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STATE OF NEW HAMPSHIRE  
DEPARTMENT of NATURAL and CULTURAL RESOURCES  
STATE COUNCIL on the ARTS

19 Pillsbury Street CONCORD, NEW HAMPSHIRE 03301

June 23, 2020

His Excellency, Governor Christopher T. Sununu  
and the Honorable Executive Council  
State House  
Concord, New Hampshire 03301

**REQUESTED ACTION**

Authorize the Department of Natural and Cultural Resources, State Council on the Arts to enter into a **Retroactive** amendment to an existing contract (Contract #1072246) with Terrence Parker d/b/a Terraforma Landscape Architecture (VC #311793), Portsmouth, NH in the amount of \$12,500 for creation of artwork for the bathhouse at Jenness Beach in Rye by extending the completion date from June 30, 2020 to September 30, 2020 effective upon Governor and Executive Council approval. The original contract was approved by the Governor and Executive Council on January 22, 2020, Item 63. 100% Other Funds (Agency Income)

**EXPLANATION**

Pursuant to RSA 19-A:10, the Percent for Art Selection Committee commissioned Terrence Parker to create a sculpture entitled *Kelp Wave* for the Jenness Beach Bathhouse. Mr. Parker realized he would not be able to finish his sculpture by the June 30, 2020 contract completion date and therefore requested an extension. However, an amendment for the extension was not processed in time to seek approval at an earlier G&C meeting and now **Retroactive** approval is being sought.

The Attorney General's office has approved the contract amendment as to form, substance and execution.

Respectfully submitted,

Sarah L. Stewart  
Commissioner

TP

AMENDMENT OF P-37 CONTRACT AGREEMENT

d/b/a Terrafirma Landscape Architecture

The Department of Natural and Cultural Resources and Terrence Parker, hereby mutually agree to amend the contract to for creation of artwork for the bathhouse at Jenness Beach in Rye, originally approved by Governor and Executive Council on January 22, 2020 (Item #63) and with a completion date of June 30, 2020, as follows:

- 1. Amend the contract by changing the completion date from June 30, 2020 to September 30, 2020;
- 2. All other terms and conditions of the original contract shall remain the same in full force and effect as originally set forth; and
- 3. This amendment is subject to approval by the Governor and Executive Council.

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

For the Contractor:

Terrence Parker  
Terrence Parker

6.2.2020  
Date

STATE OF New Hampshire  
COUNTY OF Rockingham

On this the 2 day of May 2020, before me Tyler J. Stephenson, the undersigned officer, personally appeared Terrence Parker, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same for the purposes therein contained. In witness whereof, I hereunto set my hand and official seal:

Tyler J. Stephenson  
Notary Public (Justice of the Peace)



For the Department of Natural and Cultural Resources

Virginia Lupi  
Virginia Lupi, Director  
NH State Council on the Arts

6/7/20  
Date

Sarah L. Stewart  
Sarah L. Stewart, Commissioner

6/24/20  
Date

Approved as to form, substance and execution:

Gill Feder  
Attorney General

6/28/20  
Date

State of New Hampshire  
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that TERRAFIRMA LANDSCAPE ARCHITECTURE is a New Hampshire Trade Name registered to transact business in New Hampshire on September 09, 2019. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 826806

Certificate Number : 0004591598



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 9th day of September A.D. 2019.

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

William M. Gardner  
Secretary of State

## Business Information

### Business Details

Business Name:	TERRAFIRMA LANDSCAPE ARCHITECTURE	Business ID:	826806
Business Type:	Trade Name	Business Status:	Active
Expiration Date:	9/9/2024	Last Renewal Date:	Not Available
Business Creation Date:	09/09/2019	Name in State of Formation:	Not Available
Date of Formation in Jurisdiction:	09/09/2019		
Principal Office Address:	163a Court Street, Portsmouth, NH, 03801, USA	Mailing Address:	163a Court Street, Portsmouth, NH, 03801, USA
Business Email:	terrence@terrafirmalandarch.com	Phone #:	603-531-9109
Notification Email:	terrence@terrafirmalandarch.com	Fiscal Year End Date:	NONE

### Principal Purpose

S.No	NAICS Code	NAICS Subcode
1	Professional, Scientific, and Technical Services	Landscape Architectural Services

Page 1 of 1, records 1 to 1 of 1

### Trade Name Information

No Trade Name(s) associated to this business.

### Trade Name Owned By

Name	Title	Address
terrence paul parker	Applicant	163a Court Street, Portsmouth, NH, 03801, USA

Sole Proprietor Certification of Authority

I, TERRENCE PARKER, hereby certify that I am the Sole Proprietor of TERRAFIRMA LANDSCAPE ARCHITECTURE which is a tradename registered with the Secretary of State (Name of Business) under RSA 349. I certify that I am the sole owner of my business and tradename.

I further certify that it is understood that the State of New Hampshire will rely on this certificate as evidence the person listed above currently occupies the position indicated and they have full authority to bind the business. This authority shall remain valid for thirty (30) days from the date of this Corporate Resolution.

DATED: 6-11-2020

ATTEST: Terrence Parker, PRINCIPAL  
(Name & Title)

STATE OF NH  
COUNTY OF Rockingham

On the 6 day of June, before me Brandon Sheldon, the undersigned officer personally appeared Terrence Parker, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same for purposes therein contained. In witness whereof, I hereunto set my hand and official seal:

Brandon Sheldon  
Justice of the Peace / Notary Public

My Commission Expires:

Brandon J Sheldon  
Notary Public, State of New Hampshire  
My Commission Expires Nov. 06, 2024





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/22/2019

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

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

<b>PRODUCER</b> Tobey & Merrill Insurance 20 High Street Hampton NH 03842-2214		<b>CONTACT NAME:</b> Edward Jackson AAI <b>PHONE (A/C No. Ext.):</b> (603) 926-7655 <b>FAX (A/C No.):</b> (603) 926-2135 <b>E-MAIL ADDRESS:</b> edward@tobeymerill.com	
<b>INSURED</b> Terraforma Landscape Architecture 183a Court St Portsmouth NH 03801		<b>INSURER(S) AFFORDING COVERAGE</b>	
		<b>INSURER A:</b> Hartford Casualty	<b>NAIC #</b> 29424
		<b>INSURER B:</b> Twin City Fire	<b>NAIC #</b> 29459
		<b>INSURER C:</b>	
		<b>INSURER D:</b>	
		<b>INSURER E:</b>	
		<b>INSURER F:</b>	

**COVERAGES**      **CERTIFICATE NUMBER:** CL19122406863      **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADOL SUBR INSR WVO	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR		04SBAIM909C	12/01/2019	12/01/2020	EACH OCCURRENCE \$ 2,000,000
		DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000				
		MED EXP (Any one person) \$ 10,000				
		PERSONAL & ADVERTISING \$ 2,000,000				
	GEN'L AGGREGATE LIMIT APPLIES PER <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC. <input type="checkbox"/> OTHER					GENERAL AGGREGATE \$ 4,000,000
	PRODUCTS - COMPROP ASS \$ 4,000,000					Hyd Auto \$ 2,000,000
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED <input type="checkbox"/> AUTO'S ONLY					COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NOT-OWNED AUTOS ONLY					BODILY INJURY (Per person) \$
						BODILY INJURY (Per accident) \$
						PROPERTY DAMAGE (Per accident) \$
						\$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB					EACH OCCURRENCE \$
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE					AGGREGATE \$
	<input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$					\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	04WECCR1180	08/08/2019	08/08/2020	PER STATUTE <input type="checkbox"/> OTHER <input type="checkbox"/>
		E.L. EACH ACCIDENT \$ 500,000				
		E.L. DISEASE - EA EMPLOYEE \$ 500,000				
						E.L. DISEASE - POLICY LIMIT \$ 500,000

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

<b>CERTIFICATE HOLDER</b> NH State Council on the Arts 2 Pillsbury Street, #1 Concord NH 03301	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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Item # 63 11/22/20  
63

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STATE OF NEW HAMPSHIRE  
DEPARTMENT of NATURAL and CULTURAL RESOURCES  
STATE COUNCIL on the ARTS

19 Pillsbury Street CONCORD, NEW HAMPSHIRE 03301

December 2, 2019

His Excellency, Governor Christopher T. Sununu  
and the Honorable Executive Council  
State House  
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Natural and Cultural Resources, State Council on the Arts to enter into a contract with Terrence Parker d/b/a Terrafirma Landscape Architecture (VC #311793), Portsmouth, NH in the amount of \$12,500 for creation of artwork for the bathhouse at Jenness Beach in Rye effective upon Governor and Council approval through June 30, 2020. 100% Other Funds (Agency Income)

Funding is available in account, State Art Fund, as follows:

03-035-035-353510-41000000-054-500526 Trust Fund Expenditures	<u>FY 2020</u> \$12,500
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EXPLANATION

Pursuant to RSA 19-A:10, The Percent for Art Selection Committee (which is made up of representatives from the agency responsible for the building under construction, the project architect, a state legislator from the district where the building is located, a local representative, a professional artist, and representatives from the State Arts Council) recommends the following artist commission for the Jenness Beach Bathhouse.

Terrence Parker, consistent with the Request for Proposals dated March 4, 2019 and reflected in the artist's proposal received on August 13, 2019, will create a sculpture entitled *Kelp Wave* to be built of 3 strands of 2" steel tube that stretches to 12'-13'; mounted to a steel plate fastened to a concrete block that sits partial out of the ground so the height above ground is 14'-15'. The three vertical strands have flattened ribbons of steel forming the wide blades of the kelp to look like the curl of an ocean wave. The strands bend, arch, and crisscross to form the wave action.

The Attorney General's office has approved the agreement as to form, substance and execution.

Respectfully submitted,

Sarah L. Stewart  
Commissioner

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**Notice:** This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

**AGREEMENT**

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

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

1.1 State Agency Name NH State Council on the Arts		1.2 State Agency Address Van McLeod Building 19 Pillsbury St Concord, NH 03301	
1.3 Contractor Name Terrence Parker d/b/a Terraforma Landscape		1.4 Contractor Address 163A Court St, Portsmouth, NH 03801	
1.5 Contractor Phone Number 603.430.8388	1.6 Account Number 353510-41000000-406342	1.7 Completion Date June 30, 2020	1.8 Price Limitation \$12,500.00
1.9 Contracting Officer for State Agency Sarah L. Stewart, Commissioner		1.10 State Agency Telephonic Number 603.271.2789	
1.11 Contractor Signature <i>Terrence Parker</i>		1.12 Name and Title of Contractor Signatory Terrence Parker, Artist	
1.13 Acknowledgement: State of <u>New Hampshire</u> County of <u>Rockingham</u> On <u>NOV 21, 2019</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 she executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace <i>Damalis Medrano</i>		<div style="border: 1px solid black; padding: 5px; display: inline-block;">                 Damalis Medrano                  Notary Public, State of New Hampshire                  My Commission Expires 06/30/2021             </div>	
1.13.2 Name and Title of Notary or Justice of the Peace <u>Damalis medrano</u>			
1.14 State Agency Signature <i>Sarah Stewart</i> Date: <u>12/20/19</u>		1.15 Name and Title of State Agency Signatory <u>Sarah L Stewart, Commissioner</u>	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: <u>N/A</u> Director, On:			
1.17 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By: <i>Gill Keenan</i> On: <u>1/4/2020</u>			
1.18 Approval by the Governor and Executive Council (if applicable) By: On:			



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

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.**

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.18, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.14 ("Effective Date").

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

**4. CONDITIONAL NATURE OF AGREEMENT.**

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

**5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.**

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

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

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

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

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

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. This may include the requirement to utilize auxiliary aids and services to ensure that persons with communication disabilities, including vision, hearing and speech, can communicate with, receive information from, and convey information to the Contractor. In addition, the Contractor shall comply with all applicable copyright laws.

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

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

**7. PERSONNEL.**

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

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

Contractor Initials

Date TP  
11/21/19

Agreement. This provision shall survive termination of this Agreement.

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

#### 8. EVENT OF DEFAULT/REMEDIES.

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

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

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

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

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

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

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

#### 9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

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

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

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

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

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

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

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

#### 14. INSURANCE.

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

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

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

Contractor Initials

Date 10/21/19

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than thirty (30) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than thirty (30) days prior written notice of cancellation or modification of the policy.

#### 15. WORKERS' COMPENSATION.

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

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

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

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

18. AMENDMENT. This Agreement may be amended, waived, or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no

such approval is required under the circumstances pursuant to State law, rule or policy.

#### 19. CONSTRUCTION OF AGREEMENT AND TERMS.

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

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

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

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

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

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

Contractor Initials

Date 4/21/19

**EXHIBIT A – Terrence Parker/Terra Firma Landscape Architecture**

**SERVICES & INSTALLATION:**

Consistent with the Request for Proposals dated March 4, 2019 and reflected in the artist's proposal received on August 13, 2019, Terrence Parker will create a sculpture entitled *Kelp Wave* to be built of 3 strands of 2" steel tube that stretches to 12'-13'; mounted to a steel plate fastened to a concrete block that sits partial out of the ground so the height above ground is 14'-15'. The three vertical strands have flattened ribbons of steel forming the wide blades of the kelp to look like the curl of an ocean wave. The strands bend, arch, and crisscross to form the wave action.

Contract cost is all inclusive.

**INSTALLATION:**

An employee of the NHSCA will coordinate scheduling of installation of artwork and will be present onsite to assure contract compliance on the scheduled installation day. Installation shall take place during normal business hours and the artist agrees to take all reasonable precautions to avoid unsafe conditions for patrons and employees of the site.

The artist is required to arrive fully prepared for the installation of the artworks on the scheduled installation day.

A pre-installation site visit may be scheduled by NHSCA staff to help the artist assess installation requirements, as requested by the artist.

Contractor Initials

TP

Date

11/21/19

**EXHIBIT B – Terrence Parker/Terra Firma Landscape Architecture**

**PAYMENT:**

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The Artist shall be compensated by the State of New Hampshire (State) in the total amount of the contract, which shall constitute full payment for all services, materials, travel, delivery, and installation (if specified under Exhibit A) to be furnished under the terms of this agreement. Such compensation shall be made in three installments, and processed upon receipt of invoices submitted by Artist.

**Payment Schedule for Commissions:**

- First payment: Thirty-five percent (35%) of the amount referenced above shall be paid upon the effective date of this contract.
- Second payment: Thirty-five percent (35%) of the amount referenced above shall be paid when the project is seventy percent (70%) completed.
- Third and final payment: Thirty percent (30%) shall be paid after final acceptance by the State, wherein the State signifies that the Artwork has been completed.

Upon receipt and approval of the third and final invoice by the State, completion of an "Artist Worksheet" by the Artist detailing final information and recommendations for maintenance on the Artwork, and in consideration of the satisfactory performance of the services as determined by the State, the State shall consider this acceptance of the Artwork and submit invoice for processing.

The payment by the State of the full contract price shall be the sole compensation to the Artist for services and reimbursement to the Artist for all expenses, of whatever nature, in the performance of this contract and shall be considered complete. The State shall have no liability to the Artist other than the contract price.

Contractor Initials

TP

Date

11/21/19

**EXHIBIT C – Terrence Parker/Terra Firma Landscape Architecture  
Special Provisions**

**USE:**

Once the Artwork is completed and becomes the property of the State, the State will not permit any use of the Artist's name or misuse of the Artwork which, in the State's opinion, would reflect discredit on the Artist's reputation or violate the spirit of the Artwork.

All preliminary data and research leading up to the execution of the final Artwork purchased by the State remain the sole property of the Artist.

The imagery developed by the Artist for the Artwork may continue to be used as the Artist chooses for other original works of art.

**INSURANCE:**

The insurance limits that are contained in section 14.1.1 pertaining to general liability are modified so that the Comprehensive General Liability is \$2,000,000 per incident and \$4,000,000 in aggregate.

**REPRODUCTION:**

The Division of the Arts shall have the right to reproduce the image of the Artwork for purposes of supporting and promoting New Hampshire arts and for publicity purposes such as within booklets, press releases, Division of the Arts Website, e-news, etc., with credit given to the Artist in all cases.

**ASSURANCE:**

The materials of the artwork shall remain free from all defects for a period of 90 days from the date of installation. Any defect noted within 90 days of the installation date shall be repaired by the Artist at his/her expense. The date and remedy of any repair shall be coordinated with and approved by the NHSCA staff. Any repair shall restore the artwork to a condition requiring minimal maintenance as originally stated in the Request for Proposals. Should the artist fail to remedy any defect within 60 days of notification of defect, the State may deem the artists in default and pursue legal remedies as provided in Section 8 of the P-37 Form.

Contractor Initials

Date

*TP*  
11/21/19

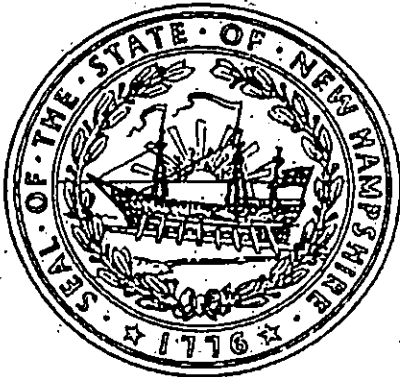
**State of New Hampshire  
Department of State**

**CERTIFICATE**

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that TERRAFIRMA LANDSCAPE ARCHITECTURE is a New Hampshire Trade Name registered to transact business in New Hampshire on September 09, 2019. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 826806

Certificate Number : 0004591598



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 9th day of September A.D. 2019.

A handwritten signature in black ink, appearing to read "William M. Gardner".

William M. Gardner  
Secretary of State

State of New Hampshire

I, TERRENCE P. PARKER as the sole owner of my business,  
(Name)

TERRA FIRMA LANDSCAPE ARCHITECTURE certify that I am authorized  
(Name of Business)

to enter into a contract with the State of New Hampshire on behalf of myself.

In witness whereof, I have set my hand as the sole owner of the business this 23 day of

OCTOBER, 2019  
(month) (year)

Terrence P. Parker  
Sole Owner

State of New Hampshire

County of Peterborough

On October 23<sup>rd</sup>, 2019 before the undersigned officer personally appeared the person identified in the foregoing certificate known to me (or satisfactorily proven) to be the owner of the business identified in the foregoing certification and acknowledged that he/she executed the foregoing certificate.

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

Grant E. B. Smith  
Notary Public/Justice of the Peace

GRANT E. B. SMITH  
Notary Public - New Hampshire  
My Commission Expires September 5, 2023





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
12/24/2019

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

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

<b>PRODUCER</b> Tobey & Merrill Insurance 20 High Street  Hampton NH 03842-2214	<b>CONTACT NAME:</b> Edward Jackson AAI <b>PHONE (A/C, No, Ext):</b> (603) 926-7655 <b>FAX (A/C, No):</b> (603) 926-2135 <b>E-MAIL ADDRESS:</b> edward@tobeymerill.com
<b>INSURED</b> Terraforma Landscape Architecture 183a Court St  Portsmouth NH 03801	<b>INSURER(S) AFFORDING COVERAGE</b> INSURER A: Hartford Casualty NAIC # 29424 INSURER B: Twin City Fire 29459 INSURER C: INSURER D: INSURER E: INSURER F:

COVERAGES      CERTIFICATE NUMBER: CL19122406883      REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDC. RUBR. INSD. WVD.	POLICY NUMBER	POLICY EFF. (MM/DD/YYYY)	POLICY EXP. (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC. <input type="checkbox"/> OTHER		04SBAIM9090	12/01/2019	12/01/2020	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (EA occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADY INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - CONFINOP AGG \$ 4,000,000 Hired Auto \$ 2,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTO'S ONLY <input type="checkbox"/> HIRED AUTO'S ONLY <input type="checkbox"/> SCHEDULED AUTO'S <input type="checkbox"/> NON-OWNED AUTO'S ONLY					COMBINED SINGLE LIMIT (EA accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED. RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR, PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS BELOW	Y/N <input type="checkbox"/> N/A	04WECCR1180	08/08/2019	08/08/2020	PER STATUTE <input type="checkbox"/> OTHER <input type="checkbox"/> E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000

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

<b>CERTIFICATE HOLDER</b>  NH State Council on the Arts 2 Pillsbury Street, #1  Concord, NH 03301	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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## The Kelp Wave

### Concept:

The Kelp Wave references the ocean as a living entity.

The Kelp Wave suggests the things the ocean carries.

The upper strands of the kelp leaves are fabricated to look like the curl of an ocean wave. This series of curls is created in a long narrow negative space to suggest the ocean is carrying something. The ocean carries everything. It is a living system filled with life from plankton to the leviathans. From surfboard to driftwood. From all manner of fish to fishing line and the microplastics eaten by fish..

Kelp is the perfect symbol for the action of a wave and all the promise the ocean holds. Kelp creates the environment to sustain fish habitat, it captures carbon, it converts the life of the sun to food, and it may very well be a new economic driver for the Gulf of Maine and our Seacoast. Kelp is and will be an important sustainable food source for this century.

The Kelp Wave suggests the action of waves breaking. High tide and high seas. Storms. Power. Beauty. Danger. Excitement. All the things we understand the ocean to be. Beyond the visual it is a dynamic ecosystem, food cycle and a hydrological cycle.

The Kelp Wave also reminds us the ocean is alive and the source of life.

The angle of the crest of the Kelp wave, created as a tubular negative space, is at the angle of the sun at the winter solstice, approximately 23 degrees. Therefore, if only for a moment, the tunnel of kelp leaves will frame the sun at high noon since it will be orientated to the southern sky.

This sculpture is physically beautiful and reminds us that the ocean is essential to our health and we have been historically dependent upon it. Those web of dependencies---economical, environmental, and emotional---are more understood now than ever.

The Kelp Wave represents the connections we have to the sea.

### Construction:

It is built of 3 strands of 2" steel tube that stretches to 12'-13'. It is mounted to a steel plate fastened to a massive concrete block that sits partial out of the ground so the height above ground is 14'-15'.

Those three vertical strands have flattened ribbons of steel forming the wide blades of the kelp as it twists and turns up to the crest of the wave. The strands bend, arch, and crisscross to form the wave action.

I plan on working with Bob Menard of the *Ball and Chain Forge* in Portland, ME to fabricate and install this sculpture. Bob Menard has a long resume of successful art installations, see the website referenced in submission forms, and I have a long resume of successful art constructions and landscape installations to make this project successful, memorable, culturally appropriate, and attractive.

This project will be built and painted to endure the conditions at the seacoast. The paint color will be bright chrome. Metallic, shiny to reflect the sun, and suggesting of universality.

Structural Engineer Alex Ross will determine the final size of the sculptural members and mounting technique.

Cost:

Because this project has been asked to move off a location allowed in the project PDF, the existing seawall, the construction costs have increased. The cost of building a new footing is \$800.

Therefore, the cost of the project is now \$12,500 to reflect that change. (I split the extra cost.)

Thank you for the opportunity to continue this discussion.

Sincerely,

Terrence Parker

Landscape Artist



**Terrence Parker,** *landscape art / landscape architecture*

**[REDACTED]** Portsmouth, New Hampshire, 03801

[www.terrafirmalandarch.com](http://www.terrafirmalandarch.com) **[REDACTED]**

**Professional** \

**Approach:** To use my insight as a Landscape Architect to create culturally and ecologically meaningful landscapes and sculpture that advance the quality of interaction with the land.

**Experience:** Principal, *terrafirma landscape architecture*, Portsmouth, N.H.:  
1993- Present

This firm has provided high quality and creative site design for public institutions and commercial facilities, planning and design for recreational centers and residential clients. Project tasks include program development, contract documentation, presentations, project management, and construction observation.

Project Landscape Architect, To Design, Hartford, CT. : 1991-1993  
Educational, commercial and residential site design  
and documentation.

Project Landscape Architect, CR3, Inc. Simsbury, CT. : 1984-1991

Site Planning and design, including schematic design, design development, and construction documents for an urban plaza, parks, residences, hospitals, commercial and educational facilities. Presentations for client review, local planning and zoning regulatory approval. Management of project schedule and budget.

**Expertise:** Site Analysis and Construction Documentation  
Concept generation and Master Planning  
Sustainable Planting, Rain Garden, Native Ornamental  
Garden Design, and Landscape Sculptural / Land Art

**Education:** *Master of Landscape Architecture*, 1984, University of Georgia  
Thesis Topic: *Environmental Design in Stone:  
An Archetypal Landscape in Southern New England*  
Travel Studies in Japan, 1982, Temple Gardens of Kyoto  
and Tokyo, University of Georgia *Bachelor of Science, Natural  
Resources*, 1979, University of Rhode Island

Licensure: The States of Maine, New Hampshire, and Massachusetts

Addenda: 2018 Winner First ever 1% for Art award in Portsmouth for 'Working' sculpture referencing the industrial history of Portsmouth.  
2018 Citizen of the Year  
2018 Designer of the Chestnut Street Arch installed in affiliation with the Music Hall  
Winner Boston Society of Landscape Architect 2015 Merit Award in communication Category for work at the Central School.  
Artist in Residence, Cortona, Italy, University of Georgia  
Studies Abroad, Fall 1990  
Sculpture Prize. Connecticut Academy of Fine Arts 80 the Annual Saloon Show, 1990  
Adjunct Professor, Paier College of Art, Fall 1989  
Designer of *Stone Occurrences*, abstract stone landscape installations, Catskill Mountains.  
Rhode Island Nurserymen's Association Award for Plant Identification, 1979

**Important Recent Projects (2011-2015):**

'Working' Site Sculpture: 3 Giant hammers, railroad track and a giant pulley wheel.  
Chestnut Street Arch  
Music Hall Streetscape Design  
StoneBale Sculpture in Rollinsford, NH  
3S Art Space Site Design  
Smuttynose Brewery Site Design  
Henry Law Playground  
York Hospital Site Design  
Bangor Savings  
Lydia Valdez Memorial Garden at Little Harbour School  
Portsmouth Naval Shipyard Master Planning Study  
Dover Police Department