

Order 100-14/15

Passage: 9-0 on 12/15/2014

MICHAEL F. BRENNAN (MAYOR)  
KEVIN J. DONOGHUE (1)  
DAVID A. MARSHALL (2)  
EDWARD J. SUSLOVIC (3)  
JUSTIN COSTA (4)

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

Effective 12/25/2014

DAVID H. BRENERMAN (5)  
JILL C. DUSON (A/L)  
JON HINCK (A/L)  
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER GRANTING A \$30,000.00 LAND BANK FUND GRANT TO PEAKS  
ISLAND LAND PRESERVE FOR ACQUISITION  
OF THE ICE POND PROPERTY**

**ORDERED,** that a Land Bank Fund Grant Agreement awarding a Land Bank Fund grant to Peaks Island Land Preserve in the amount of Thirty Thousand Dollars (\$30,000.00) is hereby approved in substantially the form attached hereto; and

**BE IT FURTHER ORDERED,** that the City Council hereby authorizes the Acting City Manager to execute said document and any other related documents necessary or convenient to carry out the intent of said document and this Order.

**LAND BANK GRANT AGREEMENT  
BY AND BETWEEN  
CITY OF PORTLAND  
AND  
PEAKS ISLAND LAND PRESERVE**

**THIS LAND BANK GRANT AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 2014 by and among the **CITY OF PORTLAND**, a body politic and corporate (hereinafter "City"), and **PEAKS ISLAND LAND PRESERVE**, a Maine nonprofit corporation with a principal place of business in Peaks Island, Maine and a mailing address of P.O. Box 99, Peaks Island, Maine 04108 (hereinafter "Grantee").

**WITNESSETH:**

**WHEREAS**, Grantee has executed a purchase and sale agreement for its purchase of certain real property located on Peaks Island and known as the Ice Pond property (the "Property") for the sum of \$60,000.00 (a description of the Property is attached hereto as Exhibit A); and

**WHEREAS**, the City holds a certain Fire Pond Easement Deed encumbering the Property, which easement grants the City access to the Property for firefighting purposes, as more fully described in that deed, which is recorded in the Cumberland County Registry of Deeds, Book 22982, Page 208 (the "Fire Pond Easement"); and

**WHEREAS**, the dam that impounds the pond on the Property is in need of repair; and

**WHEREAS**, at the September 4, 2014 meeting of the City's Land Bank Commission, Grantee requested, and the Land Bank Commission voted to recommend, that the City approve a grant of Thirty Thousand Dollars (\$30,000.00) from the City's Land Bank Fund to assist Grantee in its acquisition of the Property, in exchange for which the Grantee would grant to a third party a conservation easement on the Property for the benefit of the general public; and

**WHEREAS**, at the November 6, 2014 meeting of the Land Bank Commission, the Grantee proposed, as an alternative to the Land Bank Commission's September 4, 2014 recommendation, that the City and Grantee enter into a cooperative agreement for the purpose of protecting the parties' conservation and open space interests in the Property, the parties' interest in maintaining the dam, and the City's rights under the Fire Pond Easement Deed, and whereby, for example, the City would own the fee interest to the Property subject to a conservation easement that would be held by the Grantee; and

**WHEREAS**, at its November 6, 2014 meeting, the Land Bank Commission affirmed its September 4, 2014 recommendation, but requested that City staff explore

with Grantee the potential terms and conditions of such a cooperative agreement and return to the Land Bank Commission with a recommendation to either affirm the Land Bank Commission's September 4, 2014 recommendation or to enter into such a cooperative agreement with the Grantee; and

**WHEREAS**, by Order No. \_\_\_\_\_, dated \_\_\_\_\_, the City approved Grantee's request for a \$30,000.00 grant, on the condition that the Grantee either grant a conservation easement on the Property to a third party or enter into a cooperative agreement with the City as set forth herein.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. On or before the date of the closing on the purchase of the Property by the Grantee, at which closing the deed for the Property will be delivered by the Seller to the Grantee, the City shall pay to the Grantee the sum of Thirty Thousand Dollars (\$30,000.00) from the City's Land Bank Fund for the Grantee's acquisition of the Property. In the event that said closing does not occur by June 30, 2015, this agreement shall terminate and Grantee shall receive no payment hereunder.
2. The Grantee shall cause the following language to be included in the deed from the current owner of the Property:

The property herein conveyed is being acquired by Grantee, in part, with funds from the City of Portland's (the "City") Land Bank Fund in accordance with the City's ordinances governing the Portland Land Bank Commission and Fund (Portland, Me., Code §§ 2-41 to 2-45) and pursuant to a grant agreement between the City and the Grantee, the terms of which are incorporated herein by reference, said agreement to be recorded. The Property is being acquired by the Grantee in furtherance of the Land Bank Commission's conservation and open space interests. The Property, and any subsequent transfer or sale of the Property, is subject to the provisions of said ordinances, as may be amended.

3. As soon as practicable after the execution of this agreement, City staff shall analyze whether it is in the City's best interests to enter into a cooperative agreement with Grantee that addresses the parties' rights and responsibilities regarding the ownership, use, and maintenance of the Property and shall report its findings and recommendations to the Land Bank Commission within 90 days of the date of this Agreement. In the event that City staff recommend that the parties enter into such an agreement, City staff shall request that the Land Bank Commission vote to recommend the same and present that recommendation to the City Council as soon as practicable.
4. Unless Grantee enters into a cooperative agreement with the City as described herein, Grantee shall, within 180 days after the date of its closing on the purchase of the Property, cause to be recorded in the Cumberland County Registry of Deeds a

conservation easement to be held by Oceanside Conservation Trust of Casco Bay in substantially the form attached hereto as Exhibit B.

5. Other than the conservation easement described herein, Grantee shall not grant easements or rights of way across any portion of the Property without prior written approval from the City.
6. The Grantee warrants and represents that it possesses the legal authority to apply for the grant and to be bound by the terms of this Agreement, and has either marketable title to the Premises or a binding Agreement to acquire the same. A resolution or similar action has been duly adopted by the governing body of the Grantee authorizing the execution of this Agreement, including all understandings and assurances contained herein, and directing and authorizing the person identified as the official representative of the Grantee to act in connection with this Agreement and to provide additional information as may be required by the City.
7. The Grantee warrants and represents that it has the funds and the commitment to finance its cost share of the acquisition of the Property together with all other costs of owning, managing, and maintaining the Property, except the City's Land Bank Fund share stated in this Agreement.
8. The Grantee warrants and represents that it shall use the moneys granted pursuant to this Agreement only for the purpose of the acquisition of the Property as provided for herein.
9. The Grantee shall keep a permanent record, available for public inspection, to clearly document that the Property has been acquired with Land Bank Fund assistance and that it is subject to the City's ordinances governing the Portland Land Bank Commission and Fund (Portland, Me., Code §§ 2-41 to 2-45).
10. The City, its employees, agents and representatives, shall have the right to enter the Premises at all times and in any manner without prior notice to assure compliance with the terms of this Agreement and any applicable laws.
11. In the event of dissolution of the Grantee, at least sixty (60) days prior written notice of such shall be provided to the City. Any transfer and disposal of the Property shall in accordance with City's ordinances governing the Portland Land Bank Commission and Fund (Portland, Me., Code §§ 2-41 to 2-45).
12. Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. The Grantee shall incorporate the terms of this Agreement by reference in any deed or other instrument by which the Grantee sells or transfers any interest (including leasehold interest) in all or a portion of the Property.
13. All costs of recording all documents addressed in this agreement shall be borne by

Grantee.

14. In the event that the Grantee does not meet one or more of its obligations under this Agreement, or in the event of dissolution of the Grantee, the City may exercise, in its sole discretion, any of the following remedies following written notice and thirty (30) days opportunity for the Grantee to cure the default:

- a. the right to a return of the grant funds provided under this agreement;
- b. any other rights or remedies available at law or in equity including, but not limited to, the right to require that the Grantee perform remedial work and transfer title to the Property to the City or a successor designated by the City under such terms and conditions as the court may require. In the event that the City exercises any of the rights available to it upon default of the Grantee, the Grantee shall reimburse the City for its costs of enforcement and collection, including reasonable attorneys' fees.

15. This Agreement may not be amended, in whole or in part, except with the written consent of all of the parties hereto.

16. Any notices or requests for approval required by this Agreement shall be in writing and shall be personally delivered or sent registered or certified mail, return receipt requested, or by other courier providing reliable proof of delivery, to the Grantee and the City at the following addresses, unless one has been notified by the others of a change of address:

**To Grantee:** c/o John Whitman, President  
Peaks Island Land Preserve  
P.O. Box 99  
Peaks Island, Maine 04108

**To City:** c/o Office of Corporation Counsel  
City of Portland  
389 Congress Street  
Portland, Maine 04101

17. Assignment. The Grantee shall not assign any of its rights under this Agreement, for security purposes or otherwise.

18. Miscellaneous. Grantee understands that the grant funds to be supplied by the City represents the City's sole commitment to the cost of the Property. Unless agreed to in the cooperative agreement referenced herein or otherwise, any and all additional costs over and above the City's grant funding shall be borne by the Grantee. This Agreement does not form a partnership or joint venture between the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed on the day and date first above written.

WITNESS:

CITY OF PORTLAND

\_\_\_\_\_

By: \_\_\_\_\_

Sheila Hill-Christian  
Its: Acting City Manager

WITNESS:

PEAKS ISLAND LAND  
PRESERVE

\_\_\_\_\_

By: \_\_\_\_\_

John Whitman  
Its: President

STATE OF MAINE

County of Cumberland

\_\_\_\_\_, 2014

Personally appeared before me the above-named Sheila Hill-Christian, Acting City Manager for the City of Portland, and acknowledged the foregoing instrument is her free act and deed in said capacity, and the free act and deed of the said City of Portland.

\_\_\_\_\_  
Notary Public/Attorney-At-Law

Typed or Printed Name: \_\_\_\_\_

Commission Expires: \_\_\_\_\_

PEAKS ISLAND LAND PRESERVE

By: \_\_\_\_\_  
John Whitman  
Its: President

STATE OF MAINE  
County of Cumberland

\_\_\_\_\_, 2014

Personally appeared before me the above-named John Whitman, President of Peaks Island Land Preserve and acknowledged the foregoing instrument is his free act and deed in said capacity, and the free act and deed of the said Peaks Island Land Preserve.

\_\_\_\_\_  
Notary Public/Attorney-At-Law

Typed or Printed Name: \_\_\_\_\_  
Commission Expires: \_\_\_\_\_