hereinafter "DES"), and the City of Keene (hereinafter "the City"), for the purpose of undertaking a project of mutual interest.
2. This Agreement and all obligations of the parties hereunder shall become effective on the date the Governor and Executive Council of the State of New Hampshire approve this Agreement ("Effective date") and shall end on December 31, 2015. If the provision of services by the City precedes the effective date, all services performed by the City shall be performed at the sole risk of the City and in the event this Agreement does not become effective, DES shall be under no obligation to pay the City for costs incurred or services performed; however, if this Agreement becomes effective, all costs incurred prior to the Effective date that would otherwise be allowable shall be paid under the terms of this Agreement.
3. The work to be performed under the terms of this Agreement is described in the proposal identified below and attached to this document as Exhibit A, the content of which is incorporated herein as part of this Agreement.
4. Total funds in the amount of \$277,707 have been allocated and are available for payment of allowable costs incurred under this Agreement. DES will not reimburse the City for costs exceeding the amount specified in this paragraph.
5. The parcel where this project will take place is owned by the City of Keene.
6. As owner of the Property, the City accepts the following conditions or restrictions:
  - a. The City agrees to consider restrictions to the existing property deeds for conservation purposes.
  - b. The City agrees to place a sign, subject to its acceptability to the City, to be provided by DES, at a prominent location on or near the Property. The sign should contain as a minimum the DES logo and the following statement: "This project has been funded with assistance from the New Hampshire Aquatic Resource Mitigation Fund." Should the DES sign be damaged or destroyed, the City agrees to work with the Department to repair or replace it with identical signage and to share any costs associated with that repair or replacement to the extent reasonably practicable. The City also agrees that where significant signage is placed at major access points, the ARM Fund program will be identified as a contributing partner to the acquisition of easement interests and the long-term protection of the Property.
  - c. To return to DES ARM Fund Program any funds herein provided to the extent of any loss due to any title that proves to be less than clear and marketable for all properties protected under this contract.

### EXHIBIT A SCOPE OF SERVICES

- A. Project Title: Beaver Brook Wetland and Stream Restoration Project
- B. Project Period: Through December 31, 2015
- C. Objectives: To remove impacted fill, restore path of a stream which will also create flood storage, remove invasive species & monitor wetland health
- D. Scope of Work:
  - a. Fill Characterization
    - i. Test pit explorations
    - ii. Test boring explorations and monitoring well installation

- iii. Water level measurements & groundwater sampling
- iv. Assessment & reporting
- b. Wetland Permitting
- c. Fill Removal
  - i. Invasive species handling and removal:

Japanese knotweed is classified as a facultative upland plant (FACU) in the Northcentral and Northeast Region according to the 2012 National Wetland List provided by the Army Corps of Engineers. A facultative upland plant occasionally is a hydrophyte, but usually occurs in uplands. To achieve successful removal of the Japanese knotweed, suitable growth medium and hydrology will be removed. The City proposes to restore the fill area to a wetland that will support facultative (FAC), facultative wetland (FACW), and obligate wetland (OBL) plants. In addition, the proposed project will take the necessary precautions to eliminate the seed source in this location.

All excavated material must be handled with care to prevent the spread of the plant. The project proposes to remove plant material and root structures using a small excavator. In accordance with the Best Management Practices for Knotweed, Invasive Plant Fact Sheet #2 provided by the New Hampshire Department of Transportation, excavated material will be placed on black plastic and dried out completely so that the plant material is no longer viable. Once the material is dried out, it will be used on-site to the extent that it is practicable or it will be removed off-site. To prevent the spread of the plant, stockpiling will occur adjacent to Area A so that plant material is not lost during transport. Excavation equipment will be cleaned prior to moving to non-infested sites using a brush or broom at the site of infestation. Water will not be used to clean equipment.

- d. Wetland Restoration
- e. Stream Restoration
- f. Wetland Monitoring and Reporting

E. Deliverable Schedule: See Budget Summary

**EXHIBIT B**  
**BUDGET & PAYMENT METHOD**

The City shall submit requests for payment after completing each task. Upon receipt and approval by DES of the invoices, DES shall issue payment to the City in accordance with the following budget items:

Budget Summary				Cost Breakdown		Completion
Item Description	ARM Funds	Matching	Task Total	Labor Cost	Expenses	Proposed Date
1) Test pit exploration		\$2,000	\$2,000	-	\$2,000	April-15
2) Fill Characterization	\$22,762		\$22,762	\$10,538	\$12,224	July-15
3) Invasive Species Removal	\$3,774		\$3,774	\$1,298	\$2,476	October-15
4) Wetland Permitting	\$6,064		\$6,064	\$5,210	\$853	September-15
5) Fill Removal	\$56,200		\$56,200	\$12,330	\$43,870	November-15
6) Wetland Restoration	\$25,925		\$25,925	\$9,393	\$16,532	November-15
7) Loam		\$18,000	\$18,000	-	\$18,000	November-15
8) Stream Restoration	\$15,807		\$15,807	\$9,393	\$6,414	November-15
9) Monitoring and Reporting		\$10,007	\$10,007	\$8,807	\$1,201	December-18
10) Land preservation	\$2,005		\$2,005	\$1,840	\$165	December-15
11) Fill removal & transportation contingency funds	\$145,170		\$145,170		\$145,170	
Total:	\$277,707	\$30,007	\$307,714	\$58,809	\$248,905	

**TOTAL DES ARM FUNDS EXPECTED TO BE USED:** **\$ 277,707**

**Total amount to be authorized following approval by the  
Governor and Executive Council:** **\$277,707**

Payments shall be made by DES to the City upon approval of stated outputs and verification of the value of completed work through submittal of invoices for services rendered. DES will pay the City within 30 days of receiving the invoice.

The payments listed above are inclusive of project labor and expenses. Invoices shall be formatted to note completion of services.

The billing address shall be as follows:

NH Department of Environmental Services  
29 Hazen Drive, PO Box 95  
Concord, NH 03302-0095  
ATTN: Lori Sommer, Wetlands Bureau

Invoices shall be approved by the Contract Officer before payment is processed.

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

This section is intentionally left blank.

**CERTIFICATE OF AUTHORIZATION**

I, Patricia A. Little, City Clerk for the City of Keene, New Hampshire, am responsible for keeping City records. I do hereby certify that:

1. At the regular City Council meeting held on November 21st, 2013, the City Council voted to accept the Aquatic Resource Mitigation grant funds and to enter into a grant contract with the NH Department of Environmental Services. The City Council further authorized City Manager John A. MacLean to execute any documents which may be necessary for this grant contract.

2. This authorization has not been revoked, annulled or amended in any manner whatsoever, and remains in full force and effect as of the date hereof.

3. The following person has been appointed to and now remains in the office indicated in 2, above: John A. MacLean, City Manager

IN WITNESS THEREOF, I have hereunto set my hand as the City Clerk of Keene, New Hampshire, on this 24 day of Feb, 2014.

Patricia A. Little  
Town Clerk

(SEAL)

**State of New Hampshire  
County of Cheshire**

On this the 24 day of February, 2014, before me, Diana L. Hoop  
(Notary Justice/Justice of Peace)

personally appeared Patricia A. Little who acknowledged herself to be the City Clerk of Keene, being authorized so to do, executed the foregoing instrument for the purpose therein contained.

IN WITNESS THEREOF, I hereunto set my hand and seal.

Diana L. Hoop  
(Notary Public/Justice of the Peace)

(SEAL)



## 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> City of Keene 3 Washington Street Keene, NH 03431-3191		<b>Member Number:</b> 210	<b>Company Affording Coverage:</b> NH Public Risk Management Exchange - Primex <sup>3</sup> Bow Brook Place 46 Donovan Street Concord, NH 03301-2624									
Type of Coverage	Description	Effective Date	Expiration Date	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	7/1/2013	7/1/2014	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>Each Occurrence</td><td style="text-align: right;">\$ 5,000,000</td></tr> <tr><td>General Aggregate</td><td style="text-align: right;">\$ 5,000,000</td></tr> <tr><td>Fire Damage (Any one fire)</td><td style="text-align: right;">\$</td></tr> <tr><td>Med Exp (Any one person)</td><td></td></tr> </table>	Each Occurrence	\$ 5,000,000	General Aggregate	\$ 5,000,000	Fire Damage (Any one fire)	\$	Med Exp (Any one person)	
Each Occurrence	\$ 5,000,000											
General Aggregate	\$ 5,000,000											
Fire Damage (Any one fire)	\$											
Med Exp (Any one person)												
<input checked="" type="checkbox"/>	<b>Automobile Liability</b> Deductible    Comp and Coll: \$1,000  <input type="checkbox"/> Any auto	7/1/2013	7/1/2014	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>Combined Single Limit (Each Accident)</td><td style="text-align: right;">\$5,000,000</td></tr> <tr><td>Aggregate</td><td style="text-align: right;">\$5,000,000</td></tr> </table>	Combined Single Limit (Each Accident)	\$5,000,000	Aggregate	\$5,000,000				
Combined Single Limit (Each Accident)	\$5,000,000											
Aggregate	\$5,000,000											
<input checked="" type="checkbox"/>	<b>Workers' Compensation &amp; Employers' Liability</b>	1/1/2014	1/1/2015	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td><input checked="" type="checkbox"/> Statutory</td><td></td></tr> <tr><td>Each Accident</td><td style="text-align: right;">\$2,000,000</td></tr> <tr><td>Disease – Each Employee</td><td style="text-align: right;">\$2,000,000</td></tr> <tr><td>Disease – Policy Limit</td><td style="text-align: right;">\$</td></tr> </table>	<input checked="" type="checkbox"/> Statutory		Each Accident	\$2,000,000	Disease – Each Employee	\$2,000,000	Disease – Policy Limit	\$
<input checked="" type="checkbox"/> Statutory												
Each Accident	\$2,000,000											
Disease – Each Employee	\$2,000,000											
Disease – Policy Limit	\$											
<input checked="" type="checkbox"/>	<b>Property (Special Risk Includes Fire and Theft)</b>	7/1/2013	7/1/2014	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>Blanket Limit, Replacement Cost (unless otherwise stated)</td><td style="text-align: right;">Deductible: 1,000</td></tr> </table>	Blanket Limit, Replacement Cost (unless otherwise stated)	Deductible: 1,000						
Blanket Limit, Replacement Cost (unless otherwise stated)	Deductible: 1,000											
<b>Description:</b> 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>
NH Dept of Environmental Services 29 Hazen Drive Concord, NH ATTN: Lori Sommer, Wetlands Bureau			<b>By:</b> <i>Tammy Dewar</i>
			<b>Date:</b> 1/3/2014 <a href="mailto:tdenver@nhprimex.org">tdenver@nhprimex.org</a> Please direct inquires to: <b>Primex<sup>3</sup> Claims/Coverage Services</b> 603-226-2841 phone 603-228-3833 fax

**Attachment A**  
**2012 Aquatic Resource Mitigation Fund Grants**

**Applications and Funding Amounts**

<b>Grant Applicant</b>	<b>Location/Town</b>	<b>Funding Amount</b>	<b>Score</b>
City of Keene	Beaver Brook Restoration Project, Keene	\$277,707	34
Upper Valley Land Trust	Hanchett's Brook - Black Forest, Plainfield	\$293,090	46
City of Claremont	Monadnock Park Restoration Project, Claremont	\$0	10

(Note: Each Committee member scores the projects and their scores are combined to create the total score.)

**Site Selection Committee List**

<b>Name</b>	<b>Agency/Organization</b>	<b>Title</b>	<b>Years of Experience</b>
Tim Drew	NHDES, Public Information & Permitting Office	Administrator	31
Melissa Coppola	NH Dept. of Resources & Economic Development	Environmental Information Specialist	13
Nancy Rendall	NH Association of Natural Resource Scientists	Charter Member	29
Michael Marchand	NH Fish and Game Department	Senior Biologist	13
Tracey Boisvert	Office of Energy and Planning	CLSP Director	23
Peter Steckler	The Nature Conservancy	Director Freshwater Science & Conservation	13
Rick Vande Poll	New Hampshire Association of Conservation Commissions	Town of Sandwich	33



Attachment B.

Beaver Brook Wetland & Stream Restoration Project, Woodlawn Cemetery, Keene

