



The State of New Hampshire DEC03'20 PM12:23 RCVD
Department of Environmental Services

Robert R. Scott, Commissioner



54

November 23, 2020

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 grant to the City of Portsmouth, (VC#177463-B001), in the amount of \$287,000, to acquire a conservation easement on 107 acres of land on the Bellamy Reservoir in Madbury to protect Portsmouth's drinking water supply, effective upon Governor and Council approval through December 31, 2020. 100% Drinking Water and Groundwater Trust Fund.

Funding is available in the following account:

03-44-44-442010-3904-073-500580

Dept Environmental Services, DWGW Trust, Grants Non-Federal

FY 2021

\$287,000

EXPLANATION

The Drinking Water and Groundwater Trust Fund (Trust Fund) was created in 2016, using \$276 million of MtBE trial judgment funds, as authorized by RSA 485-F. The purpose of the Trust Fund is to provide sustainable, long-term funding for the protection, preservation, and enhancement of the drinking water and groundwater resources of the state. The Drinking Water and Groundwater Advisory Commission (Advisory Commission) was established to administer the Trust Fund and to provide guidance to the State on the use of the Trust Fund.

On December 9, 2019, the Advisory Commission voted to authorize grants for seven drinking water source protection projects. The City of Portsmouth's request for \$287,000 was selected for grant funding from the Trust Fund, toward the cost of purchasing the conservation easement in order to further the protection of the Bellamy Reservoir, the largest single source of drinking water for the City of Portsmouth.

The total project cost for the City of Portsmouth to acquire the easement is \$574,300. The DWGTF will provide \$287,000 with \$287,300 in match provided by the City of Portsmouth. The purchase price of this parcel is based on a recent appraisal of fair market value.

DES Website: www.des.nh.gov

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

Telephone: (603) 271-2513 • Fax: (603) 271-5171 • TDD Access: Relay NH 1-800-735-2964

His Excellency, Governor Christopher T. Sununu

And the Honorable Council

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

We respectfully request your approval.

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

Robert R. Scott
Commissioner



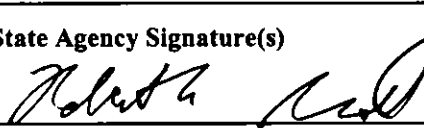

Subject: Drinking Water Groundwater Trust Fund Grant for:
Conservation Easement Purchase - Duffy Property

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: City of Portsmouth NH		1.4 Grantee Address 1 Junkins Ave. Portsmouth, NH 03801	
1.5 Effective Date Upon G&C approval	1.6 Completion Date 12/31/2020	1.7 Audit Date N/A	1.8 Grant Limitation \$287,000
1.9 Grant Officer for State Agency Sandra Crystall, NHDES		1.10 State Agency Telephone Number (603) 271- 2862	
1.11 Grantee Signature 		1.12 Name & Title of Grantee Signor Karen Conard, City Manager	
1.13 Acknowledgment: <u>State of New Hampshire, County of Rockingham</u> On <u>11/20/2020</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)  Trevor P. McCourt NOTARY PUBLIC State of New Hampshire			
1.13.2 Name & Title of Notary Public or Justice of the Peace My Commission Expires 11/25/2024			
1.14 State Agency Signature(s) 		1.15 Name/Title of State Agency Signor(s) Robert R. Scott, Commissioner	
1.16 Approval by Attorney General's Office (Form, Substance and Execution) By:  Attorney, On: <u>12/2/2020</u>			
1.17 Approval by the Governor and Council By: _____ On: / /			

2. **SCOPE OF WORK.** In exchange for grant funds provided by the state of New Hampshire, acting through the agency identified in block 1.1 (hereinafter referred to as "the State"), pursuant to RSA 21-O, the Grantee identified in block 1.3 (hereinafter referred to as "the Grantee"), shall perform that work identified and more particularly described in the scope of work attached hereto as EXHIBIT A (the scope of work being referred to as "the Project").

3. **AREA COVERED.** Except as otherwise specifically provided for herein, the Grantee shall perform the Project in, and with respect to, the state of New Hampshire.

4. **EFFECTIVE DATE; COMPLETION OF PROJECT.**

4.1 This Agreement, and all obligations of the parties hereunder, shall become effective on the date in block 1.5 or on the date of approval of this Agreement by the Governor and Council of the State of New Hampshire whichever is later (hereinafter referred to as "the Effective Date").

4.2 Except as otherwise specifically provided for herein, the Project, including all reports required by this Agreement, shall be completed in ITS entirety prior to the date in block 1.6 (hereinafter referred to as "the Completion Date").

5. **GRANT AMOUNT; LIMITATION ON AMOUNT; VOUCHERS; PAYMENT.**

5.1 The Grant Amount is identified and more particularly described in EXHIBIT B, attached hereto.

5.2 The manner of, and schedule of payment shall be as set forth in EXHIBIT B.

5.3 In accordance with the provisions set forth in EXHIBIT B, and in consideration of the satisfactory performance of the Project, as determined by the State, and as limited by subparagraph 5.5 of these general provisions, the State shall pay the Grantee the Grant Amount. The State shall withhold from the amount otherwise payable to the Grantee under this subparagraph 5.3 those sums required, or permitted, to be withheld pursuant to N.H. RSA 80:7 through 7-c.

5.4 The payment by the State of the Grant amount shall be the only, and the complete, compensation to the Grantee for all expenses, of whatever nature, incurred by the Grantee in the performance hereof, and shall be the only, and the complete, compensation to the Grantee for the Project. The State shall have no liabilities to the Grantee other than the Grant Amount.

5.5 Notwithstanding anything in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made, hereunder exceed the Grant limitation set forth in block 1.8 of these general provisions.

6. **COMPLIANCE BY GRANTEE WITH LAWS AND REGULATIONS.**

In connection with the performance of the Project, the Grantee shall comply with all statutes, laws, regulations, and orders of federal, state, county, or municipal authorities which shall impose any obligations or duty upon the Grantee, including the acquisition of any and all necessary permits.

7. **RECORDS AND ACCOUNTS.**

7.1 Between the Effective Date and the date seven (7) years after the Completion Date the Grantee shall keep detailed accounts of all expenses incurred in connection with the Project, including, but not limited to, costs of administration, transportation, insurance, telephone calls, and clerical materials and services. Such accounts shall be supported by receipts, invoices, bills and other similar documents.

7.2 Between the Effective Date and the date seven (7) years after the Completion Date, at any time during the Grantee's normal business hours, and as often as the State shall demand, the Grantee shall make available to the State all records pertaining to matters covered by this Agreement. The Grantee shall permit the State to audit, examine, and reproduce such records, and to make audits of all contracts, invoices, materials, payrolls, records or personnel, data (as that term is hereinafter defined), and other information relating to all matters covered by this Agreement. As used in this paragraph, "Grantee" includes all persons, natural or fictional,

affiliated with, controlled by, or under common ownership with, the entity identified as the Grantee in block 1.3 of these general provisions.

8. **PERSONNEL.**

8.1 The Grantee shall, at its own expense, provide all personnel necessary to perform the Project. The Grantee warrants that all personnel engaged in the Project shall be qualified to perform such Project, and shall be properly licensed and authorized to perform such Project under all applicable laws.

8.2 The Grantee shall not hire, and it shall not permit any subcontractor, subgrantee, or other person, firm or corporation with whom it is engaged in a combined effort to perform such Project, to hire any person who has a contractual relationship with the State, or who is a State officer or employee, elected or appointed.

8.3 The Grant officer shall be the representative of the State hereunder. In the event of any dispute hereunder, the interpretation of this Agreement by the Grant Officer, and his/her decision on any dispute, shall be final.

9. **DATA; RETENTION OF DATA; ACCESS.**

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

9.2 Between the Effective Date and the Completion Date the Grantee shall grant to the State, or any person designated by it, unrestricted access to all data for examination, duplication, publication, translation, sale, disposal, or for any other purpose whatsoever.

9.3 No data shall be subject to copyright in the United States or any other country by anyone other than the State.

9.4 On and after the Effective Date all data, and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason, whichever shall first occur.

9.5 The State, and anyone it shall designate, shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, all data.

10. **CONDITIONAL NATURE OF AGREEMENT.**

Notwithstanding anything in this Agreement to the contrary, all obligations of the State hereunder, including without limitation, the continuance of payments hereunder, are contingent upon the availability or continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available or appropriated funds. In the event of a reduction or termination of those funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Grantee notice of such termination.

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

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

11.1.1 failure to perform the Project satisfactorily or on schedule; or
11.1.2 failure to submit any report required hereunder; or
11.1.3 failure to maintain, or permit access to, the records required hereunder; or

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

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

11.2.1 give the Grantee a written notice specifying the Event of

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

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

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

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

12. TERMINATION.

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

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

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

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

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

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

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

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

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

17. INSURANCE AND BOND.

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

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

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

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

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

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

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

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

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

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

EXHIBIT A

SCOPE OF SERVICES

City of Portsmouth

The City of Portsmouth will use the grant to acquire a conservation easement on approximately 107 acres of land in the protection area of the City of Portsmouth's surface water source of drinking water, the Bellamy Reservoir. The City of Portsmouth will hold the conservation easement. The parcel of land, designated on the current Town of Madbury Tax Map 2, Lot 2 will be protected in perpetuity, as specified in the provisions of the draft conservation easement deed (see Attachment A), with water supply protection being one of the purposes of the conservation easement.

EXHIBIT B

GRANT AMOUNT & PAYMENT SCHEDULE

Payment in the amount of \$287,000 shall be made to the City of Portsmouth upon receipt of the following:

1. Survey of the parcel of land.
2. A copy of the appraisal.
3. Title examination.
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 match of \$287,300 provided by the City of Portsmouth.
7. The finalized conservation easement deed.

Grantee Initials KSC
Date 1/20/20

EXHIBIT C

SPECIAL PROVISIONS

1. Subparagraph 1.7 of the General Provisions shall not apply to this Grant Agreement.

Grantee Initials ICSC
Date 11/20/20

CERTIFICATION OF VOTE

I, Kelli L. Barnaby, do hereby certify that I am the City Clerk of the City of Portsmouth, a municipality in the State of New Hampshire, County of Rockingham, in the United States of America.

I do further certify that the Portsmouth City Council voted to enter into a grant agreement with the NH Department of Environmental Services, and Karen S. Conard is the City Manager of the municipality and is duly authorized by the by-laws and laws of the State of New Hampshire to execute and deliver on behalf of the municipality any documents which may be necessary for this grant agreement with the State of New Hampshire for the purpose of purchasing a conservation easement on land located adjacent to the Bellamy Reservoir to protect the water quality of this drinking water supply. This authority was given during an official meeting of the Portsmouth City Council on May 4, 2020.

I further certify that such authority has not been repealed, rescinded, or amended. In witness where, I have hereunto set my hand and attached the seal of the City of Portsmouth on this 2nd day of December, 2020.

CITY OF PORTSMOUTH

By: Kelli L. Barnaby
Kelli L. Barnaby, City Clerk

State of New Hampshire
County of Rockingham

Dated this 2nd day of December, 2020 personally appeared Kelli L. Barnaby who subscribed and sworn to the above statement.

Synthia M. Ravell
NOTARY PUBLIC
State of New Hampshire
My Commission Expires 11/25/2024

Synthia M. Ravell
Justice of the Peace/Notary Public
My Commission Expires 11/25/2024



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.

Participating Member: City of Portsmouth One Junkins Avenue Portsmouth, NH 03801		Member Number: 275	Company Affording Coverage: 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	7/1/2020	7/1/2021	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: With regards to the Grant Agreement, 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:	X	Additional Covered Party	Loss Payee	Primex³ - NH Public Risk Management Exchange By: <i>Mary Beth Purcell</i> Date: 10/21/2020 mpurcell@nhprimex.org Please direct inquiries to: Primex ³ Claims/Coverage Services 603-225-2841 phone 603-228-3833 fax
State of New Hampshire Department of Environmental Services 29 Hazen Drive Concord, NH 03302				



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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.

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Participating Member: City of Portsmouth One Junkins Avenue Portsmouth, NH 03801		Member Number: 275	Company Affording Coverage: 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, If Not	
<input type="checkbox"/> General Liability (Occurrence Form) <input type="checkbox"/> Professional Liability (describe) <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <input type="checkbox"/> Claims Made <input type="checkbox"/> Occurrence </div>			Each Occurrence	
			General Aggregate	
			Fire Damage (Any one fire)	
			Med Exp (Any one person)	
<input type="checkbox"/> Automobile Liability Deductible Comp and Coll: <div style="border: 1px solid black; padding: 2px; display: inline-block; margin-top: 5px;">Any auto</div>			Combined Single Limit (Each Accident)	
			Aggregate	
<input checked="" type="checkbox"/> Workers' Compensation & Employers' Liability	7/1/2020	7/1/2021	<input checked="" type="checkbox"/> Statutory	
			Each Accident	\$2,000,000
			Disease - Each Employee	\$2,000,000
			Disease - Policy Limit	
<input type="checkbox"/> Property (Special Risk Includes Fire and Theft)			Blanket Limit, Replacement Cost (unless otherwise stated)	

Description: Proof of Primex Member coverage only.

CERTIFICATE HOLDER: State of New Hampshire Department of Environmental Services 29 Hazen Drive Concord NH 03301	Additional Covered Party	Loss Payee	Primex³ - NH Public Risk Management Exchange By: Mary Beth Purcell Date: 10/21/2020 mpurcell@nhprimex.org Please direct inquiries to: Primex³ Claims/Coverage Services 603-225-2841 phone 603-228-3833 fax
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Attachment A – Conservation Easement Deed

THIS IS A TRANSFER TO A NEW HAMPSHIRE CITY AND IS THEREFORE EXEMPT FROM THE NEW HAMPSHIRE REAL ESTATE TRANSFER TAX. PURSUANT TO NEW HAMPSHIRE RSA 78-B:2(I.)

CONSERVATION EASEMENT DEED

THAT MARY ELLEN DUFFY, Trustee of The Mary Ellen Duffy Revocable Living Trust u/t/a dated February 18, 2000, and **MARY ELLEN DUFFY**, as an individual, of 40 Mill Hill Road, Town of Madbury, County of Strafford, State of New Hampshire 03823 (hereinafter together 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),

with **Warranty Covenants**, for consideration paid, grant in perpetuity to

the **CITY OF PORTSMOUTH NEW HAMPSHIRE**, a municipality in the State of New Hampshire duly organized and existing under the laws of the State of New Hampshire, with a principal place of business at 1 Junkins Avenue, Portsmouth NH, County of Rockingham, State of New Hampshire, 03801, (hereinafter referred to as the "Grantee" which shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns),

a Conservation Easement (herein referred to as the "Easement") hereinafter described with respect to that certain parcel/area of land (herein referred to as the "Property") with any and all buildings, structures, and improvements thereon, consisting of approximately 107.53 acres, situated along Mill Hill Road in the Town of Madbury, County of Strafford, State of New Hampshire, more particularly bounded and described in Appendix "A" attached hereto and made a part hereof and shown on a survey plan entitled "Conservation Easement Plan for The City of Portsmouth, New Hampshire Land of Mary Ellen Duffy Revocable Living Trust, Mill Hill Road, Madbury, N.H. Tax Map 2, Lot 2", Dated August 24, 2020 and last revised on October 6, 2020, Scale: 1" = 200', prepared by Berry Surveying & Engineering and recorded at the Strafford County Registry of Deeds herewith (herein referred to as the "Survey Plan"),

and grants **Third Party Right of Enforcement** therein granted to the **STATE OF NEW HAMPSHIRE** acting through its **DEPARTMENT OF ENVIRONMENTAL SERVICES**, an administrative agency duly organized and existing under the laws of the State of New Hampshire,

with a principal place of business at 29 Hazen Drive, City of Concord, County of Merrimack, State of New Hampshire, 03302, (sometimes referred to as "NHDES", and otherwise hereinafter referred to as the "Third Party Holder" as further described in Section 9 below.

The Easement has been acquired in part with a \$ [REDACTED] financial assistance award from the New Hampshire Drinking Water and Groundwater Trust Fund.

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 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 Bellamy Reservoir water quality, which supplies over half of the drinking water to the City of Portsmouth and surrounding towns; and
- B. The protection of important water resources including approximately 5,365 feet of undeveloped frontage on the Bellamy Reservoir, approximately 65.7 acres of a High Transmissivity Aquifer and the potential future sustainable yield from said aquifer, and approximately 11.7 acres of wetlands and undeveloped buffers to the wetlands; and
- C. The protection of the natural habitat of state designated, threatened, endangered and species of greatest conservation need that occur and may occur in the future on the Property, the protection of any known or potential exemplary natural communities that occur or may occur in the future on the Property, and the protection of rare or vulnerable forest and wetland communities that occur or may occur in the future on the Property; and
- D. The conservation and protection of open spaces, particularly the conservation of the productive forest land of which the Property consists and the wildlife habitat thereon including approximately 1.4 acres designated as "Highest Ranking Habitat in the State", approximately 49.7 acres designated as "Highest Ranking Habitat in the Biological Region" and 43.3 acres as "Supporting Landscape" in the 2020 New Hampshire Fish & Game Department Wildlife Action Plan; and the long-term protection of the Property's capacity to produce economically valuable forestry products through the conservation of approximately 67.4 acres of Group 1 forest soils; and
- E. The expansion of conserved land surrounding the Bellamy Reservoir and Bellamy River which includes the approximately 71-acre City of Portsmouth held Olson Conservation Easement and the approximately 107-acre City of Portsmouth owned property, both located across the Reservoir, and the nearby approximately 18-acre Fern Way Property owned by the Town of Madbury; and
- F. The scenic enjoyment of the general public with the Property being an important backdrop to the paddlers and other users on the Bellamy Reservoir and also contributing

to rural and scenic nature of Mill Hill Road with its mix of forests and open fields; and

- G. To protect the Property for public pedestrian access including hiking and nature observation; and
- H. The prevention of any uses of the Property that will significantly impair or interfere with the Purposes, described above.

The above Purposes are consistent with the clearly delineated open space conservation goals and/or objectives as stated in the "Town of Madbury, New Hampshire Master Plan: Toward the Year 2010", which states "Focus on lands along the Bellamy and Oyster Rivers for acquisition or easement" (Section 2.3 Natural Resources, General Land Protection Measures #1); and "Take reasonable and prudent precautions to protect all water resources from incompatible land uses, thus protecting the health and general welfare of the community." (Section 2.2 Water Resources, Recommendation #1) 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."

All of these 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 Forestry, as described below, and provided that the productive capacity of the Property to yield forest crops shall not be degraded by on-site activities.

- i. **Description of Forestry**

- a. **Forestry:** For the purposes hereof, "Forestry" shall include the growing, tapping, stocking, cutting, and sale of forest trees of any size capable of producing timber or other forest products, such as maple syrup, 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 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 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 fifty (50) feet of the high water mark of the Bellamy Reservoir, as delineated along the 136 foot-msl elevation contour. There shall be no application of fertilizers, pesticides, or herbicides within the buffer areas shown on the Survey Plan as “Existing Sanitary Area Easement Line S.C.R.D. Book 711, Page 214 Parcel 109E-1” and “Existing Sanitary Area Easement Line S.C.R.D. Book 711, Page 214 Parcel 105E-2” and Commercial and Non-Commercial Forestry in these buffer areas shall be limited to single tree or small group selection cuts, leaving a well distributed, uneven aged stand of trees and ground cover areas. Exceptions to the above 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.

iii. **Requirements for Commercial Forestry:** In addition to the requirements outlined in Section 2.A.ii above, Commercial Forestry shall be performed using silvicultural practices that enhance or maintain the value of timber while recognizing that the ecological, water quality, 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, the Bellamy Reservoir, 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.iii. above, and
 - the protection of the water quality in the Bellamy Reservoir, as well as minimizing disturbance around all wetlands and streams.
- 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.iii, 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, 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 meet all the following conditions and which:
- a. Assist in the accomplishment of Forestry, conservation, habitat management, or noncommercial outdoor recreational uses on the Property, and which may include but shall not be limited to: permeable road, dam, fence, bridge, culvert, trail, boardwalk or shed; and

- b. Do not cause the total impervious surface coverage of the Property to exceed 1,000 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, but shall specifically exclude bridges; boardwalks; culverts; impervious surfaces not in place year-round such as 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;
- c. Structures with impervious surfaces shall not be constructed within the areas shown on the Survey Plan as "Existing Sanitary Area Easement Line S.C.R.D. Book 711, Page 214 Parcel 109E-1" and "Existing Sanitary Area Easement Line S.C.R.D. Book 711, Page 214 Parcel 105E-2", nor shall there be any application of fertilizers, pesticides, or herbicides within these buffer areas; and
- d. 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. For any structure or improvement containing a roof, said footprint 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, installation, 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 storage tank, tennis court, swimming pool, athletic field, golf course, barn, indoor riding arena, aircraft landing strip, tower, dock, mooring, anchored raft, or other surface structure(s) affixed to the bottom of the waterbody or to the Property, whether in direct contact with the Property or otherwise permitted by virtue of ownership of the Property.
- 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 unless such activities:

- i. are commonly necessary in the accomplishment of the 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 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 twelve (12) 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 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 or 3.B. below, 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. The maximum cumulative footprint of the Extractive Zones with exposed soil at any one time shall not exceed 5,000 square feet;
 - v. Said Extractive Activities shall not significantly diminish the Property's productive capacity, including soil productivity, to yield forest products, nor the Property's potential future uses for Forestry, 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, or burial 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 Forestry, conservation, noncommercial outdoor recreation, or educational 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. There shall be no cutting of trees or vegetation within fifty (50) feet of the Bellamy River or Bellamy Reservoir unless approved by the Grantee. All activities within the Shoreland Protection Overlay District shall meet the requirement set forth in the Town of Madbury Zoning Ordinances, effective date March 20, 2014. Other shoreland restrictions as defined in NH State Rule Env-Dw 902.30 shall be incorporated by reference in this easement.
- J. The Property shall not be posted against and the Grantor shall allow public access to, and use of, the Property open to the public for fishing, transitory passive recreation, pedestrian, non-motorized, non-commercial, outdoor recreational and outdoor educational purposes as will have minimal impact on the Property such as but not limited to hiking, wildlife observation, snowshoeing and cross-country skiing, except that the landowner shall retain the right whether to allow hunting on the Property. The Grantor may post against or limit public access, with prior approval of the Grantee, if such activities become inconsistent with the Purposes for protecting the Property and/or when public safety would be at risk. Notwithstanding the above, Grantor reserves the right to post the Property against public access, without prior approval of the Grantee, during harvesting or other forest management activities, and may temporarily restrict public access during an emergency situation where public safety could be at risk.
- K. The Grantor shall not operate or grant permission to operate motorized vehicles on the Property, except as allowed in Section 3.A. below.
- L. There shall be no agriculture, other than Forestry, conducted on the Property.
- M. Notwithstanding any other provision of this Easement, no use or activity shall occur on the Property which is detrimental or has the potential to be detrimental to the water quality of the Bellamy Reservoir.

3. RESERVED RIGHTS

- A. The Grantor reserves the right to operate motorized vehicles, and permit others to operate said vehicles, for the purposes of maintaining and managing the Property, including but not limited to emergency rescue operations, Forestry, habitat management, and to control or remove non-native or invasive species. This provision is an exception to Section 2.K., above.
- B. The Grantor reserves the right to create, relocate and maintain trails for low-impact, non-commercial outdoor recreational purposes, provided said trails are consistent with and not detrimental to the Purposes of this Easement. Included with this Reserved Right is the right to install benches, trail signage, bridges, culverts and other improvements

commonly associated with recreational trail usage. All trails shall conform to best practices recommended by the State of New Hampshire and Appalachian Mountain Club or similar trail-maintaining organization (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). Trails may be located in the buffer areas identified in Section 2.C.i.c. The Grantor must notify the Grantee in writing at least thirty (30) days before any exercise of this reserved right.

- C. The Grantor reserves the right to subdivide from the area shown on the Survey Plan as the "Exclusion Area" and convey it separately from the Property subject to this Easement. However, the Property shall only be conveyed in its entirety as one lot of record. The Grantor shall notify the Grantee in writing at least thirty (30) days before the exercise of this reserved right. This provision is a clarification of Section 2.B., above.

4. NOTIFICATION OF TRANSFER, TAXES, MAINTENANCE

- A. In the event the Grantor offers the Property for sale, or seeks to transfer title of the Property, Grantor must notify the Grantee, and such notice must be received by the Grantee at least ten (10) days prior to Grantor offering the Property for sale or transferring the property.
- B. The Grantee shall be under no obligation to maintain the Property or pay any taxes or assessments thereon.
- C. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), and shall furnish Grantee with satisfactory evidence of payment upon request. Grantee is authorized but in no event obligated to make or advance any payment of taxes, upon three (3) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate, and the obligation created by such payment shall bear interest until paid by Grantor at the lesser of two (2) percentage points over the prime rate of interest as published in the Wall Street Journal for the month the taxes are paid or the maximum rate allowed by law and Grantee may secure payment of such obligation by having a lien placed on the Property in favor of the Grantee.

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.

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 nine hundred (900) square inches in size.
 - ii. Signs 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.

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 Portsmouth, 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 Portsmouth, 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.

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. If the third party responsible for a breach is not found/identified, the Grantor is responsible to take reasonable action, working cooperatively with the Grantee, to prevent future breaches and restore the area.

K. The Grantee shall have the absolute right, but not the duty, to use any and all legal remedies to enforce the provisions of this Easement against the Grantor and/or against any other party. The Grantor shall have the right, but not the duty, to enforce the provisions of this Easement and all other rights retained under this Easement against any third party. Nothing in this paragraph should be construed to abrogate the provisions contained in paragraph 8(J).

9. THIRD PARTY HOLDER

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 Third Party Holder shall have all the rights heretofore granted to the Grantee to enforce this Easement. All reasonable costs of such enforcement shall be paid by the Grantee.

B. The interests held by the Third Party Holder are assignable or transferable to any party qualified to become the Grantee's or Third Party Holder's assignee or transferee as specified in Section 5 above. 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.

C. The Third Party Holder does not waive or forfeit the right to take action as may be necessary to insure compliance with this Easement by any prior failure to act, and Grantee and Grantor hereby waive any defense of laches with respect to any delay or omission by the Grantee or Third Party Holder in acting to enforce any restriction or exercise any rights under this Easement, any such delay or omission shall not impair Grantee or Third Party Holder's rights or remedies, or be construed as a waiver.

D. In the event that a dispute arises between either the Third Party Holder and the Grantee or Grantor, the provisions of Section 7.B and 7.C shall not apply to the Third Party Holder.

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 below 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 received by the intended party.

If Intended for Grantee:

City of Portsmouth
Attn: City Manager
1 Junkins Avenue
Portsmouth, NH 03801

City of Portsmouth
Legal Department
1 Junkins Avenue
Portsmouth, NH 03801

If Intended for Grantor:

Mary Ellen Duffy
40 Mill Hill Road
Madbury, NH 03823

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 as follows:

- (i) **If the Grantor claims a charitable contribution deduction**, that value determined by multiplying (1) the fair market value of the Property without deduction for the value of this Easement as of the time of said extinguishment or condemnation, by (2) the ratio of the value of the Easement at the time of this grant to the value of the Property at the time of this grant without deduction for the value of this Easement, those values being those used to calculate the deduction for federal income or estate tax purposes allowable by reason of this grant, pursuant to the IRS Code Section 170(h) or 2055(f), determined by an appraisal report which shall be prepared by a qualified appraiser on behalf of the Grantor and which the Grantor shall submit to the Grantee. For the purposes of this Section 12, the ratio of the value of the Easement to the value of the Property unencumbered by this Easement shall remain constant.
- (ii) **If the Grantor does not claim a charitable contribution deduction**, that value determined by an appraisal prepared by a qualified appraiser as of the time of said extinguishment or condemnation.

D. **Allocation of Net Proceeds**

All expenses reasonably incurred by Grantor and Grantee in connection with Section 12 A. or 12 B. above shall be paid out of the amount recovered. The balance recovered less expenses shall hereinafter be referred to as the "Net Proceeds". The Net Proceeds shall be divided between the Grantor and the Grantee in proportion to the value of their respective interests in that part of the Property extinguished or condemned as determined pursuant to Section 12.C. (i) or (ii) as the case may be. Any increase in value attributable to

improvements made after the date of the Easement Deed shall accrue to the party who made the improvements.

Grantee's share of the Net Proceeds shall be divided between the Grantee and NHDES as follows: the Grantee's share shall be fifty percent (50%) and NHDES's share shall be fifty percent (50%). These percentage shares represent the proportion each party contributed to the Total Project Cost. The Grantee shall use its share of the Net Proceeds for conservation purposes consistent with the Purposes of this Easement.

If the Net Proceeds are paid directly to Grantor then Grantee and Third Party Holder shall each have a lien against the Property for the amount due each of them until such time as Grantee and Third Party Holder receive their share of the Net Proceeds from Grantor or Grantor's successor or assigns. If Grantee and Third Party Holders' share of the Net Proceeds are paid to Grantee, Grantee must forthwith reimburse Third Party Holder for the amount due to them.

Should the requirements of this Section 12 conflict with NH RSA 485-F, the requirements of NH RSA 485-F shall apply.

13. 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.

14. PUBLIC TRUST

In accordance with NH RSA 485-F, the Easement shall be held in public trust and used and applied for the purposes of NH RSA 485-F. Notwithstanding any other provision of law relating to the disposal of publicly-owned real estate, no deviation in the uses of the Property to uses or purposes not consistent with the purposes of NH RSA 485-F shall be permitted. The sale, transfer, conveyance, or release of the Easement or any portion thereof from public trust is prohibited except when the conditions of RSA 485-F are met.

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 5. above, this provision 15. ("Sovereign Immunity") shall not apply to the assignee or transferee.

16. AMENDMENT

If, owing to unforeseen or changed circumstances, Grantor and Grantee agree that an

amendment to, or modification of, this Easement would be appropriate and desirable, Grantor and Grantee 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 Strafford County Registry of Deeds. Nothing in this paragraph shall require Grantor, Third Party Holder or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

Trustees' Certificate

I, Mary Ellen Duffy as Trustee of the Mary Ellen Duffy Revocable Living Trust u/t/a dated February 18, 2000, being the Grantor under the foregoing Conservation Easement Deed, hereby certify that (a) my respective Trusts exist and remain in full force and effect, (b) I am the sole and current Trustee of the respective Trust, (c) under the Trust the Trustee has full and absolute power to convey any interest in real estate and improvements thereon held in the said Trust, and (d) no purchaser or third party shall be bound to inquire whether as the Trustee has said power or is properly exercising such power or to see to the application of any Trust asset paid to it as Trustee for a conveyance thereof. This Certificate is given pursuant to New Hampshire R.S.A. 564-A:7(ii).

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 _____, 2020.

GRANTOR:

Mary Ellen Duffy

STATE OF NEW HAMPSHIRE
COUNTY OF STRAFFORD, ss.

On this ____ day of _____, 2020, before me personally appeared **Mary Ellen Duffy**, 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:

DRAFT

GRANTOR:

Mary Ellen Duffy, Trustee
Mary Ellen Duffy Revocable Living Trust u/t/a dated February 18, 2000

STATE OF NEW HAMPSHIRE
COUNTY OF STRAFFORD, ss.

On this _____ day of _____, 2020, before me personally appeared **Mary Ellen Duffy**, as Trustee of the Mary Ellen Duffy Revocable Living Trust u/t/a dated February 18, 2000, 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:

GRANTEE ACCEPTED: CITY OF PORTSMOUTH

By: _____
Karen Sawyer Conard

Title: City Manager
Duly Authorized per City Council vote dated: _____

Date: _____

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM, ss.

On this _____ day of _____, 2020, before me personally appeared **Karen Sawyer Conard, City Manager for the City of Portsmouth**, 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:

Third Party Holder Accepted by the State of New Hampshire on this ____ day of _____, 2020:

Robert R. Scott, Commissioner
New Hampshire Department of Environmental Services

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK, ss.

On this ____ day of _____, 2020, before me personally appeared **Robert R. Scott, the Commissioner of the New Hampshire Department of Environmental Services**, 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.

DRAFT

APPENDIX A

The "Property" subject to this Easement is that tract of land with any and all structures and improvements thereon situated along Mill Hill Road, so-called, in the Town of Madbury, County of Strafford, State of New Hampshire, consisting of approximately 107.53 acres and shown on a survey plan entitled "Conservation Easement Plan for The City of Portsmouth, New Hampshire Land of Mary Ellen Duffy Revocable Living Trust, Mill Hill Road, Madbury, N.H. Tax Map 2, Lot 2", Dated August 24, 2020 and last revised on October 6, 2020, Scale: 1" = 200', prepared by Berry Surveying & Engineering and recorded at the Strafford County Registry of Deeds herewith (herein referred to as the "Survey Plan") 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 Plan.

Beginning on the westerly sideline of the said Mill Hill Road at a drill hole set in the end of a stonewall at land now or formerly known as the Young Cemetery;

Thence running N78°33'25"W along said stonewall and the said Young Cemetery for a distance of twenty-eight and forty-two hundredths (28.42') feet to the end of the said stonewall;

Thence running N71°17'01"W along the said Young Cemetery for a distance of eight and seventy-five hundredths (8.75') feet to a drill hole set in the end of a stonewall;

Thence turning and running S13°07'52"W along said stonewall and the said Young Cemetery for a distance of sixty and thirty hundredths (60.30') feet to a drill hole set in the corner of the said stonewall at land now or formerly of Roderic and Carolyn Hutton;

Thence turning and running S74°02'10"W along land of the said Hutton for a distance of one hundred ninety-one and forty-seven hundredths (191.47') feet to an angle iron found with angle iron witness post at land now or formerly of Winsor and Suzanne Watson;

Thence running S72°31'12"W generally along a wire fence line along land of the said Watson for a distance of three hundred forty-seven and seventy-nine hundredths (347.79') feet to a drill hole set in the end of a stonewall;

Thence running S72°52'06"W along said stonewall and land of the said Watson for a distance of two hundred forty-three and eight hundredths (243.08') feet to a point;

Thence running S69°08'10"W along said stonewall and land of the said Watson for a distance of one hundred ninety-three and thirty-three hundredths (193.33') feet to a drill hole set at the end of the said stonewall;

Thence running S66°34'11"W along land of the said Watson and generally along a line of trees with barbed wire for a distance of two hundred seventy and forty-eight hundredths (270.48') feet to a 2" iron pipe found which was located at the base;

Thence running S67°48'24"W along land of the said Watson and generally along a line of trees with barbed wire for a distance of four hundred thirty-eight and fifty-four hundredths (438.54') feet to a drill hole set in the corner of stonewalls;

Thence running S70°59'06"W along said stonewall and land of the said Watson for a distance of fifty-four and fifty-eight hundredths (54.58') feet to a gap in the stonewall;

Thence running S63°00'31"W along the said gap in the stonewall and land of the said Watson for a distance of twenty-eight and ninety-eight hundredths (28.98') feet to the said stonewall;

Thence running S69°20'56"W along the said stonewall and land of the said Watson for a distance of forty-nine and fifty-nine hundredths (49.59') feet to a point on the stonewall;

Thence running S75°40'59"W along the said stonewall and land of the said Watson for a distance of one hundred twenty-one and no hundredths (121.00') feet to a point on the stonewall;

Thence running S72°16'53"W along the said stonewall and land of the said Watson for a distance of one hundred twenty-four and ninety-nine hundredths (124.99') feet to a point on the stonewall;

Thence running S77°46'03"W along the said stonewall and land of the said Watson for a distance of eighty-four and eighty-two hundredths (84.82') feet to a drill hole set at the end of the stonewall;

Thence running S78°28'02"W along the remains of a stonewall and land of the said Watson for a distance of one hundred twenty-nine and sixty-six hundredths (129.66') feet to a ¾" rebar with Surveyor's ID cap set at the end of the stonewall remains;

Thence running S74°52'28"W along land of the said Watson for a distance of one hundred eighty-five and fifty-nine hundredths (185.59') feet to an iron rod found at the end of a stonewall and land now or formerly of the City of Portsmouth;

Thence running S85°17'42"W along land of the said City of Portsmouth and generally along a line of trees with barbed wire for a distance of three hundred ninety-seven and fifty-three hundredths (397.53') feet to a ¾" rebar with Surveyor's ID cap set;

Thence running S85°04'45"W along land of the said City of Portsmouth and generally along a line of short iron rods for a distance of one hundred ninety-six and ninety hundredths (196.90') feet to a ¾" rebar with Surveyor's ID cap set;

Thence turning and running N15°28'58"W along land of the said City of Portsmouth which is also known as the Bellamy Reservoir for a distance of two hundred seventy and seventy hundredths (270.70') feet to a point;

Thence running N23°31'02"E along land of the said City of Portsmouth for a distance of one hundred thirty and hundredths (130.00') feet to a point;

Thence running N71°01'02"E along land of the said City of Portsmouth for a distance of two hundred fifty and no hundredths (250.00') feet to a point;

Thence running N41°01'02"E along land of the said City of Portsmouth for a distance of four hundred thirty and no hundredths (430.00') feet to a point;

Thence running N15°31'02"E along land of the said City of Portsmouth for a distance of one hundred ten and no hundredths (110.00') feet to a point;

Thence turning and running N56°58'58"W along land of the said City of Portsmouth for a distance of four hundred forty-five and no hundredths (445.00') feet to a point;

Thence turning and running N09°31'02"E along land of the said City of Portsmouth for a distance of three hundred eighty and no hundredths (380.00') feet to a point;

Thence turning and running N79°31'02"E along land of the said City of Portsmouth for a distance of four hundred twenty and no hundredths (420.00') feet to a point;

Thence running N19°31'02"E along land of the said City of Portsmouth for a distance of one hundred forty and no hundredths (140.00') feet to a point;

Thence running N83°31'02"E along land of the said City of Portsmouth for a distance of three hundred forty and no hundredths (340.00') feet to a point;

Thence running S51°28'58"E along land of the said City of Portsmouth for a distance of one hundred eighty-five and no hundredths (185.00') feet to a point;

Thence turning and running S25°31'02"W along land of the said City of Portsmouth for a distance of hundredths (255.00') feet to a point;

Thence turning and running S86°58'58"E for a distance of one hundred eighty and no hundredths (180.00') feet to a point;

Thence turning and running S09°28'58"E along land of the said City of Portsmouth for a distance of hundredths (260.00') feet to a point;

Thence running S55°28'58"E along land of the said City of Portsmouth for a distance of one hundred seventy and no hundredths (170.00') feet to a point;

Thence turning and running N05°01'02"E along land of the said City of Portsmouth for a distance of three hundred twenty-five and no hundredths (325.00') feet to a point;

Thence running N35°31'02"E along land of the said City of Portsmouth for a distance of eighty-five and no hundredths (85.00') feet to a point;

Thence running N04°28'58"W along land of the said City of Portsmouth for a distance of one hundred fifty-five and no hundredths (155.00') feet to a point;

Thence running N39°31'02"E along land of the said City of Portsmouth for a distance of one hundred sixty-five and no hundredths (165.00') feet to a point;

Thence running N02°46'02"E along land of the said City of Portsmouth for a distance of one hundred seventy and no hundredths (170.00') feet to a point;

Thence running N33°58'58"W along land of the said City of Portsmouth for a distance of seventy and no hundredths (70.00') feet to a point;

Thence turning and running N76°31'02"E along land of the said City of Portsmouth for a distance of one hundred and no hundredths (100.00') feet to a ¾" rebar with Surveyor's ID cap set at the end of a stonewall;

Thence turning and running N16°11'53"E along land of the said City of Portsmouth and generally along a line of trees with barbed wire for a distance of two hundred eighty-six and ten hundredths (286.10') feet to a stump with barbed wire at land now or formerly of Wayne & Gail Stiles;

Thence running N14°07'52"E along land of the said Stiles for a distance of seventy-eight and ninety-four hundredths (78.94') feet to an iron rod found;

Thence running N14°42'26"E along land of the said Stiles for a distance of one hundred two and eighty-seven hundredths (102.87') feet to an iron rod found;

Thence running N15°26'33"E along land of the said Stiles for a distance of twenty-seven and fifteen hundredths (27.15') feet to a ¾" rebar with Surveyor's ID cap set;

Thence running N15°26'33"E along land of the said Stiles for a distance of forty-four and ten hundredths (44.10') feet to an iron rod found at the end of a stonewall;

Thence running N12°28'38"E along land of the said Stiles and the said stonewall for a distance of one hundred twenty-two and eighty-two hundredths (122.82') feet to a drill hole found;

Thence running N12°53'34"E along land of the said Stiles and the said stonewall for a distance of one hundred sixty-nine and thirteen hundredths (169.13') feet to a steel stake found in the end of the stonewall;

Thence turning and running S71°14'48"E along land of the said Stiles and generally along a line of trees with barbed wire for a distance of eight hundred seventeen and ten hundredths (817.10') feet to a ½" rebar with Easement cap set at the Exclusion Area;

Thence turning and running S18°19'21"W along said Exclusion Area for a distance of two hundred fifty-nine and sixty-four hundredths (259.64') feet to a ½" rebar with Easement cap set;

Thence turning and running S71°14'48"E along said Exclusion Area for a distance of eight hundred fifty-six and fifty-nine hundredths (856.59') feet to a ½" rebar with Easement cap set at the westerly sideline of the said Mill Hill Road;

Thence turning and running S23°14'35"W along the westerly sideline of the said Mill Hill Road for a distance of sixty-three and forty-two hundredths (63.42') feet to a point;

Thence running along the westerly sideline of the said Mill Hill Road on a curve to the left with an arc length of four hundred ten and seven hundredths (410.07') feet with a radius of five thousand four hundred and no hundredths (5400.00') feet to the end of a stonewall;

Thence running S18°53'32"W along the westerly sideline of the said Mill Hill Road and the said stonewall for a distance of one hundred ninety and four hundredths (190.04') feet to a point;

Thence running S17°35'55"W along the westerly sideline of the said Mill Hill Road and the said stonewall for a distance of three hundred fifteen and forty hundredths (315.40') feet to a point;

Thence running S17°38'57"W along the westerly sideline of the said Mill Hill Road and the said stonewall for a distance of one hundred sixty and seventy hundredths (160.70') feet to the end of the stonewall;

Thence running S12°14'22"W along the westerly sideline of the said Mill Hill Road for a distance of hundredths (41.08') feet to a drill hole set in the corner of stonewalls which is the point of beginning.

Said Easement containing approximately 4,683,851 Square Feet, 107.53 acres and is subject to all matters as shown on the Survey Plan.

SUBJECT TO

Condemnation Notice-United States of America recorded November 17, 1959 at Book 711, Page 214 and an Easement to the United States of America recorded at Book 711, Page 214.

Boundary Line Agreement dated November 30, 2004 and recorded at Book 3108, Page 797.

MEANING AND INTENDING to describe a portion of the premises conveyed by Deed from Mary Ellen Duffy to Mary Ellen Duffy, Trustee of the Mary Ellen Duffy Revocable Living Trust, recorded at Book 2285, Page 543.

Not homestead property of the Grantor.

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Attachment B - Map

Duffy - Bellamy Reservoir

Duffy Parcel Proposed Conservation Lands

Conservation Lands

Wellhead Protection Areas

Hydrologic Areas of Concern

Public Water Supply Wells

Hydrography

Town Boundaries

Roads

Total Acres= 112.9 Ac.

Eligible Acres= 112.9 Ac.

The coverages presented are under constant revision as new sites or facilities are added. They may not contain all of the potential or existing sites or facilities. NHDES is not responsible for the use or interpretation of this information. Not intended for legal purposes.

11/4/2019

0 415 830 1,660 Feet

