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New Hampshire
Department of Agriculture,
Markets & Food

Lorraine S. Merrill, Commissioner



May 15, 2013

Her Excellency, Governor Margaret Wood Hassan
And the Honorable Executive Council
State House
Concord, NH 03301

Dear Governor Hassan and Honorable Council:

REQUESTED ACTION

Authorize the NH Department of Agriculture, Markets & Food (NHDAMF) to enter into a grant agreement with the Merrimack County Conservation District, Vendor Code: 157734, for the period from Governor and Council approval to March 1, 2015 in the amount of \$44,000 to create a program to build and train farmers in the use of a mobile flash freeze unit to extend availability of local foods. 100% Federal Funds.

Funding is available in account, Specialty Crop Block Grant, as follows with the authority to adjust encumbrances in each of the State fiscal years through the Budget Office if needed and justified, pending FY 14 budget approval.

Funding is available in FY 2013 as follows: 02-18-18-185010-33460000 Specialty Crop Block Grant, #12-25-B-1475

<u>ACCOUNT</u>		<u>FY 2013</u>	<u>FY 2014</u>	<u>Total</u>
33460000-500575	Grants – Federal	\$30,000	\$14,000	\$44,000

EXPLANATION

The New Hampshire Department of Agriculture, Markets & Food (NHDAMF) received Specialty Crop Block Grant (SCBG) money from the United States Department of Agriculture to fund seven specific projects. The projects were solicited through the RFP process and submitted for review by USDA, Agricultural Marketing Service as part of our state application. The proposal submitted by the Merrimack County Conservation District was one of the seven projects accepted by USDA for funding.

In the event that these Federal funds become no longer available, General Funds will not be requested to support this program.

Respectfully submitted,

For: Lorraine S. Merrill
Commissioner

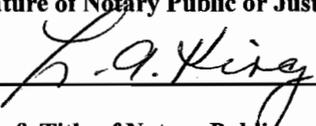
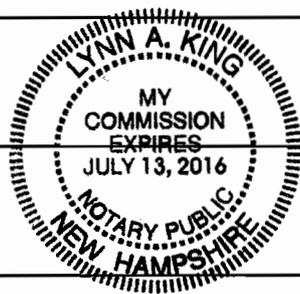
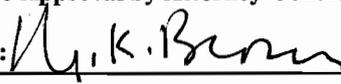
GRANT AGREEMENT

Subject: Merrimack County Flash Freezer Project

GENERAL PROVISIONS

33460000 - 500575

1. IDENTIFICATIONS AND DEFINITIONS

1.1 State Agency Name NH Dept. of Agriculture, Markets & Food		1.2 State Agency Address PO Box 2042, Concord, NH 03302-2042	
1.3 Grantee Name Merrimack County Conservation District		1.4 Grantee Address 10 Ferry St., Ste 211, Concord, NH 03301	
1.5 Effective Date	1.6 Completion Date March 1, 2015	1.7 Audit Date	1.8 Grant Limitation 44,000.00
1.9 Grant Officer for State Agency Lorraine S. Merrill		1.10 State Agency Telephone Number 603-271-3788	
1.11 Grantee Signature 		1.12 Name & Title of Grantee Signor PETER BLAKEMAN, CHAIRMAN	
1.13 Acknowledgment: State of New Hampshire, County of <u>Merrimack</u> On <u>3/27/2013</u> , before the undersigned officer, personally appeared the person identified in block 1.12., or satisfactorily proven to be the person whose name is signed in block 1.11., and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace (Seal) 			
1.13.2 Name & Title of Notary Public or Justice of the Peace Lynn A. King Notary Public			
1.14 State Agency Signature(s) 		1.15 Name/Title of State Agency Signor(s) Lorraine S. Merrill, Commissioner	
1.16 Approval by Attorney General's Office (Form, Substance and Execution)			
By: 		Attorney, On: <u>5/20/13</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.

Grantee Initial  Date 3/29/13

Exhibit A

The grantee shall utilize awarded Specialty Crop Block Grant (SCBG) funds to create a mobile flash freezer unit and educate producers on using the technology to preserve their crops for year round sales. All project work shall be managed by the grantee who shall be responsible for all project development and oversight, per the terms of the grant application approved by USDA. Upon completion of the project, the contractor shall submit a written report of the project outcomes per federal reporting guidelines for the SCBG program.

Exhibit B

The grant amount shall not exceed \$44,000. The grantee shall be paid as follows within 30 days of submission of an invoice and approval of completed work by the Division of Agricultural Development:

\$30,000 in April 2013 for initial purchases of materials to construct the flash freezer unit
\$14,000 in July 2013 for freezer assembly and workshops

Upon completion of the project, the contractor shall submit a written report of the project outcomes per federal reporting guidelines for the SCBG program.

Initials PAS
Date 3/27/13

Certificate of Authority

I, Robert Larocque, Treasurer of the Merrimack County Conservation District
(name) (title) (business/organization)

do hereby certify that:

- Peter Blakeman is the duly elected Chairman;
(name of person being certified) (title)
- the Merrimack County Conservation District has agreed to accept funds to enter into a contract
(business/organization)
with the State of New Hampshire, Department of Agriculture, Markets & Food;
- the Merrimack County Conservation District further authorizes the Chairman
(business/organization) (title from 1. above)
to execute any documents necessary for this contract;
- this authorization has not been revoked, annulled, or amended in any manner whatsoever,
and remains in full force and effect as of the date hereof;
- The following person has been appointed to and now occupies the office indicated above:
Peter Blakeman
(name of person being certified in 1. above, title)

IN WITNESS WHEREOF, I have hereunto set my hand as the Treasurer of the
(title)
Merrimack County Conservation District this 3 day of April, 2013
(Business/organization)

Robert Larocque
(signature)

Printed Name: Robert Larocque

State of New Hampshire
County of Merrimack

On this 3rd day of April, 2013, before me Lorna Wakefield the
undersigned officer, personally appeared Robert Larocque who
acknowledged him/herself to be the Merrimack County Conservation District of the Merrimack County
Conservation District being authorized so to do, executed the forgoing instrument for
the purpose therein contained.

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

Lorna Wakefield
Justice of the Peace/Notary Public

(Seal)

Commission Expiration Date: Feb 20, 2018

McWilliam Jellie, Gail

From: Luke, Stacy - NRCS-CD, Concord, NH [stacy.luke@nh.nacdnet.net]
Sent: Thursday, March 28, 2013 3:28 PM
To: McWilliam Jellie, Gail
Subject: RE: 2012 SCBG-- YOUR RESPONSE NEEDED ASAP

From: McWilliam Jellie, Gail [mailto:Gail.McWilliam.Jellie@agr.nh.gov]
Sent: Thursday, March 28, 2013 11:09 AM
To: Gail McWilliam Jellie (gail.mcwilliam.jellie@agr.nh.gov)
Subject: 2012 SCBG-- YOUR RESPONSE NEEDED ASAP

Hello Grantees:

A we finalize your grants for Governor & Council approval we have been asked to inform you about the potential for reduction of funding of your grant due to budget issues at the federal level. Please understand that we have not been informed of any specific impacts to the 2012 Specialty Crop Block Grant Program, but much is uncertain in Washington, now and the NH State budget also still not final.

Please review the following and by return email please indicate that you and your organization understand and accept this. A copy of your acknowledging email will be attached to your grant. Thanks for your prompt response and understanding.

Exhibit C

Due to the uncertainties of the federal budget sequestration and the still not finalized State of New Hampshire budget approval process for Fiscal Years 2014 and 2015, it is possible that part or all of the funds for this grant could be withdrawn with the State of New Hampshire, Department of Agriculture, Markets & Food (DAMF) prior to the Grant Agreement specified end date. In the event that funding is reduced, DAMF would have to adjust or end this grant accordingly.

Merrimack County Conservation District acknowledges and accepts this condition for Specialty Crop Block Grant # 12-25-B-1475.

Peter Blakeman
Chairman
Merrimack County Conservation District
10 Ferry Street, Suite 211
Concord, NH 03301

**Gail McWilliam Jellie, Director
Division of Agricultural Development**

NH Dept. of Agriculture, Markets & Food
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Concord, NH 03302-2042
Tel. (603) 271-3788
Fax (603) 271-1109
Email: gail.mcwilliam.jellie@agr.nh.gov

4/17/2013

