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Robert R. Scott, Commissioner

June 24, 2022

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

REQUESTED ACTIONS

1. Authorize the Department of Environmental Services (NHDES) to enter into a Memorandum of agreement (MOA) with the Winnepesaukee River Basin Program (WRBP) (VC# 177894-B004) Franklin, NH in an amount not to exceed \$459,000 to fund the Pump Station Emergency Generator Replacements project effective upon Governor & Council approval through December 31, 2025. 100% Federal Funds.

Funding is available in the following account:

03-44-44-440010-2476-085-588544

Dept Environmental Services, Interagency Transfer out of Federal Funds

Activity code: 00FRF602WB4401F

FY 2023
\$459,000

2. Authorize the Department of Environmental Services to approve a loan agreement with the Winnepesaukee River Basin Program (WRBP) (VC# 177894-B004) Franklin, NH in an amount not to exceed \$1,071,000 to finance the Pump Station Emergency Generator Replacements project under the provisions of RSA 486:14 and N.H. Code of Admin. Rules Env-Wq 500 et seq., effective upon Governor & Council approval. Funding is 100% CWSRF Repayment Funds.

Funding is available in the following account:

03-44-44-441018-2001-301-500832

Dept. Environmental Services, CWSRF Loan Repayments, Loans

FY 2023
\$1,071,000

EXPLANATION

NHDES selected awardees for the Clean Water Infrastructure projects from pre-applicants who submitted proposed projects to the Clean Water State Revolving Fund (CWSRF) loan program in 2021. Pre-applicants were offered funding for their project utilizing CWSRF ranking criteria, the 2021 CWSRF Project Priority List, and information obtained from a project update solicitation in November 2021.

The WRBP requested a total of \$1,530,000 in funding from NHDES for needed wastewater collection system improvements. NHDES, through the American Rescue Plan Act funds (ARPA) and the Clean Water State Revolving Loan Fund (CWSRF) has offered the Winnepesaukee River Basin Program \$1,530,000 in a combination of grant and loan funds.

The WRBP will use the grant and loan funding to replace ten of the original emergency back-up generators at WRBP pump stations that are past their remaining useful life and are increasingly problematic to repair and maintain.

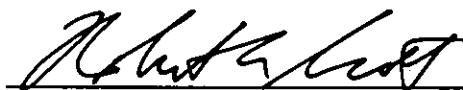
ARPA of 2021 is a \$1.9 trillion economic stimulus bill passed by the 117th United States Congress and signed into law by President Biden on March 11, 2021, to speed up the United States' recovery from the economic health effects of the COVID-19 pandemic and the resultant recession. The Act defines eligible uses of the state and local funding, including responding to public health emergencies, responding to workers performing essential work during the COVID-19 emergency, providing revenue relief to states and making investments in water, sewer, and broadband infrastructure. This is an allowable use of ARP FRF funds under Section 602 (c)(1)(D) to make necessary investments in water, sewer, or broadband infrastructure.

In accordance with the final rule from the US Treasury Department for water and wastewater infrastructure investments, project eligibility is aligned with the Environmental Protection Agency's Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF). This project is an eligible CWSRF infrastructure project.

The Supplemental (final) loan amount will be based upon the total CWSRF funds disbursed and may be less than \$1,071,000. Under federal capitalization grant requirements, this loan includes principal forgiveness of up to \$107,100. Currently, there is \$120,845,590 in available loan funds.

In the event federal funds become no longer available, general funds will not be requested to support this program. This grant agreement has been approved by the Attorney General's Office as to form, substance and execution.

We respectfully request your approval of this item.



Robert R. Scott,
Commissioner

DEPARTMENT OF ENVIRONMENTAL SERVICES
WATER DIVISION
CLEAN WATER STATE REVOLVING FUND

Supplemental information to Governor and Council request for loan agreements under RSA 486:14 and N.H. Admin. Rules Env-Wq 500 for the municipality listed below

This request will change the balance available for loans as follows:

	CWSRF Repayment
Repayment Funds as of June 15, 2022	<u>\$120,845,590</u>
Loan Agreement(s) This Request:	
Winnepesaukee River Basin Program	\$1,071,000
Other Requested Action(s)	
Net Change	<u>\$1,071,000</u>
Balance Available after G & C Approval	<u>\$119,774,590</u>

MEMORANDUM OF AGREEMENT
between the
NH DEPARTMENT OF ENVIRONMENTAL SERVICES
and the
NH DEPARTMENT OF ENVIRONMENTAL SERVICES WINNIPESAUKEE RIVER BASIN PROGRAM
(WRBP)

Title: Pump Station Emergency Generator Replacements

I. Purpose of the Agreement:

This Memorandum of Agreement (MOA) describes the award of federal grant funds to the New Hampshire Department of Environmental Services (NHDES) Winnepesaukee River Basin Program (WRBP) using American Rescue Plan Act of 2021 (ARPA) federal grant funds for improvements related to upgrades to the generators and automatic transfer switches (ATS) at pump stations throughout the collection system.

WRBP will use ARPA grant funds to make improvements to the generators and/or ATS's at ten WRBP pump stations. Work will include the replacement of the generator and ATS at eight pump stations. One pump station (Belmont) will have only the ATS replaced. One pump station (Ellacoya) will only have the generator replaced. One location requires a load analysis completed by an engineer to determine the appropriate generator size. Grant funds may be used for equipment procurement and installation, including electrical, instrumentation and programming work as well as engineering costs related to the upgrades. This is an allowable use of ARPA SRF funds under Section 602 (c)(1)(D) to make necessary investments in water, sewer, or broadband infrastructure.

ARPA of 2021 is a \$1.9 trillion economic stimulus bill passed by the 117th United States Congress and signed into law by President Biden on March 11, 2021, to speed up the United States' recovery from the economic health effects of the COVID-19 pandemic and the resultant recession. The Act defines eligible uses of the state and local funding, including responding to public health emergencies, responding to workers performing essential work during the COVID-19 emergency, providing revenue relief to states and making investments in water, sewer, and broadband infrastructure.

The WRBP has been offered up to \$459,000 of ARPA grant funds and up to \$1,071,000 of Clean Water State Revolving Fund (CWSRF) loan funds to be applied to this project.

II. Timeline of Agreement:

The MOA duration extends from the date of approval by Governor and Executive Council of the State of New Hampshire (Effective Date) through December 31, 2025, unless terminated by either

Grantee Initials

Date

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party, or extended in writing by subsequent agreement of the parties and acceptance by Governor and Council.

For the purpose of this MOA, NHDES and WRBP agree to cooperate as follows:

III. NHDES:

The NHDES agrees to:

1. Provide WRBP with funding as described in Section VI, Funding, Costs, and Payment.
2. Accept, review and approve disbursement requests on a monthly basis, as requested. Each invoice shall be accompanied by a summary of the work completed. All payments are subject to the approval of the NHDES Wastewater Engineering Bureau Grants Management Section Administrator or their designee. NHDES will review disbursement requests to determine that the costs covered by the requests are eligible under N.H. Code of Administrative Rules Env-Wq 504.02 through Env-Wq 504.04.
3. Meet with WRBP and the contracted consultant for the project, as needed, to review the status and progress of the project including project kick-off, periodic status and wrap-up meetings.
4. Review and comment on draft report documents.

IV. Winnepesaukee River Basin Program:

The WRBP agrees to:

1. Submit disbursement requests to NHDES not more frequently than once per calendar month, and at least quarterly, for a total amount not to exceed \$459,000. Invoices shall include documentation of work associated with the funds being requested in accordance with Section VI, Funding, Costs and Payment. The first disbursement request shall be submitted within six months of the Effective Date of this MOA. This ARPA grant is in concert with a CWSRF loan. Each disbursement request will be paid 100% of eligible expenses as ARPA grant funds not to exceed \$459,000.00 followed by CWSRF loan funds.
2. Adhere to the Standard Terms and Conditions and any special conditions of the federal grant for this project, including the cost principals and accounting requirements as referenced in said Standard Terms and Conditions. Said terms and conditions are incorporated in Exhibit A of this agreement.

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Date 6/6/23

3. Comply, and to require all of its contractors to comply, with all applicable state and federal requirements and applicable state and federal laws, including those specific requirements outlined in Exhibit A.
4. Assign appropriate WRBP staff to coordinate this project with NHDES.

V. Mutual Agreement of the Parties:

1. The parties will maintain communication via regular meetings between program staff to ensure collaboration on work is being conducted including a project kick-off meeting, periodic status meetings, and a project wrap-up meeting.
2. In the event that changes in either State or Federal laws or regulations occur which render performance of portions of this MOA illegal, void, impractical or impossible, those responsibilities shall be removed from this MOA but such removal shall not affect the other provisions and obligations contained within the remainder of this MOA.
3. The parties will review this MOA at least once each year to determine whether the MOA should be revised, renewed, or terminated.

VI. Funding, Costs and Payment:

NHDES shall reimburse WRBP for costs associated with the Pump Station Emergency Generator Replacements project on a monthly basis, as requested. In the event this MOA does not become effective, NHDES shall be under no obligation to pay for costs incurred or services performed.

The total grant reimbursement shall not exceed \$459,000 over the course of this MOA. Grant funding will be based on actual project costs incurred. Any unused funds from one fiscal year may be carried over to future years within the MOA period.

The WRBP shall maintain supporting documentation for all costs incurred for a period of five years beyond the end of this MOA for federal reporting and auditing purposes. Supporting documentation includes but is not limited to detailed time sheets which identify hours worked on this project, vendor invoices, and other related supporting documents.

Federal funds paid under this MOA are from the American Rescue Plan Act of 2021 passed through the Secretary of the Treasury to the State of New Hampshire. All applicable requirements, regulations, provisions, terms and conditions of this federal grant, including but not limited to, the Department of Treasury Interim Final Rules under 31 CFR Part 35, are hereby adopted in full force and effect between NHDES and WRBP. Exhibit A, attached to this MOA, provides the special provisions under this agreement. Funding for this project is available in the account: 03-44-44-440010-2476-085-588544.

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VII. Amendments:

This agreement may only be amended by mutual, written agreement of both NHDES and WRBP with the approval of the Governor and Council.


VIII. Termination:

The termination of this Agreement for good cause by any one of the parties or for convenience if all parties agree, with provision for orderly termination of the project. Termination of this Agreement shall not occur until thirty (30) days after a "notice of termination" has been received by the other party. Said notice shall specify the cause for the termination.

Grantee Initials BJP
Date 6/6/22

IN WITNESS WHEREOF, the respective parties have hereunto set their hands on the dates indicated.

Date 6/6/22


Authorized Representative
Winnepesaukee River Basin Program

Date 6-27-22


Robert R. Scott, Commissioner
NH Department of Environmental Services

Reviewed and approved as to form, substance, and execution:

Date 7/5/2022


Assistant Attorney General

Grantee Initials RTW
Date 6/6/22

**EXHIBIT A
STATE OF NEW HAMPSHIRE
STATE AND LOCAL FISCAL RECOVERY FUNDS
FEDERAL REQUIREMENTS**

I. NEW HAMPSHIRE STATE AND LOCAL FISCAL RECOVERY FUNDS FEDERAL REQUIREMENTS

This Agreement is funded under a grant to the State of New Hampshire (State) and subsequently through the Governor's Office for Emergency Relief and Recovery (GOFERR) and New Hampshire Department of Environmental Services (NHDES) as approved by the Governor and Executive Council from the federal government through the Department of Treasury (Treasury) through the American Rescue Plan Act of 2021 (ARPA), with the source of funds being the State and Local Fiscal Recovery Funds (SLFRF) identified under the Catalog of Federal Domestic Assistance (CFDA) number #21.027. The Federal Award Identification Number (FAIN) for this award is SLFRP0145. This grant award is a subaward of SLFRF funds and any and all compliance requirements, as updated by Treasury, for use of SLFRF funds are applicable to the Subrecipient, without further notice. Treasury requirements are published and updated at <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds>.

FEDERAL FUNDING ACCOUNTABILITY and TRANSPARENCY ACT (FFATA). The Subrecipient shall comply with the terms of the FFATA by providing NHDES with their Unique Entity Identifier Unique Entity ID), and all applicable Executive Compensation Data information as required under the FFATA. A Unique Entity ID may be obtained by visiting <https://www.sam.gov>.

SAM REGISTRATION: The Subrecipient must have an active registration with the System for Award Management (SAM). (<https://www.sam.gov>).

GENERALLY ACCEPTED ACCOUNTING PROCEDURES: The Subrecipient, if a governmental entity, shall maintain project accounts in accordance with the Generally Accepted Accounting Principles (GAAP), including standards relating to the reporting of infrastructure assets as issued by the Governmental Accounting Standards Board (GASB). The full text of Governmental Accounting Reporting Standards is available through the GASB website at: <http://www.gasb.org>

RECORDKEEPING REQUIREMENTS: The Subrecipient must maintain records and financial documents for five years after all funds have been expended or returned to the State and/or Treasury. Treasury may request transfer of records of long-term value at the end of such period. Wherever practicable, such records should be collected, transmitted, and stored in open and machine-readable formats.

Subrecipient must agree to provide or make available such records to the State and Treasury upon request, and to the Government Accountability Office ("GAO"), Treasury's Office of Inspector General ("OIG"), and their authorized representative in order to conduct audits or other investigations.

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SINGLE AUDIT REQUIREMENTS: Recipients and subrecipients that expend more than \$750,000 in Federal awards during their fiscal year will be subject to an audit under the Single Audit Act and its implementing regulation at 2 CFR Part 200, Subpart F regarding audit requirements. Recipients and subrecipients may also refer to the Office of Management and Budget (OMB) Compliance Supplements for audits of federal funds and related guidance and the Federal Audit Clearinghouse to see examples and single audit submissions.

CIVIL RIGHTS COMPLIANCE: The sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply, and shall include in every contract or agreement funded with these funds this same requirement to comply, with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.

In order to carry out its enforcement responsibilities under Title VI of the Civil Rights Act, NHDES may collect and review information from subrecipients to ascertain their compliance with the applicable requirements before and after providing financial assistance. Treasury's implementing regulations, 31 CFR part 22, and the Department of Justice (DOJ) regulations, Coordination of Non-discrimination in Federally Assisted Programs, 28 CFR part 42, provide for the collection of data and information from recipients and subrecipients (see 28 CFR 42.406).

PERIOD OF PERFORMANCE: All funds are subject to statutory requirements that they must be used for costs incurred by the recipient during the period that begins on March 3, 2021, and ends on December 31, 2024, and that award funds for the financial obligations incurred by December 31, 2024 must be expended by December 31, 2026.

PROCUREMENT, SUSPENSION AND DEBARMENT: Recipients are responsible for ensuring that any procurement using SLFRF funds, or payments under procurement contracts using such funds are consistent with the procurement standards set forth in the Uniform Guidance at 2 CFR 200.317 through 2 CFR 200.327, as applicable. The Uniform Guidance establishes in 2 CFR 200.319 that all procurement transactions for property or services must be conducted in a manner providing full and open competition, consistent with standards outlined in 2 CFR 200.320, which allows for non-competitive procurements only in circumstances where at least one of the conditions below is true: the item is below the micro-purchase threshold; the item is only available from a single source; the public exigency or emergency will not permit a delay from publicizing a competitive solicitation; or after solicitation of a number of sources, competition is determined inadequate. Subrecipients must

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have and use documented procurement procedures that are consistent with the standards outlined in 2 CFR 200.317 through 2 CFR 200.320.

Subrecipient shall fully comply with Subpart C of 2 C.F.R. Part 180 entitled, "Responsibilities of Participants Regarding Transactions Doing Business With Other Persons," as implemented and supplemented by 2 C.F.R. Part 1532. subrecipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 2 C.F.R. Part 180, entitled "Covered Transactions," and 2 C.F.R. § 1532.220, includes a term or condition requiring compliance with 2 C.F.R. Part 180, Subpart C. subrecipient is responsible for further requiring the inclusion of a similar term and condition in any subsequent lower tier covered transactions. subrecipient acknowledges that failing to disclose the information required under 2 C.F.R. § 180.335 to NHDES may result in the delay or negation of this assistance agreement, or pursuance of administrative remedies, including suspension and debarment. Subrecipients may access the System for Award Management (SAM) exclusion list at <https://sam.gov/SAM/> to determine whether an entity or individual is presently excluded or disqualified.

By entering into this agreement, the subrecipient certifies that the subrecipient is not debarred or suspended. Furthermore, the subrecipient certifies that no part of this contract will be subcontracted to a debarred or suspended person or firm.

DOMESTIC PREFERENCES FOR PROCUREMENTS (2 C.F.R. § 200.322) As appropriate and to the extent consistent with law, to the greatest extent practicable, there is a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

For purposes of this section:

- (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT:

As required by 2 CFR 200.216, subrecipients, are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that

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use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Recipients, Subrecipients, and borrowers also may not use federal funds to purchase:

- a. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- b. Telecommunications or video surveillance services provided by such entities or using such equipment.
- c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Consistent with 2 CFR 200.471, costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, and cloud servers are allowable except for the following circumstances:

- a. Obligating or expending funds for covered telecommunications and video surveillance services or equipment or services as described in 2 CFR 200.216 to:
 - (1) Procure or obtain, extend or renew a contract to procure or obtain;
 - (2) Enter into a contract (or extend or renew a contract) to procure; or
 - (3) Obtain the equipment, services, or systems. Certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the System for Award Management exclusion list which can be found at <https://www.sam.gov/SAM/pages/public/index.jsf>

REPORTING REQUIREMENTS: For all projects listed under the Water and Sewer Expenditure Categories (see Table below), detailed project-level information is required.

5: Infrastructure
5.1 Clean Water: Centralized Wastewater Treatment
5.2 Clean Water: Centralized Wastewater Collection and Conveyance

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5.3	Clean Water: Decentralized Wastewater
5.4	Clean Water: Combined Sewer Overflows
5.5	Clean Water: Other Sewer Infrastructure
5.6	Clean Water: Stormwater
5.7	Clean Water: Energy Conservation
5.8	Clean Water: Water Conservation
5.9	Clean Water: Nonpoint Source
5.10	Drinking water: Treatment
5.11	Drinking water: Transmission & Distribution
5.12	Drinking water: Transmission & Distribution: Lead Remediation
5.13	Drinking water: Source
5.14	Drinking water: Storage
5.15	Drinking water: Other water infrastructure

Definitions for water and sewer Expenditure Categories can be found in the EPA's handbooks. For "clean water" expenditure category definitions, please see: <https://www.epa.gov/sites/production/files/2018-03/documents/cwdefinitions.pdf>. For "drinking water" expenditure category definitions, please see: <https://www.epa.gov/dwsrf/drinking-water-state-revolving-fund-national-information-management-system-reports>.

All Clean Water and Drinking Water infrastructure projects:

- Projected/actual construction start date (month/year)
- Projected/actual initiation of operations date (month/year)
- Location (for broadband, geospatial location data)

For water and sewer projects:

- National Pollutant Discharge Elimination System (NPDES) Permit Number (if applicable; for projects aligned with the Clean Water State Revolving Fund)
- Public Water System (PWS) ID number (if applicable; for projects aligned with the Drinking Water State Revolving Fund)

II. FEDERAL REQUIREMENTS APPLICABLE TO ARPA INFRASTRUCTURE PROJECTS OVER \$10M

For projects over \$10 million (based on expected total cost) a recipient shall provide a certification that, for the relevant project, all laborers and mechanics employed by contractors and subcontractors in the performance of such project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed. All contracts and subcontracts for the construction of treatment works shall insert in full in any contract the standard Davis-Bacon contract clause as specified by 29 CFR §5.5(a).

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III. OTHER SPECIAL PROVISIONS

- A. In addition to the above special provisions, the following provisions as required by federal regulations apply to this Agreement:
1. **Financial management.** *The Contractor shall comply with 2 CFR part 200 Subpart D and the specific standards regarding financial reporting, accounting records, internal control, budget control, allowable cost, source documentation, and cash management outlined therein.*
 2. **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 2 CFR part 200 Subpart E.*
 3. **Property Management.** *The Contractor shall comply with the property management and procedures detailed in 2 CFR Part 200 Subpart D.*
 4. **Restrictions on Lobbying.** *The Contractor shall comply with the terms of 15 CFR part 28 and 2 CFR Part 200 Subpart E which prohibit the use of federal Contract 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.*
 5. **Drug-Free Workplace.** *The Contractor shall comply with the terms of 2 CFR part 1329 which require that as a condition of the Agreement, certification that they maintain a drug-free workplace. By signing and submitting the Agreement, the Contractor 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.*
 6. **Protection for Whistleblowers.** *The Contractor shall comply with the terms of 41 U.S.C. §471 regarding Whistleblower protections. As described in 41 USC §471 "an employee of a contractor, subcontractor, grantee, or subgrantee or personal services contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (2) information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant."*

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STATE OF NEW HAMPSHIRE
WATER POLLUTION CONTROL REVOLVING LOAN FUND PROGRAM
WINNIPESAUKEE RIVER BASIN PROGRAM, NEW HAMPSHIRE
(Project No. CS-334203-13)

ORIGINAL LOAN AGREEMENT

I. This Agreement is between the State of New Hampshire Water Pollution Control Revolving Loan Fund Program (State) and the **Winnepesaukee River Basin Program, New Hampshire** (Loan Recipient) in accordance with RSA 486:14 and New Hampshire Code of Administrative Rules Env-Wq 500 (Rules) for the purpose of financing, to the extent of the aggregate amount of funds transferred (Disbursements) to the Loan Recipient made hereunder, the **Pump Station Emergency Generator Replacements** (Project) now being undertaken by the Loan Recipient. The Project is described in Exhibit A. The Loan Recipient shall abide by all of the requirements of RSA 486:14 and the Rules.

II. The State agrees to loan to the Loan Recipient, and the Loan Recipient agrees to repay to the State, in accordance with the terms of this Agreement, the principal sum of **One Million, Seventy-One Thousand and 00/100 Dollars (\$1,071,000)** (Principal Sum) or such lesser amount as shall equal the aggregate of Disbursements made hereunder by the State to the Loan Recipient. Pursuant to federal capitalization grant requirements and/or other allowances, additional financial assistance in the form of principal forgiveness will be applied to the loan upon the initial repayment as follows: A portion of the principal sum, not to exceed **One Hundred Seven Thousand, One Hundred and 00/100 Dollars (\$107,100)** or **10%** of the total of Disbursements, whichever is less, provided the project is determined to be complete by the State. In addition to the principal sum, the Loan Recipient agrees to pay the applicable interest accrued as described in Paragraphs III, V, and VII. Federal financial assistance provided through the Water Pollution Control Revolving

1 Loan Fund Program (CFDA #66.458) may comprise all or a portion of the Principal Sum. Any
2 Disbursement or other payment from the State to the Loan Recipient is contingent upon the
3 availability of funds.

4
5 III. Disbursements shall be made on a periodic basis, as requested by the Loan Recipient, but not
6 more frequently than monthly, subject to the approval of the amount of each Disbursement by the
7 State. The State shall approve the amount requested if it determines that the costs covered by the
8 request are eligible under Env-Wq 504.02 through Env-Wq 504.04, as applicable. Interest on each
9 Disbursement shall accrue on the outstanding principal balance from the date of the Disbursement
10 at the rate of 1% per annum computed on the basis of 30-day months and 360-day years until the
11 date of Substantial Completion of the Project or the date of Scheduled Completion, whichever is
12 earlier. At the option of the Loan Recipient, such interest may be paid (1) prior to the
13 commencement of Loan repayment, (2) at the time of the first Loan repayment, or (3) by adding
14 the charges to the to the outstanding principal Loan balance so long as the Loan Recipient's
15 authority to borrow is not exceeded.

16
17 IV. The aggregate of the Disbursements shall be consolidated by a Promissory Note (Note) of the
18 Loan Recipient in a Supplemental Loan Agreement issued under and in accordance with the
19 applicable provisions of this Agreement and the Municipal Finance Act, RSA 33, as amended and
20 supplemented, including the provisions of RSA 486:14. The Note shall be substantially in the
21 form of Exhibit B.

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23 V. The interest rate applicable to the Note will be **2.0000%**, as determined in accordance with
24 RSA 486:14 and Env-Wq 500 et seq.

1 VI. The Loan Recipient hereby authorizes the State to compute the payments of principal and
2 interest on the Note. The principal shall be paid in full within **20 years** from the date of the Note.
3 Note payments shall commence within one year of the Substantial Completion date of the Project
4 or the Scheduled Completion date of the project, whichever is earlier. The Scheduled Completion
5 date is hereby determined to be **September 2, 2025**; however, should the project experience an
6 excusable delay, an extension may be granted by the Commissioner of the Department of
7 Environmental Services upon request in writing by the Loan Recipient. In no event shall Note
8 payments commence later than ten years from the effective date of this Agreement.

9
10 VII. The Loan Recipient reserves the right to prepay, at any time and without penalty, all or any
11 part of the outstanding principal or interest of the Note.

12
13 VIII. In the event of a default in the full and timely remittance of any Note payment, any State
14 Aid Grant funds payable to the Loan Recipient under RSA 486:1 may be offset against and applied
15 to the payment of any obligations that are due hereunder. The Loan Recipient agrees to be liable
16 for all costs of collection, legal expenses, and attorney's fees incurred or paid by the State in
17 enforcing this Agreement or in collecting any delinquent payments due hereunder.

18
19 IX. No delay or omission on the part of the State in exercising any right hereunder shall operate
20 as a waiver of such right or of any other right under this Agreement. A waiver on any one occasion
21 shall not be construed as bar to any right and/or remedy on any future occasion.

22
23 X. The Loan Recipient agrees to comply, and to require all of its contractors to comply, with all
24 applicable state and federal requirements contained in the Rules and applicable state and federal
25 laws, including those specific requirements outlined in Exhibit C.

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XI. The effective date of this Agreement shall be the date of its approval by the Governor and Executive Council. This Agreement may be amended, waived, or discharged only by a written instrument signed by the parties hereto and only after approval of such amendment, waiver, or discharge by the Governor and Executive Council.

XII. 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. The parties hereto do not intend to benefit any third parties and, consequently, the Agreement shall not be construed to confer any such benefit.

XIII. The Loan Recipient acknowledges that by accepting the Loan it will be a sub-recipient of federal financial assistance and, as such, subject to requirements of the federal Single Audit Act and subsequent amendments (SAA). The Loan Recipient further acknowledges that, if the Loan Recipient expends more than the required threshold in federal financial assistance from all sources in any fiscal year, it must perform an SAA audit in accordance with the requirements of Office of Management and Budget Circular A-133. In that event, the Loan Recipient shall provide the State with a copy of the SAA audit report within nine months of the end of the audit period.

XIV. 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 thereto. Nothing herein shall be construed as a waiver of sovereign immunity, such immunity being hereby specifically reserved.

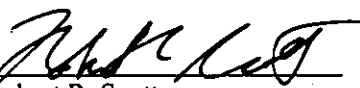
1 STATE OF NEW HAMPSHIRE

WINNIPESAUKEE RIVER BASIN

2

PROGRAM, NEW HAMPSHIRE

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By:  6/27/22
Date
Robert R. Scott
Commissioner,
Department of Environmental Services

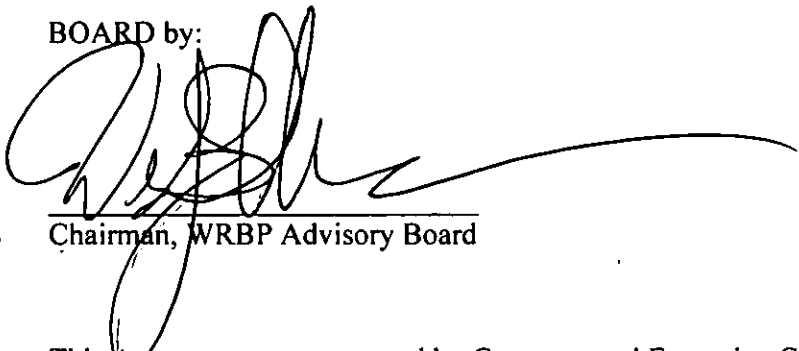
By:  6/7/22
Date
Authorized Representative

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In support and concurrence WINNIPESAUKEE RIVER BASIN PROGRAM ADVISORY

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BOARD by:



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Chairman, WRBP Advisory Board

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This Agreement was approved by Governor and Executive Council on _____, 2022

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as Item No. ____.

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EXHIBIT A
STATE OF NEW HAMPSHIRE
WATER POLLUTION CONTROL REVOLVING LOAN FUND PROGRAM
PROJECT DESCRIPTION

The **Winnepesaukee River Basin Program** has applied for a Loan to be used for the **Pump Station Emergency Generator Replacements** project. This project replaces ten of the original emergency back-up generators at WRBP pump stations that are past their remaining useful life and are increasingly problematic to repair and maintain.

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EXHIBIT B
STATE OF NEW HAMPSHIRE
WATER POLLUTION CONTROL REVOLVING LOAN FUND PROGRAM
PROMISSORY NOTE AND REPAYMENT SCHEDULE

The Winnepesaukee River Basin Program, New Hampshire (Loan Recipient) promises to pay to the Treasurer of the State of New Hampshire the principal sum of **One Million, Seventy-One Thousand and 00/100 Dollars (\$1,071,000)** in installments on **September 1** in each year as set forth below, with interest on the entire unpaid balance payable on the first principal payment date and annually, thereafter, at the rate of **2.0000%** per annum, computed on the basis of 30-day months and 360-day years, in the respective years set forth below. A total of up to **One Hundred Seven Thousand, One Hundred and 00/100 Dollars (\$107,100)** of principal will be forgiven, in accordance with this agreement, provided the project is determined to be complete by the State, and will be granted as reflected in the repayment schedule shown below.

REPAYMENT SCHEDULE

<u>Payment Date</u>	<u>Principal Payment</u>	<u>Principal Forgiveness</u>	<u>Interest Payment</u>	<u>Total Payment</u>
2026				
2027				
2028				
2029				
2030				
2031				
2032				
2033				

- 1 2034
- 2 2035
- 3 2036
- 4 2037
- 5 2038
- 6 2039
- 7 2040
- 8 2041
- 9 2042
- 10 2043
- 11 2044
- 12 2045

13 This Promissory Note (Note) is issued under and by virtue of the New Hampshire
14 Municipal Finance Act, an agreement duly entered into by the Loan Recipient and the State of
15 New Hampshire Water Pollution Control Revolving Loan Fund Program, and is issued for the
16 purpose of financing the cost of **Pump Station Emergency Generator Replacements (Project)**
17 as described in Exhibit A of the Supplemental Loan Agreement (Agreement).

18
19 The Loan Recipient reserves the right to prepay, at any time and without penalty, all or
20 any part of the outstanding principal or interest on this Note.

21
22 The terms and provisions of the Agreement are hereby incorporated in and made a part of
23 this Note to the same extent as if said terms and provisions were set forth in full herein.

24

1 It is hereby certified and recited that all acts, conditions, and things required to be done
2 precedent to and in the issuing of this Note have been done, have happened, and have been
3 performed in regular and due form and, for the payment hereof when due, the full faith and credit
4 of the Loan Recipient are hereby irrevocably pledged.

5
6 IN WITNESS whereof the Loan Recipient has caused this Note to be signed by its
7 _____, on the date(s) below.

8
9 **WINNIPESAUKEE RIVER BASIN PROGRAM, NEW HAMPSHIRE** by:

10 Name/Title _____

11 Authorized Representative _____

Date _____

12 (City Seal)

SAMPLE

EXHIBIT C
STATE OF NEW HAMPSHIRE
WATER POLLUTION CONTROL REVOLVING LOAN FUND
PROGRAM

FEDERAL REQUIREMENTS

DUNS NUMBER: The Loan Recipient must obtain a Data Universal Numbering System (DUNS) number. The federal government has adopted the use of DUNS numbers to track how federal grant money is allocated. DUNS numbers identify your organization. A DUNS number may be obtained by visiting <http://fedgov.dnb.com/webform/>.

SIGNAGE: The Loan Recipient must communicate to the public that EPA funds are contributing to the project.

WAGE RATE REQUIREMENTS (DAVIS-BACON): The recipient agrees to include in all agreements to provide assistance for the construction of treatment works carried out in whole or in part with such assistance made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.), or with such assistance made available under section 205(m) of that Act (33 U.S.C. 1285(m)), or both, a term and condition requiring compliance with the requirements of section 513 of that Act (33 U.S.C. 1372) in all procurement contracts and sub-grants, and require that Loan Recipients, procurement contractors and sub-grantees include such a term and condition in subcontracts and other lower tiered transactions. All contracts and subcontracts for the construction of treatment works carried out in whole or in part with assistance made available as stated herein shall insert in full in any contract in excess of \$2,000 the contract clauses as attached hereto entitled "Wage Rate Requirements Under The Clean Water Act, Section 513 and the Safe Drinking Water Act, Section 1450(e)." This term and condition applies to all agreements to provide assistance under the authorities referenced herein, whether in the form of a loan, bond purchase, grant, or

any other vehicle to provide financing for a project, where such agreements are executed on or after October 30, 2009.

AMERICAN IRON AND STEEL (AIS): P.L. 113-76, Consolidated Appropriations Act, 2014 (Act), includes an “American Iron and Steel (AIS) requirement in section 436 that Clean Water State Revolving Loan Fund (CWSRF) Loan Recipients to use iron and steel products that are produced in the United States for projects for construction, alteration, maintenance or repair of a public water system or treatment works if the project is funded through an assistance agreement executed beginning January 17, 2014 (enactment of the Act).

On June 10, 2014, the Water Resources Reform and Development Act amended the Clean Water Act to include permanent requirements for the use of AIS products in CWSRF assistance agreements. Section 608 of the CWA now contains requirements for AIS that repeat those of the Consolidated Appropriations Act, 2014. All CWSRF assistance agreements must comply with Section 608 of the CWA for implementation of the permanent AIS requirement.

GENERALLY ACCEPTED ACCOUNTING PROCEDURES: The Loan Recipient shall maintain project accounts in accordance with the Generally Accepted Accounting Principles (GAAP), including standards relating to the reporting of infrastructure assets as issued by the Governmental Accounting Standards Board (GASB). The full text of Governmental Accounting Reporting Standards is available through the GASB website at: <http://www.gasb.org>

FISCAL SUSTAINABILITY PLAN: On June 10, 2014, the Water Resources Reform and Development Act of 2014 amended the Clean Water Act to include permanent requirements for Loan Recipients to develop and implement a fiscal sustainability plan for the repair, replacement, or expansion of treatment works, or certify that such a plan has been developed and implemented. The fiscal sustainability plan shall include:

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- An inventory of the critical assets that are part of the treatment works,
 - An evaluation of the conditions and performance of inventoried assets or asset groupings,
 - A certification that the Loan Recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan, and
 - A plan for maintaining, repairing, and, as necessary, replacing the treatment works and a plan for funding such activities.

As part of the CWSRF Application Process, the Loan Recipient has certified that they have or will have a Fiscal Sustainability Plan prior to the date of Scheduled Completion or Final Disbursement, whichever date is later.

COST AND EFFECTIVENESS: On June 10, 2014, the Water Resources Reform and Development Act of 2014 amended the Clean Water Act to include permanent requirements for Loan Recipients to conduct a cost and effectiveness analysis for the funded asset that includes at a minimum:

- The study and evaluation of the cost and effectiveness of the processes, materials techniques and technologies for carrying out the proposed project or activity.
- The selection, to the maximum extent practicable, of a project or activity that maximizes the potential for efficient water use, reuse, recapture, and conservation and energy conservation taking into account:
 - The cost of constructing the project or activity,
 - The cost of operation and maintaining the project or activity over the life of the project or activity, and
 - The cost of replacing the project or activity.

NH Code of Administrative Rules Env-Wq 700, Standards of Design and Construction for Sewerage and Wastewater Treatment Facilities, include minimum technical standards and requirements for the planning, design, and construction of sewerage and wastewater treatment facilities that meet the requirements listed above.

The Loan Recipient must certify that it has completed the required cost and effectiveness analysis and that it has selected, to the maximum extent practicable, a project or activity that maximizes the potential for water and energy conservation, as appropriate. This certification should be included with, and will be processed as part of, the design submittal.

DISADVANTAGED BUSINESS ENTERPRISE (DBE): Pursuant to 40 CFR, Section 33.301, the Loan Recipient shall make good faith efforts to utilize small, minority and women's business enterprises whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and shall require that prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained.

SUSPENSION AND DEBARMENT

Recipient shall fully comply with Subpart C of 2 C.F.R. Part 180 entitled, "Responsibilities of Participants Regarding Transactions Doing Business With Other Persons," as implemented and supplemented by 2 C.F.R. Part 1532. Recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 2 C.F.R. Part 180, entitled "Covered Transactions," and 2 C.F.R. § 1532.220, includes a term or condition requiring compliance with 2 C.F.R. Part 180, Subpart C. Recipient is responsible for further requiring the inclusion of a similar term and condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information required under 2 C.F.R. § 180.335 to the EPA office that is entering into the transaction with

the recipient may result in the delay or negation of this assistance agreement, or pursuance of administrative remedies, including suspension and debarment. Recipients may access the System for Award Management (SAM) exclusion list at <https://sam.gov/SAM/> to determine whether an entity or individual is presently excluded or disqualified.

By entering into this agreement, the Loan Recipient certifies that the Loan Recipient is not debarred or suspended. Furthermore, the Loan Recipient certifies that no part of this contract will be subcontracted to a debarred or suspended person or firm.

PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT:

This term and condition implements 2 CFR 200.216 and is effective for obligations and expenditures of EPA financial assistance funding on or after 8/13/2020. As required by 2 CFR 200.216, EPA recipients and subrecipients, including borrowers under EPA funded revolving loan fund programs, are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Recipients, subrecipients, and borrowers also may not use EPA funds to purchase:

- a. For the purpose of public safety, security of government facilities, physical security surveillance of critical Page 4 of 29 infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications

Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company
“(or any subsidiary or affiliate of such entities).

b. Telecommunications or video surveillance services provided by such entities or using such equipment.

c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Consistent with 2 CFR 200.471, costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, and cloud servers are allowable except for the following circumstances:

a. Obligating or expending EPA funds for covered telecommunications and video surveillance services or equipment or services as described in 2 CFR 200.216 to:

- (1) Procure or obtain, extend or renew a contract to procure or obtain;
- (2) Enter into a contract (or extend or renew a contract) to procure; or
- (3) Obtain the equipment, services, or systems. Certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the System for Award Management exclusion list which can be found at <https://www.sam.gov/SAM/pages/public/index.jsf>

SUPER CROSS-CUTTERS:

- Title VI of the Civil Rights Act
- Section 13 of the Federal Water Pollution Control Act Amendments of 1972
- Section 504 of the Rehabilitation Act of 1973
- The Age Discrimination Act of 1975
- Equal Employment Opportunity requirements (Executive Order 11246)