



The State of New Hampshire
Department of Environmental Services

APR 04 '19 AM 8:48 DAS 90 JSM

APR 04 '19 AM 8:48 DAS



Robert R. Scott, Commissioner

April 1, 2019

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

REQUESTED ACTION

Authorize the Department of Environmental Services to award a grant to the City of Manchester (VC# 177433 B004), Manchester, NH in the amount not to exceed \$11,174,100 for water system improvements under the provisions of RSA 485:F, effective upon Governor & Council approval through December 31, 2058. 100% Drinking Water and Groundwater Trust Fund.

Funding is available in the account as follows:

03-44-44-442010-3904-073-500580	<u>FY 2019</u>
Dept Environmental Services, Drinking Water and Groundwater Trust, Grants Non-Federal	\$11,174,100

EXPLANATION

The Drinking Water and Ground Water Trust Fund was created in 2016, using \$276 million of MtBE trial judgement funds, as authorized by RSA 485-F. The purpose of the Trust Fund is to provide sustainable, long-term funding for the protection, preservation, and enhancement of the drinking water and groundwater resources of the state. The Drinking Water and Groundwater Advisory Commission was established to administer the Trust Fund and to provide guidance to the State on the use of the Trust Fund.

On April 18, 2018, the Advisory Commission voted to authorize a grant to the City of Manchester Water Works (MWW) for payment of the Merrimack Source Development Charge (MSDC) to reserve capacity in a manner necessary to ensure that 3.13 million gallons per day of water is available for the water recipients of the Southern New Hampshire Regional Water Interconnection Project. Specifically, all funds collected from the MSDC will be utilized to develop the Merrimack River as an additional source of supply for MWW. This agreement has been approved by the Attorney General's Office as to form, substance and execution.

We respectfully request your approval.

Robert R. Scott
Commissioner

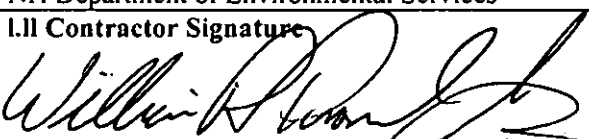
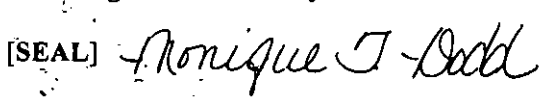
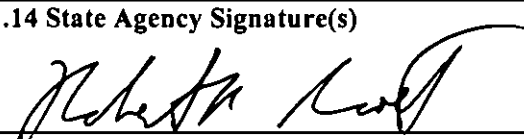
Subject: Manchester Water Works

AGREEMENT

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

GENERAL PROVISIONS

I. Identification.

1.1 State Agency Name NH Department of Environmental Services		1.2 State Agency Address 29 Hazen Drive, Concord, NH 03301	
1.3 Contractor Name Manchester Water Works		1.4 Contractor Address 281 Lincoln St, Manchester, NH 03103	
1.5 Effective Date Upon G&C Approval	1.6 Completion Date December 31, 2058	1.7 Audit Date N/A	1.8 Contract Limitation \$11,174,100
1.9 Contract Officer for State Agency Erin Holmes, Drinking Water & Groundwater Bureau, NH Department of Environmental Services		1.10 State Agency. Telephone Number 603-271-8321	
1.11 Contractor Signature 		1.12 Name & Title of Contractor Signor William R. Tromby Jr. President.	
1.13 Acknowledgment: State of <u>New Hampshire</u> , County of <u>Hillsborough</u> On <u>03/29/19</u> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace MONIQUE T. DODD, Notary Public State of New Hampshire My Commission Expires August 26, 2020 [SEAL] 			
1.13.2 Name & Title of Notary Public or Justice of the Peace Monique T. Dodd, N.H. D. Administrative Services Manager			
1.14 State Agency Signature(s) 		1.15 Name/Title of State Agency Signor(s) Robert R. Scott, Commissioner NH Department of Environmental Services	
1.16 Approval by Attorney General (Form, Substance and Execution) By: <u>K. Allen Brooks</u> (K. Allen Brooks) On: <u>4/2/19</u>			
1.17 Approval by the Governor and Executive Council By: _____ On: _____			

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

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

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

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

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

5. **CONTRACT AMOUNT: LIMITATION ON AMOUNT: PAYMENT.**

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

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

5.3 In accordance with the provisions set forth in EXHIBIT B, and in consideration of the satisfactory performance of the Project, as determined by the State, and as limited by subparagraph 5.5 of these general provisions, the State shall pay the Contractor the Contract Amount.

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

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

6. **COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS.**

In connection with the performance of the Project, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county, or municipal authorities, which shall impose any obligations, or duty upon the Contractor, including the acquisition of any and all necessary permits.

7. **RECORDS AND ACCOUNTS.**

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

7.2 Between the Effective Date and the date seven (7) years after the Completion Date, at any time during the Contractor's normal business hours, and as often as the State shall demand, the Contractor shall make available to the State all records pertaining to matters covered by this Agreement. The Contractor shall permit the State to audit, examine, and reproduce such records, and to make audits of all contracts, invoices, materials, payrolls, records or personnel, data (as that term is hereinafter defined), and other information relating to all matters covered by this Agreement. As used in this paragraph, "Contractor" includes all persons, natural or fictional, affiliated with, controlled by, or under common ownership with, the entity identified as the Contractor in block 1.3 of these general provisions.

8. **PERSONNEL.**

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

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

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

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

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

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

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

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

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

10. **CONDITIONAL NATURE OR AGREEMENT.**

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

11. **EVENT OF DEFAULT: REMEDIES.**

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

11.1.1 failure to perform the Project satisfactorily or on schedule; or

11.1.2 failure to submit any report required hereunder; or

11.1.3 failure to maintain, or permit access to, the records required hereunder; or

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

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

11.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination; and

11.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract amount which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor; and

11.2.3 set off against any other obligation the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and

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

12. **TERMINATION.**

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

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

12.3 In the event of Termination under paragraphs 10 or 12.4 of these general provisions, the approval of such a Termination Report by the State shall in no event relieve the Contractor from any and all liability for damages sustained

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or incurred by the State as a result of the Contractor's breach of its obligations hereunder.

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

13. **CONFLICT OF INTEREST.** No officer, member or employee of the Contractor and no representative, officer or employee of the State of New Hampshire or of the governing body of the locality or localities in which the Project is to be performed, who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of such Project, shall participate in any decision relating to this Agreement which affects his or her personal interests or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested, nor shall he or she have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

14. **CONTRACTOR'S RELATION TO THE STATE.** In the performance of this Agreement the Contractor, its employees, and any subcontractor or subcontractors of the Contractor are in all respects independent contractors, and are neither agents nor employees of the State. Neither the Contractor nor any of its officers, employees, agents, members, subcontractors or subcontractors, shall have authority to bind the State nor are they entitled to any of the benefits, workers' compensation or emoluments provided by the State to its employees.

15. **ASSIGNMENT AND SUBCONTRACTS.** The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the State. None of the Project Work shall be subcontracted or subcontractor by the Contractor other than as set forth in Exhibit A without the prior written consent of the State.

16. **INDEMNIFICATION.** The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based on or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor or Subcontractor, or subcontractor or other agent of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this Agreement.

17. **INSURANCE AND BOND.**

17.1 The Contractor shall, at its sole expense, obtain and maintain in force, or shall require any subcontractor, subcontractor or assignee performing Project work to obtain and maintain in force, both for the benefit of the State, the following insurance:

17.1.1 statutory workers' compensation and employees liability insurance for all employees engaged in the performance of the Project, and

17.1.2 comprehensive public liability insurance against all claims of bodily injuries, death or property damage, in amounts not less than \$2,000,000 for bodily injury or death any one incident, and \$500,000 for property damage in any one incident; and

17.2 The policies described in subparagraph 18.1 of this paragraph shall be the standard form employed in the State of New Hampshire, issued by underwriters acceptable to the State, and authorized to do business in the State of New Hampshire. Each policy shall contain a clause prohibiting cancellation or modification of the policy earlier than ten (10) days after written notice thereof has been received by the State.

18. **WAIVER OF BREACH.** No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event, or any subsequent Event. No express waiver of any Event of Default shall be deemed a waiver of any provisions hereof. No such failure or waiver shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other default on the part of the Contractor.

19. **NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses first above given.

20. **AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Council of the State of New Hampshire.

21. **CONSTRUCTION OF AGREEMENT AND TERMS.** This Agreement shall be construed in accordance with the law of the State of New

Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assignees. The captions and contents of the "subject" blank are used only as a matter of convenience, and are not to be considered a part of this Agreement or to be used in determining the intent of the parties hereto.

22. **THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

23. **ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

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ATTACHMENT C

EXHIBIT A

SCOPE OF SERVICES

DEFINITIONS:

“Agreement” means this agreement including all exhibits to the agreement.

“Average Daily Flow” or “ADF” means the total volume of water measured in gallons or cubic feet at a metering station or stations during the two highest consecutive MWW monthly billing periods divided by the actual number of days in the applicable billing periods.

“Capacity” means the ability to provide a specified amount of water.

“DES” or the “Department” means the N.H. Dept. of Environmental Services.

“Fund” means the New Hampshire Drinking Water and Groundwater Trust Fund established in RSA 6-D.

“In-town rate” means the retail rate charged to MWW customers within the geographic boundary of the City of Manchester.

“Maximum Daily Flow” or “MDF” means the highest total volume of water measured in gallons or cubic feet at a Project metering station over any consecutive twenty-four (24) hour period.

“Merrimack Source Development Charge” or “MSDC” means a capital charge assessed by MWW in accordance with Manchester Water Works Rules and Regulations, RSA 38:27 and RSA 38:28 for the purpose of constructing, acquiring, improving, enlarging and/or operating the Manchester Water Works system. Specifically, all funds collected from the MSDC will be utilized to develop the Merrimack River as an additional source of supply for MWW.

“MGD” means million gallons per day.

“Out-of-Town rate” means the rate charged by MWW to retail franchise customers outside the geographic boundary of the City of Manchester.

“Phase 1” means the time period beginning on December 31, 2020¹ and ending at the beginning of Phase 2 unless the parties hereto agree to an earlier date.

¹ Although the firm deadline for Phase 1 is December 31, 2020, all parties must make all reasonable efforts to complete Phase 1 improvements by May 1, 2020 as indicated in Article II.B.2 of the SIA.

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“Phase 2” means the time period beginning on December 31, 2023, and ending at the termination of this Agreement unless the parties hereto agree to an earlier date.

“Project” means the Southern New Hampshire Regional Water Interconnection Project identified in the Memorandum of Understanding (“MOU”) signed by the Department on October 5, 2018, and also signed by Manchester Water Works (“MWW”), the Town of Derry (“Derry”), the Town of Salem (“Salem”), the Town of Windham (“Windham”), Pennichuck East Utilities (“PEU”), the Hampstead Area Water Company, Inc. (“HAWC”), and the Town of Plaistow (“Plaistow”), and as further identified in an Agreement Regarding Southern New Hampshire Regional Water Interconnection Project or “Southern Interconnection Agreement” (“SIA”) as further described below.

“SIA” means the “Agreement Regarding Southern New Hampshire Regional Water Interconnection Project” or “Southern Interconnection Agreement” to be signed by the Water Recipients, MWW, PEU and Derry, or similar parties, pursuant to RSA 53-A.

“Tariff” means rules and regulations of MWW.

“Water” means potable water.

“Water Recipients” means Salem, Windham, HAWC, and Plaistow.

“Waterworks” means facilities for collection, storage, supply, distribution, treatment, pumping, metering or transmission of water.

PURPOSE:

The purpose of this Agreement is to further the Project. Specifically, the Fund, through the Department, is providing \$11,174,100 to MWW to ensure that MWW makes up to 3.13 MGD of capacity available for the Project, with the MSDC corresponding to said capacity to be paid by the Water Recipients in the manner and at the prices specified below. The actual amount of capacity so reserved will depend on the date on which the Department transfers \$11,174,100 to MWW as described below.

REQUIREMENTS:

1. The Fund, through the Department, shall be under no obligation to provide funds to MWW unless the Department obtains and approves a properly executed agreement

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binding the Water Recipients and Derry to abide by the terms set forth herein and in the SIA. The determination as to whether the Water Recipients and Derry have bound themselves to abide by the terms set forth herein and in the SIA shall be in the sole discretion of the Department. However, if the Department does not obtain such agreement by December 31, 2019, this Agreement shall become null and void.

2. If the Fund, through the Department, transfers \$11,174,100 to MWW prior to June 1, 2019, MWW shall upon receipt of those funds, begin to develop and reserve capacity in a manner necessary to ensure that 1.00 MGD ADF and 1.30 MGD MDF is available to the Project at the transfer of such funds and through the end of Phase 1, and to ensure that 3.13 MGD ADF and 4.07 MGD MDF of water is available to the Project at the start of Phase 2 and thereafter. If the Department transfers \$11,174,100 to MWW on or after June 1, 2019, MWW shall immediately upon receipt of those funds, begin to develop and reserve capacity for the Project in an amount equivalent to that which could be purchased for said amount at the prevailing MSDC rate at the time of purchase to ensure that the above-stated ADF and MDF amounts are available to the Project at the above-stated times. All payments are contingent on approval by the Governor and Executive Council.
3. The procurement of MSDC capacity described herein is in addition to any pre-existing or separate agreement that a Water Recipient or Derry may have with MWW for capacity procurement which is unrelated to or outside of the scope of the Project.
4. If the Department transfers \$11,174,100 to MWW prior to June 1, 2019, the Department shall be charged the 2018 MSDC rate, and MWW shall make capacity available to the Project in the manner set forth below. If the Department transfers \$11,174,100 to MWW on or after June 1, 2019, the Department shall be charged the prevailing MSDC rate, and the amount of capacity that MWW must provide shall be adjusted accordingly.
5. Upon execution of this Agreement and subject to Paragraphs 6 and 7 below, MWW shall make the full amount of capacity related to the Project available for purchase to the Water Recipients. Use of such capacity shall be governed by the SIA. Although MWW shall sell capacity to the Water Recipients according to the following allocations, MWW's only obligation, unless otherwise specifically stated herein, shall be to deliver water for use by the Project to the Derry water system in an amount equal to 1.00 MGD ADF and 1.30 MGD MDF at the time of the transfer of funds described above and through the end of Phase 1, and 3.13 MGD ADF and 4.07 MGD MDF at the start of Phase 2 and thereafter.
6. Subject to the second sentence of Sections 2 and 4, MWW shall make capacity available for purchase by the Water Recipients for use beginning after the transfer of funds described above and through the end of Phase 1 in the following manner:
 - a. Capacity in the amount of 0.30 MGD ADF (0.39 MGD MDF) shall be made available for purchase by Salem.

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- b. Capacity in the amount of 0.20 MGD ADF (0.26 MGD MDF) shall be made available for purchase by Windham or Salem, in either case for use within the geographical boundaries of Windham.
 - c. Capacity in the amount of 0.25 MGD ADF (0.33 MGD MDF) shall be made available for purchase by HAWC.
 - d. Capacity in the amount of 0.25 MGD ADF (0.33 MGD MDF) shall be made available for purchase by Plaistow.
7. Subject to the second sentences of Sections 2 and 4, MWW shall make additional capacity available for purchase to the Water Recipients for use in Phase 2 and thereafter in the following manner:
 - a. Capacity in the amount of 1.20 MGD ADF (1.56 MGD MDF) shall be made available for purchase by Salem. This amount is in addition to the Phase 1 capacity allotted to Salem.
 - b. Capacity in the amount of 0.11 MGD ADF (0.14 MGD MDF) shall be made available to Windham or Salem, in either case for use within the geographical boundaries of Windham. This amount shall be in addition to the Phase 1 capacity allotted for use within Windham.
 - c. Capacity in the amount of 0.50 MGD ADF (0.65 MGD MDF) shall be made available for purchase by HAWC. This amount is in addition to the Phase 1 capacity allotted to HAWC.
 - d. Capacity in the amount of 0.32 MGD ADF (0.42 MGD MDF) shall be made available for purchase by Plaistow. This amount is in addition to the Phase 1 capacity allotted to Plaistow.
8. The MSDC rate charged by MWW to the Water Recipients for any capacity purchased prior to June 30, 2019, shall be \$3.57 per gallon per day. If a Water Recipient purchases 100% of its allotted Phase 1 capacity prior to June 30, 2019, the MSDC rate charged by MWW to that Recipient for any portion of its allotted Phase 2 capacity shall be \$3.57 per gallon per day provided such capacity is purchased no later than sixty (60) days after the date the New Hampshire Drinking Water and Groundwater Trust Fund Advisory Commission votes to fund Phase 2 of the Project. Otherwise, the rate charged by MWW for capacity purchases shall be MWW's prevailing MSDC rate.
9. To the extent any Water Recipient does not purchase the portion of the Phase 1 capacity allotted to it above by May 1, 2022, MWW shall make the unsold portion available to all of the Water Recipients on a first-come, first-served basis.
10. To the extent any Water Recipient does not purchase the portion of the Phase 2 capacity allotted to it above by May 1, 2025, MWW shall make the unsold portion available to all of the Water Recipients on a first-come, first-served basis.

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11. Any sales by MWW of capacity to any Water Recipient shall be made from the capacity reserved by this agreement up to the limit of the total capacity available for the Project as set forth herein until all of this capacity is sold. Sales of additional capacity beyond the total capacity identified herein shall be handled by MWW in the same manner as any other sale of its capacity. Upon termination of this Agreement, MWW shall transfer any un-purchased capacity associated with the Agreement to the party or parties within the Project area designated by the Department and upon payment terms determined by the Department.
12. MWW shall read the meter at the Londonderry-Derry town line and at the Derry-Windham town line to determine the amount of Project water flowing through the Derry water system and received by Salem at the Derry-Windham town line. MWW shall then bill Salem directly for the amount of water received by Salem. Said billings shall reflect the rates to be paid by Salem under this Agreement and the SIA. Upon receipt of payment, MWW shall remit to Derry the amount that Derry is due under the SIA. MWW shall invoice Salem on a monthly basis in arrears. Payments on such invoices shall be made within thirty (30) days.
13. MWW shall remit to the Trust Fund all of the money received from the Water Recipients for their capacity purchases described in this Agreement less an administrative fee of one tenth of one percent (0.1%). Such remittance shall be made within thirty (30) days of payment by a Water Recipient to MWW.
14. By ensuring capacity as described above, and subject to Sections 2 and 4 and the capital improvement funding provisions in Article II of the SIA, MWW shall ensure the ability to deliver an equivalent amount of water to the Project; specifically up to a total of 1.00 MGD ADF and up to a total of 1.30 MGD MDF beginning at the transfer of funds and through the end of Phase 1 of the Project. MWW shall further ensure the ability to deliver a total of up to 3.13 MGD ADF and up to a total of 4.07 MGD MDF of water to the Project at the start of Phase 2 and thereafter. All such water deliveries by MWW shall be made in the manner set forth herein and in accordance with water system industry practice and MWW's applicable tariff provisions, water delivery rules, regulations, procedures, and restrictions. MWW shall complete all capital improvements necessary to supply this water.
15. MWW will monitor and report to the Department on a quarterly basis the status of all capacity purchases related to the Project.
16. MWW will notify any Water Recipient if it is using water in an amount that exceeds the level of water use for which the Water Recipient purchased capacity. MWW may also notify any Water Recipient that the Water Recipient is about to exceed the level of water use for which the Water Recipient purchased capacity.
17. **MWW shall provide water to the Water Recipients under the following terms and conditions unless otherwise specified in the SIA:**

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17. 1. **Limitation of Rights** - Nothing in this Agreement is intended as a grant by MWW of any exclusive right or privilege. In any period in which a Water Recipient receives water pursuant to this Agreement, the Water Recipient shall comply in all respects with applicable provisions of MWW's Tariff, except as otherwise specified herein.
17. 2. **Charges and Fees** – Timely payments of all charges described in this Agreement shall be made in accordance with the terms of this Agreement.
17. 3. **Quantity of Water** –For purposes of the Project, MWW shall have no responsibility to supply water in excess of the amounts stated in this Agreement. In addition, regardless of which Water Recipient purchases the capacity under this Agreement, MWW shall only be responsible for ensuring that such water is supplied to the metering point where water is currently delivered from MWW to Derry, the meter located at New Hampshire Route 28 (Rockingham Road) at the Londonderry-Derry town line.
- 17.4. **Capacity Rights Not Assignable** – Once purchased, a Water Recipient may not assign its water quantity rights to another party without the express written consent of the Department except that any town may assign its rights to an entity providing water within its town boundary without such consent. If a Water Recipient makes an assignment of capacity rights without necessary consent, such assignment shall be null and void. The Water Recipients may only use or distribute water from the capacity purchased from MWW pursuant to this Agreement within the geographical boundaries of the towns of Derry, Salem, Windham, Atkinson, Hampstead, and Plaistow.
- 17.5. **Control of System Leaks and Wasteful Use** – The Water Recipients shall operate and maintain their waterworks in accordance with customary engineering and waterworks practices and with the guidelines set forth below.

The Water Recipients shall minimize any wasteful use of water within their service areas.

In any period in which a Water Recipient receives water from the capacity purchased pursuant to this Agreement, the Water Recipient shall impose the same voluntary or mandatory restrictions on water use by its customers (e.g. sprinkling bans) as MWW shall impose on its franchise customers within one week of being informed of such imposition by MWW. The imposition and removal of any restrictions shall be within the sole and exclusive discretion of MWW. Nothing in this Agreement shall prevent the Water Recipients from imposing their own restrictions which are more restrictive than those imposed by MWW.

- 17.6. **Conformance of Law** – The Water Recipients shall comply and shall make all reasonable efforts to ensure that their customers and any private water systems connected to them comply with all applicable laws of the United States and of the State of New Hampshire, including but not limited to all applicable rules and regulations of

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the Department, and all applicable rules and regulations of the New Hampshire Public Utilities Commission (NHPUC). If, after sixty (60) days' written notice from MWW of a known violation, any Water Recipient fails to comply or to make prompt, substantial or reasonable efforts to comply within such time, the Water Recipient may forfeit the right to receive water under this Agreement until such time as they demonstrate compliance.

17.7. Quality of Water - MWW shall make all reasonable effort and shall maintain and operate the supply system so as to supply water meeting the drinking water quality criteria established from time to time by the United States Environmental Protection Agency (EPA) and the Department. This obligation shall be limited to the water when it is supplied to the metering point where water is delivered from MWW to Derry on New Hampshire Route 28 (Rockingham Road) at the Londonderry-Derry town line.

17.8. Construction of Connection - Any and all connections between MWW's waterworks and Derry's waterworks, including modifications or upgrades which may be necessary to effectuate this Agreement, including but not limited to meter vaults and metering devices, shall be designed by Derry, or after notification to MWW, constructed by any subcontractors as Derry shall choose to employ subject to the requirements of Derry's municipal procurement code, such decision to be made by Derry. The cost of all design and construction undertaken to construct, modify or upgrade the connection of MWW's waterworks to Derry's waterworks, including the purchase of metering devices and appurtenances, shall be paid by the Project either through the Fund or the Water Recipients. The necessity of and selection of all materials and equipment and the location thereof shall be decided by Derry upon approval of MWW. Such approval shall not be unreasonably withheld.

17.9. Ownership of Connection Facilities - Piping, valves and vaults constructed to make the connection necessary beyond the Londonderry-Derry town line shall be the property of the individual Water Recipients and shall be maintained by each Water Recipient.

17.10. Maintenance of Metering Devices

Any and all metering devices installed pursuant to this Agreement shall be inspected and calibrated by the party owning the metering device in the manner provided by regulations of the NHPUC. The cost for inspection and calibration will be the responsibility of the party owning the meter. Each party conducting such inspection and calibration shall cause a copy of its inspection and calibration reports to be filed at MWW's offices. Said reports shall be available for examination by any Water Recipient, Derry, or the Department at the offices of MWW during normal business hours.

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MWW may request any Water Recipient or Derry to test and certify the accuracy of any metering device at any time. MWW must submit such requests in writing to the party. If the metering device reads within specifications accepted by the NHPUC, the cost of such tests shall be borne by MWW. If the average error over different test rates is greater than that allowed by the NHPUC, the cost of the tests shall be paid by the relevant party.

In the case of missing or inaccurate flow records, due to faulty metering device operation or other circumstances, an estimate of flow shall be made by MWW based on past records for a comparable period. The estimates shall be used by MWW to calculate the amount of payments due from Salem for water usage only, not MSDC.

17.11. Records, Calculations - MWW shall maintain records of all calculations in determining capacity for all Water Recipients, and these records shall be available for inspection by any Water Recipient or the Department at the office of MWW during normal business hours. The Department may also require MWW to send such records to it electronically. Said records shall be available for inspection by other parties only upon presentation to MWW of a written authorization from the Department or a Water Recipient.

17.12. Responsibility for System Operation and Maintenance - MWW assumes no responsibility for operation and maintenance of waterworks constructed and owned by any other party. MWW's sole duty hereunder shall be to make capacity available and supply water up to the maximum amounts specified in this Agreement at the locations specified subject to the terms and conditions contained in this Agreement.

17.13. Impairment of Supply - Existing customers of MWW have first right to any water supplied by MWW, and this Agreement shall not impair the supply of water to them. If MWW is unable to supply both its other customers and the Water Recipients with water for any reason other than the negligence of MWW, the Water Recipients cannot compel MWW to supply them with water, nor shall they be entitled to any damages from MWW as a result of MWW's failure to supply them with water. MWW shall not make such demand upon the Water Recipients until it has made reasonable attempts to seek reductions in demand from its existing customers unless the cause of such impairment is isolated to the Water Recipients' supply from MWW. In addition, MWW cannot be compelled to furnish the Water Recipients with water if MWW's waterworks or the source upon which MWW is dependent for its supply of water is impaired, and the Water Recipients shall be entitled to no damages from MWW as a result of MWW's failure to supply them with water, except in the case of MWW's negligence or intentional acts as indicated in section 17.15. MWW shall be the sole judge as to whether the water available to it is adequate to supply both the Water Recipients and MWW's other customers and whether MWW's waterworks or source of supply is impaired, which decision shall be final and binding on the Water Recipients.

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Notwithstanding the foregoing, if MWW reduces the amount of water which it supplies to the Water Recipients pursuant to this Section, such reduction shall be proportional to reductions made to each other wholesale customer of MWW, based on the average amount of water received by each wholesale customer during the ninety (90) days preceding such reduction from MWW.

17.14. Liability for Accident - Neither MWW, the Department, nor the Water Recipients shall be liable in damages or otherwise for failure to perform any obligation under this Agreement, which failure is occasioned by or in consequence of any act of God, act of public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, drought, fires, storms, floods, winter freeze, washouts, vandalism, arrests and restraints of rulers and peoples, civil disturbances, labor strikes, power failures, explosions, breakage or accident to machinery or lines of pipe, failure or want of water supply, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated or otherwise, not within the control of such party and which act, omission or circumstances such party is unable to prevent or overcome by the exercise of reasonable care.

17.15. Liability Resulting from Negligence and Intentional Acts – No party shall be relieved of liability for loss resulting from its negligence, intentional actions, or its failure to use due diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting performance relieve any Water Recipient from its obligations to make payments of amounts then due with respect to water theretofore supplied.

17.16. Notices - All notices and other writings sent pursuant to this Agreement shall be addressed to the Director of MWW at:

Manchester Water Works
Attention: Director
281 Lincoln Street
Manchester, NH 03103

and to Derry at: Derry Department of Public Works
 Attention: Director
 14 Manning Street

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Derry, NH 03038

and to Salem at: Salem Municipal Services Department
Attention: Director of Municipal Services
21 Cross Street
Salem, NH 03079

and to HAWC at: Hampstead Area Water
Attention: President
54 Sawyer Ave.
Atkinson, NH 03811

and to Plaistow at: Town of Plaistow
Attention: Town Manager
145 Main Street
Plaistow, NH 03865

and to Windham at: Town of Windham
Attention: Town Administrator
3 N Lowell Road
Windham, NH 03087

17.17. Rate per 100 Cubic Feet (CCF) –Rates charged by MWW for all water related to the Project shall be calculated in the manner described in Exhibit C to this Agreement.

17.18. Purchase of Additional Capacity –Capacity purchases related to the Project shall be limited to the amounts as set forth above and in no event shall they be more than the

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equivalent of 3.13 MGD in the aggregate. Purchase of additional capacity beyond Project limits, including penalties for exceeding allotted capacity, shall be in accordance with MWW's normal practices and procedures unless otherwise specified herein.

17.19. Excess Use – Should the Project use water supplied by MWW in excess of 1.0 MGD ADF and 1.3 MGD MDF prior to the end of Phase 1, or in excess of 3.13 MGD ADF and 4.07 MDG MDF during Phase 2 and thereafter, and if MWW in its absolute discretion agrees to supply such additional water, MWW may identify the Water Recipient that used water in excess of its capacity obtained through this Agreement and the SIA. Any Water Recipient so identified by MWW under this section, shall pay an “excess water use charge” directly to MWW in addition the charge for water already being paid by the Water Recipient. The amount of the “excess water use charge” shall be equal to the water rate then being charged by MWW and shall be applied to the amount of water exceeding the Water Recipient's allotted capacity. Nothing in this section shall be construed as giving any Water Recipient or the Project a right to water supply or capacity in excess of the limits specified herein. MWW shall have sole and exclusive discretion as to the determination of the available water in excess of the limits stated herein and the determination of the length of any prolonged use in excess of the amounts so stated.

17.20 Billing Cycle - MWW shall issue invoices on a monthly basis in arrears for amounts due to MWW under this agreement. Payment on invoices shall be due within thirty (30) days.

17.21. Delinquent Bills - Invoices remaining unpaid for thirty (30) days or longer from the invoice date shall be subject to one and one-half (1 1/2) percent interest per month on the unpaid balance from the original due date. If such an event occurs, MWW may require the Water Recipient to post a deposit and make payments more frequently than at monthly intervals.

17.22. Expansion and/or Upgrading of MWW - In all cases, MWW reserves the right to determine as to all improvements, additions or expansions to its waterworks, provided that the undertaking of such improvements, additions or expansions does not impair the ability of MWW to provide water to the Water Recipients pursuant to this Agreement.

18. MISCELLANEOUS PROVISIONS:

Status of Current Agreement – It is the intention of the parties that both this Agreement and MWW's current Derry Wholesale Water Agreement (Derry Agreement) dated March 26, 2013, shall be read together to fully implement the purposes and provision of both.

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Date 4-3-19 4-3-19
KAE 4-3-19

EXHIBIT B

BUDGET & PAYMENT METHOD

Upon receipt of a properly executed Trust Fund Disbursement form, the Department may pay MWW up to \$11,174,100 from the Fund on or before December 31, 2019 in accordance with the requirements of this Agreement.

EXHIBIT C

SPECIAL PROVISIONS

1. Paragraph 22 (THIRD PARTIES) of the Agreement is revised to as follows:

The parties hereto do not intend to benefit any third parties other than Water Recipients, and this Agreement shall not be construed to confer any such benefit. MWW assumes no responsibility for any facility not included in its waterworks, and in the event that a facility of a third party shall be involved in the furnishing of service to, or the receipt of service from any Water Recipient to this Agreement, that Water Recipient shall look solely to such third party for any such services. All Water Recipients assume sole responsibility for compliance with this Agreement by all third party users or customers of its waterworks.

2. As a condition to receiving funds under this Agreement, MWW agrees to be bound by the terms of the SIA.

3. General liability insurance shall be limited to 1,000,000 each occurrence and \$325,000 for each person.

RATES

Rate per 100 Cubic Feet (CCF) - The rate charged by MWW for water supplied as part of the Project through the Route 28 meter at the Londonderry-Derry town line and received by any Water Recipient shall be equal to the in-town rate per hundred cubic feet ("CcF") for City of

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KAB 4-3-19

Manchester water customers including any increase in such rate to in-town customers approved by the Manchester Water Works Board of Water Commissioners. This rate shall apply from the commencement of this Agreement through the tenth (10th) year of this Agreement. In years 11 through 15, rates shall escalate as indicated below such that in year 15 and thereafter, the rate shall be MWW's out-of-town rate.

Any increases in the rate charged under this Agreement shall be effective as of the same date on which the increase in rates charged to customers residing inside the City of Manchester is effective.

Escalation of Rate from In-town (City of Manchester) to Out-of-Town Rate –Beginning in the eleventh (11th) year of this Agreement, the rate per CcF described above will increase in the following manner over a five (5) year period until it is equal to the out-of-town rate charged by MWW: In year 11, the rate will be the sum of the in-effect in-town rate plus one-fifth (1/5th) of the difference between the in-effect in-town rate and the in-effect out-of-town rate; in year 12, the rate will be the sum of the in-effect in-town rate plus one fourth (1/4) of the difference between the in-effect in-town rate and the in-effect out-of-town rate; in year 13, the rate will be the sum of the in-effect in-town rate plus one third (1/3) of the difference between the in-effect in-town rate and the in-effect out-of-town rate; in year 14, the rate will be the sum of the in-effect in-town rate plus one half (1/2) of the difference between the in-effect in-town rate and the in-effect out-of-town rate; in year 15 all subsequent years, the rate will be equal to the in-effect out-of-town rate.

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Date 3-29-19

Certificate of Vote of Authorization

**MANCHESTER WATER WORKS
281 Lincoln Street, Manchester, NH 03103**

I, Philip W. Croasdale, Director of the Manchester Water Works do hereby certify that at a meeting held on March 28, 2019 the Manchester Water Works Board of Water Commissioners voted to enter into a Drinking Water and Groundwater Trust Fund grant agreement with the NH Department Environmental Services to fund a water system improvement project.

The Manchester Water Works further authorized William R. Trombly, Jr., President, Board of Water Commissioners to execute any documents which may be necessary to effectuate this grant agreement.

IN WITNESS WHEREOF, I have hereunto set me hand as Director of the Manchester Water Works the 29th day of March 2019.

Signature 

STATE OF NEW HAMPSHIRE County of Hillsborough

On this 29 day of March, 2019, before me Monique T. Dodd (Notary Public) the undersigned Officer, personally appeared. William R. Trombly, Jr., who acknowledged himself to be the President of the Board of Water Commissioners of the Manchester Water Works, being authorized so to do, execute the foregoing instrument for the purpose therein contained.

In witness thereof, I have set my hand and official seal.

Notary Public Monique T. Dodd My commission expires: My Commission Expires August 28, 2020

MONIQUE T. DODD, Notary Public
State of New Hampshire
My Commission Expires August 28, 2020

Kevin J. O'Neil
Risk Manager



CITY OF MANCHESTER
Office of Risk Management
CERTIFICATE OF COVERAGE

NH DEPARTMENT OF ENVIRONMENTAL SERVICES
Drinking & Ground Water Bureau
29 Hazen Drive
Concord, New Hampshire 03302-0095

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage within the financial limits of RSA 507-B as follows:

	Limits of Liability (in thousands 000)	
GENERAL LIABILITY	Bodily Injury and Property Damage	
	Each Person	325
	Each Occurrence	1000
AUTOMOBILE LIABILITY	Bodily Injury and Property Damage	
	Each Person	325
	Each Occurrence	1000
WORKER'S COMPENSATION	Statutory Limits	

The City of Manchester, New Hampshire maintains a Self-Insured, Self-Funded Program and retains outside claim service administration. All coverages are continuous until otherwise notified. Effective on the date Certificate issued and expiring upon completion of contract. Notwithstanding any requirements, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the coverage afforded by the limits described herein is subject to all the terms, exclusions and conditions of RSA 507-B.

DESCRIPTION OF OPERATIONS/LOCATION/CONTRACT PERIOD

For the Southern New Hampshire Region Water Interconnection project beginning on March 29, 2019.

Issued the 2nd day of April, 2019.



Risk Manager