

The State of New Hampshire
Department of Environmental Services

Thomas S. Burack, Commissioner

*Celebrating 25 Years of Protecting
New Hampshire's Environment*



October 4, 2012

His Excellency, Governor John H. Lynch
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

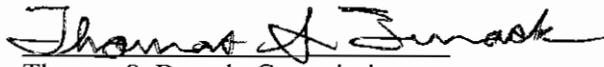
Authorize the New Hampshire Department of Environmental Services (DES) to amend an Aquatic Resource Mitigation (ARM) Fund grant (PO# 1018040) to the Trust for Public Lands, Portland, ME (Vendor Code #167126) by extending the completion date to June 30, 2013 from December 31, 2012. The original grant was approved by the Governor and Council on August 10, 2011, (Item #70). No additional funding is requested as part of this amendment. 100% Aquatic Resource Mitigation Funds.

EXPLANATION

The ARM Fund grant with the Trust for Public Lands will protect over 176 acres of land in Durham. The parcel includes 14,640 feet of frontage on the Oyster River, a tidal tributary to the Great Bay and primary drinking water source for the Town of Durham and University of New Hampshire. The property is situated above critical groundwater resources and immediately abuts over 2,200 acres of existing conservation land. The grant presently expires on December 31, 2012. This proposed Amendment extension is requested to extend the contract to June 30, 2013. The contract extension is needed to complete the legal materials and finalize the conservation easement deed language with the landowner for long-term protection of the parcel.

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

We respectfully request your approval.


Thomas S. Burack, Commissioner

www.des.nh.gov

29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095
(603) 271-3503 • TDD Access: Relay NH 1-800-735-2964

Agreement for Services with The Trust for Public Land

This Agreement (hereinafter called the "Amendment") dated this 7th day of September, 2012, is by and between the State of New Hampshire, acting by and through its Department of Environmental Services (hereinafter referred to as the "State") and The Trust for Public Land, acting by and through its authorized Counsel, Denise Mullane (hereinafter referred to as the "Grantee").

WHEREAS, pursuant to the Contract (hereinafter called the "Agreement") approved by the Governor and Council on August 10, 2011, the Grantee agreed to perform certain services upon the terms and conditions specified in the Agreement and in consideration of payment by the State of certain sums as specified therein; and

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

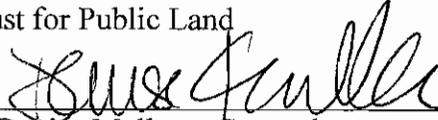
NOW THEREFORE, in consideration of the foregoing, and the covenants and conditions contained in the Agreement and set forth herein, the parties hereto do hereby agree as follows:

1. Amendment and Modification of Agreement: The Agreement is hereby amended as follows:
 - (A) The Completion Date as set forth in sub-paragraph 1.7 of the agreement shall be changed from December 31, 2012 to June 30, 2013.
2. Effective Date of Amendment: This Amendment shall take effect upon the date of approval of this Amendment by the Governor and Executive Council of the State of New Hampshire.
3. Continuance of Agreement: Except as specifically amended and modified by the terms and conditions of this Amendment, the Agreement, and the obligations of the parties thereunder, shall remain in full force and effect in accordance with the terms and conditions set forth therein.

Initial DM Date 9/20/12

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

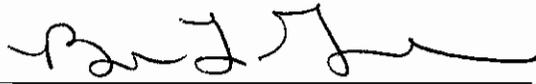
The Trust for Public Land

By 
Denise Mullane, Counsel

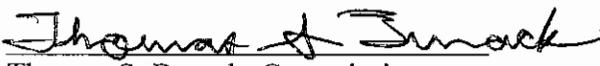
COMMONWEALTH OF MASSACHUSETTS
COUNTY OF SUFFOLK

On this the 20th day of September, 2012, before the undersigned officer, personally appeared Denise Mullane, Counsel who acknowledged herself to be the person who executed the foregoing instrument for the purpose therein contained.

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


Notary Public/Justice of the Peace BRIAN GALLAGHER
My Commission Expires: 10/27/15

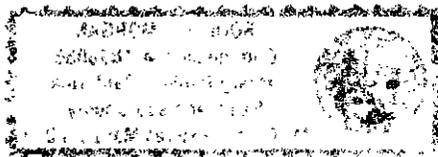
THE STATE OF NEW HAMPSHIRE
Department of Environmental Services

By 
Thomas S. Burack, Commissioner

Approved by Attorney General this 9th day of October, 2012

OFFICE OF ATTORNEY GENERAL

By 



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 THE TRUST FOR PUBLIC LAND doing business in New Hampshire as TPL-NEW HAMPSHIRE, a(n) California nonprofit corporation, registered to do business in New Hampshire on July 22, 1988. I further certify that it is in good standing as far as this office is concerned, having paid the fees required by law.



In TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 6th day of September, A.D. 2012

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

William M. Gardner
Secretary of State



TRUSTPUBL

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
3/30/2012

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

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

PRODUCER Commercial Lines - (707) 769-2900 Wells Fargo Insurance Services USA, Inc. - CA Lic#: 0D08408 1039 N. McDowell Blvd. Petaluma, CA 94954-1173	CONTACT NAME: Gail Dillon / Evie Ferretti PHONE (A/C, No, Ext): 707-769-2900 E-MAIL ADDRESS: Evie.Ferretti@wellsfargo.com	FAX (A/C, No): 707-773-1868
	INSURER(S) AFFORDING COVERAGE	
INSURED The Trust for Public Land 101 Montgomery Street, Suite 900 San Francisco, CA 94104	INSURER A: Federal Insurance Company	NAIC # 20281
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** 4158616 **REVISION NUMBER:** See below

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

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC		35774917	04/01/2012	04/01/2013	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ Included
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$		79820681	04/01/2012	04/01/2013	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
A	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 N/A	71726455	04/01/2012	04/01/2013	<input checked="" type="checkbox"/> WC STATUTORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

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

RE: Oyster River/Sprucewood Forest ARM Grant-Land Acquisition/Conservation
 Evidence of coverage.

CERTIFICATE HOLDER

The State of New Hampshire
 29 Hazen Drive
 Concord, NH 03301

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



AUG 15 2011

The State of New Hampshire

DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

ENVIRONMENTAL SERVICES
"BY NH DES WETLANDS BUREAU"

June 22, 2011

APPROVED G & C

DATE 8/10/11

ITEM # 70

His Excellency, Governor John H. Lynch
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the New Hampshire Department of Environmental Services (DES) to award an Aquatic Resource Mitigation (ARM) Fund grant to the Trust for Public Lands, Portland, ME (Vendor Code #167126) in the amount of \$500,000 to protect 176 acres of land on the Oyster River in Durham, effective upon G & C approval through December 31, 2012. 100% Aquatic Resource Mitigation Funds.

Funding is available in the account as follows. Funding for FY 2012 is contingent upon continuing appropriation and availability of funds.

03-44-44-442010-38710000-073-500581 FY' 2012
\$500,000

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

EXPLANATION

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

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

The Department issued the request for proposals for ARM Funds available in the Salmon Falls – Piscataqua River watershed in April, 2010. Eleven proposals were received and on December 14, 2010 DES announced the decision to fund eight projects. The project proposed by the Trust for Public Lands was recommended for funding by the ARM Fund Site Selection Committee. Attachment A notes the proposals received and the Committee members involved in the decision. The review of the awards by the Army Corps of Engineers and the New Hampshire Wetland Council resulted in full support of the recommendations.

His Excellency, Governor John H. Lynch
and the Honorable Council

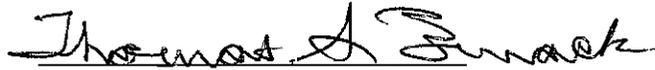
Page 2

The Trust for Public Lands will utilize its ARM funds to protect over 176 acres of land that includes 14,640 feet of frontage on the Oyster River, a tidal tributary to the Great Bay and primary drinking water source for the Town of Durham and University of New Hampshire. The property is situated above critical groundwater resources and immediately abuts over 2,200 acres of existing conservation land. Attachment B includes a location map of the site.

In the event that other funds no longer become available, general funds will not be requested to support this program. Exhibit A describes the scope of services. Exhibit B provides the budget and payment terms. Exhibit C addresses special provisions.

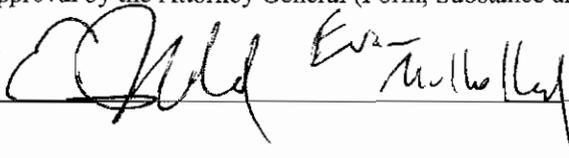
This agreement has been approved as to form, content, and execution by the Attorney General's Office.

We respectfully request your approval.


Thomas S. Burack, Commissioner

**GRANT AGREEMENT
GENERAL PROVISIONS**

1. IDENTIFICATION.

1.1 1.1 State Agency Name New Hampshire Department of Environmental Services		1.2 State Agency Address 29 Hazen Drive, Concord NH 03301	
1.3 Grantee Name The Trust for Public Land		1.4 Grantee Address 30 Danforth Street, Suite 106, Portland, ME 04101	
1.5 Grantee Phone Number (207) 772-7424 x.2	1.6 Account Number 03-44-44-442010- 38710000-073	1.7 Completion Date 12/31/2012	1.8 Grant Limitation \$500,000
1.9 Grant Officer for State Agency Lori L. Sommer, Wetland Mitigation Coordinator NH Department of Environmental Services		1.10 State Agency Telephone Number 603-271-4059	
1.11 Grantee Signature 		1.12 Name and Title of Grantee Signatory LAUREN L. BUTLER, COUNSEL	
By executing this Agreement, Grantee certifies that all applicable public notice, meeting and other requirements for acceptance of this grant, including, but not limited to, the requirements under N.H. RSA 31:95, if applicable, have been fully satisfied.			
1.13 Acknowledgement: State of Massachusetts, County of Suffolk On <u>JUNE 10, 2011</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 BRIAN L. GALLAGHER [Seal]			
1.13.2 Name and Title of Notary or Justice of the Peace BRIAN L. GALLAGHER			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory Thomas S. Burack, Commissioner NH Department of Environmental Services	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) By:  On: 6-23-11			

RECEIVED

JUN 14 2011

BY NH DES WETLANDS BUREAU

2. PROJECT. In exchange for grant funds provided by the State of New Hampshire, acting through the agency identified in block 1.1 ("State") engages the grantee identified in block 1.3 ("Grantee") to perform, and the Grantee shall perform, the work identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Project"). Except as otherwise specifically provided for herein, the Grantee shall perform the Project in, and with respect to, the State of New Hampshire.

3. EFFECTIVE DATE/COMPLETION OF PROJECT.

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

3.2 Except as otherwise specifically provided for herein, the Project, including all reports required by this Agreement, shall be completed prior to the date 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 Grantee 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. GRANTAMOUNT/LIMITATION ON AMOUNT / PAYMENT.

5.1 The grant amount, 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 grant amount shall be the only and the complete payment 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 liability to the Grantee other than the grant amount.

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 herein, the State shall pay the Grantee the grant amount.

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

5.5 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 Grant 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 Project, the Grantee shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Grantee, including, but not limited to, civil rights and equal opportunity laws. In addition, the Grantee shall comply with all applicable copyright and other intellectual property laws that impose any obligation or duty upon the Grantee.

6.2 During the term of this Agreement, the Grantee 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 Grantee shall comply with all federal laws and regulations to the extent they apply to the subject matter of this Agreement and are required by the amount of federal funds involved in this Agreement, which include, but are not limited to: 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; Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d et seq.), which prohibits discrimination on the basis of race, color, and national origin; Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination against qualified individuals with disabilities; and the Age Discrimination Act of 1975 (42 U.S.C. 6010-6107), as amended, which prohibits discrimination the basis of age. The Grantee shall maintain all records necessary to enable the State or the United States to account for all payments made to Grantee for costs permitted under this Agreement for a minimum period of seven (7) years from the final completion of this Agreement, or until all audits initiated under this Agreement have been completed, whichever is later ("Audit Review Period"). Grantee further agrees to permit the State or United States access to any of the Grantee's books, records and accounts during the Audit Review period 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 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 the Project, 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 Grantee 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 Project to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.

7.3 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 herein, the State shall pay the Grantee the Grant amount. The Grant 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 Grant 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 Grantee shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Project 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 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;

8.2.2 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;

8.2.3 set off against any other obligations the State may owe to the Grantee 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 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 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. No data shall be subject to copyright in the United States or any other country by anyone other than the State. 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.

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. RECORDS AND ACCOUNTS.

10.1 Between the Effective Date and 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.

10.2 Between the Effective Date and 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 of 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.

11. CONFLICT OF INTEREST. No officer, member or employee of the Grantee, and no representative, officer or 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 interest 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.

11. TERMINATION.

11.111.1 In the event of an 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 ("Termination Report") describing in detail all Project work performed, and the grant amount 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.

11.211.2 In the event of Termination under paragraphs 4 or 11.4, the approval of such a Termination Report by the State shall entitle the Grantee to receive that portion of the grant amount earned to an including the date of termination.

11.311.3 In the event of Termination under paragraphs 4 or 11.4 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.

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

12. CONTRACTOR'S RELATION TO THE STATE. In the performance of this Agreement the Grantee is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Grantee 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.

13. ASSIGNMENT/DELEGATION/SUBCONTRACTS. The Grantee shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the N.H. Department of Administrative Services. None of the Project work shall be subcontracted by the Grantee other than as set forth in Exhibit A without the prior written consent of the State.

14. 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 or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions 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 in paragraph 14 shall survive the termination of this Agreement.

15. INSURANCE.

15.1 The Grantee 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:

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

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

15.2 The policies described in subparagraph 15.1 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.

15.3 The Grantee shall furnish to the Grant Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Grantee shall also furnish to the Grant Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Grant Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modification of the policy.

16. WORKERS' COMPENSATION.

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

15.2 To the extent the Grantee is subject to the requirements of N.H. RSA chapter 281-A, Grantee 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. Grantee shall furnish the Grant Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation and any applicable renewal(s) thereof in the manner described in N.H. RSA chapter 281-A 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 Grantee, or any subcontractor or employee of Grantee, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Project under this Agreement.

17. 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 Grantee.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

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

24. 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.

25. 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

1. The State of New Hampshire, its successors and assigns, represented by the Department of Environmental Services (DES), agrees to grant the Trust for Public Land the amount of \$500,000 for the purpose of acquiring land owned by Mr. David Garvey and Mr. Jack Farrell consisting of a 176 +/- acre parcel of land located on the Oyster River in the Town of Durham, County of Strafford, State of New Hampshire, identified on the Durham tax records as Map 13 Lots 14-2 and 6-3 (portion South of the Oyster River; hereinafter: the "Property.") This agreement shall be performed in accordance with New Hampshire RSA 482-A; all applicable sections of the Administrative Rules, Env-Wt 100-800, and all other pertinent New Hampshire laws.
2. The Trust for Public Land shall use their grant funds to acquire the Fee Interest in the Property and to convey it to The Town of Durham with a perpetual conservation easement over the Property being simultaneously conveyed to the Southeast Land Trust of New Hampshire. The easement shall be conveyed within 12 months of the notification of the award. TPL shall also use grant funds to set up a Stewardship Endowment for monitoring the Property, and will undertake wetland and stream restoration within 12 months of the purchase of the Property.
3. The Trust for Public Land shall work with the Town of Durham to include the following conditions or restrictions in the conservation easement:
 - a. The use of the Property as hereinafter defined to shall be limited to conservation purposes in perpetuity.
 - b. The Property acquired through this project will be monitored on an annual basis in accordance with the *Standards and Practices* for stewardship of the Land Trust Alliance, to ensure that the terms of the Conservation Easement are being adhered to, and to ensure that no actions are occurring which could be detrimental to the conservation attributes of the Property.
 - c. All public access shall be in accordance with all federal and state policies of non-discrimination in public accommodation.
4. The Trust for Public Land agrees to place a sign, subject to its acceptability to the Town of Durham and South East Land Trust of New Hampshire, to be provided by DES, at a prominent location on or near the Property. The sign should contain as a minimum the DES logo and the following statement: "This property has been protected with assistance from the New Hampshire Aquatic Resource Mitigation Fund." Should the DES sign be damaged or destroyed, TPL agrees to work with the Department to repair or replace it with identical signage and to share any costs associated with that repair or replacement to the extent reasonably practicable. TPL also agrees that where significant signage is placed at major access points, the ARM Fund program will be identified as a contributing partner to the acquisition of easement interests and the long-term protection of the Property;
5. TPL agrees to return to DES ARM Fund Program any funds if the Trust for Public Land fails to complete the Property acquisition.
6. DES ARM Fund Program agrees that at Closing, TPL may assign some or all of its rights and obligations hereunder to either the Town of Durham or the South East Land Trust of New Hampshire provided that TPL provides DES ARM with notice of said assignment.

TSB 

EXHIBIT B
BUDGET & PAYMENT METHOD

Land Acquisition	\$472,000	Awarded upon closing
Wetlands/stream restoration within 12 months of closing.	\$ 3,000	To be completed
Stewardship Endowment	\$ 25,000	Awarded upon closing
TOTAL DES ARM FUNDS	\$500,000	

**Total amount to be authorized following approval
by the Governor and Executive Council: \$500,000**

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

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

The billing address shall be as follows:

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

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

EXHIBIT C
SPECIAL PROVISIONS

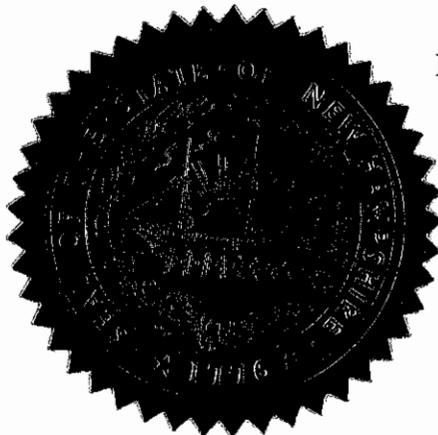
This section is intentionally left blank.

TSB 12/14

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 THE TRUST FOR PUBLIC LAND dba in New Hampshire as TPL-NEW HAMPSHIRE, a(n) California nonprofit corporation, registered to do business in New Hampshire on July 22, 1988. I further certify that it is in good standing as far as this office is concerned, having paid the fees required by law.



In TESTIMONY WHEREOF, I hereto
set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 19th day of April, A.D. 2011

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

William M. Gardner
Secretary of State



TRUSTPUBL

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
6/10/2011

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

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

PRODUCER	Commercial Lines - (707) 769-2900	CONTACT NAME: Gail Dillon / Evie Ferretti
	Wells Fargo Insurance Services USA, Inc. - CA Lic#: 0D08408	PHONE (A/C, No, Ext): 707-769-2900 FAX (A/C, No): 707-773-1868
	1039-A McDowell Boulevard	E-MAIL ADDRESS: Evie.Ferretti@wellsfargo.com
	Petaluma, CA 94954-5507	INSURER(S) AFFORDING COVERAGE
		INSURER A: Federal Insurance Company
		INSURER B:
		INSURER C:
		INSURER D:
		INSURER E:
		INSURER F:
INSURED	The Trust for Public Land	NAIC #
	101 Montgomery Street, Suite 900	20281
	San Francisco, CA 94104	

COVERAGES **CERTIFICATE NUMBER: 2856764** **REVISION NUMBER: See below**

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

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR		35774917	04/01/2011	04/01/2012	EACH OCCURRENCE	\$ 1,000,000
						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000
						MED EXP (Any one person)	\$ 10,000
						PERSONAL & ADV INJURY	\$ 1,000,000
						GENERAL AGGREGATE	\$ 2,000,000
						PRODUCTS - COMP/OP AGG	\$ Included
							\$
	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS HIRED AUTOS					COMBINED SINGLE LIMIT (Ea accident)	\$
						BODILY INJURY (Per person)	\$
						BODILY INJURY (Per accident)	\$
						PROPERTY DAMAGE (Per accident)	\$
							\$
A	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE		79820681	4/1/2011	4/1/2012	EACH OCCURRENCE	\$ 1,000,000
						AGGREGATE	\$ 1,000,000
							\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		71726455	4/1/2011	4/1/2012	<input checked="" type="checkbox"/> WC STATUTORY LIMITS	OTHER
						E.L. EACH ACCIDENT	\$ 1,000,000
						E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
						E.L. DISEASE - POLICY LIMIT	\$ 1,000,000

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

RE: Oyster River/Sprucewood Forest ARM Grant-Land Acquisition/Conservation
Evidence of coverage.

CERTIFICATE HOLDER	CANCELLATION
The State of New Hampshire 29 Hazen Drive Concord, NH 03301	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 

The ACORD name and logo are registered marks of ACORD

© 1988-2010 ACORD CORPORATION. All rights reserved.

ACORD 25 (2010/05)

(This certificate replaces certificate# 2672513 issued on 4/25/2011)

**Attachment A
2010 Aquatic Resource Mitigation Fund Grants**

Applications and Rankings

#	Grant Applicant	Location/Town	Total Score
1	The Trust for Public Lands	Sprucewood Forest, Durham	76
2	Town of Strafford.Bear-Paw Regional Greenways	Evans Mountain, Strafford	71
3	Town of Brentwood, Conservation Commission	Exeter River Water Quality Improvements and Buffer Preservation, Brentwood	67
4	NH Fish & Game Department	Siemon Family Charitable Trust, Milton	55
5	Piscataqua Region Estuaries Partnership	Upper Oyster River Channel & Fish Passage Restoration Project, Barrington	55
6	Rockingham County Conservation District	Odiorne Point State Park Maritime Cobble Beach and Coastal Salt Pond Marsh Restoration Project, Rye	51
7	UNH Stormwater Center/City of Dover	Berry Brook Watershed Restoration through Stream Restoration, Buffer Development, and LID Retrofits, Dover	45
8	New Castle Conservation Commission	River Road Marsh Restoration, New Castle	36
9	City of Rochester	Gonic Dam Removal, Cochecho River Restoration Project, Rochester	25
10	Rye Beach Village District, Eel Pond Natural Resource Council	Eel Pond Watershed Restoration Project, Rye	23
11	Town of Wakefield	Scribner Brook Restoration Project, Wakefield	21

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

Site Selection Committee List

Name	Agency/Organization	Title	Years of Experience
Tim Drew	NHDES, Public Information & Permitting Office	Administrator	27
Melissa Coppola	NH Dept. of Resources & Economic Development	Administrator	9
Nancy Rendall	NH Association of Natural Resource Scientists	Vice President	25
Rick VandePol	NH Association of Conservation Commissions	Sandwich Cons. Comm.	30
Doug Bechtel	The Nature Conservancy	Director Freshwater Science & Conservation	12

10/10/10