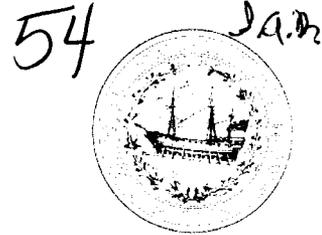




The State of New Hampshire
Department of Environmental Services



Clark B. Freise, Assistant Commissioner

April 26, 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 the Town of Derry, NH (VC #177379-B003) in the amount of \$375,000 to purchase 63.5 acres of land in the Town of Derry and acquire a conservation easement on that land to protect public drinking water supply in the Town of Derry, effective upon Governor and Council approval through December 31, 2017. 100% Interagency Funds.

Funding is available as follows:

	<u>FY 2017</u>
03-44-44-442010-1879-073-500581	\$375,000
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 2014 grant round, one municipality and one land trust organization applied and were eligible for these grants. See Attachment A for a list of applicants, rankings and reviewers.

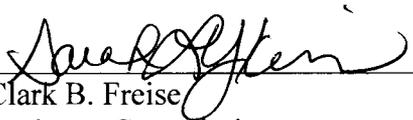
The Town of Derry will use this grant as well as Town funds to purchase 63.5 acres of land within the wellhead protection area of Willow Bend Community Water System, a public water supply in Derry and acquire a conservation easement on this land. The Southeast Land Trust of New Hampshire will hold the

conservation easement. The land will be maintained in perpetuity for the purpose of water supply protection.

The total cost for the Town of Derry to acquire the land and conservation easement is \$750,000. The Department will provide \$375,000 with \$375,000 in match provided by the Town of Derry. The purchase price for the land 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.

We respectfully request your approval.


for Clark B. Freise
Assistant 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: Town of Derry		1.4 Grantee Address 14 Manning St, Derry NH 03038	
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 \$375,000
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 David R. Caron, Town Administrator	
1.13 Acknowledgment: State of <u>New Hampshire</u> , County of <u>Rockingham</u> On <u>04/26/2017</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) 			
1.13.2 Name & Title of Notary Public or Justice of the Peace SHEILA M. BODENRADER, Notary Public My Commission Expires August 8, 2017			
1.14 State Agency Signature(s) 		1.15 Name/Title of State Agency Signor(s) for Clark B. Freise, Assistant Commissioner	
1.16 Approval by Attorney General's Office (Form, Substance and Execution) By:  Attorney, On: <u>4/28/17</u>			
1.17 Approval by the Governor and Council 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 continuance of payments hereunder, are contingent upon the availability or continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available or appropriated funds. In the event of a reduction or termination of those funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Grantee notice of such termination.

11. **EVENT OF DEFAULT; REMEDIES.**

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

11.1.1 failure to perform the Project satisfactorily or on schedule; or

11.1.2 failure to submit any report required hereunder; or

11.1.3 failure to maintain, or permit access to, the records required hereunder; or

11.1.4 failure to perform any of the other covenants and conditions of this Agreement.

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

11.2.1 give the Grantee a written notice specifying the Event of

Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Grantee notice of termination; and

11.2.2 give the Grantee a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the Grant Amount which would otherwise accrue to the grantee during the period from the date of such notice until such time as the State determines that the Grantee has cured the Event of Default shall never be paid to the Grantee; and

11.2.3 set off against any other obligation the State may owe to the Grantee any damages the State suffers by reason of any Event of Default; and

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

12. TERMINATION.

12.1 In the event of any early termination of this Agreement for any reason other than the completion of the Project, the Grantee shall deliver to the Grant Officer, not later than fifteen (15) days after the date of termination, a report (hereinafter referred to as the "Termination Report") describing in detail all Project Work performed, and the Grant Amount earned, to and including the date of termination.

12.2 In the event of Termination under paragraphs 10 or 12.4 of these general provisions, the approval of such a Termination Report by the State shall entitle the Grantee to receive that portion of the Grant amount earned to and including the date of termination.

12.3 In the event of Termination under paragraphs 10 or 12.4 of these general provisions, the approval of such a Termination Report by the State shall in no event relieve the Grantee from any and all liability for damages sustained or incurred by the State as a result of the Grantee's breach of its obligations hereunder.

12.4 Notwithstanding anything in this Agreement to the contrary, either the State or except where notice default has been given to the Grantee hereunder, the Grantee, may terminate this Agreement without cause upon thirty (30) days written notice.

13. CONFLICT OF INTEREST. No officer, member or employee of the Grantee and no representative, officer of employee of the State of New Hampshire or of the governing body of the locality or localities in which the Project is to be performed, who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of such Project, shall participate in any decision relating to this Agreement which affects his or her personal interests or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested, nor shall he or she have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

14. GRANTEE'S RELATION TO THE STATE. In the performance of this Agreement, the Grantee, its employees, and any subcontractor or subgrantee of the Grantee are in all respects independent contractors, and are neither agents nor employees of the State. Neither the Grantee nor any of its officers, employees, agents, members, subcontractors or subgrantees, shall have authority to bind the State nor are they entitled to any of the benefits, worker's compensation or emoluments provided by the State to its employees.

15. ASSIGNMENT AND SUBCONTRACTS. The Grantee shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the State. None of the Project Work shall be subcontracted or subgranted by the Grantee other than as set forth in Exhibit A without the prior written consent of the State.

16. INDEMNIFICATION. The Grantee shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any

person, on account of, based on, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Grantee of Subcontractor, or subgrantee or other agent of the Grantee. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this agreement.

17. INSURANCE AND BOND.

17.1 The Grantee shall, at its sole expense, obtain and maintain in force, or shall require any subcontractor, subgrantee or assignee performing Project work to obtain and maintain in force, both for the benefit of the State, the following insurance:

17.1.1 statutory worker's compensation and employees liability insurance for all employees engaged in the performance of the Project, and

17.1.2 comprehensive public liability insurance against all claims of bodily injuries, death or property damage, in amounts not less than \$2,000,000 for bodily injury or death any one incident, and \$500,000 for property damage in any one incident; and

17.2 The policies described in subparagraph 17.1 of this paragraph shall be the standard form employed in the State of New Hampshire, issued by underwriters acceptable to the State, and authorized to do business in the State of New Hampshire. Each policy shall contain a clause prohibiting cancellation of modification of the policy earlier than ten (10) days after written notice has been received by the State.

18. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event, or any subsequent Event. No express waiver of any Event of Default shall be deemed a waiver of any provisions hereof. No such failure or waiver shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other default on the part of the Grantee.

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

20. AMENDMENT. This agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Council of the State of New Hampshire.

21. CONSTRUCTION OF AGREEMENT AND TERMS. This Agreement shall be construed in accordance with the law of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assignees. The captions and contents of the "subject" blank are used only as a matter of convenience, and are not to be considered a part of this Agreement or to be used in determining the intent of the parties hereto.

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

23. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings relating hereto.

EXHIBIT A

SCOPE OF SERVICES

Town of Derry

The Town of Derry will use the grant to purchase 63.5 acres of land in the wellhead protection area of Willow Bend Community Water System, a public water supply in Derry. The Southeast Land Trust of New Hampshire will be the holder of the conservation easement. The parcel of land, designated on the current Derry tax maps as Map 2, Lot 70 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 \$375,000 shall be made to the Town of Derry 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 \$375,000 in match provided by the Town of Derry.
7. The finalized conservation easement deed.

Grantee Initials OK
Date 5/1/17

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, and \$500,000 for property damage 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 JK
Date 5/1/17

Town of Derry

Certificate of Authorization

I, Daniel Healey, Town Clerk for the Town of Derry, New Hampshire am responsible for keeping town records. I hereby certify that:

1. At the regular Town Council meeting held on June 21 2016, the Town Council voted to accept NHDES Water Supply Land Protection Grant funds and to enter into a grant contract with the NH Department of Environmental Services.
2. At the regular Town Council meeting held on January 24, 2017, the Town Council authorized David Caron, Town Administrator, to execute any documents which may be necessary for this grant contract.
3. This authority has not been revoked, annulled, or amended in any manner whatsoever, and remains in full force and effect as of the date hereof; and
4. The following person has been appointed to and now remains in the office indicated in 1, above: David Caron, Town Administrator.

IN WITNESS THEREOF, I have hereunto set my hand as the Town Clerk of Derry, New Hampshire, on this 7 day of February, 2017

Daniel Healey
Signature of Derry Town Clerk

2-7-17
Date

Daniel Healey, Derry Town Clerk

State of New Hampshire
County of Rockingham

On this the 7 day of February, 2017, before me, *Ruth E. Robinson*
(Notary Justice/Justice of Peace)

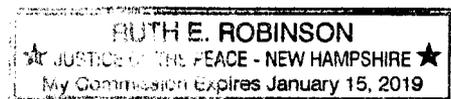
personally appeared Daniel Healey who acknowledged himself to be the Town Clerk of the Town of Derry, New Hampshire, and that he, as such Town Clerk being authorized to do so, executed the foregoing instrument for the purpose therein contained.

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

Ruth E. Robinson
Signature of Notary Public

(affix seal)

Commission Expires: 1-15-2019





CERTIFICATE OF COVERAGE

The New Hampshire Public Risk Management Exchange (Primex³) 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, Primex³ is authorized to provide pooled risk management programs established for the benefit of political subdivisions in the State of New Hampshire.

Each member of Primex³ is entitled to the categories of coverage set forth below. In addition, Primex³ 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 Primex³, including but not limited to the final and binding resolution of all claims and coverage disputes before the Primex³ 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 Primex³. 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.

<i>Participating Member:</i> Town of Derry 14 Manning Street Derry, NH 03038	<i>Member Number:</i> 154	<i>Company Affording Coverage:</i> NH Public Risk Management Exchange - Primex ³ Bow Brook Place 46 Donovan Street Concord, NH 03301-2624
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Type of Coverage	Effective Date (mm/dd/yyyy)	Expiration Date (mm/dd/yyyy)	Limits - NH Statutory Limits May Apply	
<input checked="" type="checkbox"/> General Liability (Occurrence Form) Professional Liability (describe) <input type="checkbox"/> Claims Made <input type="checkbox"/> Occurrence	7/1/2016	7/1/2017	Each Occurrence	\$ 1,000,000
			General Aggregate	\$ 2,000,000
			Fire Damage (Any one fire)	
			Med Exp (Any one person)	
<input type="checkbox"/> Automobile Liability Deductible Comp and Coll: <input type="checkbox"/> Any auto			Combined Single Limit (Each Accident)	
<input type="checkbox"/> Workers' Compensation & Employers' Liability			<input type="checkbox"/> Statutory	
			Each Accident	
			Disease – Each Employee	
			Disease – Policy Limit	
<input type="checkbox"/> Property (Special Risk includes Fire and Theft)			Blanket Limit, Replacement Cost (unless otherwise stated)	

Description: Grant. The certificate holder is named as Additional Covered Party, but only to the extent liability is based solely on the negligence or wrongful acts of the member, its employees, agents, officials or volunteers. This coverage does not extend to others. Any liability resulting from the negligence or wrongful acts of the Additional Covered Party, or their employees, agents, contractors, members, officers, directors or affiliates is not covered. Pollution and hazardous waste related liabilities, expenses and claims are excluded from coverage in the coverage document.

CERTIFICATE HOLDER:	<input checked="" type="checkbox"/>	Additional Covered Party	Loss Payee	Primex ³ – NH Public Risk Management Exchange
State of NH Department of Environmental Services 29 Hazen Dr Concord, NH 03302				By: <i>Tammy Denver</i>
				Date: 4/6/2017 tdenver@nhprimex.org
				Please direct inquires to: Primex³ Claims/Coverage Services 603-225-2841 phone 603-228-3833 fax

Attachment A
Fall 2014 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
Town of Derry	\$635,000	South Range Realty Trust	Derry	Willowbend Community Water Supply	33.5	1
Southeast Land Trust of NH	\$ 270,775	Dufresne	Hooksett	Manchester Water Works – Lake Massabesic	24	2
Southeast Land Trust of NH	\$ 397,125	Gunther-Nelson	Derry	Salem Water Department – Arlington Mill Reservoir	19.5	3

Grant Reviewer List

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

ATTACHMENT B

THIS IS A TRANSFER TO AN INSTRUMENTALITY OF THE STATE OF NEW HAMPSHIRE AND A NONCONTRACTUAL TRANSFER AND EXEMPT FROM THE NEW HAMPSHIRE REAL PROPERTY TRANSFER TAX PURSUANT TO RSA 78-B:2, I AND IX. THIS TRANSFER IS ALSO EXEMPT FROM THE LCHIP SURCHARGE PURSUANT TO RSA 478:17-g, II(a).

CONSERVATION EASEMENT DEED

I, xxxxxxxxxxx, **Trustee of the South Range Realty Trust** xxxxx dated xxxxxxxx, having an address of xxxxxxxxxxx, Derry, New Hampshire, 03038 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, grant in perpetuity to

the **SOUTHEAST LAND TRUST OF NEW HAMPSHIRE**, a corporation duly organized and existing under the laws of the State of New Hampshire, with a principal place of business at 6 Center Street, PO Box 675, Town of Exeter, County of Rockingham, State of New Hampshire, 03833, having been determined by the Internal Revenue Service to be an income tax exempt, publicly supported corporation, contributions to which are deductible for federal income tax purposes pursuant to the United States Internal Revenue Code, (hereinafter referred to as the "Grantee" which shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns), with

a Third Party Right of Enforcement, as further defined in Section 9 below, 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").

The **Conservation Easement** (herein referred to as the "**Easement**") hereinafter described with respect to those certain parcels/area of land (herein referred to as the "**Property**") with any and all buildings, structures, and improvements thereon, consisting of approximately sixty-three and forty two hundredths (63.42) acres, situated off Willow Street in the Town of Derry, County of Rockingham, State of New Hampshire, as shown on a plan entitled "Conservation Easement Plan, Tax Map 2 Lot 70 Off Willow Street, Derry, NH, Owners: South Range Realty Trust, Dated August 29, 2016, Scale 1" = 100' ", last revised on xxxxxx and prepared by Eric C. Mitchell & Assoc. Inc. and recorded herewith at the Rockingham County Registry of Deeds as Plan _____ (the "**Easement Plan**"), more particularly bounded and described in

Appendix "A" attached hereto and made a part hereof.

The Easement has been acquired in part with funds from the New Hampshire Department of Environmental Services (NHDES) Water Supply Land Protection Grant Program. Pursuant to NH RSA 486-A:7 II (e), the Grantee shall henceforth provide annual stewardship reports to the Third Party Holder.

The conservation attributes and present conditions of the Property are further described and set forth in a Baseline Documentation Report with the original on file with the Grantee and a copy provided to the Grantor and with an additional copy provided to 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 the quality and availability of ground water and surface water resources on and under the Property and available to the well located on the Town owned land to which the Property abuts and also the protection of the well-head protection area associated with said well as identified by the New Hampshire Drinking Water Source Protection Program administered by the New Hampshire Department of Environmental Services; and
- B. The protection of the natural wildlife habitats on the Property including the wetland, riparian, and upland habitats associated with the Property's undeveloped frontage along an unnamed wetland to which the northwest boundary of the Property fronts, and the Property's XXXX +/- feet of frontage along an unnamed stream; the approximate XX acres of forest which encompasses portions of Ryan Hill; the protection of any state or federally recognized rare, threatened or endangered species on the Property that may exist; and the enhancement and enlargement of approximately two hundred forty-two (242) acres of protected land which is nearby the Property. Said unnamed wetland is designated a Prime Wetland by the Town of Derry and said nearby protected land includes the State of NH owned Windham Road Holdings and Tuckernuck Development LLC land, and the Town of Derry Bike Path.
- C. The conservation and protection of open spaces, particularly the conservation of the productive forest land of which the Property consists and of the wildlife habitat thereon including approximately xxx acres of NH Fish & Game Department designated "Highest Quality Habitat in the Biological Region", XXX acres of Appalachian oak-pine forest, xxx acres of xxxx wetland; the protection of the xxxx undeveloped feet of water frontage along an unnamed stream and xxxx undeveloped feet of frontage along xxxx Prime Wetland to which the Property fronts; and the long-term protection of the Property's capacity to produce economically valuable agricultural and forestry products through the conservation of approximately xxx acres of Natural Resource Conservation Service designated important forest soils (Group IB); and

- D. The protection of the Property for noncommercial outdoor recreation by and/or for the education of the general public compatible with these conservation Purposes.

The above Purposes are consistent with the clearly delineated open space conservation goals and/or objectives as stated in the 2010 Master Plan & Open Space Plan of the Town of Derry, which states “The preservation of open land, including open fields, woods, wetlands, farms and undisturbed wild areas for creatures, is critical to assure that Derry will remain a livable community for the next decade and for the generations of Derry residents to come. Open Space preservation is inextricably linked to a positive future for the other aspect of life in Derry such as a thriving local economy and attractive residential development”; said Master Plan & Open Space Plan specifically identifying the Property as a high priority parcel that should be pursued for protection;

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 the purposes of New Hampshire RSA Chapter 486-A which include: “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.”

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

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)

The Property shall be maintained in perpetuity as open space subject to the following use limitations:

- A. There shall not be conducted on the Property any industrial or commercial activities, except Agriculture and Forestry, as described below, and provided that the productive capacity of the Property to yield forest and/or agricultural crops shall not be degraded by on-site activities.

i. **Description of Agriculture and Forestry**

- a. **Agriculture:** For the purposes hereof, “Agriculture” shall include animal husbandry, floriculture, and horticulture activities; the production of plant and animal products for domestic or commercial purposes; the growing, stocking, cutting, and sale of Christmas trees; and the processing and sale of products produced on the Property (such as pick-your-own fruits and vegetables and maple syrup) all as not detrimental to the Purposes of this Easement.

- b. **Forestry:** For the purposes hereof, “Forestry” shall include the growing, stocking, cutting, and sale of forest trees of any size capable of producing timber or other forest products, all as not detrimental to the Purposes of this Easement.
 - 1. **Commercial Forestry:** For the purposes hereof, “Commercial Forestry” shall include all forestry and forest management activities performed for commercial or industrial purposes, including barter transactions.
 - 2. **Non-commercial Forestry:** For the purposes hereof, “Non-commercial Forestry” shall include non-commercial timber stand improvement activities, wildlife habitat improvement, and the small-scale cutting or harvesting of wood products for the domestic use of the Grantor, such as clearing trees to maintain the edge of a field, thinning the forest stand to maintain a view, or cutting firewood for domestic consumption. Non-commercial Forestry shall not include activities conducted for the contemporaneous production of sale proceeds or other consideration.
- ii. **Requirements for Agriculture:** Agriculture shall be performed, to the extent reasonably practicable, in accordance with a coordinated management plan for the sites and soils of the Property. Agricultural management activities shall be in accordance with the then-current scientifically based practices recommended by UNH Cooperative Extension, U.S. Natural Resources Conservation Service, or other government or private, nonprofit natural resource conservation and management agencies then active, and shall be in accordance with “best management practices” as set forth in the following publications or as these publications may be specifically updated or superseded:
 - a. “Manual of Best Management Practices for Agriculture in New Hampshire,” New Hampshire Department of Agriculture, Markets and Food, reprinted in 2002; and
 - b. “Pesticide Management Guidelines for Groundwater Protection,” University of New Hampshire Cooperative Extension, November 1992; and
 - c. “Buffers for Wetlands and Surface Waters: A Guidebook for New Hampshire Municipalities,” Audubon Society of New Hampshire, New Hampshire Office of State Planning, University of New Hampshire Cooperative Extension, U.S. Natural Resources Conservation Service, as revised May 1997; and
 - d. “Best Management Practices: Biosolids,” University of New Hampshire Cooperative Extension, 1995; and
 - e. “Best Management Practices to Control Nonpoint Source Pollution: A Guide for Citizens and Town Officials,” New Hampshire Department of Environmental Services, as revised January 2004.

Such management activities shall not be detrimental to the Purposes of this Easement.

iii. **Requirements for Forestry:** Any and all Commercial and Non-commercial Forestry 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 then-current, generally accepted best management practices for the sites, soils, and terrain of the Property and shall not be detrimental to the Purposes of the Easement. No Commercial or Non-Commercial Forestry shall occur within XX feet of the ordinary high water mark of XXXX designated Prime Wetlands or streams. Exceptions to this limitation may be granted by mutual agreement in writing by the Grantor and Grantee. For references on best management practices see:

- “New Hampshire Best Management Practices for Erosion Control on Timber Harvesting Operations” (N.H. Division of Forests and Lands, 2016); and
- “Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire” (New Hampshire Forest Sustainability Standards Work Team, 2010), or similar successor publications.

iv. **Requirements for Commercial Forestry:** In addition to the requirements outlined in Section 2.A.iii above, Commercial Forestry shall be performed using silvicultural practices that enhance or maintain the value of timber while recognizing that the ecological, aesthetic, wildlife, or other non-timber values are important components of the forest. To the extent reasonably practicable, forestry shall meet the following goals:

a. The goals are:

- maintenance of soil productivity;
- protection of water quality, wetlands, and riparian zones;
- maintenance or improvement of the overall quality of forest products;
- conservation of scenic quality;
- protection of significant or fragile natural areas;
- protection of significant historic and cultural features; and
- conservation of native plant and animal species.

b. Any and all Commercial Forestry shall be performed in accordance with a written Forest Management Plan consistent with this Easement, prepared by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee.

c. Said Forest Management Plan shall have been prepared not more than ten (10) years prior to the date any harvesting is expected to commence. Or, if more than ten (10) years old, the plan shall have been reviewed and updated as required by such a forester or other qualified person at least thirty (30) days prior to the date of harvest.

d. Said Forest Management Plan shall include a statement of landowner objectives, and shall specifically address:

- the accomplishment of those Purposes for which this Easement is granted,
 - the goals in Section 2.A.iv.above
 - the protection of the water quality of ground water and surface water resources on and under the Property and available to the well located on the Town owned land to which the Property abuts and also within said well's associated well-head protection area identified by the New Hampshire Drinking Water Source Protection Program administered by the New Hampshire Department of Environmental Services; as well as minimizing disturbance around said surface waters and well; and
- e. At least thirty (30) days prior to any commercial timber harvest, the Grantee shall have received from the Grantor a written certification, signed by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee, that the Forest Management Plan, as defined in 2.A.iv, a-d, above, has been prepared in compliance with the terms of this Easement. Grantee may request the Grantor to submit the Plan itself to Grantee within ten (10) days of such request, but acknowledges that the plan's purpose is to guide forest management activities in compliance with this Easement, and that the actual activities will determine compliance therewith.
- f. Timber harvesting with respect to any Commercial Forestry shall be conducted in accordance with said Plan and be supervised by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee.
- B. The Property shall not be subdivided and none of the individual tracts which together comprise the Property shall be conveyed separately from one another, except that the lease of any portion of the Property for any use permitted by this Easement shall not violate this provision.
- C. The following provisions shall apply to structures or improvements on the Property:
- i. No structure or improvement shall be constructed, placed, introduced, enlarged, relocated, used, maintained, repaired, replaced, rebuilt, or improved on, above, or below the Property, except for structures and improvements which:
 - a. Assist in the accomplishment of agriculture, forestry, conservation, habitat management, or noncommercial outdoor recreational uses on the Property, which may include but shall not be limited to: permeable roads, dams, fences, bridges, culverts, barns, maple sugar houses, trails, boardwalks or sheds [consider adding "utility lines" or "farm stands" to the list if appropriate for the Property]; and
 - b. Do not cause the total impervious surface coverage of the Property to exceed two percent (2%) of the Property's overall size, or 55,250 square feet; for the purposes of this restriction, impervious surfaces are defined as material that does not allow water to percolate into the soil on the Property. Impervious surfaces include, but are not limited to buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. Notwithstanding the

foregoing, impervious surfaces shall specifically exclude bridges; boardwalks; culverts; impervious surfaces not in place year-round such as row covers for agricultural crops, tents and awnings; and roadways, or other improvements established on the Property by third parties exercising lawful rights obtained prior to the date of this Easement; and

- c. Are not detrimental to the Purposes of this Easement.
 - ii. Prior to the Grantor's construction, placement, introduction, enlargement, or relocation of any structure or improvement with a footprint exceeding two hundred and fifty (250) square feet, the Grantor must obtain written approval of the same from the Grantee. The footprint of any roofed structure shall include the area within the dripline. For an enlargement of a structure, the square footage calculation under this provision shall only be the enlargement and shall not include the original structure.
 - a. At least forty-five (45) days prior to the commencement of any such construction, placement, introduction, enlargement, relocation, or on-site preparation therefor including but not limited to land clearing, the Grantor shall provide the Grantee with written notice with details of said structure or improvement including but not limited to scope, size, and location, and method and timing of said construction/installation. Within thirty (30) days after Grantee's receipt of such notice, the Grantee shall inform the Grantor in writing of its approval, approval with conditions, or disapproval of the proposed structure or improvement, such approval not to be unreasonably withheld. Any disapproval shall specify the reasons therefor.
 - iii. Notwithstanding the above provisions of this Section 2.C., there shall not be constructed, placed, introduced, enlarged, relocated, used, maintained, repaired, replaced, rebuilt, or improved on, under, or above the Property any of the following structures or improvements, including any portion thereof: dwelling, mobile home, cabin, residential driveway, any portion of a septic system, underground petroleum/gas storage tank, tennis court, swimming pool, athletic field, golf course, tower, indoor riding arena, or aircraft landing area.
- D. There shall be 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 agricultural, forestry, conservation, habitat management, or noncommercial outdoor recreational uses of the Property; and
 - ii. do not harm state or federally recognized rare, threatened, or endangered species, or exemplary natural communities, such determination of harm to be based upon information from the New Hampshire Natural Heritage Bureau or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species and/or natural communities; 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 shall be displayed on the Property except as desirable or necessary in the accomplishment of the agricultural, forestry, conservation, or noncommercial outdoor recreational uses of the Property, and provided such structures are not detrimental to the Purposes of this Easement. No sign on the Property shall exceed twenty-four (24) square feet in size, and no sign shall be artificially illuminated.
- F. There shall be no mining, quarrying, excavation, or removal (hereinafter referred to as "Extractive Activities") of surface or subsurface materials including but not limited to hydrocarbons, rocks, minerals, gravel, sand, topsoil, or other similar materials (hereinafter referred to as "Extractive Materials") on, under, or from the Property, unless Extractive Activities will have a limited and localized impact on the Property and shall not be irretrievably destructive of or detrimental to the Purposes of this Easement, and all of the following conditions are met:
- i. Said Extractive Activities shall be undertaken in furtherance of improvements made pursuant to and consistent with the provisions of Sections 2.A., C., D., and/or E., above, and in accordance with relevant Best Management Practices;
 - ii. No Extractive Materials shall be removed from the Property, except with advance written approval of the Grantee after the Grantee has determined, in its sole discretion, that said removal is not detrimental to the Purposes of this Easement;
 - iii. Said Extractive Activities shall be limited to specific Extraction Zone(s) approved in accordance with Section 2.F.(viii.) below, with opportunity for said zone(s), once initially established, to be relocated from time to time by mutual agreement of the Grantor and the Grantee, but only after a finding by the Grantee in its sole discretion that the proposed new location and configuration of said zone(s) are no more detrimental to the Purposes of this Easement than the established zone(s) proposed to be relocated; and, further, only if said relocation does not convey impermissible private benefit;
 - iv. maximum cumulative footprint of the Extractive Zones with exposed soil at any one time shall not exceed 22,500 square feet;
 - v. Said Extractive Activities shall not significantly diminish the Property's productive capacity, including soil productivity, to yield forest and/or agricultural products, nor the Property's potential future uses for forestry or agriculture, or other permitted uses;
 - vi. Said Extractive Activities shall not harm state or federally recognized rare, threatened, or endangered species, or exemplary natural communities, such determination of harm to be based upon information from the New Hampshire Natural Heritage Bureau

or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species and/or natural communities;

- vii. Following the cessation of Extractive Activities at any given Extractive Zone on the Property, the Grantor shall restore such zone(s) to a natural vegetated condition and appearance in conformance with all governmental laws, ordinances, rules, and regulations, including but not limited to the requirements of U.S. Treasury Regulations at 1.170A-14(g)(4)(i), as may be amended from time to time;
 - viii. At least forth-five (45) days prior to the initial commencement or site preparation for Extractive Activities in any Extractive Zone or to designate a new or relocated Extractive Zone, the Grantor shall give the Grantee written notice of the commencement of said activities or the desire to designate an initial Extractive Zone(s). Said notice shall include a detailed description of the proposed activities (hereinafter the "Extraction Plan") including but not limited to the type(s) and volume(s) of said Extractive Materials to be mined, quarried, excavated, and/or removed from the Property; the proposed uses of said materials; the source and location of said Extractive Materials within the Property; the size and location of the Extractive Zone; the timing, duration, and frequency of said Extractive Activities; and a plan for restoring the extraction zone following the cessation of Extractive Activities. The Grantee shall have thirty (30) days from receipt of the Grantor's Extraction Plan to evaluate said plan and approve, approve with conditions, or disapprove the same, at the Grantee's sole discretion. Said approval or disapproval shall be based on whether the proposed Extraction Plan meets all of the above conditions of this Section 2.F., and said approval shall not to be unreasonably withheld. Any disapproval shall specify the reasons therefor. Once an Extraction Plan is approved by the Grantee, the Grantor does not need to notify the Grantee of individual instances of extraction activities within said zone so long as said activities are within the parameters of the Extraction Plan.
- G. There shall be no dumping, injection, burning, burial, or disposal on the Property of man-made materials, wastes generated off the Property, or materials then known to be environmentally hazardous. Further, no such materials shall be stored or applied on the Property except in conjunction with any of the agricultural, forestry, conservation, or noncommercial outdoor recreational uses of the Property, and provided such uses are not detrimental to the Purposes of this Easement.
- H. No rights-of-way or easements of ingress or egress in favor of any third party shall be created or developed into, on, over, or across the Property without the prior written approval of the Grantee, except those of record as of the execution of this Easement and those specifically permitted in the provisions of this Easement.
- I. The Property shall not be posted against, and the Grantor shall keep access to and use of the Property open to the public for, non-motorized, pedestrian, non-commercial, outdoor recreational and outdoor educational purposes, such as but not limited to hiking, wildlife observation, cross-country skiing, and mountain biking but not for camping or hunting. However, the Grantee shall be under no duty to supervise said access, use, or purpose.

The Grantor reserves the right to post the Property against camping, hunting, public access to agricultural cropland during the planting and growing season, to lands while being grazed by livestock, to forestland during harvesting or other forest management activities, and against motorized vehicles use including snowmobiling.

- J. The Grantor shall not use or grant permission for motorized vehicle use on the Property except for as necessary in the accomplishment of the forestry, agricultural, habitat management, law enforcement and public safety, or conservation uses of the Property, provided that no use of motorized vehicles shall create impacts that are detrimental to the Purposes of this Easement. Notwithstanding the foregoing, the use of snowmobiles as defined in RSA 215-A:1, XIII may be allowed if they are operated:
- a. Only on snow and ice outside the sanitary protective area of public water supply well(s);
 - b. More than two hundred fifty (250) feet from a surface water body being used as a public water supply;
 - c. More than 100 feet from tributaries contributing to such water bodies; except when crossing such tributaries; and
 - d. 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. Trails: The Grantor reserves the right to construct, maintain, repair, and relocate and replace trails for low-impact, non-commercial, outdoor recreational purposes, provided said trails are consistent with and not detrimental to the Purposes of this Easement. All trails shall conform to best practices recommended by the State of New Hampshire and Appalachian Mountain Club or similar trail-maintaining organization (For reference, see Appalachian Mountain Club, *The Complete Guide to Trail Building and Maintenance*, 4th edition; and State of New Hampshire, *Best Management Practices for Erosion Control During Trail Maintenance and Construction*, 2004, or similar successor publications).

4. NOTIFICATION OF TRANSFER, TAXES, MAINTENANCE

- A. The Grantor agrees to notify the Grantee in writing or via email within ten (10) days of offering the Property for sale. In addition, the Grantor agrees to notify the Grantee in writing or via email at least ten (10) days before the transfer of title to the Property [or any division of ownership thereof permitted hereby].
- B. The Grantee shall be under no obligation to maintain the Property or pay any taxes or assessments thereon.

5. BENEFITS AND BURDENS

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, agrees to and is capable of protecting the conservation purposes of this Easement, and has the resources to enforce the restrictions of this Easement. Any such assignee or transferee shall have like power of assignment or transfer. Any holder of an interest in this Easement desiring to transfer or assign its interest shall send written notice describing said intention to all other holders of any interest in this Easement at least thirty (30) days prior to such transfer or assignment taking effect.

6. AFFIRMATIVE RIGHTS OF GRANTEE

- A. The Grantee and Third Party Holder shall have reasonable access to the Property and all of its parts for such inspection as is necessary 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.
- B. Grantee shall have the right to place, maintain, and replace signs on the Property as follows:
 - i. Signs to facilitate inspection of the Property and to identify the Property as conservation land protected by the Grantee, said signs located along the Property's boundaries with each sign not exceeding thirty (30) square inches in size.
 - ii. Signs along the Property's maintained public road frontage (if any) or access way/right of way from public road frontage, to identify to the public that the Property is conserved land and to recognize funding entities who contributed funding toward the conservation of the Property, as may be required. Said signs shall be located at a visible location on the Property, said location to be mutually agreed upon by the Grantor and Grantee. The Grantee shall be responsible for ensuring that said sign(s) conform with applicable local, state, and federal regulations and shall bear the cost of installation.
 - iii. Up to two (2) informational kiosks that are no more than ___ feet wide by ___ feet high within which the Grantee can display information related to its mission, the Property, the effort to conserve the Property and the conservation context of the Property. The Grantor and Grantee shall work together on a mutually agreeable location for said kiosk(s).

- iv. Signs to identify trail location and trail uses and to facilitate the use of the Property for the allowed recreational purposes.
- B. The Grantor hereby conveys the right to the Grantee to construct, maintain, repair, relocate, and replace trails, bridges and stream crossings on the Property for non-commercial, low-impact, non-motorized, outdoor recreational purposes, provided the following:
- a. Said trails are consistent with and not detrimental to the Purposes of this Easement. All trails shall conform to best practices recommended by the State of New Hampshire and Appalachian Mountain Club or similar trail-maintaining organization (For reference, see Appalachian Mountain Club, The Complete Guide to Trail Building and Maintenance, 4th edition; and State of New Hampshire, Best Management Practices for Erosion Control During Trail Maintenance and Construction, 2004, or similar successor publications); and
 - b. The extent and location of said trails, bridges and stream crossings are mutually agreed upon and approved by the Grantor and Grantee and that said trails, bridges and stream crossings are consistent with and not detrimental to the Purposes of this Easement.

7. RESOLUTION OF DISAGREEMENTS

- A. The Grantor and the Grantee desire that issues arising from time to time concerning uses or activities in light of the provisions of the 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 either party becomes concerned whether any use or activity (which together for the purposes of this Section, "Resolution of Disagreements," shall be referred to as the "Activity") complies with the provisions of this Easement, wherever reasonably possible the concerned party shall notify the other party of the perceived or potential problem, and the parties shall explore the possibility of reaching an agreeable resolution by informal dialogue.
- B. If informal dialogue does not resolve a disagreement regarding the Activity, and the Grantor agrees not to proceed or to continue with the Activity pending resolution of the disagreement concerning the Activity, either party may refer the disagreement to mediation by written notice to the other. Within ten (10) days of the delivery of such a notice, the parties shall agree on a single impartial mediator. Mediation shall be conducted in Exeter, New Hampshire, or such other location as the parties shall agree. Each party shall pay its own attorneys' fees and the costs of mediation shall be split equally between the parties.
- C. If the parties agree to bypass mediation, if the disagreement concerning the Activity has not been resolved by mediation within sixty (60) days after delivery of the notice of mediation, or if the parties are unable to agree on a mediator within ten (10) days after delivery of the notice of mediation, the disagreement may be submitted to binding arbitration in accordance with New Hampshire RSA 542. The parties shall have ten (10)

days to accept or refuse binding arbitration. The Grantor and the Grantee shall each choose an arbitrator within twenty (20) days of the delivery of written notice from either party referring the matter to arbitration. The arbitrators so chosen shall in turn choose a third arbitrator within twenty (20) days of the selection of the second arbitrator. The arbitrators so chosen shall forthwith set as early a hearing date as is practicable, which they may postpone only for good cause shown. The arbitration hearing shall be conducted in Exeter, New Hampshire, or such other location as the parties shall agree. A decision by two of the three arbitrators, made as soon as practicable after submission of the matter, shall be binding upon the parties and shall be enforceable as part of this Easement.

- 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, to require the restoration of the Property to its condition prior to the breach, and to recover such damages as appropriate.
- E. Notwithstanding the availability of mediation and arbitration to address disagreements concerning the compliance of any Activity with the provisions 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 court of competent jurisdiction to cause the cessation of any such damage or harm, to enforce the terms of this Easement, to enjoin any violation by permanent injunction, and to require the restoration of the Property to its condition prior to any breach.
- F. So long as the Third Party Holder is the State of New Hampshire or an agency thereof, the provisions in this section 7 shall not apply to the Third Party Holder. The Third Party Holder may, at any time, seek resolution of a dispute through all available means including an action at law or in equity in a court of competent jurisdiction. If the interests held by the Third Party herein are assigned or transferred to a qualified party other than the State of New Hampshire or agency thereof, as allowed by Section 9. B. below, this provision 7.F. shall not apply to the assignee or transferee.

8. BREACH OF EASEMENT – GRANTEE’S REMEDIES

- A. If the Grantee determines that a breach of this Easement has occurred or is threatened, the Grantee shall notify the Grantor in writing of such breach and demand corrective action to cure the breach and, where the breach involves injury to the Property, to restore the portion of the Property so injured to its prior condition.
- B. The Grantor shall, within thirty (30) days after receipt of such notice or after otherwise learning of such breach, undertake those actions, including restoration, which are reasonably calculated to cure swiftly said breach and to repair any damage. The Grantor shall promptly notify the Grantee of its actions taken hereunder.
- C. If the Grantor fails to perform its obligations under the immediately preceding paragraph

- B. above, or fails to continue diligently to cure any breach until finally cured, the Grantee may 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.
- D. If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation features of the Property, the Grantee may pursue its remedies under this Section, "Breach of Easement...", without prior notice to the Grantor or without waiting for the period provided for cure to expire.
- E. The Grantee shall be entitled to recover damages from the party directly or primarily responsible for violation of the provisions of this Easement or injury to any conservation features protected hereby, including, but not limited to, damages for the loss of scenic, aesthetic, or environmental attributes of the Property. Without limiting the Grantor's liability therefore, the Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.
- F. The Grantee's rights under this Section, "Breach of Easement...", apply equally in the event of either actual or threatened breach of this Easement, and are in addition to the provisions of the preceding Section, "Resolution of Disagreements," which section shall also apply to any disagreement that may arise with respect to activities undertaken in response to a notice of breach and the exercise of the Grantee's rights hereunder.
- G. The Grantor and the Grantee acknowledge and agree that should the Grantee determine, in its sole discretion, that the conservation features protected by this Easement are in immediate danger of irreparable harm, the Grantee may seek the injunctive relief described in the third paragraph of this Section, "Breach of Easement...", 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, "Breach of Easement...", shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- H. Provided that the Grantor is directly or primarily responsible for the breach, all reasonable costs incurred by the Grantee in enforcing the terms of this Easement against the Grantor, including, without limitation, staff and consultant costs, reasonable attorneys' fees and costs and expenses of suit, and any costs of restoration necessitated by the Grantor's breach of this Easement shall be borne by the Grantor; 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 Conservation Easement, and if the court determines that the litigation 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.

- I. 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 the 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 or estoppel.
- J. 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. 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, "Breach of Easement...", against any third party responsible for any actions inconsistent with the provisions of this Easement.

9. THIRD PARTY

- 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 6 above. Any such assignee or transferee shall have like power of assignment or transfer.

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. EXTINGUISHMENT & CONDEMNATION

- A. **Extinguishment.** If circumstances arise in the future such as render the Purposes of this Easement impossible or impracticable to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such judicial termination or extinguishment, shall be determined in accordance with Section 12.C. below. In making this grant of Easement, Grantor has considered and acknowledges the possibility that uses prohibited by the terms of this Easement may become more economically viable than the uses specifically reserved by Grantor pursuant to this Easement. It is the intent of both Grantor and Grantee that any such change in economic conditions shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement pursuant to this Section.
- B. **Condemnation.** If all or any part of the Property is taken, in whole or in part, by exercise of the power of eminent domain or is acquired by purchase in lieu of condemnation, whether by public, corporate or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of their interests in the Property subject to the taking or in lieu purchase and to recover all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. The amount of the proceeds to which the Grantee shall be entitled, after payment of any expenses, shall be determined in accordance with Section 12.C. below.
- C. **Valuation.** This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of Sections 12.A and 12.B above, shall have a fair market value which shall be determined by an appraisal prepared by a qualified appraiser as of the time of said extinguishment or condemnation. The balance of the amount recovered, after payment of any expenses, shall be divided between the Grantor and the Grantee in proportion to the fair market value, as determined by the appraisal, of their respective interests in that part of the Property extinguished or condemned.
- D. As required by NH RSA 486-A:13, any release of the Property, or portion thereof, from the public trust in order to be converted to a use not permitted under the terms of this Easement or due to termination of the Easement shall be subject to the provisions of NH RSA 486-A:13 and Section 14 of this Easement and shall be undertaken according to the requirements of NH RSA 486-A:13. When the requirements of NH RSA 486-A:13 and Section 14 conflict, the requirements of NH RSA 486-A:13 shall apply.

13. AMENDMENT

If, owing to unforeseen or changed circumstances, Grantor, Grantee and Third Party Holder all agree that an amendment to, or modification of, this Easement would be appropriate and desirable, the parties may jointly amend this Easement pursuant to: the provisions and limitations of this section; the then-current amendment policies of the Grantee; notification is given to the New Hampshire Attorney General's Office at least thirty (30) days prior to the adoption of the amendment; and applicable state and federal law. Any amendment shall be consistent with the Purposes of this Easement, and shall not impair the conservation attributes of the Property protected by this Easement. No amendment shall affect the qualification of this Easement or the status of the Grantee under any applicable laws, including Sections 170(h) and 501(c)(3) of the Internal Revenue Code of 1986, as amended, and NH RSA 477:45-47 as may be amended from time to time, nor shall any amendment affect the perpetual duration of this Easement. Any amendment shall be executed by the Grantor, Grantee and Third Party Holder and shall be recorded in the Rockingham County Registry of Deeds. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

14. GOVERNING LAW

The Easement shall be construed in accordance with the laws of the State of New Hampshire.

15. 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 9. B. above, this provision 15. shall not apply to the assignee or transferee.

16. 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 the Section "Benefits and Burdens," above, accepts and records the additional easement.

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 (We) have hereunto set my (our) hand(s) this _____ day of _____, 2017.

Name of Grantor

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM, ss.

On this _____ day of _____, 2017, before me personally appeared _____, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that she executed the same as her free act and deed for the purposes therein contained.

Notary Public/Justice of the Peace
My commission expires:

ACCEPTED: SOUTHEAST LAND TRUST OF NEW HAMPSHIRE

By: _____

Title: _____
Duly Authorized

Date: _____

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM, ss.

On this ____ day of _____, 2017, before me personally appeared _____, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same as his free act and deed for the purposes therein contained.

Notary Public/Justice of the Peace
My commission expires:

Third Party Holder accepted by the State of New Hampshire on this ____ day of _____
2017:

By: _____
Clark Friese, Assistant Commissioner
New Hampshire Department of Environmental Services

STATE OF NEW HAMPSHIRE
COUNTY OF _____, ss.

On this ____ day of _____, 2017, before me personally appeared
Clark Freise, Assistant Commissioner of the New Hampshire Department of Environmental
Services and duly authorized, known to me, or satisfactorily proven, to be the person whose
name is subscribed to the foregoing instrument, and acknowledged that he/she executed the same
as his free act and deed for the purposes therein contained.

Notary Public/Justice of the Peace
My commission expires:

APPENDIX A

The "Property" subject to this Easement is that tract of land with any and all structures and improvements thereon situated on Road, so-called, in the Town of Derry, County of Rockingham, State of New Hampshire, and shown as Proposed Conservation Easement on a plan entitled "Conservation Easement Plan, Tax Map x Lot x, Dated xxxxxxxx, 201x, Scale: xxxxx" last revised on xxxxx and prepared xxxxxxxxxxxx to be recorded herewith and further described as follows:

All bearings of this description are turned from grid north based on the New Hampshire State Plane Coordinate System and all distances are based on the current survey.

Beginning at xxxxxxx; thence

parcel containing approximately xxxx acres, shown on a plan entitled ", " by , last revised , recorded at _____ at the County Registry of Deeds (hereafter "Plan"), and more particularly bounded and described as follows:

Beginning at on the side of Road, at the corner of the Property, at land now or formerly of ;

Thence proceeding a distance of feet, more or less, along said land to at land now or formerly of ;

Thence proceeding xxx a distance of xxx feet, more or less, along said xxx land to a at land now or formerly of ;

Thence the following courses and distances along said xxxx land:

Thence xxx feet along the arc of a curve to the left/right having a radius of xxx feet to a ;

to (point), which is on a tie course of (bearing) xxx feet from (point)

EXCEPTING AND RESERVING THEREFROM

SUBJECT TO

TOGETHER WITH

MEANING AND INTENDING to describe all and the same/a portion of the premises conveyed by Deed from , to , dated , recorded at said Registry at Book, Page .

[Not homestead property of the Grantor.]

Attachment C

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

7.5 Willow Street, Derry, NH

