



The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner

JUN 15 '22 AM 10:26 RCVD



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June 10, 2022

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

REQUESTED ACTION

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 \$189,100 to fund the implementation of energy efficiency measures at the Wastewater Treatment Facility (WWTF) effective upon Governor & Council approval through December 31, 2024. 100% Federal Funds.

Funding is available in the following account:

	<u>FY 2022</u>
03-44-44-440010-2476-085-588544	\$189,100
Dept Environmental Services, ARPA Program, Interagency Transfer out of Federal Funds	
Activity Code: 00FRF602WB4401J	

EXPLANATION

NHDES selected awardees for the Clean Water Energy Audit Measures Implementation 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, and was offered, project funding of \$189,100 from NHDES by applying through the CWSRF program for the implementation of energy efficiency measures at the WWTF.

WRBP will use the ARPA funds to make improvements to the aeration process at the Franklin WWTF as recommended in the 2019 Energy Evaluation completed by Process Energy Services. The improvements include upgrades to the aeration system to reduce energy use and optimize wastewater treatment operations. Work will include the installation of automated valves for air flow, and associated improvements to allow for dissolved oxygen control of the valves via the Supervisory Control and Data Acquisition (SCADA) system at the WWTF. Grant funds will be used for the equipment procurement and installation, including mechanical, electrical, instrumentation and programming work as well as

engineering costs related to the upgrade. 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.

In the event that 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.

A handwritten signature in black ink, appearing to read "Robert R. Scott", written over a horizontal line.

Robert R. Scott
Commissioner

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

Title: Energy Efficiency Aeration Upgrades – Phase 2

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 energy efficiency at the Wastewater Treatment Facility (WWTF) in Franklin, NH.

WRBP will use ARPA grant funds to make improvements to the aeration process at the Franklin Wastewater Treatment Facility (WWTF) as recommended in the 2019 Energy Evaluation completed by Process Energy Services. The improvements include upgrades to the aeration system to reduce energy use and optimize wastewater treatment operations. Work will include the installation of automated valves for air flow; and associated improvements to allow for dissolved oxygen control of the valves via the Supervisory Control and Data Acquisition (SCADA) system at the Franklin WWTF. Grant funds will be used for equipment procurement and installation, including mechanical, 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.

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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, 2024, unless terminated by either party, or extended in writing by subsequent agreement of the parties and acceptance by Governor and Council.

Grantee Initials RTS
Date 6/6/23

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 \$189,100. 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.
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.
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.

Grantee Initials

Date

RT
6/6/22

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 energy audit measures implementation 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 project budget is presented in Table 1.

Table 1: Project Budget

Cost Categories	Budget
Equipment purchase: actuators with panels, butterfly valves, dissolved oxygen (DO) probes, wiring,	\$81,450
Installation: electrical, mechanical, programming/SCADA integration	\$67,650
Engineering	\$40,000
TOTAL	\$189,100

The total grant reimbursement shall not exceed \$189,100 over the course of this MOA. Grant funding will be based on actual project costs incurred. NHDES understands additional funding for the project is anticipated through incentives from Eversource. The total of this grant and Eversource incentive funding shall not exceed 100% of project costs. WRBP is allowed to adjust funding between the two cost categories listed in Table 1 but shall not exceed a difference of 5% without advanced approval by NHDES. Any unused funds from one fiscal year may be carried over to future years within the MOA period. Funding for this project is available in the account: 03-44-44-440010-2476-085-588544.

Grantee Initials RTG
Date 6/6/22

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.

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.

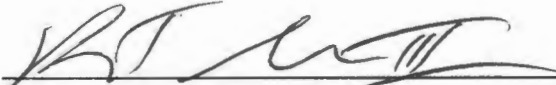
VIII. Termination:

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 RTG
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 6/9/22



Robert R. Scott, Commissioner
NH Department of Environmental Services

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

Date 6/14/2022



Assistant Attorney General

Grantee Initials RJL
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).

Grantee Initials

Date

R.K.
6/6/22

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."

Grantee Initials

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