



New Hampshire Fish and Game Department

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Glenn Normandeau
Executive Director

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February 4, 2013

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

REQUESTED ACTION

Authorize the New Hampshire Fish and Game Department to enter into a contract with Fulcrum Appraisal Service (Vendor Code 163542), Nashua, NH, to conduct four (4) appraisal reviews to Uniform Standards for Federal Land Acquisition for properties located in Grantham, Hooksett, Stratham and Stark, NH, in the amount of \$4,480 effective upon Governor and Council approval through December 31, 2013. Funding is 75% Federal; 25% Other (Donated Property, Wildlife Habitat and Estuarine Reserve Funds).

Funding is available, contingent upon availability and continued appropriations for State Fiscal Year 2013 and pending budget approval for State Fiscal Year 2014, with authority to adjust encumbrances in each of the State fiscal years through the Budget Office if needed and justified as follows:

03 75 75 751520-2155 Wildlife Program – Wildlife Habitat Conservation			
020-07500-21550000-305-500845	Habitat Acquisition and Management	<u>FY 2013</u>	<u>FY 2014</u>
		\$2,240.00	\$1,120.00
03 75 75 753020-2289 Marine Resources Program-Estuarine Reserve			
020-07500-22890000-102-500731	Contracts for Program Services	<u>FY 2013</u>	<u>FY 2014</u>
		\$1,120.00	\$0.00

EXPLANATION

These appraisal reviews are required as part of the due diligence necessary for the Department to secure federal funds to purchase conservation land.

Her Excellency, Governor Margaret Wood Hassen
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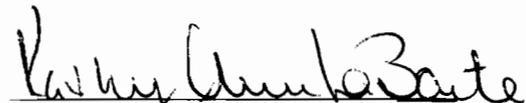
A single solicitation for bids included the review of four individual real estate appraisals and was distributed to 11 potential appraisal reviewers on January 9, 2013. Two responses were received. Fulcrum Appraisal Service submitted the low bid.

Pending completion of the appraisal review process, the Department will seek funding through the Wildlife and Sport Fish Restoration Program to permanently conserve the targeted properties.

Respectfully submitted,



Glenn Normandeau
Executive Director



Kathy Ann LaBonte
Chief, Business Division

Bid Solicitations

**Appraisal Review Four Parcels (Grantham, Hooksett, Stark and Stratham)
January 9, 2013**

Appraisal Reviewer	Address	Date Received	Bid	Telephone
Bergeron Commercial Appraisals	487 State Street Portsmouth, NH 03801		No response	436-3009
Capital Appraisal Associates	128 South Fruit St Concord, NH 03301	1/30/13	\$3600 + \$150/hr for additional work	228-9040
Crafts Appraisal Associates	4 Bell Hill Rd Bedford, NH 03102		No response	472-2444
Freemeau Appraisal Services	11 Stark St Manchester, NH 03101		No response	622-8826
Fulcrum Appraisal Service	49 Indian Rock Rd Nashua, NH 03063	1/23/13	\$3200 + \$160/hr for additional work	881-4895
Legasse Appraisal Service	PO Box 12 White River Junction, VT 05001		Not interested	802 905-1013
M.H. Beecy Appraisal Services	73 Lee Ave Manchester, NH 03109	11/16/12	Not interested	622-5106
McManus and Nault Appraisal Services	722 Route 3A Suite 6 Bow, NH 03304		No response	230-9788
Robert Lamprey, Appraiser	23 Grove St Wells River, VT 05081		No response	802 757-3722
Rauseo and Associates	152 Morrill Pond Rd Canterbury, Nh 03224		No response	783-0400
Shurtleff Appraisal Associates	103 Main St Hampstead, Nh 03841		No response	329-4808

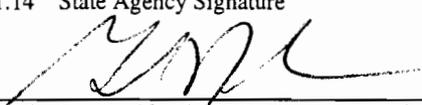
Subject: Real Property Appraisal Review Services FORM NUMBER P-37 (version 1/09)

AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name <u>Fish and Game Department</u>		1.2 State Agency Address <u>11 Hazen Drive, Concord, NH, 03301</u>	
1.3 Contractor Name <u>Fulcrum Appraisal Service</u>		1.4 Contractor Address <u>44 NB 2413</u> <u>44 Indian Rock Road, Nashua, NH, 03063</u>	
1.5 Contractor Phone Number <u>603 881-4895</u>	1.6 Account Number <u>* SEE BELOW</u>	1.7 Completion Date <u>December 31, 2013</u>	1.8 Price Limitation <u>\$4,480</u>
1.9 Contracting Officer for State Agency <u>Glenn Normandeau</u>		1.10 State Agency Telephone Number <u>271-3511</u>	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory <u>Martin S. Doctor, Proprietor</u>	
1.13 Acknowledgement: State of <u>N.H.</u> , County of <u>Hillsborough</u> On <u>2/4/13</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 <u>[Seal] Kim Laurendi</u>		KIM LAURENDI, Notary Public My Commission Expires December 14, 2016	
1.13.2 Name and Title of Notary or Justice of the Peace <u>Kim Laurendi</u>			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory <u>Glenn Normandeau, Executive Director</u>	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) By:  On: <u>2-6-13</u>			
1.18 Approval by the Governor and Executive Council By: _____ On: _____			

* \$1,120 - 020-07500-22890000-102-500731
\$3,360 - 020-07500-21550000-305-500845

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

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("Effective Date").

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

4. CONDITIONAL NATURE OF AGREEMENT.

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

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.

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

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

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

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

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

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.

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

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

7. PERSONNEL.

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

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

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

8. EVENT OF DEFAULT/REMEDIES.

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

- 8.1.1 failure to perform the Services satisfactorily or on schedule;
- 8.1.2 failure to submit any report required hereunder; and/or
- 8.1.3 failure to perform any other covenant, term or condition of this Agreement.

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

- 8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;
- 8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;
- 8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or
- 8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

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

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

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

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

Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

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

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

13. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

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

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$2,000,000 per occurrence; and

14.1.2 fire and extended coverage insurance covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

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

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be

Contractor Initials
Date 2/4/16

attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modification of the policy.

15. WORKERS' COMPENSATION.

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

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

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

17. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

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

19. CONSTRUCTION OF AGREEMENT AND TERMS.

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual

intent, and no rule of construction shall be applied against or in favor of any party.

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

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

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

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

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

EXHIBIT A
SCOPE OF SERVICES

The Scope of Services is agreed to be as follows between Fulcrum Appraisal Service and the New Hampshire Fish and Game Department (NHFG). Fulcrum Appraisal Service shall:

- 1) Provide real property appraisal review services for up to four properties located in New Hampshire:
Property #1 is 0.4 +/- acres of riverfront land improved with a seasonal cabin identified as Tax Map 24, Lot 12 in Stratham, New Hampshire; **Property #2** is 95.5 acres of riverfront land identified as Tax Map 412, Lots 36, 38, 40, 47 and 48.01 in Stark, New Hampshire; **Property #3** is 37 acres of land located between NH Route 10 and Interstate 89 identified as Tax Map 204, Lot 8 in Grantham, New Hampshire; **Property #4** 465 acres of undeveloped land in Hooksett, NH. Two parcels identified as Tax map 15, Lot 91 and Tax map 14, Lot 7.
 - The scope of work is that the review appraiser shall:
 - i. determine that the appraiser is qualified, competent and experienced in the performance of appraisals similar to the subject appraisal;
 - ii. read the appraisal report;
 - iii. verify that the correct property and property rights were valued;
 - iv. check all mathematical calculations;
 - v. review the appraisal report for content, analysis and methodology;
 - vi. examine the appraiser's presentation and analysis of market information; and
 - vii. consider the adequacy of the appraiser's reasoning and support.
 - This scope of work is to assure that the appraisal:
 - i) meets the definition of an appraisal found in 49 CFR 24.2(a)(3);
 - ii) meets the appraisal requirements found in 49 CFR 24.103, as required;
 - iii) meets the applicable appraisal and reporting requirements (including, to the extent appropriate, the USPAP, the UASFLA, federal regulations when involving federal funds in the purchase price, appraisal instructions, and contracting and supplemental standards issued by or agreed to by NHFG);
 - iv) report supports the appraiser's opinion of value.
- 3) Submit an appraisal review report in compliance with USPAP Standard 3, UASFLA Standard C and typed written, dated and signed by the review appraiser. All items contained in USPAP Standard 3 and UASFLA Standard C must be documented by the review appraiser in the appraisal review report. Two hard copies and an electronic copy of the appraisal review report shall be supplied to NHFG.
- 4) Make a determination as to the acceptability of the appraisal report in accordance with instructions provided to the appraiser.
- 5) May be requested by NHFG to do additional tasks, developing and communicating NHFG's real property valuation needs to the appraiser, and appraisal review technical tasks. The additional tasks may include:
 - i) early project consultation and development including pre-work meetings or conference calls with the appraiser;
 - ii) defining the appraisal problem and developing the scope of work statement;
 - iii) mentor and technical advisor to the appraiser; and
 - iv) technical advisor to NHFG

Contractor Initials WMS
Date 2/14/13

EXHIBIT B
METHOD OF PAYMENT

Method of payment shall be as follows:

1. Upon the completion of the appraisal review and acceptance by NHFG for each of the properties identified in Exhibit A #1, the contractor shall submit an invoice not to exceed \$800.00 plus \$160.00 per hour up to two hours for additional tasks as assigned and completed under Exhibit A #5. The following appropriations code shall be referenced: For Property #1 – 020-07500-22890000-102-500731; For Properties 2, 3 & 4 – 020-07500-21550000-305-500845.
2. Total to be paid under this contract may not exceed \$4,480

EXHIBIT C
SPECIAL PROVISIONS

The Fish and Game Department agrees to waive the insurance provision of paragraph 14.11.

Contractor Initials 
Date 2/14/13

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 FULCRUM APPRAISAL SERVICE is a New Hampshire trade name registered on November 25, 1996 and that Martin S. Doctor presently own(s) this trade name. I further certify that it is in good standing as far as this office is concerned, having paid the fees required by law.



In TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 4th day of February, A.D. 2013

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

William M. Gardner
Secretary of State

Fulcrum Appraisal Service

Real Estate Appraisers & Consultants

"Exceeding Our Clients' Expectations"

SOLE PROPRIETOR CERTIFICATE OF AUTHORITY

I, Martin S. Doctor, hereby certify that I am the sole proprietor of Fulcrum Appraisal Service, which is a trade name registered with the Secretary of State under RSA 349. I certify that I am the sole owner of my business and of the trade name.

I hereby further certify and acknowledge that the State of New Hampshire will rely on this certification as evidence that I have full authority to bind my business and that no corporate resolution, shareholder vote, or other document or action is necessary to grant me such authority.

Signed: 

Date: 2/4/13

State of New Hampshire, County of Hillsborough.

On this the 4 day of Feb 2013, before me Kim Laurendi, the undersigned officer, personally appeared Martin Doctor, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same for the purposes therein contained. In witness whereof, I hereunto set my hand and official seal.

KIM LAURENDI, Notary Public
My Commission Expires December 14, 2016