



DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

June 1, 2016

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

REQUESTED ACTION

Authorize the New Hampshire Department of Environmental Services (DES) to amend an existing Aquatic Resource Mitigation (ARM) Fund grant (PO# 1043288) with the Cheshire County Conservation District, NH (Vendor Code #154649) by extending the completion date to December 31, 2021 from December 31, 2017 and increasing the ARM Fund grant amount by \$50,000 to \$165,000 from \$115,000, effective upon G&C approval. The original grant was approved by the Governor and Council on April 22, 2015 (Item #60). 100% Aquatic Resource Mitigation Funds.

Funding is available in the account as follows:

	<u>FY'16</u>
03-44-44-442010-38710000-073-500581	\$50,000

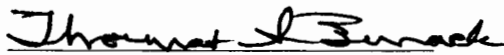
Dept. Environmental Services, In-Lieu Wetland Mitigation, Grants – Non-Federal

EXPLANATION

The ARM Fund grant to the Cheshire County Conservation District provides important stream restoration through the removal of an undersized culvert within Falls Brook in Swanzey. The project will restore fluvial processes and improve aquatic organism passage in the area to result in over thirty miles of interconnected high quality fish spawning and rearing habitat. The project area is of high value due to the presence of brook trout, a species of concern that have been monitored over the years by NH Fish & Game Department. The additional funds of \$50,000 are necessary due to an increase in materials and construction costs. The grant is currently slated to expire on December 31, 2017. This proposed amendment extension is requested to extend the contract to December 31, 2021 to conduct the site work and allow for five years of monitoring of the improved stream passage conditions.

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

We respectfully request your approval.


Thomas S. Burack, Commissioner

DES Web site: www.des.nh.gov

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

Telephone: (603) 271-3503 • Fax: (603) 271-6588 • TDD Access: Relay NH 1-800-735-2964

Agreement for Services with the Cheshire County Conservation District

This Agreement (hereinafter called the "Amendment") dated this April 20, 2016, is by and between the State of New Hampshire, acting by and through its Department of Environmental Services (hereinafter referred to as the "State") and the Cheshire County Conservation District, acting by and through its District Manager, Amanda Littleton (hereinafter referred to as the "Grantee").

WHEREAS, pursuant to the Contract (hereinafter called the "Agreement") approved by the Governor and Council on May 22, 2015, the Grantee agreed to perform certain services upon the terms and conditions specified in the Agreement and in consideration of payment by the State of certain sums as specified therein; and

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

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

1. **Amendment and Modification of Agreement:** The Agreement is hereby amended as follows:
 - (A) The Completion Date as set forth in sub-paragraph 1.6 of the Agreement shall be changed from December 31, 2017 to December 31, 2021.
 - (B) The Grant Limitation as set forth in sub-paragraph 1.8 of the Agreement shall be changed from \$115,000 to \$165,000.
2. **Effective Date of Amendment:** This Amendment shall take effect upon the date of approval of this Amendment by the Governor and Executive Council of the State of New Hampshire.
3. **Continuance of Agreement:** Except as specifically amended and modified by the terms and conditions of this Amendment, the Agreement, and the obligations of the parties thereunder, shall remain in full force and effect in accordance with the terms and conditions set forth therein.

Contractor Initial *ACL*
Date *4/29/16*

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

Cheshire County Conservation District
By [Signature]
Amanda Littleton, District Manager

STATE OF NEW HAMPSHIRE
COUNTY OF Cheshire

On this the 29th day of April, 2016, before the undersigned officer, personally appeared Amanda Littleton, District Manager who acknowledged herself to be the person who executed the foregoing instrument for the purpose therein contained.

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

[Signature]
Notary Public/Justice of the Peace

My Commission Expires: **JUSTIN E. CARTER, Notary Public**
State of New Hampshire
My Commission Expires October 6, 2020

THE STATE OF NEW HAMPSHIRE
Department of Environmental Services

By [Signature]
Thomas S. Burack, Commissioner

Approved by Attorney General this 13th day of June, 2016

OFFICE OF ATTORNEY GENERAL

By [Signature]

Contractor Initial [Signature]
Date 4/29/16

CERTIFICATE

I Bill Fosher, Chair of the Cheshire County Conservation District, do hereby certify that:

- (1) I am the duly elected Chair;
- (2) at the meeting held on April 28, 2016, the Cheshire County Conservation District voted to accept additional NH Department of Environmental Services funds and to enter into a contract with the NH DES;
- (3) the Cheshire County Conservation District further authorized the District Manager to execute any documents which may be necessary for this contract;
- (4) the authorization has not been revoked, annulled, or amended in any manner whatsoever, and remains in full force and effect as of the date hereof; and
- (5) the following person has been hired and now occupies the position in (3) above: Amanda Littleton

IN WITNESS WHEREOF, I have herunto set my hand as the Chair of the Cheshire County Conservation District, this 29th day of April 2016.



Bill Fosher, Chair of the Cheshire County Conservation District

STATE OF NEW HAMPSHIRE

County of Cheshire

On this the 29th day of April 2016, Before the Justin Carter (name of Notary Public) the undersigned officer, Bill Fosher, personally appeared and acknowledged himself to be the Chair of the Cheshire County Conservation District and being authorized so to do, executed the foregoing instrument for the purpose therein contained.

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



Printed name Notary Public: Justin Carter

(signature above line)

Commission Expiration Date:

(SEAL)

JUSTIN E. CARTER, Notary Public
State of New Hampshire
My Commission Expires October 6, 2020



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
5/31/2016

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

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

PRODUCER Clark - Mortenson Insurance P.O. Box 606 Keene NH 03431	CONTACT NAME: PHONE (A/C, No, Ext): 603-352-2121 FAX (A/C, No): 603-357-8491 E-MAIL ADDRESS: csr24@clark-mortenson.com	
	INSURER(S) AFFORDING COVERAGE INSURER A : Central Insurance Companies INSURER B : FirstComp INSURER C : INSURER D : INSURER E : INSURER F :	NAIC # 27626
INSURED Cheshire Cty Conservation Dist 11 Industrial Park Drive Walpole NH 03608	CHESHIRECOUNTY5	

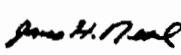
COVERAGES **CERTIFICATE NUMBER:** 1513335551 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GENL AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC			CLP8612735	6/17/2016	6/17/2017	EACH OCCURRENCE	\$1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$100,000
							MED EXP (Any one person)	\$5,000
							PERSONAL & ADV INJURY	\$1,000,000
							GENERAL AGGREGATE	\$2,000,000
							PRODUCTS - COMP/OP AGG	\$2,000,000
								\$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident)	\$
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$		Y	CXS9182847	6/17/2016	6/17/2017	EACH OCCURRENCE	\$1,000,000
							AGGREGATE	\$1,000,000
								\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N <input checked="" type="checkbox"/> Y <input type="checkbox"/> N/A	WC012446706	5/23/2016	5/23/2017	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER	
							E.L. EACH ACCIDENT	\$100,000
							E.L. DISEASE - EA EMPLOYEE	\$100,000
							E.L. DISEASE - POLICY LIMIT	\$500,000

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

Workers Compensation Insurance: Part 3A applies to the Workers Compensation Law of the State NH
Amanda Costello is excluded from Workers Compensation

CERTIFICATE HOLDER NH Dept of Environmental Services 29 Hazen Drive Concord NH 03301	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

Lou Sommer



Thomas S. Burack, Commissioner

March 5, 2015

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

APPROVED G & C

DATE 4/20/15

ITEM # 60

REQUESTED ACTION

Authorize the New Hampshire Department of Environmental Services (DES) to award an Aquatic Resource Mitigation (ARM) Fund grant to the Cheshire County Conservation District (hereinafter "CCCD") (Vendor Code #154649) in the amount of \$115,000 to conduct stream restoration work through removal of an undersized roadway culvert within Falls Brook in Swanzey, effective upon G&C approval through December 31, 2017. 100% Aquatic Resource Mitigation Funds.

Funding is available in the account as follows:

	<u>FY'15</u>
03-44-44-442010-38710000-073-500580	\$115,000
Dept. Environmental Services, In-Lieu Wetland Mitigation, Grants – Non - Federal	

EXPLANATION

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

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

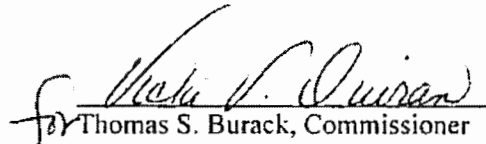
The Department issued the request for proposals for ARM Funds available in the Lower Connecticut River watershed in April, 2014. Three applications were received on November 4, 2014 DES announced the decision to fund the Falls Brook stream restoration project. The project proposed by CCCD was recommended for funding by the ARM Fund Site Selection Committee. Attachment A lists the proposals received and the Committee members involved in the decision. The review of the awards by the Army Corps of Engineers and the New Hampshire Wetland Council resulted in full support of the recommendations.

Her Excellency, Governor Margaret Wood Hassan
And the Honorable Council
Page 2 of 2

The CCCD will utilize its ARM funds to conduct stream restoration through the removal of an undersized culvert within Falls Brook. The project will restore fluvial processes and improve aquatic organism passage in the area to result in over thirty miles of interconnected high quality fish spawning and rearing habitat. The project area is of high value due to the presence of brook trout, a species of concern that have been monitored over the years by NH Fish & Game Department. Attachment B includes a map of the property.

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

We respectfully request your approval.


for Thomas S. Burack, Commissioner

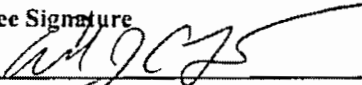
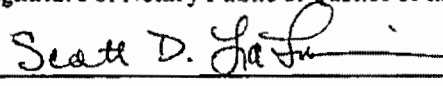
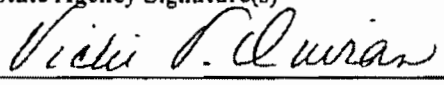

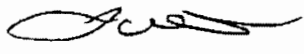
Subject: Grant agreement for a NHDES Aquatic Resource Mitigation Fund Award

GRANT AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATIONS

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: Cheshire County Conservation District		1.4 Grantee Address 11 Industrial Park Dr., Walpole NH 03608	
1.5 Effective Date Upon G&C approval	1.6 Completion Date December 31, 2017	1.7 Audit Date N/A	1.8 Grant Limitation \$115,000
1.9 Grant Officer for State Agency Lori L. Sommer		1.10 State Agency Telephone Number (603) 271- 4059	
1.11 Grantee Signature 		1.12 Name & Title of Grantee Signor Amanda Littleton, District Manager	
1.13 Acknowledgment: State of <u>New Hampshire</u> , County of <u>Cheshire</u> On <u>02/18/2015</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 Scott D. LaFreniere		SCOTT D. LAFRENIERE, Notary Public My Commission Expires May 23, 2019	
1.14 State Agency Signature(s) 		1.15 Name/Title of State Agency Signor(s)  Thomas S. Burack, Commissioner	
1.16 Approval by Attorney General's Office (Form, Substance and Execution) By:  Attorney, On: <u>3/18/2015</u>			
1.17 Approval by the Governor and Council By: _____ On: <u>1/1</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 or modification of the policy earlier than ten (10) days after written notice has been received by the State.

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

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

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

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

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

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

PROJECT AGREEMENT

Between the
STATE OF NEW HAMPSHIRE, **Department of Environmental Services**
and the
Cheshire County Conservation District

1. This Project Agreement (hereinafter "Agreement") is entered into by the State of New Hampshire, Department of Environmental Services, (hereinafter "DES"), and the Cheshire County Conservation District (hereinafter "CCCD"), for the purpose of undertaking a project of mutual interest.
2. This Agreement and all obligations of the parties hereunder shall become effective on the date the Governor and Executive Council of the State of New Hampshire approve this Agreement ("Effective date") and shall end on December 31, 2017. If the provision of services by CCCD precedes the Effective date, all services performed by CCCD shall be performed at the sole risk of CCCD and in the event this Agreement does not become effective, DES shall be under no obligation to pay CCCD for costs incurred or services performed; however, if this Agreement becomes effective, all costs incurred prior to the Effective date that would otherwise be allowable shall be paid under the terms of this Agreement.
3. The work to be performed under the terms of this Agreement is described in the proposal identified below and attached to this document as Exhibit A, the content of which is incorporated herein as part of this Agreement.
4. That the Property involved in the project will be monitored on an annual basis for five years post construction to ensure the success of the activities taken and to ensure that no actions are occurring which could be detrimental to the attributes of the Property. The CCCD agrees to submit a copy of the annual monitoring report to DES to document the property conditions and any remedial measures taken.
5. Total funds in the amount of \$115,000 have been allocated and are available for payment of allowable costs incurred under this Agreement. DES will not reimburse CCCD for costs exceeding the amount specified in this paragraph.

EXHIBIT A
SCOPE OF SERVICES

- A. Project Title: Falls Brook Restoration Project
- B. Project Period: February 2015-December 2017
- C. **Project Objectives**

1. Improving aquatic organism passage, particularly for brook trout, in the Ashuelot River Watershed. Brook trout are listed as a "species of concern" in NH's Wildlife Management Plan.
2. Restore Aquatic Connectivity within the drainage area whereby reducing ongoing erosional impacts driven by above average stream flows from more frequent and intense precipitation events.

D. Proposed Results

Immediately following the completion of the proposed project, the following results will be realized:

- a) The second highest priority aquatic organism barrier in the Ashuelot river watershed will be restored;
- b) Over thirty miles of interconnected high quality aquatic spawning and rearing habitat will be reopened resulting in an increase in the diversity of aquatic organisms as well as the number of brook trout throughout this series of steep cold headwater tributaries (see figure 2);

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- c) An undersized structure, potentially hazardous to community infrastructure and stream geomorphology during extreme storm events, will be removed whereby protecting the long-term viability of local wetlands; and
- d) This restoration will restore full hydraulic functionality within the stream channel enhancing a broad range of eco-system services throughout Falls Brook.

E. Scope of Work:

1. Design, permitting and engineering;
 - o Responsible Party: Trout Unlimited and hired engineering firm
 - Technical support from USDA Natural Resources Conservation Service, US Fish and Wildlife Service, and NH Fish and Game Department
 - o Timeline: November 2014-June 2015
2. Geotech investigation to support structure design;
 - o Responsible Party: Trout Unlimited
 - o Timeline: March 2015
3. Construction including mobilization/demobilization, materials and structure installation;
 - o Responsible Party: Town of Swanzey, Trout Unlimited, hired contractors
 - o Timeline: July 2015-September 2015
4. Construction oversight and overall project management;
 - o Responsible Party: Trout Unlimited
 - o Timeline: November 2014-December 2016
5. Post construction riparian plantings for erosion control and invasive management;
 - o Responsible Party: Trout Unlimited, Cheshire County Conservation District, USDA Natural Resources Conservation Service
 - o Timeline: September-October 2015
6. Five years of project monitoring for the habitat enhancement;
 - o Responsible Party: Cheshire County Conservation District with technical support from NH Fish and Game, US Fish and Wildlife Service, USDA Natural Resources Conservation Service, and Trout Unlimited
 - o Timeline: Five years post project completion 2016-2021
 - o Community outreach, education, and volunteer management; and
 - o Responsible Party: Ashuelot Valley Environmental Observatory – the citizen science arm of the Harris Center for Conservation Education, Ashuelot River Local Advisory Committee, Cheshire County Conservation District
 - o Timeline: January 2015- December 2016
7. Financial administration and reporting
 - o Responsible Party: Cheshire County Conservation District
 - o Timeline: November 2014- December 2016

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Date

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F. Deliverable Schedule:

Falls Brook Restoration Project ~ Timeline				
Project Activity	2014		2015	
	Oct - Dec	Jan - Mar	Apr - Jun	July - Sep
Design & Engineering	■			
Construction Permits	■	■		
Project Construction			■	
Pre & Post Monitoring	■		■	■
Channel Stabilization & Shoreline Replanting			■	■
Educational Programs / Outreach / Monitoring			■	■

EXHIBIT B
BUDGET & PAYMENT METHOD

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

1. Design, permitting and engineering;
 - o Responsible Party: Trout Unlimited and hired engineering firm
 - Technical support from USDA Natural Resources Conservation Service, US Fish and Wildlife Service, and NH Fish and Game Department
 - o Timeline: November 2014-April 2015
 - o **Budget:** \$15,000
2. Geotech investigation to support structure design;
 - a. Responsible Party: Trout Unlimited
 - b. Timeline: November - December 2014
 - c. **Budget:** \$5,000
3. Construction including mobilization/demobilization, materials and structure installation;
 - a. Responsible Party: Town of Swanzey, Trout Unlimited, hired contractors
 - b. Timeline: July 2015-September 2015
 - c. **Budget:** \$71,065
4. Construction oversight and overall project management;
 - a. Responsible Party: Trout Unlimited
 - b. Timeline: November 2014-December 2016
 - c. **Budget:** \$8,000
5. Financial administration and reporting
 - a. Responsible Party: Cheshire County Conservation District
 - b. Timeline: November 2014- December 2016

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Date 2/18/15

c. Budget (10% of total project costs): \$15,935

TOTAL DES ARM FUNDS \$ 115,000

**Total amount to be authorized following approval by the
Governor and Executive Council:** **\$115,000.**

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

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

The billing address shall be as follows:

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

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

EXHIBIT C
SPECIAL PROVISIONS

This section is intentionally left blank.

Contractor Initials

Date

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2/18/15

CERTIFICATE

I Bill Fosher, Chair of the Cheshire County Conservation District, do hereby certify that:

- (1) I am the duly elected Chair;
- (2) at the meeting held on January 29, 2015, the Cheshire County Conservation District voted to accept NH Department of Environmental Services funds and to enter into a contract with the NH DES;
- (3) the Cheshire County Conservation District further authorized the District Manager to execute any documents which may be necessary for this contract;
- (4) the authorization has not been revoked, annulled, or amended in any manner whatsoever, and remains in full force and effect as of the date hereof; and
- (5) the following person has been hired and now occupies the position in (3) above: Amanda Littleton

IN WITNESS WHEREOF, I have herunto set my hand as the Chair of the Cheshire County Conservation District, this 18th day of February 2015.



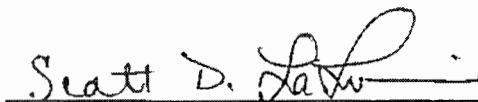
Bill Fosher, Chair of the Cheshire County Conservation District

STATE OF NEW HAMPSHIRE

County of Cheshire

On this the 18th day of February 2015, Before the notary Scott LaFreniere (name of Notary Public) the undersigned officer, Bill Fosher, personally appeared and acknowledged himself to be the Chair of the Cheshire County Conservation District and being authorized so to do, executed the foregoing instrument for the purpose therein contained.

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



Printed name Notary Public: SCOTT D. LAFRENIERE

(signature above line)

SCOTT D. LAFRENIERE, Notary Public
My Commission Expires May 23, 2019

Commission Expiration Date:

(SEAL)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
1/30/2015

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

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

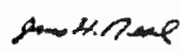
PRODUCER Clark - Mortenson Insurance P.O. Box 606 Keene NH 03431	CONTACT NAME: PHONE (A/C, No, Ext): 603-352-2121 E-MAIL ADDRESS: csr24@clark-mortenson.com FAX (A/C, No): 603-357-8491
	INSURER(S) AFFORDING COVERAGE
INSURED Cheshire Cty Conservation Dist 11 Industrial Park Drive Walpole NH 03608	INSURER A: Central Insurance Companies
	INSURER B: FirstComp
	INSURER C: United States Liability Insurance G
	INSURER D: NGM Insurance Company 14788
	INSURER E: INSURER F:

COVERAGES **CERTIFICATE NUMBER:** 1997685887 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER		CLP8612735	6/17/2014	6/17/2015	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$		CXS9182847	6/17/2014	6/17/2015	EACH OCCURRENCE \$1,000,000 AGGREGATE \$1,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N Y N/A	WC012446704	5/23/2014	5/23/2015	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$100,000 E.L. DISEASE - EA EMPLOYEE \$100,000 E.L. DISEASE - POLICY LIMIT \$500,000
C D	Directors & Officers Employee Dishonesty		PO2000139B F236194	9/1/2014 4/1/2014	9/1/2015 4/1/2017	500,000 2,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Workers Compensation coverage applies in the State of New Hampshire. Amanda Costello is excluded.

CERTIFICATE HOLDER NH Dept of Environmental Sciences 29 Hazen Drive Concord NH 03301	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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**Attachment A
2014 Aquatic Resource Mitigation Fund Grants**

Applications and Funding Amounts

Grant Applicant	Location/Town	Funding Amount	Score
Cheshire County Conservation District	Swanzy	\$115,000.00	52
Monadnock Conservancy	Keene, Swanzy and Chesterfield	\$140,000.00	64
Trout Unlimited	Stoddard	\$0.00	34

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

Site Selection Committee List

Name	Agency/Organization	Title	Years of Experience
Craig Rennie	NHDES, Land Resource Management Program	Land Resource Specialist	20
Peter Bowman	NH Dept. of Resources & Economic Development	Wildlife Biologist	6
Nancy Rendall	NH Association of Natural Resource Scientists	Charter Member	30
Michael Marchand	NH Fish and Game Department	Senior Biologist	14
Tracey Boisvert	Office of Energy and Planning	CLSP Director	24
Peter Steckler	The Nature Conservancy	Director Freshwater Science & Conservation	14
Rick Vande Poll	New Hampshire Association of Conservation Commissions	Town of Sandwich	33

Attachment B
Falls Brook Restoration, Swanzev

