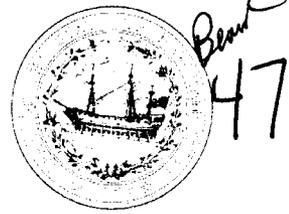




The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner



August 17, 2017

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 Water Supply Land Protection Grant to Bear-Paw Regional Greenways (hereinafter "Bear Paw"), (VC #162206-B001), Deerfield, NH in the amount of \$50,000 to acquire a conservation easement on 70 acres of land in the Town of Hooksett to protect public drinking water supply, effective upon Governor and Council approval through December 31, 2017. 100% Interagency Funds.

Funding is available as follows:

	<u>FY 2018</u>
03-44-44-442010-1879-073-500581	\$50,000
Department of Environmental Services, I-93 Water Supply Land Grant, Grants-Non Federal	

EXPLANATION

Pursuant to RSA 486-A:1, the Department of Environmental Services (DES) has a local assistance program that provides municipalities and non-profit land trusts with 50% of the cost of acquiring land and conservation easements in order to permanently protect critical water supply lands. Notices were sent to eligible communities, land trusts, and water suppliers and three applications were received. The eligible project application was evaluated for grant funding based on criteria listed in administrative rules, Env-Dw 1002, and included type and size of water system, proximity of land to water supply source, percent of source water protection area being protected, and the amount of acreage being protected.

A total of \$3 million in federal funds was made available for these grants through an agreement with the NH Department of Transportation - from a fund established to offset impacts to wetlands associated with the widening of Interstate 93 between the Massachusetts border in Salem and the I-93/I-293 interchange in Manchester. During the fall 2015 grant round, all three applications were approved for funding. See Attachment A for a list of applicants, rankings and reviewers.

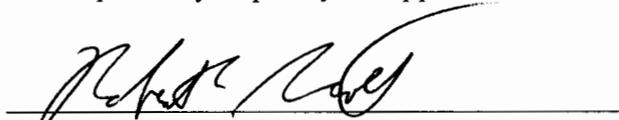
Bear-Paw will use this grant as well as a grant from the Land and Community Heritage Investment Program, a grant from the Merrimack Conservation Partnership, and Town of Hooksett conservation funds to purchase a conservation easement on 70 acres of land within the source water protection area of

the City of Manchester. The land will be maintained in perpetuity for the purpose of water supply protection.

The total cost for Bear-Paw to acquire the conservation easement is \$114,500. The Department will provide \$50,000 with \$64,500 in match provided by Bear-Paw. The purchase price of this conservation easement is based on a recent appraisal of fair market value performed in accordance with administrative rule Env-Dw 1002.17.

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

We respectfully request your approval.

A handwritten signature in black ink, appearing to read "Robert R. Scott", is written over a horizontal line.

Robert R. Scott
Commissioner

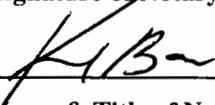
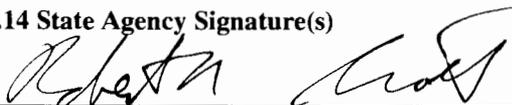
Subject: Grant Agreement for a NH DES Water Supply Land Protection Grant

GRANT AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATIONS

1.1 State Agency Name NH Department of Environmental Services		1.2 State Agency Address 29 Hazen Drive, Concord, NH 03302-0095	
1.3 Grantee Name: Bear Paw Regional Greenways		1.4 Grantee Address 63 Nottingham Road, Deerfield, NH 03037	
1.5 Effective Date Upon G&C approval	1.6 Completion Date 12/31/2017	1.7 Audit Date N/A	1.8 Grant Limitation \$50,000
1.9 Grant Officer for State Agency Holly Green NH Department of Environmental Services		1.10 State Agency Telephone Number (603) 271-3114	
1.11 Grantee Signature 		1.12 Name & Title of Grantee Signor Daniel E. Kern	
1.13 Acknowledgment: State of <u>New Hampshire</u> , County of <u>Rockingham</u> On <u>7/10/2017</u> , before the undersigned officer, personally appeared the person identified in block 1.12., or satisfactorily proven to be the person whose name is signed in block 1.11., and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace (Seal) 		KEVIN J. BARRY Justice of the Peace - New Hampshire My Commission Expires June 10, 2020	
1.13.2 Name & Title of Notary Public or Justice of the Peace <u>KEVIN J. BARRY Justice of the Peace</u>			
1.14 State Agency Signature(s) 		1.15 Name/Title of State Agency Signor(s) <u>Robert R. Scott, Commissioner</u>	
1.16 Approval by Attorney General's Office (Form, Substance and Execution) By: <u>Gordon P. Landrigan</u> Attorney, On: <u>9/11/17</u>			
1.17 Approval by the Governor and Council 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 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.

EXHIBIT A

SCOPE OF SERVICES

Bear-Paw Regional Greenways

Bear-Paw Regional Greenways will use the grant to purchase a conservation easement on approximately 70 acres of land in the protection area of the City of Manchester's drinking water source. NH. Bear-Paw Regional Greenways will be the holder of the conservation easement. The parcel of land, designated on the current Hooksett tax maps as Map 4 Lot 9 will be protected in perpetuity, as specified in conservation easement deed (see Attachment B), with water supply protection being one of the purposes of the conservation easement.

EXHIBIT B

GRANT AMOUNT & PAYMENT SCHEDULE

Payment in the amount of \$50,000.00 shall be made to the Bear-Paw Regional Greenways upon receipt of the following:

1. Survey of the parcel of land.
2. A copy of the appraisal as specified in Env-Dw 1002.17.
3. Title examination as specified in Env-Dw 1002.18.
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 \$50,000 in match provided by Bear-Paw Regional Greenways.
7. The finalized conservation easement deed.

Grantee Initials DR
Date 7/2/17

EXHIBIT C

SPECIAL PROVISIONS

1. Federal Funds paid under this agreement are from a Grant/Contract/Cooperative Agreement to the State from the United States Department of Transportation, Highway Planning and Construction under CFDA # 20.205. All applicable requirements, regulations, provisions, terms and conditions of this Federal Grant/Contract/Cooperative Agreement are hereby adopted in full force and effect to the relationship between this Department and the grantee. Additionally, the Grantee shall comply with the terms of the Federal Funding Accountability and Transparency Act (FFATA) by providing DES with their Data Universal Numbering System (DUNS) number.
2. Subparagraph 1.7 of the General Provisions shall not apply to this Grant Agreement.
3. Section 17.1.2. is amended so that the required comprehensive general liability insurance per occurrence is \$1,000,000 for bodily injury or death in any one incident as no construction or other similar activities will be performed by the grantee. Any subcontractor will remain obligated to carry comprehensive general liability insurance in amounts not less than \$250,000 per claim and \$2,000,000 per occurrence.

Grantee Initials DA
Date 7/31/17

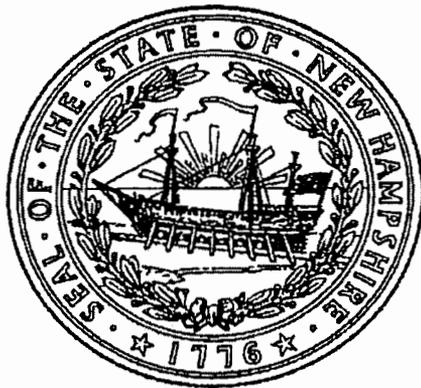
State of New Hampshire

Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that BEAR-PAW REGIONAL GREENWAYS is a New Hampshire Nonprofit Corporation registered to transact business in New Hampshire on January 13, 1997. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 263562



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 30th day of March A.D. 2017.

A handwritten signature in cursive script, appearing to read "William M. Gardner".

William M. Gardner
Secretary of State



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/3/2017

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

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER The Frank Massin Agency Inc 32 NH Rte 119 P.O. Box 430 Fitzwilliam NH 03447	CONTACT NAME: Fitzwilliam Account PHONE (A/C, No, Ext): (603) 585-3411		FAX (A/C, No): (603) 585-3413
	E-MAIL ADDRESS:		
		INSURER(S) AFFORDING COVERAGE	NAIC #
		INSURER A: PEERLESS INSURANCE CO.	
		INSURER B:	
		INSURER C:	
		INSURER D:	
		INSURER E:	
		INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** CL173307171 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LDC OTHER:			GL9468857	1/22/2017	1/22/2018	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Non-profit organization

CERTIFICATE HOLDER

NH Department of Environmental Services
 29 Hazen Drive
 PO Box 95
 Concord, NH 03302

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
 Charles Massin/CSR14

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BEAR-PAW REGIONAL GREENWAYS
Certificate of Authority

I, Al Jaeger, hereby certify as follows:

1. I am the duly appointed Chair of BEAR-PAW REGIONAL GREENWAYS, a New Hampshire nonprofit corporation (the "Corporation");
2. BEAR-PAW REGIONAL GREENWAYS has agreed to accept funds from and enter into a contract with the New Hampshire Department of Environmental Services for the Heroux Property water supply land protection project;
3. BEAR-PAW REGIONAL GREENWAYS further authorized Daniel E. Kern, Executive Director of BEAR-PAW REGIONAL GREENWAYS, 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.

IN WITNESS WHEREOF, I have hereunto set my hand as the Chairman of BEAR-PAW REGIONAL GREENWAYS this 6th day of July, 2017.

BEAR-PAW REGIONAL GREENWAYS OF NEW
HAMPSHIRE New Hampshire non-profit corporation



Al Jaeger
Chair
Hereunto Duly Authorized

The State of New Hampshire
County of Rockingham

Personally appeared, Al Jaeger, this 6th day of July, 2017 and being duly authorized acknowledged the foregoing on behalf of BEAR-PAW REGIONAL GREENWAYS.

Before me, Kelly A Roberts

Print Name: Kelly A Roberts

Justice of the Peace/Notary Public
My commission expires: 6/24/20

KELLY A. ROBERTS
Justice of the Peace • New Hampshire
My Commission Expires June 24, 2020

Attachment A
Fall 2015 Grant Round - Water Supply Land Protection

Applications and Rankings
Water Supply Land Protection Projects

Grant Applicant	Grant Amount	Project Name	Location	Public Water Supply Source(s) Protected	Score	Rank
Society for the Protection of NH's Forests	\$890,033	Tower Hill Pond	Hooksett/ Candia	Manchester Water Works – Lake Massabesic	291	1
Bear Paw Regional Greenways	\$50,000	Heroux	Hooksett	Manchester Water Works – Lake Massabesic	17	2
Southeast Land Trust of NH	\$ 320,000	Doyle	Londonderry	Pennichuck Water Works – Merrimack River	16	3

Grant Reviewer List

Name	Department	Bureau	Title	Years Experience
Sarah Pillsbury	NHDES	Drinking Water & Groundwater Bureau	Administrator IV	Sixteen years overseeing grant program as Administrator of the Drinking Water & Groundwater Bureau
Paul Susca	NHDES	Drinking Water & Groundwater Bureau	Administrator III	Eleven years managing the Source Water Protection Program
Holly Green	NHDES	Drinking Water & Groundwater Bureau	Environmentalist III	Nine years managing the grant program

Attachment B

Draft Conservation Easement Deed

THIS IS A NON-CONTRACTUAL
CONVEYANCE PURSUANT TO NEW
HAMPSHIRE RSA 78-B:2, IX AND IS
EXEMPT FROM THE NEW HAMPSHIRE
REAL ESTATE TRANSFER TAX.
THIS TRANSFER IS ALSO EXEMPT
FROM THE LCHIP SURCHARGE
PURSUANT TO RSA 478:17-g, II(a).

Please return to:
Bear-Paw Regional Greenways
P.O. Box 19
Deerfield, NH 03037

CONSERVATION EASEMENT DEED

TOWN OF HOOKSETT, a New Hampshire municipal corporation organized under the laws of the State of New Hampshire with a mailing address of 35 Main Street, Hooksett, Merrimack County, New Hampshire 03106 (hereinafter referred to as the "Grantor", 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),

for consideration paid, with WARRANTY covenants, grants in perpetuity to

BEAR-PAW REGIONAL GREENWAYS, a New Hampshire not-for-profit corporation, situated in the County of Rockingham, State of New Hampshire, with a mailing address of Post Office Box 19, Deerfield, New Hampshire 03037 (hereinafter referred to as the "Grantee", which shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns),

the **CONSERVATION EASEMENT** (herein referred to as the "Easement") hereinafter described with respect to that certain area of land (herein referred to as the "Property") being unimproved land consisting of approximately 73.5 acres situated on North Candia Road in the Town of Hooksett, County of Merrimack, State of New Hampshire, as shown on the plan entitled "Standard Boundary Survey and Conservation Easement Plan of Land for Land Owned by Town of Hooksett", dated March 25, 2016, prepared by Knight Hill Land Surveying Services, Inc., recorded of near or even date herewith in the Merrimack County Registry of Deeds, (herein

referred to as the “Plan”) and more particularly bounded and described in Appendix "A" attached hereto and made a part hereof,

and, with a **THIRD PARTY RIGHT OF ENFORCEMENT**, as further defined in Section 10 **THIRD PARTY RIGHT OF ENFORCEMENT** below, being granted to the **STATE OF NEW HAMPSHIRE**, acting through its **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,(sometimes referred to herein as the “Third Party Holder”).

1. PURPOSES

The Easement hereby granted is pursuant to NH RSA 477:45-47, exclusively for the following conservation purposes (herein referred to as the “Purposes”) for the public benefit:

- A. The protection of significant natural habitat identified in the New Hampshire Wildlife Action Plan, including “tier 1” hemlock-hardwood-pine and Appalachian oak-pine forests. Tier 1 habitats were ranked as the top 15% by condition relative to all other similar areas in the state (the “most critical wildlife habitat” in the state);
- B. The enhancement and enlargement of more than 11,000 acres of protected or publicly owned land that is adjacent to or near by the Property, said other land including Bear-Brook State Park (9,977 acres), the Clay Pond Conservation Area (736 acres), the Lindsey Easement (30 acres) and the “Clay Pond” / “High Street” parcels held by the Town of Candia (46 acres), as well as over 1,000 acres of land owned by Manchester Water Works that is managed to protect public drinking water supplies;
- C. The protection of land within an 22,000-acre contiguous block of unfragmented lands;
- D. The conservation and protection of open spaces, particularly the conservation of the productive forestland of which the Property consists and of the wildlife habitat thereon, and the long-term protection of the Property’s capacity to produce economically valuable forestry products;
- E. The scenic enjoyment of the general public, including over 600 feet of undeveloped road frontage on North Candia “Road”;
- F. The perpetual protection of the quality and sustainable yield of surface water and groundwater resources on and under the Property to safeguard present and future community drinking water supplies, including Lake Massabesic watershed, and the environmental values of the Property which are dependent on water quality and quantity.

This purpose yields a substantial public benefit and is consistent with the water supply protection goals and land conservation policies stated in the Town of Hooksett’s Master Plan and with NH RSA 481:1, which states, in part, “The general court declares and determines that the water of

New Hampshire whether located above or below ground constitutes a limited and, therefore, precious and invaluable public resource which should be protected, conserved and managed in the interest of present and future generations”;

G. The preservation of biological diversity, native flora and fauna, and the environments, natural habitats, and ecological processes which support them, as those values exist on the date of this instrument, and as they may evolve in the future;

H. The preservation of the Property for the scenic enjoyment and the low-impact, non-commercial, outdoor educational or recreational use of the general public for such activities as hiking, wildlife observation, cross-country skiing, fishing and hunting;

I. The prevention of any use or activity on the Property which would be detrimental to drainage, flood control, water conservation, water quality, and erosion control, or that would or has the potential to impair or interfere with the unique and significant qualities of public benefit and the conservation and preservation values of the Property; and

The above Purposes are consistent with the clearly delineated open space conservation goals and/or objectives as stated in the 2004 Master Plan of the Town of Hooksett, which states, among its recommendations, the following:

- Establish conservation land in the northeast quadrant of the Town;
- Target as a goal that 25% of the total land area in Hooksett be set aside in some manner as open space land;
- Explore all possible avenues to fund the preservation of Hooksett’s key natural resource assets;

and with New Hampshire RSA Chapter 79-A, 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;

and with New Hampshire RSA Chapter 482-A and the New Hampshire Department of Environmental Services Aquatic Resource Mitigation Fund established through NHDES Administrative Rule Wt 800, which state among its goals the:

- Protection of the quality of wetlands and surface water resources associated with the Property; and the
- Protection of the environmental values of the Property that are dependent on aquatic resources;

and with New Hampshire RSA Chapter 486-A which includes in its purposes: “to protect sources of public drinking water that serve community or non-transient non-community water systems and associated natural resources through the acquisition of land or conservation easements within

source water protection areas.”

These purposes and the characteristics of the Property are also consistent with the conservation goals of the Grantee, including:

- The protection of conservation land within large contiguous blocks of unfragmented lands in southeastern New Hampshire;
- The protection of forestland;
- The protection of surface waters, groundwater and wetlands; and
- The protection of habitat for native plant and animal species.

All of these Purposes are consistent and in accordance with the U.S. Internal Revenue Code, Section 170(h).

These Purposes and the significant conservation values they serve are set forth in detail in baseline documentation entitled “Baseline Documentation Report for the Clay Pond Properties” on file with the Grantee.

The Easement hereby granted with respect to the Property is as follows:

2. USE LIMITATIONS (Subject to the Reserved Rights specified in Section 3, below.)

A. The Property shall be maintained in perpetuity as open space without there being conducted thereon any industrial or commercial activities, except forestry, including timber harvesting, as described below, and provided that the capacity of the Property shall not be degraded by on-site activities.

i. Management activities on the Property, including forestry, shall be performed in accordance with a written management plan (“Stewardship Plan”) approved by the Grantee and prepared by a forester licensed by the State of New Hampshire, a certified wildlife biologist, or by another similarly qualified person, said person approved in advance and in writing by the Grantee, in accordance the long-term protection of those Purposes and values for which this Easement is granted, as described in Section 1 above, and with the following goals:

- Maintenance of soil productivity;
- Protection of water quality, wetlands and riparian areas;
- Maintenance or enhancement of wildlife habitat;
- Maintenance or enhancement of the overall quality of forest products;
- Maintenance or enhancement of scenic quality;
- Protection of unique or fragile natural areas;
- Protection of unique historic or cultural features; and
- Conservation of native plant and animal species, and natural communities.

ii. The Stewardship Plan shall include:

- A statement of landowner management objectives consistent with the Purposes and values for which this Easement is granted and the goals specified in Section 2.A.i above;
- Property specific management goals and objectives;

- A boundary map with access roads and natural cover types;
- A description of the natural features of the Property, including land cover, topography, soils, geology, wetlands, streams, and ponds, and wildlife habitat features;
- Identification of plant and wildlife species and natural communities of conservation concern, and how management shall enhance, or avoid detrimental impacts to, said plants, wildlife, and natural communities;
- Recommended management activities; and
- Recommended schedule for implementation of management practices, including a schedule for boundary, road, and trail maintenance.

iii. For the purposes hereof, "forestry" shall include the planting, growing, cutting and sale of forest trees of any size capable of producing timber or other forest products; the production and sale of products produced on the property including Christmas trees and maple syrup; those forest practices employed primarily to enhance or protect wildlife habitat; and the construction of roads or other access ways for the purposes of removing forest products from the Property and for improving non-commercial recreational opportunities.

iv. Forestry on the Property shall be performed in accordance with the Stewardship Plan required by Section 2.A.i. Said plan shall have been prepared not more than ten (10) years prior to the date that any harvesting is expected to commence, or shall have been reviewed and updated at least thirty (30) days prior to said date.

v. At least thirty (30) days prior to the commencement of forestry activities, the Grantor shall submit a written certification to the Grantee, signed by a licensed professional forester or other qualified person, said other person to be approved in advance and in writing by the Grantee, that the Stewardship Plan has been prepared in compliance with the terms of this Easement. The Grantee may request the Grantor to submit the Stewardship Plan itself to the Grantee for the Grantee's approval within ten (10) days of such request, but acknowledges that the plan's purpose is to guide forestry activities in compliance with this Easement, and that the actual activities on the Property will determine compliance therewith.

vi. Management activities shall be supervised by a licensed professional forester, certified wildlife biologist, or other qualified person approved in advance and in writing by the Grantee.

vii. 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. (For references, see *Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire* (J.B. Cullen, 1996), *Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire* (New Hampshire Forest Sustainability and Standards Work Team, 1997) or similar successor publications.)

viii. No management activity shall be undertaken in a manner that is detrimental to the Purposes of this Easement.

B. The Property shall not be subdivided and none of the individual tracts that together comprise the Property shall be conveyed separately from one another without the prior written approval of the Grantee. The Grantor further covenants and agrees not to undertake any action that would have the effect of subdividing or conveying any part of the Property.

C. No structure or improvement, including, but not limited to, a dwelling (permanent, seasonal or temporary), any portion of a septic system, tennis court, swimming pool, dock, aircraft landing strip, telecommunications and/or wireless communications facility, tower, windmill, or mobile home, shall be constructed, placed or introduced onto the Property. However, ancillary structures and improvements, including, but not limited to, a road, dam, fence, bridge, culvert, maple sugar house, or shed may be constructed, placed or introduced onto the Property only as necessary in the accomplishment of the forestry, conservation, habitat management, or non-commercial outdoor recreational uses of the Property and consistent with the Stewardship Plan required in Section 2.A.i above and provided that they are not detrimental to the Purposes of this Easement. No ancillary structure or improvement may be constructed, placed or introduced onto the Property without the prior review by and written approval of the Grantee. No more than 2% of the Property shall be covered by buildings or other impervious materials.

D. No removal, filling or other disturbances of soil surface, nor any changes in topography, surface or subsurface water systems, wetlands, or natural habitat shall be allowed unless such activities:

i. Are commonly necessary in the accomplishment of the forestry, conservation, habitat management, or non-commercial outdoor recreational uses of the Property consistent with the Stewardship Plan required in Section 2.A.i above;

ii. Do not harm state or federally recognized rare, threatened or endangered species, such determination of harm to be based upon information from the New Hampshire Natural Heritage Bureau or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species; and

iii. Are not detrimental to the Purposes of this Easement.

Prior to commencement of any such activities, all necessary federal, state, local, and other governmental permits and approvals shall be secured.

E. No outdoor advertising structures such as signs and billboards shall be displayed on the Property except as desirable or necessary in the accomplishment of the forestry, conservation, or non-commercial outdoor recreational uses of the Property, and provided such signs are not detrimental to the Purposes of this Easement.

F. There shall be no mining, quarrying, excavation, or removal of rocks, minerals, gravel, sand, topsoil, water, or other similar materials from the Property, except in connection with any improvements made pursuant to the provisions of Sections 2.A, C, D, or E, above.

G. There shall be no storage, dumping, injection, burning, or burial of manmade materials, wastes generated off the Property, or materials then known to be environmentally hazardous.

H. Except those of record, and as otherwise allowed within this Easement, there shall be no rights-of-way, easements of ingress or egress, driveways or roads constructed, developed or maintained into, on, over, under, or across the Property without the prior written approval of the Grantee.

I. Surface water and groundwater quality shall be preserved and in no event shall be polluted or degraded by activities on the Property such that the surface or groundwater quality on the Property reaches or violates water quality standards set for public drinking water by the NH Department of Environmental Services, or such agency with the statutory authority to regulate public water supplies at the time.

J. The Grantor shall not use or permit the use of motorized vehicles on the Property, except as allowed in Section 3.B. Notwithstanding the foregoing, the use of snowmobiles, as defined in RSA 215-A:1, XIII may be allowed if they are operated:

i. Only on snow and ice outside the sanitary protective area of public water supply well(s);

ii. More than two hundred fifty (250) feet from a surface water body being used as a public water supply;

iii. More than 100 feet from tributaries contributing to such water bodies; except when crossing such tributaries; and

iv. Only on designated snowmobile trails depicted on a plan approved by the Grantee and Department of Environmental Services in accordance with Env-Dw 1002.20.

3. RESERVED RIGHTS

A. The Grantor reserves the right to conduct non-commercial management activities on the Property, including, but not limited to cutting, planting, pruning, and thinning, for the improvement of the forest or wildlife habitat resources of the Property. Such activities shall be consistent with the Stewardship Plan required by Section 2.A.i above and shall not be detrimental to the Purposes of this Easement.

B. The Grantor reserves the right to use motorized, wheeled vehicles to conduct activities on the Property consistent with the Stewardship Plan required by Section 2.A.i above and to conduct activities related to the exercise of its public safety, police, or emergency response responsibilities. Such activities shall not be detrimental to the Purposes of this Easement.

C. The Grantor reserves the right to post against vehicles, motorized or otherwise, and against hunting on active livestock fields, against access to agricultural cropland during the planting and growing season, and against access to forest land during harvesting or establishment

of plantations.

D. The Grantor shall have the right to use and manage the Property for any and all uses consistent with the Purposes and Use Limitations herein, including, but not limited to the right to clear, construct and maintain trails for walking, cross country skiing and other limited low impact, transitory, non-motorized, non-commercial educational and/or outdoor recreational activities within and across the Property, provided said trails are consistent with and not detrimental to the Purposes of this Easement, subject to the following conditions:

- i. The creation of new trails or the relocation of existing trails shall be provided for in the Stewardship Plan required by Section 2.A.i; and
- ii. All trails shall conform to best practices recommended by the Appalachian Mountain Club or similar trail-maintaining organization. (For reference, see *The Complete Guide to Trail Building and Maintenance* (C. Demrow, D. Salisbury, Appalachian Mountain Club) or similar successor publication.)

E. Subject to written approval from the Grantee and in accordance with a written plan approved by the New Hampshire Department of Environmental Services, the Grantor reserves the right to construct, re-construct, and maintain structures or make other improvements intended to restore wetland functions and values and/or to make wildlife habitat improvements so as to provide enhancement of functions within degraded wetland or riparian systems on the Property, provided that their construction and required maintenance are not detrimental to the Purposes of this Easement. Prior to commencement of any such activities, all necessary federal, state, local, and other governmental permits and approvals shall be secured.

F. Subject to written approval from the Grantee, which approval shall not be unreasonably withheld, and with all necessary federal, state and local permits, the Grantor reserves the option to withdraw groundwater, by the Grantor or the Grantor's designee, on a sustainable yield basis and export it from the Property if used for a public drinking water system. For the purposes hereof, permitted activities in conjunction with the provision of a public water supply shall be defined as 1) the installation, maintenance, monitoring and replacement of water supply wells and the wells' treatment infrastructure, monitoring wells, a water distribution system, pump stations, and ancillary improvements such as access roads, signs, utilities, security facilities; and 2) the extraction and exportation of groundwater from the Property, all for the purpose of serving public water supply needs. Said activities may be conducted provided that all federal and state requirements associated with public water supply, water withdrawals, and groundwater discharges are complied with.

G. The Grantor reserves the right to have professionally conducted archaeological activities conducted on the Property, including without limitation, survey, excavation and artifact removal, following submission of an archaeological field investigation plan to, and its approval in writing by, the State Archaeologist of the New Hampshire Division of Historic Resources (or appropriate successor official), with written notice to the Grantee. Any such archaeological investigations shall be conducted by qualified individuals who meet the Secretary of Interior's Professional Qualification Standards for Archaeology, or subsequent standards. Any area disturbed by any such activities shall be restored to substantially its prior condition within nine (9) months after such activities cease.

J. These reserved rights are exceptions to the use limitations set forth in Section 2 above.

K. The Grantor must notify the Grantee in writing at least thirty (30) days before any exercise of the aforesaid reserved rights in Sections 3.C, 3.D, 3.E, 3.F, and 3.G.

4. NOTIFICATION OF TRANSFER, TAXES, MAINTENANCE

A. The Grantor agrees to notify the Grantee in writing no later than ten (10) days before the transfer of title to the Property.

B. The Grantee shall be under no obligation to maintain the Property or pay any taxes or assessments thereon.

5. BENEFITS, BURDENS AND ACCESS

A. The burden of the Easement conveyed hereby shall run with the Property and shall be enforceable against all future owners and tenants in perpetuity; the benefits of this Easement 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 conservation purposes of this Easement. Any such assignee or transferee shall have like power of assignment or transfer.

B. The Grantee shall have reasonable access to the Property and all of its parts to determine compliance with and to enforce this Easement and exercise the rights conveyed hereby and fulfill the responsibilities and carry out the duties assumed by the acceptance of this Easement.

C. The Grantee has the right to install and maintain small unlighted signs visible from public vantage points and along boundary lines for the purpose of identifying the Grantee and informing the public and abutting property owners that the Property is under the protection of this Easement.

6. ALTERNATE DISPUTE RESOLUTION

A. The Grantor and the Grantee desire that issues arising from time to time concerning prospective uses or activities in light of the conservation purposes of this Easement will first be addressed through candid and open communication between the parties rather than unnecessarily formal or adversarial action. Therefore, the Grantor and the Grantee agree that if a party becomes concerned about the consistency of any proposed use or activity with the purposes of this Easement, wherever reasonably possible, the concerned party shall notify the other party of the perceived or potential problem, and explore the possibility of reaching an agreeable resolution.

B. If informal dialog does not resolve the issue, and the Grantor agrees not to proceed with the proposed use or activity pending resolution of the on-going dispute, either party may refer the dispute to mediation by request made in writing to the other. Within ten (10) days of the receipt of such a request, the parties shall agree on a single impartial mediator who shall be an attorney licensed to practice law in the State of New Hampshire or an experienced land use or land conservation professional, both of whom must have experience with conservation easements and training in mediation. Each party shall pay its own attorneys' fees, and the costs of mediation shall be split equally between the parties.

C. If the dispute has not been resolved by mediation within sixty (60) days after delivery of the mediation request, or the parties are unable to agree on a mediator within thirty (30) days after delivery of the mediation request, then, upon the Grantor's continued agreement not to proceed with the disputed use or activity pending resolution, either party may refer the dispute to binding arbitration by request made in writing and in accordance with New Hampshire RSA 542. Within thirty (30) days of receipt of such a request, the parties shall select a single impartial arbitrator to hear the matter. The arbitrator shall be an attorney licensed to practice law in the State of New Hampshire with experience in conservation easements and applicable training and experience as an arbitrator. Judgment upon the award rendered by the arbitrator may be enforced in any court of competent jurisdiction. The arbitrator shall be bound by and follow the substantive law of the State of New Hampshire and the applicable provisions of the US Internal Revenue Code. The arbitrator shall render a decision within thirty (30) days of the arbitration hearing.

D. If the parties do not agree to resolve the dispute by arbitration, or if the parties are unable to agree on the selection of an arbitrator, then either party may bring an action at law or in equity in any court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation by permanent injunction and to require the restoration of the Property to its condition prior to the breach.

E. Notwithstanding the availability of mediation and arbitration to address disputes concerning the consistency of any proposed use or activity with the purposes of this Easement, if the Grantee believes that some action or inaction of the Grantor or a third party is causing irreparable harm or damage to the Property, the Grantee may seek a temporary restraining order, preliminary injunction or other form of equitable relief from any New Hampshire court of competent jurisdiction to cause the cessation of any such damage or harm pending resolution of any dispute in accordance with this Section 6.

7. BREACH OF EASEMENT – GRANTEE'S REMEDIES

A. If the Grantee determines that a breach of this Easement has occurred or is threatened by the Grantor, the Grantee shall notify the Grantor in writing of such breach and demand corrective action to cure said breach, and, where the breach involves injury to the Property resulting from any use or activity inconsistent with the purposes of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by the Grantee. Such notice shall be delivered in hand or by certified mail, return receipt requested.

B. If the Grantor fails, within thirty (30) days after receipt of such notice or after otherwise learning of such breach or conduct, to undertake those actions, including restoration, which are reasonably calculated to cure swiftly said breach and to repair any damage to the Property caused thereby, or fails to continue diligently to cure such breach until finally cured, the Grantee shall undertake any actions that are reasonably necessary to repair any damage in the Grantor's name or to cure such breach, including an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.

C. If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, the Grantee may pursue its remedies under this Section 7 without prior notice to the Grantor or without waiting for the period provided for cure to expire.

D. The Grantee's rights under this Section 7 apply equally in the event of either actual or threatened violations of the terms of this Easement. The Grantor agrees that the Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that the Grantee shall be entitled to the injunctive relief described in Section 7.B, above, both prohibitive and mandatory, in addition to such other relief to which the Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The Grantee's remedies described in this Section 7 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

E. Provided that the Grantor is directly or primarily responsible for the breach, and if a court so orders, all reasonable costs incurred by the Grantee in enforcing the terms of this Easement against the Grantor, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessitated by the Grantor's breach of this Easement, shall be borne by the Grantor, provided that the Grantor is directly or primarily responsible for the breach; and provided further, however, that if the Grantor ultimately prevails in a judicial enforcement action, each party shall bear its own costs. Notwithstanding the foregoing, if the Grantee initiates litigation against the Grantor to enforce this Easement, and if the court determines that the enforcement action was initiated without reasonable cause or in bad faith, then the court may require the Grantee to reimburse the Grantor's reasonable costs and reasonable attorney's fees in defending the action.

F. Forbearance by the Grantee to exercise its rights under this Easement in the event of any breach of any term thereof by the Grantor shall not be deemed or construed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of the Grantee's rights hereunder. No delay or omission by the Grantee in exercise of any right or remedy upon any breach by the Grantor shall impair such right or remedy or be construed as a waiver. The Grantor hereby waives any defense of laches, estoppel or prescription.

G. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any

action against the Grantor for any injury to or change in the Property resulting from causes beyond the Grantor's control, including, but not limited to, unauthorized actions by third parties, natural disasters such as fire, flood, storm, disease, infestation, and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes.

H. The Grantee and the Grantor reserve the right, separately or collectively, to pursue all legal and/or equitable remedies, as set forth in this Section 7, against any third party responsible for any actions detrimental to the conservation purposes of this Easement.

8. THIRD PARTY RIGHT OF ENFORCEMENT

A. If the Grantee ceases to enforce the Easement 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 Grantee to enforce this Easement and be entitled to recover the costs of such enforcement from the Grantor or Grantee or both.

B. The interests held by the Third Party Holder are assignable or transferable to any party qualified to become the Grantee's or Third Party Holder's assignee or transferee as specified in Section 5 BENEFITS AND BURDENS above. Any such assignee or transferee shall have like power of assignment or transfer.

9. DISCRETIONARY CONSENT

A. The Grantee's consent for activities otherwise prohibited herein may be given under the following conditions and circumstances. If, owing to unforeseen or changed circumstances, any of the activities listed in Section 2 are deemed desirable by the Grantor and the Grantee, the Grantee may, in its sole discretion, give permission for such activities, subject to the limitations herein. Such requests for permission shall be in writing and shall describe the proposed activity in sufficient detail to allow the Grantee to judge the consistency of the proposed activity with the purposes of this Easement. The Grantee may give its permission only if it determines, in its sole discretion, that such activities (i) do not violate the Purposes of this Easement and (ii) either enhance or do not impair any significant conservation interests associated with the Property.

B. Notwithstanding the foregoing, the Grantor and the Grantee shall have no right or power to agree to any activities that would result in the termination of this Easement or to allow any residential, commercial or industrial structures, or any commercial or industrial activities, not provided for above.

10. NOTICES

All notices, requests and other communications required to be given under this Easement shall be in writing, except as otherwise provided herein, and shall be delivered in hand or sent by certified mail, postage prepaid, return receipt requested to the appropriate address set forth above or at such other address as the Grantor or the Grantee may hereafter designate by notice given in

accordance herewith. Notice shall be deemed to have been given when so delivered or so mailed.

11. SEVERABILITY

If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid by a court of competent jurisdiction, by confirmation of an arbitration award or otherwise, the remainder of the provisions of this Easement 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.

12. SEPARATE PARCEL

The Grantor agrees that for the purpose of determining compliance with any present or future regulation (other than those governing N.H. Current Use Assessment under RSA 79-A), bylaw, order, or ordinance (within this Section referred to as "legal requirements") of the Town of Hooksett, the State of New Hampshire or any other governmental unit, the Property shall be deemed a separate parcel of land and shall not be taken into account in determining whether any land of the Grantor, other than the Property, complies with any said legal requirements. The Property shall not be taken into account to satisfy in whole or in part any of said legal requirements or any area, density, setback, or other dimensional standard applicable to such land.

13. CONDEMNATION

A. Whenever all or part of the Property is taken in exercise of eminent domain by public, corporate or other authority so as to abrogate in whole or in part the Easement conveyed hereby, or whenever all or a part of the Property is lawfully sold without the restrictions imposed hereunder in lieu of condemnation or exercise of eminent domain, the Grantor and the Grantee shall thereupon act jointly to recover the full damages resulting from such taking or lawful sale with all incidental or direct damages and expenses incurred by them thereby to be paid out of the damages recovered.

B. The balance of the land damages recovered (including, for purposes of this subsection, proceeds from any lawful sale, in lieu of condemnation, of the Property unencumbered by the restrictions hereunder) shall be divided between the Grantor, Grantee, and the State of New Hampshire in proportion to the fair market value of their respective interests in the Property on the date of execution of this Easement. For this purpose, the parties agree that the Grantor's interest shall be seventeen percent (17%), the Grantee's interest shall be twenty percent (20%), and the State of New Hampshire's interests shall be sixty-three percent (63%). The value of the Property has been determined by appraisals prepared by a qualified appraiser, Joseph G. Fremeau, MAI, NHCG-89, of Fremeau Appraisal Inc., dated May 12, 2016, and a copy of the appraisal has been submitted to the Grantee. Any increase in value attributable to improvements made after the date of the Conservation Easement shall accrue to the party who made the improvements.

C. The Grantee shall use its share of the proceeds in a manner consistent with and in

furtherance of one or more of the conservation purposes set forth herein on a property located in the Town of Hooksett upon consultation with the Town of Hooksett's Conservation Commission.

D. Notwithstanding the foregoing, any release of the Easement from the public trust in order to be converted to another use or due to termination of use shall be undertaken according to the requirements of RSA 486-A:13.

14. ADDITIONAL EASEMENT

Should the Grantor determine that the expressed purposes of this Easement could better be effectuated by the conveyance of an additional easement, the Grantor may execute an additional instrument to that effect, provided that the conservation purposes of this Easement are not diminished thereby and that a public agency or qualified organization described in Section 5.A, above, accepts and records the additional easement.

15. STEWARDSHIP RESPONSIBILITIES OF THE GRANTEE

To facilitate the fulfillment of its responsibilities under this Easement, Bear-Paw Regional Greenways shall be responsible for the following (which shall include, but not be limited to):

A. Provide an annual on-ground monitoring inspection that confirms that the interests acquired as part of this NHDES Water Supply Land Protection Grant project are being protected and maintained according to the terms of the conservation easement;

B. Provide annual contact with property owners to inform them of their obligations under the terms of this conservation easement;

C. Prepare and submit an annual monitoring report to the Grantor, the Land and Community Heritage Investment Program, and the NHDES Water Supply Land Protection Grant Program which shall contain the following:

- i. Description of the inspection conducted;
- ii. Description of any physical changes to the property;
- iii. Description of any contacts made with property owners, including their current name and address information;
- iv. Description of any conditions or activities on the property, including those which violate or may violate the intent of this conservation easement;
- v. Explanation of the current status of any previously identified violations and any remedial steps taken; and
- vi. Any steps to be taken by property owners to bring property into compliance with the terms of the easement (if necessary).

D. Upon sale of property, Bear-Paw shall contact the new owner and inform them of the provisions of this conservation easement.

16. SOVEREIGN IMMUNITY

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 8. B. above, this provision 16. shall not apply to the assignee or transferee.

The Grantee, by accepting and recording this Easement, agrees to be bound by and to observe and enforce the provisions hereof and assumes the rights and responsibilities herein granted to and incumbent upon the Grantee, all in the furtherance of the conservation purposes for which this Easement is delivered.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, _____.

ACCEPTED: TOWN OF HOOKSETT TOWN COUNCIL

_____, Town Councilor

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK, SS

On this _____ day of _____, _____, before me the undersigned officer, personally appeared the Town Councilor of Hooksett who acknowledged the foregoing to be their voluntary act and deed for the purposes therein contained.

Before me, _____
Justice of the Peace/Notary Public

My commission expires: _____

ACCEPTED: HOOKSETT CONSERVATION COMMISSION

Conservation Commissioner

STATE OF NEW HAMPSHIRE
COUNTY OF Merrimack, SS

On this ____ day of _____, _____, before me the undersigned officer, personally appeared the Town Council of Hooksett who acknowledged the foregoing to be their voluntary act and deed for the purposes therein contained.

Before me, _____
Justice of the Peace/Notary Public
My commission expires: _____

ACCEPTED: BEAR-PAW REGIONAL GREENWAYS

By: _____

Title: _____
Duly Authorized

Date: _____

By: _____

Title: _____
Duly Authorized

Date: _____

STATE OF NEW HAMPSHIRE
COUNTY OF _____, SS

On this ____ day of _____, _____, before me the undersigned officer, personally appeared _____ and _____ who acknowledged themselves to be officers of Bear-Paw Regional Greenways, and acting in said capacity, and being authorized so to do, executed the foregoing instrument on behalf of Bear-Paw Regional Greenways as its voluntary act and deed for the purposes therein contained.

Before me, _____
Justice of the Peace/Notary Public

My commission expires: _____

ACCEPTED BY THIRD PARTY HOLDER:

State of New Hampshire, acting through the New Hampshire Department of Environmental Services

By: _____

Duly Authorized

Date: _____

STATE OF NEW HAMPSHIRE
COUNTY OF _____, SS

On this _____ day of _____, _____, before me the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the authorized agent of the State of New Hampshire, acting through the New Hampshire Department of Environmental Services, and that being authorized so to do on behalf of such entity, executed the foregoing instrument for the purposes therein contained. In witness whereof I set my hand and seal.

Before me, _____
Justice of the Peace/Notary Public
My commission expires: _____

Appendix A

A certain tract or parcel of land situate in Town of Hooksett, County of Merrimack, State of New Hampshire, on the northerly side of North Candia Road, shown on a plan entitled "Standard Boundary Survey and Conservation Easement Plan of Land for Land Owned by Town of Hooksett", dated March 25, 2016, prepared by Knight Hill Land Surveying Services, Inc., recorded of near or even date herewith at the Merrimack County Registry of Deeds, and more particularly described as follows:

Beginning at a drill hole in the fieldstone town bound with the letters "C" and "H" engraved, along the northerly sideline of North Candia Road at the County line between Rockingham County and Merrimack County at the southwest lot corner of land now or formerly of James and Joan Maloney;

thence, along the northerly sideline of North Candia Road the following courses and distances:

N 66°14'19" W, 85.40 feet;

N 73°56'04" W, 188.39 feet;

S 86°31'44" W, 83.39 feet to a 30" hemlock w/wire;

S 76°15'03" W, 180.29 feet to a 30" oak w/wire;

S 80°58'32" W, 173.19 feet to an iron pin w/cap #881 in stones at land now or formerly of the Town of Hooksett;

thence, along land now or formerly of the Town of Hooksett the following courses and distances:

N 30°30'08" E, 70.14 feet to an iron pin w/cap #881 in stump;

N 35°05'10" E, 262.83 feet to a 24" hemlock w/wire;

N 35°03'50" E, 494.40 feet to an iron pin w/cap #881 in stump;

N 31°31'25" E, 279.17 feet;

N 60°34'36" W, 34.55 feet to an iron pin w/cap #881 in stump;

N 60°34'35" W, 219.33 feet to a 40" pine w/wire;

N 66°30'48" W, 108.93 feet to a drill hole found at the beginning of a stone wall;

N 62°10'51" W, 135.46 feet along stone wall to a point;

N 61°06'14" W, 174.52 feet along stone wall to a point;

N 60°18'26" W, 146.60 feet along stone wall to a point;

N 61°02'02" W, 41.92 feet to the corner of the stone wall at land now or formerly of Lillian King, Exempt Family Trust;

thence, along land now or formerly of said King Trust the following courses and distances:

N 48°33'20" E, 11.44 feet along stone wall to a drill hole;

N 47°17'44" E, 254.66 feet to a drill hole at stone wall intersection;

N 47°15'17" E, 203.20 feet along stone wall to a drill hole;

N 47°21'26" E, 300.90 feet along stone wall to a drill hole;

N 47°38'29" E, 549.51 feet to a 12" spike at base of fence post;

N 47°03'19" E, 379.10 feet to a point at land now or formerly of Bear Brook State Park said point being located S 61°53'46" E, 631.32 feet from a 1¼" iron pipe 2.3 feet high, said point also being located S 47°03'19" W, 5.26 +/- feet from the center of a 24" white oak with barb wire fence corner;

thence along land now or formerly of Bear Brook State Park the following courses and distances:

S 61°53'46" E, 274.28 feet to a concrete bound w/disk;

N 66°15'41" E, 1701.50 +/- feet along a spotted tree line to a point on County line, said point being located S66°15'41" W, 4.92 +/- feet from a 1¼ in. pipe 2.2 feet high;

S 36°04'50" W, 510.59 +/- feet along County line to a drill hole in a field stone town bound with the letters "C" and "H" engraved;

S 36°04'50" W, 839.50 feet to a point at land now or formerly of James and Joan Maloney. Said point being located S 64°03'14" E, 0.38 feet from a concrete bound w/disk;

thence, along said Maloney land and County line S 36°04'50" W, 149.97 feet to a drill hole in field stone town bound with the letters "C" and "H" engraved;

thence, along land of said Maloney and County line S 36°06'18" W, 2,267.78 feet to the point of beginning.

Said parcel is depicted as Tax Map 4 Lot 9 on the Hooksett Assessor's Maps and contains a total of 73.5 acres, more or less.

MEANING and INTENDING to describe and convey a conservation easement over the same premises described and conveyed in the Deed of Karen Heroux to the Town of Hooksett, recorded at Book 3501 Page 503 in the Merrimack County Registry of Deeds.

Attachment C

Map of Land to Be Conserved by Water Supply Land Protection Grant

Bear Paw Regional Greenways - Heroux Parcel

Legend

-  Applicant Parcels
-  Source Water Protection Areas
-  Town Boundaries



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.

