



THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION



l.a.m.
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VICTORIA F. SHEEHAN
COMMISSIONER

WILLIAM CASS, P.E.
ASSISTANT COMMISSIONER

Bureau of Highway Design
April 13, 2017

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

REQUESTED ACTION

Authorize the Department of Transportation (NHDOT) and the Department of Environmental Services (NHDES) to retroactively enter into a Memorandum of Agreement for \$2,748,687.54 for water supply land conservation grants to permanently protect critical water supply lands with the region served by the I-93 expansion, effective upon Governor and Executive Council approval from July 1, 2016 through September 30, 2020. 100% Federal Funds.

Funds to support this request are available in the following account in State FY 2017, and are contingent upon the availability and continued appropriation of funds in FY 2018 with the ability to adjust encumbrances between State Fiscal Years if needed and justified:

Table with 3 columns: Account Number, FY 2017, FY 2018. Row 1: 04-96-096-963515-3054 Consolidated Federal. Row 2: 401-500877 Land Interest \$1,500,000.00 \$1,248,687.54

EXPLANATION

This item is retroactive due to the need to work with the Attorney General's Office and the Department of Environmental Services on the revised terms in the agreement. The work to identify legal requirements to modify the matching requirements delayed the timely finalization of a revised agreement.

As part of the mitigation package associated with the wetlands permit dated May 2, 2006 and as required by the Record of Decision dated June 28, 2005 issued by the Federal Highway Administration for the widening of Interstate 93 between the Massachusetts border in Salem and the I-93/I-293 interchange in Manchester, a total of three million dollars (\$3,000,000.00) will be spent to permanently protect critical water supply lands within the region served by this project. This part of the mitigation package was in recognition of water quality concerns in the region.

On February 16, 2011, the Governor and Executive Council authorized a Memorandum of Understanding (MOU) (Item #93; copy of Resolution attached) in the amount of \$3,000,000 to accomplish this mitigation goal. Under this MOU, NHDOT made \$3,000,000 available to NHDES to administer the Water Supply Land Protection Grant Program (WSLGP). Of the \$3,000,000 amount, \$251,312.46 was paid to NHDES during the course of the 2011 MOU.

The WSLGP was established by the Legislature in 2000 to provide eligible municipalities and non-profit water systems (and non-profit land conservation organizations since 2009) with matching funds to acquire land or interest in land in the areas that protect source(s) of public drinking water (i.e. wells, reservoirs, rivers, or lakes). The laws pertaining to the program are RSA 486-A and Administrative

Rules ENV-Dw 1002. The WSLGP grants will cover up to 50% of eligible land protection costs, with at least 50% coming from other sources. These and other applicable program parameters established by statues and rule (or any changes in said status and rules) will apply to all funding received from the I-93 mitigation package for water supply protection.

Employee support from existing WSLGP will be utilized to administer this program. The funding for this project has been incorporated into the FY 2017/2018 budget for NHDES, pending approval.

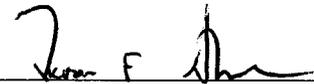
In the event that Federal funds no longer become available, general funds will not be requested to support this program. This agreement has been approved by the Attorney General's Office as to form, substance, and execution.

We respectfully request your approval.

Sincerely,



Clark B. Freise
NHDES Assistant Commissioner



Victoria F. Sheehan
NHDOT Commissioner

Attachments

Memorandum of Agreement
Between
New Hampshire Department of Transportation (NHDOT)
And
New Hampshire Department of Environmental Services (NHDES)
Concerning
I-93 Widening Mitigation Funding Provided by NHDOT to NHDES
For
Water Supply Land Protection

Salem-Manchester 10418
IM-IR-0931(167)
I-93 Corridor

July 1, 2016

July 1, 2016

I-93 Mitigation – Water Supply Land Grant Program

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1. **PURPOSE:** The purpose of this document is to create an understanding of how NHDES will receive, utilize and account for I-93 mitigation funds received from NHDOT for the purpose of providing grants to protect critical water supply lands. This Memorandum of Agreement (MOA) replaces and supersedes “Memorandum of Understanding Between New Hampshire Department of Transportation (NHDOT) And New Hampshire Department of Environmental Services (NHDES) Concerning I-93 Widening Mitigation Funding Provided by NHDOT to NHDES For Water Supply Land Protection,” dated December 10, 2010.

2. **BACKGROUND:** As part of the mitigation package associated with the wetlands permit dated May 2, 2006 for the widening of Interstate 93 between the Massachusetts border in Salem and the I-93/I-293 interchange in Manchester (the I-93 Project), a total of three million dollars (\$3,000,000) will be spent to permanently protect critical water supply lands within the region served by this project. This total includes funds previously expended under the December 10, 2010 MOU; this MOA does not authorize any additional funds. As of the date of this agreement, \$251,312.46 of the \$3,000,000 has been reimbursed by NHDOT to NHDES. This part of the mitigation package was in recognition of overall water quality concerns in the region. To accomplish this mitigation goal, NHDOT will provide NHDES with a total of \$3,000,000 (the funds), of which \$2,748,687.54 is remaining, to be administered by the existing Water Supply Land Protection Grant Program (WSLPGP), which was established by the Legislature in 2000 to provide eligible municipalities and non-profit water systems with matching funds to acquire land or interest in land in the areas that protect their source(s) of public drinking water (i.e. wells, reservoirs, rivers, lakes). The WSLPGP will administer the funds according to the procedures outlined in the laws pertaining to this program, which include RSA 486-A and Administrative Rules Env-Dw 1002, with the following exception: while the grantee match amount specified in Env-Dw 1002.06(a) is at least 75% of the eligible project costs and the maximum state contribution specified in RSA 486-A:3, II. is 25% of the eligible project costs, for grants awarded by the WSLPGP with the funds provided by NHDOT under this MOA, the grant amount may be up to 50% of the total project value.

3. **CRITERIA FOR USE OF FUNDS:** The intent of these funds is to address water quality concerns associated with the I-93 Project. The following criteria will be used by NHDES to prioritize and select projects to receive I-93 mitigation funding:

- a. The acquisition of property rights for water quality protection shall be limited to “eligible water supply land protection costs” as defined in RSA 486-A:2,III-a., in the Lake Massabesic watershed and/or in the following I-93 corridor municipalities: Salem, Windham, Derry, Londonderry, and Manchester.
- b. The acquisition of property rights within the Lake Massabesic Watershed will be given highest priority.

July 1, 2016

I-93 Mitigation – Water Supply Land Grant Program

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- c. Administrative and other associated costs shall be absorbed by the Water Supply Land Protection Grant Program at NHDES and shall not be charged against any of the transferred funds.
- d. In order to ensure that property rights for water quality protection are acquired in accordance with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended, NHDES shall ensure that:
 - (i.) Fair market value of property rights shall be determined in accordance with Env-Dw 1002.17; and
 - (ii.) No projects shall be funded that would be eligible for relocation.

4. GRANT ROUNDS: NHDES has conducted several public solicitations for grant applications in order to expend the funds provided by NHDOT, and will continue to do so until the funds are expended or the expiration of this agreement. These grant rounds may be in conjunction with grant rounds to award non-NHDOT related funding. NHDOT will be notified of all grant rounds.

5. TECHNICAL ASSISTANCE TO ELIGIBLE MUNICIPALITIES: NHDES will continue to provide outreach and technical assistance to the eligible municipalities listed in paragraph 3 with respect to the remaining available funds in this MOA.

6. STEWARDSHIP OF LANDS PROTECTED: NHDES will be responsible for monitoring protected lands to ensure that they retain the values for which they were protected (i.e. water supply protection and other values identified) in accordance with RSA 486-A:13, I. A stewardship plan and annual report provided by the grantee to ensure that the conditions listed in RSA 486-A:7, II are met will be a grant condition. In addition, NHDES or its contractor will inspect the properties on a periodic basis.

7. MITIGATION FUND TRANSFERS: Upon execution of this MOA, NHDOT will make the Federal funds designated for this mitigation element available to NHDES as a reimbursement.

- NHDES will seek Governor and Council approval to expend the funds for each grant award.
- NHDES will pay the grant amount to the grantee at the closing.
- NHDES will submit a grant summary table on a quarterly basis by property. It shall include:
 - Target closing dates in two columns (previous quarter and current quarter);
 - The grantee;
 - The location of the land;
 - The acres to be protected;
 - The water supply resource being protected; and
 - The grant amount and total cost of the project.

- NHDES will submit invoices on a quarterly basis to the NHDOT, Project Manager. This shall include:
 - A cover letter requesting the payment of the funds with a current total being requested, and a sequential invoice number.
 - An invoice consisting of a balance sheet with a line item for each award and funding balance.
 - Governor and Executive Council Approval documentation for each grant re-imbursement.
- NHDOT will pay the NHDES invoice utilizing obligated ROW funds.

8. PROGRESS REPORTS: NHDES will submit reports to NHDOT that describe how the funds have been used during each quarter as described in paragraph 7. Upon expenditure of all funds or expiration of this agreement, NHDES will submit a final summary report to NHDOT, which will contain a chart that lists all the projects funded. This chart will include the following information for each project: the payment made by NHDES to the grantee; the total cost of each project; and the percentage of total project cost covered by each NHDES payment.

9. AMENDMENT OR TERMINATION: This agreement may be amended or terminated by mutual consent of the Commissioners of NHDOT and NHDES, in writing, at any time. This agreement shall not be extended.

10. DURATION: This agreement will remain in effect from the date of signature until the I-93 mitigation funds for water supply lands have been expended or until September 30, 2020, whichever is first. It is noted that NHDOT does not have any funds, or the authority to expend any funds after September 30, 2020; therefore all NHDES reimbursement requests need to be received by the NHDOT a minimum of 2 months before this date to allow time for processing. Any funds that remain available through the MOA will be forfeited by the NHDES Water Supply Land Protection Grant Program.

11. AGREEMENT: The undersigned have reviewed this memorandum of agreement and agree to operate in accordance with this document.



Commissioner, New Hampshire Department of Transportation

4/18/17
Date



Assistant Commissioner, New Hampshire Department of Environmental Services

4/14/17
Date



Assistant Attorney General

4/20/17
Date