

The State of New Hampshire
Department of Environmental Services

Thomas S. Burack, Commissioner

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

September 19, 2012



His Excellency, Governor John H. Lynch
and The Honorable Council
State House
Concord, NH 03301

REQUESTED ACTION

Authorize the Department of Environmental Services to enter into a Grant Agreement with the Cobbetts Pond Improvement Association, Inc. (VC #161552), Windham, NH in the amount of \$77,000 to complete the *Cobbetts Pond Restoration Plan Implementation, Phase II: Farmer Road and Horseshoe Road Areas Project*, effective upon Governor and Council approval through December 31, 2014. 100% Federal Funds.

Funding is available in the account as follows:

	<u>FY 2013</u>
03-44-44-442010-2035-072-500575	\$77,000
Dept. Environmental Services, NPS Restoration Program, Grants-Federal	

EXPLANATION

The Department of Environmental Services issued a Request For Proposals (RFP) for the 2012 Watershed Assistance and Restoration Grants program. The proposal process is a two-part process involving pre-proposals and full proposals. Twenty-one pre-proposals were received. The pre-proposals were ranked based on the criteria included in the RFP: water quality benefits; commitment of local support; clarity of project outcomes; tasks matching goals; and, overall quality of the proposal. The eleven highest ranking organizations were invited to attend an interview with DES staff to further discuss the proposed project. Based on results of the interview and available federal grant funding levels, seven projects were selected to submit comprehensive full project proposals. Based on the review of the full proposals, all seven were selected to receive funding. Please see Attachment B for a list of project rankings and review team members.

The DES Watershed Assistance Section focuses on the reduction of nonpoint source (NPS) pollution. NPS pollution occurs when rainfall, snowmelt, or irrigation water runs over land or through the ground, transporting materials which are then deposited into rivers, lakes, and coastal waters, or introduced into the groundwater. Pollutants can include chemicals, sediments, nutrients, and toxics. These materials can have harmful effects on drinking water supplies, recreation, fisheries, and wildlife. Land development or

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changes in land use can also cause NPS pollution by disrupting the natural hydrology of a water body, increasing impervious surfaces, and contributing to the loss of aquatic habitat. Watershed Assistance programs address NPS pollution by managing land use and drainage on a watershed scale.

Cobbetts Pond is a 302-acre waterbody located in Windham, NH. Much of the watershed is heavily developed with residential neighborhoods, and State transportation corridors including Route 111, and Interstate 93. Routine monitoring shows declining water quality, and the pond has been placed on New Hampshire's 303(d) list of impaired waters with several impairments including dissolved oxygen saturation, total phosphorus, chlorophyll-A, and cyanobacteria. The impairment listing identified stormwater runoff as the likely cause of the impairments. Previous grants awarded to the Cobbetts Pond Improvement Association (CPIA) funded a 2008 grant project which developed a comprehensive watershed restoration plan to identify pollution sources and prioritize actions for restoration. A second grant project in 2009 began installing the recommended storm water improvement best management practices (BMPs) in the Fossa Road sub-watershed.

This proposed Phase 2 Implementation Project will continue implementation of the recommended actions detailed in the restoration plan. The activities will include structural storm water management improvements at four problematic sites identified in the watershed management plan. Project outcomes will be verified by metrics that are specific to each project element, including photo documentation of structural stormwater devices, results of ongoing water quality and BMP monitoring, submittal of regular progress reports and a comprehensive final report detailing all project outcomes.

The total project costs are budgeted at \$128,539. DES will provide \$77,000 (60%) of the project costs through a federal grant and the Cobbetts Pond Improvement Association, Inc. will provide the remaining costs through cash and in-kind services. A budget breakdown is provided in Attachment A. As required by Section 319 of the Clean Water Act, federal funds provided to this project must be matched by a local, state, or private share of at least 40 percent. In the event that federal funds become no longer available, general funds will not be requested to support this program.

The agreement has been approved by the Office of the Attorney General as to form, execution, and content. We respectfully request your approval.


Thomas S. Burack, Commissioner

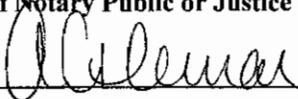
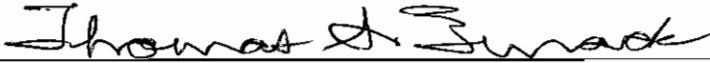
GRANT AGREEMENT

Subject: *Cobbetts Pond Restoration Plan Implementation Phase II: Farmer Road and Horseshoe Road Areas*

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

GENERAL PROVISIONS

1. IDENTIFICATIONS AND DEFINITIONS

1.1 State Agency Name Department of Environmental Services		1.2 State Agency Address 29 Hazen Drive Concord, NH 03301	
1.3 Grantee Name Cobbetts Pond Improvement Association, Inc.		1.4 Grantee Address PO Box 912 Windham, NH 03087	
1.5 Effective Date Upon G&C approval	1.6 Completion Date December 31, 2014	1.7 Audit Date N/A	1.8 Grant Limitation \$77,000
1.9 Grant Officer for State Agency Eric Williams, Watershed Assistance Section Supervisor		1.10 State Agency Telephone Number 603-271-2358	
1.11 	1.12 Derek Monson, VP of Water Quality - CPIA		
1.13 Acknowledgment: State of New Hampshire, County of <u>ROCKINGHAM</u> On <u>08 / 16 / 2012</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 Amanda Coleman  AMANDA COLEMAN, Notary Public My Commission Expires August 10, 2016			
1.14 State Agency Signature(s) 		1.15 Name/Title of State Agency Signor(s) Thomas S. Burack, Commissioner	
1.16 Approval by Attorney General's Office (Form, Substance and Execution) By:  Attorney, On: <u>10/3/2012</u>			
1.17 Approval by the Governor and Council By: _____ On: <u> / /</u>			

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

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

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

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

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

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

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

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

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

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

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

6. **COMPLIANCE BY GRANTEE WITH LAWS AND REGULATIONS.** In connection with the performance of the Project, the Grantee shall comply with all statutes, laws, regulations, and orders of federal, state, county, or municipal authorities which shall impose any obligations or duty upon the Grantee, including the acquisition of any and all necessary permits.

7. **RECORDS AND ACCOUNTS.**

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

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

Grantee in block 1.3 of these general provisions.

8. **PERSONNEL.**

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

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

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

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

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

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

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

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

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

10. **CONDITIONAL NATURE OF AGREEMENT.**

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

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

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

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

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

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

11.2.1 give the Grantee a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date

of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Grantee notice of termination; and

11.2.2 give the Grantee a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the Grant Amount which would otherwise accrue to the grantee during the period from the date of such notice until such time as the State determines that the Grantee has cured the Event of Default shall never be paid to the Grantee; and 11.2.3 set off against any other obligation the State may owe to the Grantee any damages the State suffers by reason of any Event of Default; and

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

12. TERMINATION.

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

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

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

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

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

RECEIVED

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DEPARTMENT OF ENVIRONMENTAL SERVICES

Exhibit A
Scope of Services

The Cobbetts Pond Improvement Association, Inc. (CPIA) shall perform the following described in the detailed proposal titled *Cobbetts Pond Restoration Plan Implementation Phase II: Farmer Road and Horseshoe Road Areas*, submitted by the CPIA, dated November 10, 2011:

Objective 1: Design of Horseshoe and Farmer Rd Stormwater Project

- Task 1: Select consultant(s) and draft for DES review and approval a scope of services and contract agreement between CPIA and the consultant. Submit contract to DES to review and approval prior to signature.
- Task 2: Coordinate with selected consultant, Town of Windham (TOW), NHDES to facilitate on-site meeting to discuss conceptual design plans. The intent of this project is to design sites 5a, 5b, 10 and 11. Any project modification proposals will need to be submitted to DES for review and approval prior to proceeding with conceptual design plans.
- Task 3: Submit conceptual design plans to CPIA/ DES for review and comment. This shall include pollutant load reduction estimates for each BMP location.
- Task 4: Secure Town approval for BMP construction locations, and permitting.
- Task 5: Submit final design plans to CPIA and DES for review, comment and approval.

Objective 2: Construction of Horseshoe and Farmer Rd Stormwater Project

- Task 6: Conduct meeting with TOW, to determine town contribution of labor, and conduct pre-construction meeting.
- Task 7: For contractor built BMPs, conduct meeting (s) to determine process for preparing bid documentation.
- Task 8: Prepare bid documents. Provide documents to DES for review and approval prior to bid release to public.
- Task 9: Send out and review project bids.
- Task 10: Conduct contractor interviews and selection, and develop contract agreement. Provide contract to DES for review and approval prior to signature.
- Task 11: Coordinate with the selected contractor, homeowner or Town to facilitate project construction.
- Task 12: Provide project construction oversight by an on-site engineer.
- Task 13: Complete photo documentation following DES approved Standard Operating Procedures (SOP)
- Task 14: Coordinate with the consultant to finalize pollutant load reduction documentation for BMPs as per approved quality assurance document.
- Task 15: Prepare and submit an Operation and Maintenance (O & M) Plan to document O & M activities including, but not limited to: a description of O & M activities to be performed on management practices; schedule of activities to be performed; responsible parties; and record keeping and retention.

Objective 3: Griffin Beach Bioretention Cell Construction

- Task 16: Coordinate with the selected contractor to construct Griffin Park Bioretention per approved plan set and submit Operation and Maintenance Plan.
- Task 17: Provide SSPP and determine pollutant load reduction estimate for the Griffin Park Bioretention Cell.

Objective 4: Homeowner BMP Construction

- Task 18: Complete private property BMP evaluation and selection using the New Hampshire Homeowner's Guide to Storm Water Management
- Task 19: Hire appraiser to determine land value for areas where homeowner BMPs will be sited.
- Task 20: Coordinate with the selected contractor to construct homeowner BMPs and submit an Operation and Maintenance (O & M) Plan. The O&M plan shall document O & M activities including, but not limited to: a description of O & M activities to be performed on management practices; schedule of activities to be

Grantee Initials DSM
Date 9-10

performed; responsible parties; and record keeping and retention.

Task 21: Provide SSPP and evaluate site using the NH Residential Loading Model and determine pollutant load reductions.

Objective 5: BMP Maintenance (Fossa Road subwatershed, Griffin Park)

Task 22: CPIA to conduct annual site evaluation to determine if any maintenance of the Fossa Rd. and Griffin Park BMPs is necessary.

Task 23: Coordinate with the selected contractor to complete maintenance of Fossa Rd. and Griffin Park BMP's as necessary.

Objective 6: Milfoil removal to reduce in-lake nutrients

Task 24: Submit Quality Assurance Plan to DES for review and approval which details how milfoil and phosphorus removal estimates will be calculated.

Task 25: Coordinate with a contractor to complete Cobbetts Pond's annual milfoil removal. Provide phosphorus load reduction estimate based upon volume of milfoil removed.

Objective 7: Cobbetts Pond Water quality monitoring

Task 26: Complete monthly VLAP and cyanobacteria sampling according to NHDES Volunteer Lake Assessment Quality Assurance Project Plan.

Objective 8: Cobbetts Pond Public Outreach and Education.

Task 27: Develop and publish solicitation documents in compliance with State and Federal procurement requirements for selection of an education and outreach consultant. All documents must be reviewed and approved by DES prior to publication or execution.

Task 28: Enter into subcontract for completion of public outreach activities. The primary purpose will be to reduce NPS pollution from the watershed and improve the Pond's water quality. This will include methods for residents to reduce their "stormwater footprint" and phosphorus loading to Cobbetts Pond. All documents must be reviewed and approved by DES prior to publication or execution.

Objective 9: Planning for next 2013/2014 implementation

Task 29: Plan for future BMP implementation in 2013/2014. This includes preparation of engineering evaluations, cost estimation, coordination with Town officials and related analyses as needed to plan and prepare documentation required for next phase of WMP implementation.

Objective 10: Project Administration, grant Semi-annual and final reports

Task 30: Submit electronic semi-annual reports documenting all work performed on the project at the end of each June and December of the project period. The semi-annual reports will include a Pollutants Controlled Report when structural BMPs have been implemented during the reporting period.

Task 31: Submit a comprehensive final report in both electronic and hard-copy to DES on or before the project completion date. The final report shall include load reduction estimates, photo-documentation of installed system components, and comply with the DES and EPA requirements found in the final report guidance documents.

Additional Requirements of the Agreement

Quality Assurance

All project activities which are to be guided by a Quality Assurance document such as a Quality Assurance Project Plan (QAPP) or Site Specific Project Plan (SSPP) must **not** begin prior to DES/EPA approval of that QA document. In the event that sampling, modeling, or other such activities precede QA document approval, the data

will not be considered valid, and the grantee will forfeit the ability to receive payment for those activities.

Outreach Materials

All materials produced for public distribution shall be reviewed and approved by DES prior to distribution and shall include the DES logo and the following citation: "Funding for this project was provided in part by a Watershed Assistance Grant from the NH Department of Environmental Services with Clean Water Act Section 319 funds from the U.S. Environmental Protection Agency".

Operations and Maintenance

Management practices implemented as agreed upon in the scope of services of this grant agreement and with grant funds or matching funds under a Section 319 Watershed Grant, shall be properly operated and maintained for the intended purposes during the life span of the project. The life span of a project shall be determined by the Grantee, tailored to the types of practices expected to be funded in this project, and agreed upon by DES. The Grantee shall provide DES with an engineering estimate of the design life of the best management practice(s) (BMPs), or in the case of small-scale BMPs which do not have a design life estimation completed by an engineer, the design life of that practice shall be estimated to be ten years.

Operation includes the administration, management, and performance of non-maintenance actions needed to keep the completed practice safe and functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail. The Grantee shall obtain written operation and maintenance (O&M) agreements from landowners of properties where BMPs are implemented. The Grantee shall assure that any O&M agreement or sub-award of Section 319 funds shall likewise include the same O&M requirements and conditions as this Agreement. Additionally, both EPA and DES reserve the right to periodically inspect a practice during the life span of the project to ensure that operation and maintenance are occurring. If it is determined that the participants are not operating and maintaining these practices in an appropriate manner, DES may request a refund for that practice supported by the grant.

Exhibit B
Contract Price and Method of Payment

No Tasks shall be eligible for payment until the Grantee receives written notification from DES that project work may begin. All services shall be performed to the satisfaction of DES before payment is made. All payments shall be made upon receipt and approval of stated outputs and upon receipt of an associated invoice. Documentation of match costs (including the value of volunteer labor) shall be provided with each payment request. The final invoice shall include total match cost documentation of \$51,539. Payment shall be made in accordance with the following schedule based upon completion of specific tasks described in Exhibit A:

Upon completion and DES approval of Tasks 1 through 3	\$2,000
Upon completion and DES approval of Tasks 4 and 5	\$11,000
Upon completion and DES approval of Tasks 6 through 10	\$5,700
Upon completion and DES approval of Tasks 11 and 12	\$52,000
<i>Partial payment may be made at the discretion of DES, contingent upon work completed and fulfillment of 40% match requirement.</i>	
Upon completion and DES approval of Tasks 13 through 15	\$4,300
Upon completion and DES approval of Tasks 16 through 31	<u>\$2,000</u>
Total	\$77,000

Funding is provided through a Watershed Assistance Grant from the NH Department of Environmental Services with Clean Water Act Section 319 funds from the U.S. Environmental Protection Agency.

Exhibit C
Special Provisions

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

Paragraph 17 of the General Provisions shall not apply to the Grantee, as they have certified that only sub-contractors will be performing Project Work, and that all sub-contractors shall meet the provisions of Paragraph 17.

Federal Funds paid under this agreement are from a Grant Agreement to the State from the US Environmental Protection Agency, Impaired Waters Restoration Grant under CFDA # 66.460. All applicable requirements, regulations, provisions, terms and conditions of this Federal Grant Agreement are hereby adopted in full force and effect to the relationship between this Department and the grantee. Additionally, the Grantee shall comply with the terms of the Federal Funding Accountability and Transparency Act (FFATA) by providing DES with their Data Universal Numbering System (DUNS) number.

In addition to the General Provisions, the following provisions as required by federal regulations apply to this Agreement

In addition to the General Provisions of Paragraph 1 through 23, the following provisions as required by federal regulations apply to this Agreement:

I) ***Nondiscrimination.*** The Grantee shall comply with 40 CFR part 7 which prohibits discrimination under any program or activity receiving EPA assistance on the basis of race, color, national origin, or gender, and 40 CFR part 12 which prohibits discrimination based on handicap.

II) ***Financial management.*** The Grantee shall comply with 40 CFR 31.20 and the specific standards regarding financial reporting, accounting records, internal control, budget control, allowable cost, source documentation, and cash management outlined therein.

III) ***Allowable costs.*** All costs charged to this Agreement shall be eligible, necessary, and reasonable for performing the tasks outlined in the approved project scope of services. The costs, including match, shall be incurred during the period of performance of the project, and shall be allowable, meaning that the costs must conform to specific federal requirements detailed in 40 CFR part 31.22; and OMB Circular A-87.

IV) ***Matching funds.*** All matching funds contributed by the Grantee shall conform to the same laws, regulations, and grant conditions as the federal funds in the Agreement and referenced in 40 CFR 31.24 and OMB Circular A-87.

V) ***Property Management.*** The Grantee shall comply with the property management and procedures detailed in 40 CFR 31.32 and 40 CFR 31.33.

VI) ***Debarment and Suspension.*** The grantee shall comply with 40 CFR part 31.35. By signing and submitting the Agreement, the Grantee certifies that they have not been debarred or suspended by a government agency. The Grantee will not make any award or permit any award (subgrant or subcontract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

VII) **Procurement.** When purchasing goods or services with grant or match funds, the Grantee shall comply with procurement regulations as detailed in 40 CFR 31.36 which include procurement standards, competition, methods of procurement, contract cost and price, agency review, bonding requirements, and contract provisions.

- a. Assignment of Subcontracts. The Contractor shall not assign, or otherwise transfer any interest in this contract without the prior written consent of the Contract Owner and the State.
- b. Subcontracts. The Contractor shall:
 - i. Ensure that every subcontract includes provisions for compliance with Federal and State standards applicable to the contract;
 - ii. Ensure that every subcontract includes any clauses required by Federal statute and executive orders and their implementing regulations; and
 - iii. Ensure that subcontractors are aware of requirements imposed upon them by State and Federal statutes and regulations.
- c. Payment to consultants. Grant payments to individual consultants retained by the Contractor (excluding overhead) are limited to the maximum daily rate for Level IV of the Executive Schedule (formerly GS-18). Maximum daily rates may change annually or more often. As of January 1, 2010, the limit is approximately \$598 per day and \$74.75 per hour. This amount does not include transportation and subsistence costs, in accordance with normal travel reimbursement practices. The Contractor may pay consultants more than this amount, but the excess amount shall not be paid with federal grant funds. Contracts with firms for services which are awarded using the procurement requirements in 40 CFR 31.36 are not affected by this limitation.

VIII) **Participation by Disadvantaged Business Enterprises.** The Grantee shall comply with the terms of 40 CFR Part 33 Subpart C, which requires that organizations conduct a competitive procurement process making a good faith effort to utilize goods and services provided by disadvantaged businesses.

IX) **New Restrictions on Lobbying: Interim Final Rule.** The Grantee shall comply with the terms of 40 CFR part 34 and OMB Circular A-87 which prohibit the use of federal grant funds to influence (or attempt to influence) a federal employee, and requires the submission of Standard Form LLL ("Disclosure of Lobbying Activities") if *nonfederal* funds have been used to influence (or attempt to influence) a federal employee.

X) **Drug-Free Workplace.** The Grantee shall comply with the terms of 40 CFR Part 36 which require that as a condition of the Agreement, certification that they maintain a drug-free workplace. By signing and submitting the Agreement, the Grantee certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity associated with the Agreement.

XI) **Bonding requirements.** For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold (currently \$100,000), the minimum requirements shall be as follows:

- a. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

- XII) **Additional contract provisions.** The Grantee shall comply with the following as applicable:
- a. Comply with Executive Order 11246 of September 24, 1965, entitled “**Equal Employment Opportunity**,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their subcontractors)
 - b. Comply with the **Copeland “Anti-Kickback” Act** (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subcontracts for construction or repair)
 - c. Comply with Sections 103 and 107 of the **Contract Work Hours and Safety Standards Act** as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subcontractors in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers.)
 - d. Comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Subcontracts in excess of \$100,000)
 - e. Comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

- XIII) **Federal Funding Accountability and Transparency Act (FFATA).** The Grantee shall comply with the terms of the FFATA by providing DES with their Data Universal Numbering System (DUNS) number, and all applicable Executive Compensation Data information as required under the FFATA.

CERTIFICATE of AUTHORITY

I, Greg Reeners, President of the Cobbett's Pond Improvement Association, do hereby certify that:

- (1) I am the duly elected President;
- (2) at the meeting held on July 11, 2012, the CPIA voted to accept DES funds and to enter into a contract with the Department of Environmental Services;
- (3) the CPIA further authorized the VP of Water Quality to execute any documents which may be necessary for this contract;
- (4) 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; and
- (5) the following person has been appointed to and now occupies the office indicated in (3) above:

Derek Monson

IN WITNESS WHEREOF, I have hereunto set my hand as the President of the CPIA, this 15th day of August, 2012.

Greg Reeners, PRESIDENT
Greg Reeners, President

STATE OF NEW HAMPSHIRE

County of Rockingham

On this the 15th day of August, 2012, before me Amanda Coleman the undersigned officer, personally appeared Greg Reeners who acknowledged him/herself to be the President of the CPIA being authorized so to do, executed the foregoing instrument for the purpose therein contained.

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

AMANDA COLEMAN, Notary Public
My Commission Expires August 10, 2016

Amanda Coleman
Amanda Coleman

Commission Expiration Date:

(Seal)

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 COBBETTS POND IMPROVEMENT ASSOCIATION, INC. is a New Hampshire nonprofit corporation formed September 12, 1995. I further certify that it is in good standing as far as this office is concerned, having filed the return(s) and 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 24th day of August A.D. 2012

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

William M. Gardner
Secretary of State

**Attachment A
Budget Estimate**

Budget Item	Grant Funding	Match	Total
Salaries & Wages	\$0.00	\$33,139.00	\$33,139.00
Indirect cost of salary	\$0.00	\$0.00	\$0.00
Supplies	\$0.00	\$0.00	\$0.00
Travel and Training	\$0.00	\$0.00	\$0.00
Contractual	\$26,300.00	\$3,400.00	\$29,700.00
Constuction	\$50,700.00	\$15,000.00	\$65,700.00
Subtotals	\$77,000.00	\$51,539.00	\$128,539.00
Total Project Cost			\$128,539.00

Attachment B: Watershed Assistance and Restoration Grant Ranking

Organization	Project Name	Reviewer A	Reviewer B	Reviewer C	Reviewer D	Reviewer E	Reviewer F	Reviewer G	Reviewer H	Reviewer I	Reviewer J	Proposed Score	Interview Score	Total Score	Rank
Acorn Watershed Watersheds Alliance	Salmon Fall, Hawkwater Watershed - Bead Management Implementation Project - Phase 2	93	96	90	81	93	94	86	94	77	804	1887	2491	1	
Cobbetts Pond Improvement Association	Cobbett's Pond Restoration Plan Implementation II - Farmer Rd. & Horsehoe Rd. Area	90	86	77	72	69	89	73	73	54	683	1664	2347	2	
Mirror Lake Protective Association	Mirror Lake Watershed - Stormwater Improvement Implementation	90	84	69	79	71	88	74	86	84	725	1421	2146	3	
Newfound Lake Region Association	Newfound River Watershed Management Plan - Implementation Phase II	82	78	82	75	88	79	67	78	86	715	1388	2073	4	
UNH Stormwater Center	Great Bay Municipal Bioretention Program	90	87	66	79	84	75	69	63	69	682	1321	2003	5	
Rye, Town of	Implementation of the Parsons Creek Restoration Project - Phase 1	83	71	66	80	80	82	70	81	92	705	1200	1905	6	
UNH Technology Transfer Center	Collage Brook Watershed Restoration: Chloride Reduction	81	70	74	77	68	83	61	59	59	632	1211	1943	7	
Lakes Region Planning Commission	A Watershed Restoration Plan for Moultonborough Bay (Ishel - Phase 1	71	85	50	51	82	68	70	78	71	626	1182	1808	Not Selected	
Granite Lake Association	Granite Lake Watershed Management Plan - Phase 1 Implementation	88	84	71	76	58	85	71	72	74	679	893	1572	Not Selected	
Swampscott, Town of	Perkins Pond Watershed Planning and Stormwater Management Project	82	70	47	75	70	75	64	77	69	629	843	1472	Not Selected	
Exeter, Town of	West Sida Drive LID Stormwater Improvement Feasibility Analysis Phase 1	96	64	86	77	80	83	59	58	63	656	591	1247	Not Selected	
Town of Meredith	Lake Watkinson Subwatershed Management Plan: Towards the Creation of a Lake Winnepesaukee Watershed Management Plan	90	57	60	69	68	79	54	78	72	627	827	627	Not Selected	
Manchester Water Department	Lake Massabesic Watershed Management Program Update	88	68	30	73	61	84	62	64	78	608	608	608	Not Selected	
South East Watershed Alliance	Nonpoint nutrient reduction in the lower Exeter / Swampscott watershed	85	71	60	75	55	71	57	66	64	604	604	604	Not Selected	
Green Mountain Conservancy Group	Ossipee Watershed Master Plan - Phase 1 of III.	59	68	66	75	67	64	58	66	70	593	593	593	Not Selected	
Silver Lake Association	Mitigation of Run-Off from Breed Road into Silver Lake, Harrisville, NH	86	61	47	73	43	68	61	41	72	552	552	552	Not Selected	
The Nature Conservancy	Oyster Reef Restoration for Reducing Nitrogen in the Squamscott River at Great Bay Estuary	38	64	64	74	63	47	48	51	71	541	541	541	Not Selected	
Ashland, Town of	Squam River Watershed Plan	50	58	44	60	47	73	56	58	72	518	518	518	Not Selected	
University of New Hampshire	Mitigation of dissolved oxygen and chlorophyll impairments and sequestration and extension of nitrogen in the tidal portion of the Oyster River using filtration capacity of native oysters	58	64	56	75	62	50	57	50	42	514	514	514	Not Selected	
Canaan, Town of	Canaan Street Lake Watershed Protection	81	75	42	40	38	54	47	48	25	451	451	451	Not Selected	
Nortingham, Town of	Parkusksaway Lake - Fernald Brook Area Remediation Plan	60	30	22	30	36	32	44	28	10	292	292	292	Not Selected	

Review Team Members

Name	Qualifications
Andy Chapman	11 years experience, Clean Lakes Program Coordinator, aquatic biological project management, and coordination, lakes management expertise
Steve Lundy	16 years experience, Merrimack Watershed Coordinator, aquatic biologist, project management, Merrimack watershed expertise
Rob Livingston	23 years experience, Nonpoint source pollution specialist, BMP, pollution source investigation expertise, Field training of local municipalities in watershed pollution source tracking and identification
Jeff Marcoux	7 years experience, Watershed Assistance Specialist, grant and contract expertise
Jillien McCarthy	7 years experience, Nonpoint source pollution specialist, quality assurance, and stormwater BMP expertise
Barbara McMillin	12 years Watershed Assistance Outreach Coordinator, outreach and education expertise
Sally Scule	13 years experience, Coastal Watershed Coordinator, project management, Coastal watershed expertise
Wendy Waslkin	20+ years experience, Watershed Coordinator, budgeting, planning expertise
Eric Williams	23 years experience, Watershed Assistance Station Supervisor, environmental planner, general project management expertise, WAS section and 518 program supervisor.