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The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner

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January 25, 2023

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

REQUESTED ACTION

Authorize the Department of Environmental Services (NHDES) to enter into a grant agreement with the Town of Durham, NH (VC # 177383-B001), in the amount of $284,226 for design and permitting necessary to advance the removal of the Mill Pond Dam, effective upon Governor and Council approval through December 31, 2024. 100% Federal Funds.

Funding is available in the account as follows:

	FY 2023
03-44-44-440010-2476-072-500574	$284,226

Dept Environmental Services, ARPA Program, Grants Federal
Activity code: 00FRF602WB4401I

EXPLANATION

NHDES released a solicitation for Critical Flood Risk Infrastructure Grant (CFRING) applications on February 15, 2022. Projects eligible to receive CFRING funding included flood resilience and stormwater management planning and assessment projects, as well as implementation projects. NHDES received 33 eligible proposals and ranked them according to selection criteria and selection committee discussion. Eight proposals were selected to receive American Rescue Plan Act (ARPA) funding, including the proposal submitted by the Town of Durham for design and permitting necessary to advance the removal of the Mill Pond Dam. A scoring matrix that includes a list of the staff who participated in proposal review, along with their titles and level of experience is provided in Attachment B.

The Mill Pond Dam is located on the Oyster River where it flows through the Town of Durham. Due to structural deficiencies and its inability to safely pass a 50-year storm event, the dam does not meet current NHDES safety standards. The dam's impoundment of the Oyster River, including the 9.5-acre Mill Pond, poses an ongoing water quality concern. After years of discussion and evaluating alternatives, the Town intends to pursue removal of the dam. The proposed dam removal would reduce Durham's vulnerability to flood risk, enhance resilience in the face of projected sea-level rise, improve water quality by restoring a natural flow regime, and reestablish a healthy ecosystem for the Oyster River's anadromous fish populations. This project will result in the preparation of final designs, permitting, bid documents, and Historic Preservation Act compliance documents

necessary to support the removal of the dam. This is an allowable use of ARPA 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.

Total project costs for this agreement are $284,226. NHDES will provide 100% of project costs through a federal grant. A budget breakdown is provided in Attachment A. In the event that federal funds become no longer available, general funds will not be requested to support the project.

This agreement has been approved by the Office of the Attorney General as to form, execution, and content.

We respectfully request your approval.

Robert R. Scott, Commissioner

GRANT AGREEMENT

The State of New Hampshire and the Grantee hereby
Mutually agree as follows:
GENERAL PROVISIONS

1. Identification and Definitions.

1.1. State Agency Name Department of Environmental Services		**1.2. State Agency Address** 29 Hazen Drive, P.O. Box 95 Concord, NH 03302-0095	
1.3. Grantee Name Town of Durham		**1.4. Grantee Address** 100 Stone Quarry Drive, Durham, NH 03824	
1.5 Grantee Phone # 603-868-5578	**1.6. Account Number** 03-44-44-440010-2476-072	**1.7. Completion Date** December 31, 2024	**1.8. Grant Limitation** $ 284,226.00
1.9. Grant Officer for State Agency Steve Couture, Coastal Program		**1.10. State Agency Telephone Number** 603-559-0027	
If Grantee is a municipality or village district: **"By signing this form we certify that we have complied with any public meeting requirement for acceptance of this grant, including if applicable RSA 31:95-b."**			
1.11. Grantee Signature 1		**1.12. Name & Title of Grantee Signor 1** Todd Selig, Durham Administrator	
Grantee Signature 2		**Name & Title of Grantee Signor 2**	
Grantee Signature 3		**Name & Title of Grantee Signor 3**	
1.13 State Agency Signature(s)		**1.14. Name & Title of State Agency Signor(s)** Robert R. Scott, Commissioner Department of Environmental Services	
1.15. Approval by Attorney General (Form, Substance and Execution) (if G & C approval required) **By:** **Assistant Attorney General, On:** 1/26/23			
1.16. Approval by Governor and Council (if applicable) **By:** **On:** / /			

2. SCOPE OF WORK: In exchange for grant funds provided by the State of New Hampshire, acting through the Agency identified in block 1.1 (hereinafter referred to as "the State"), the Grantee identified in block 1.3 (hereinafter referred to as "the Grantee"), shall perform that work identified and more particularly described in the scope of work attached hereto as EXHIBIT B (the scope of work being hereinafter referred to as "the Project").

3. AREA COVERED. Except as otherwise specifically provided for herein, the Grantee 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 on the date of approval of this Agreement by the Governor and Council of the State of New Hampshire if required (block 1.16), or upon signature by the State Agency as shown in block 1.14 ("the Effective Date").

4.2. Except as otherwise specifically provided herein, the Project, including all reports required by this Agreement, shall be completed in ITS entirety prior to the date in block 1.7 (hereinafter referred to as "the Completion Date").

5. GRANT AMOUNT: LIMITATION ON AMOUNT: VOUCHERS: PAYMENT.

5.1. The Grant Amount is identified and more particularly described in EXHIBIT C, attached hereto.

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

5.3. In accordance with the provisions set forth in EXHIBIT C, 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 Grantee the Grant Amount. The State shall withhold from the amount otherwise payable to the Grantee under this subparagraph 5.3 those sums required, or permitted, to be withheld pursuant to N.H. RSA 80:7 through 7-c.

5.4. The payment by the State of the Grant amount shall be the only, and the complete payment to the Grantee for all expenses, of whatever nature, incurred by the Grantee in the performance hereof, and shall be the only, and the complete, compensation to the Grantee for the Project. The State shall have no liabilities to the Grantee other than the Grant 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 Grant limitation set forth in block 1.8 of these general provisions.

6. COMPLIANCE BY GRANTEE WITH LAWS AND REGULATIONS. In connection with the performance of the Project, the Grantee 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 Grantee, including the acquisition of any and all necessary permits and RSA 31-95-b.

7. RECORDS and ACCOUNTS.

7.1. Between the Effective Date and the date seven (7) years after the Completion Date, unless otherwise required by the grant terms or the Agency, the Grantee 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, unless otherwise required by the grant terms or the Agency pursuant to subparagraph 7.1, at any time during the Grantee's normal business hours, and as often as the State shall demand, the Grantee shall make available to the State all records pertaining to matters covered by this Agreement. The Grantee shall permit the State to audit, examine, and reproduce such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, data (as that term is hereinafter defined), and other information relating to all matters covered by this Agreement. As used in this paragraph, "Grantee" includes all persons, natural or fictional, affiliated with, controlled by, or under common ownership

8. with, the entity identified as the Grantee in block 1.3 of these provisions

8.1. PERSONNEL.

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

8.2. to perform such Project under all applicable laws.

The Grantee shall not hire, and it shall not permit any subcontractor, subgrantee, or other person, firm or corporation with whom it is engaged in a combined effort to perform the Project, to hire any person who has a contractual relationship with

8.3. the State, or who is a State officer or employee, elected or appointed.

The Grant Officer shall be the representative of the State hereunder. In the event of any dispute hereunder, the interpretation of this Agreement by the Grant

9. Officer, and his/her decision on any dispute, shall be final.

9.1. DATA: RETENTION OF DATA: ACCESS.

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 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, paper, and documents, all whether finished or unfinished.

9.2. Between the Effective Date and the Completion Date the Grantee shall grant 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 Grantee notice of such termination.

11. EVENT OF DEFAULT: REMEDIES.

11.1. Any one or more of the following acts or omissions of the Grantee 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 Grantee 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 Grantee notice of termination; and

11.2.2 Give the Grantee 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 Grant Amount which would otherwise accrue to the Grantee during the period from the date of such notice until such time as the State determines that the Grantee has cured the Event of Default shall never be paid to the Grantee; and

11.2.3 Set off against any other obligation the State may owe to the Grantee 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 Grantee shall deliver to the Grant Officer, not later than fifteen (15) days after the date of termination, a report (hereinafter referred to as the "Termination Report") describing in detail all Project Work performed, and the Grant 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 Grantee to receive that portion of the Grant 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 Grantee from any and all liability for damages sustained or incurred by the State as a result of the Grantee'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 Grantee hereunder, the Grantee, may terminate this Agreement without cause upon thirty (30) days written notice.

13. CONFLICT OF INTEREST. No officer, member of employee of the Grantee, 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

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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 interest 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. GRANTEE'S RELATION TO THE STATE. In the performance of this Agreement the Grantee, its employees, and any subcontractor or subgrantee of the Grantee are in all respects independent contractors, and are neither agents nor employees of the State. Neither the Grantee nor any of its officers, employees, agents, members, subcontractors or subgrantees, shall have authority to bind the State nor are they entitled to any of the benefits, workmen's compensation or emoluments provided by the State to its employees.

15. ASSIGNMENT AND SUBCONTRACTS. The Grantee 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 subgranted by the Grantee other than as set forth in Exhibit B without the prior written consent of the State.

16. INDEMNIFICATION. The Grantee 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, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Grantee or subcontractor, or subgrantee or other agent of the Grantee. 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.

17.1 The Grantee shall, at its own expense, obtain and maintain in force, or shall require any subcontractor, subgrantee 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 General liability insurance against all claims of bodily injuries, death or property damage, in amounts not less than $1,000,000 per occurrence and $2,000,000 aggregate 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 17.1 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. Grantee shall furnish to the State, certificates of insurance for all renewal(s) of insurance required under this Agreement no later than ten (10) days prior to the expiration date of each insurance policy.

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 of 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 Grantee.

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, if required or by the signing State Agency.

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 intend 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.

24. SPECIAL PROVISIONS. The additional or modifying provisions set forth in Exhibit A hereto are incorporated as part of this agreement.

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EXHIBIT A
SPECIAL PROVISIONS

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

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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 use covered telecommunications equipment or services as a substantial or essential component of any system, or as

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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
5.3	Clean Water: Decentralized Wastewater
5.4	Clean Water: Combined Sewer Overflows
5.5	Clean Water: Other Sewer Infrastructure

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5.6	Clean Water: Stormwater
5.7	Clean Water: Energy Conservation
5.8	Clean Water: Water Conservation
5.9	Clean Water: Nonpoint Source
5.10	Drinking water: Treatment
5.11	Drinking water: Transmission & Distribution
5.12	Drinking water: Transmission & Distribution: Lead Remediation
5.13	Drinking water: Source
5.14	Drinking water: Storage
5.15	Drinking water: Other water infrastructure

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

All Clean Water and Drinking Water infrastructure projects:

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

For water and sewer projects:

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

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

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

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III. OTHER SPECIAL PROVISIONS

A. In addition to the above special provisions, the following provisions as required by federal regulations apply to this Agreement:

1. ***Financial management***. The Contractor shall comply with 2 CFR part 200 Subpart D and the specific standards regarding financial reporting, accounting records, internal control, budget control, allowable cost, source documentation, and cash management outlined therein.

2. ***Allowable costs***. All costs charged to this Agreement shall be eligible, necessary, and reasonable for performing the tasks outlined in the approved project scope of services. The costs, including match, shall be incurred during the period of performance of the project, and shall be allowable, meaning that the costs must conform to specific federal requirements detailed in *2 CFR part 200 Subpart E.*

3. ***Property Management.*** The Contractor shall comply with the property management and procedures detailed in 2 CFR Part 200 Subpart D.

4. ***Restrictions on Lobbying.*** The Contractor shall comply with the terms of 15 CFR part 28 and 2 CFR Part 200 Subpart E which prohibit the use of federal Contract funds to influence (or attempt to influence) a federal employee, and requires the submission of Standard Form LLL ("Disclosure of Lobbying Activities") if *non*federal 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 _____
Date 12/20/22

EXHIBIT B
SCOPE OF SERVICES

The Town of Durham will use the American Rescue Plan Act (ARPA) grant funds to perform the following tasks and provide the following deliverables, as outlined in their proposal, entitled "Restoration of the Oyster River through Removal of the Mill Pond Dam."

Task 1: Data Collection
Complete a detailed wetland delineation within the project area, as well as collection of detailed wetland functional evaluation data required for permitting.

Timeframe: May 1, 2022 –May 1, 2023
Deliverables: Updated base plan including wetland delineation and functional evaluation; topographic, bathymetric, and sediment survey;
Budget Estimate: $7,277

Task 2: Final Design
Complete final design for removal of the Mill Pond Dam and the fish ladder, as well as reconfiguration of the river channel to ensure long-term stability and fish passage. This task will also include conceptual plans for future recreational uses. The consultant will develop a basis of design memo, design plans, quantities and construction cost estimate, and technical specifications for the removal of the Mill Pond Dam, including work associated with stabilizing or retrofitting adjacent structures. The design and associated plans will be developed over the course of up to four submittals: 10% Design, 50% Design (Permitting), 90% Design (Final), and 100% Design (Construction).

Timeframe: August 1, 2022 – April 1, 2024
Deliverables: 10% conceptual design plans, 50% permitting plans, 90% design plans with specifications, and 100% design plans with specifications and quantities.
Budget Estimate: $130,386

Task 3: Environmental Permitting
Consult with the NH Natural Heritage Bureau and the NH Fish and Game Department to identify recommended conservation measures for four rare plant species and two rare fish species that may be present within the project area. Develop an Integrated Vegetation Management Plan to minimize the threat of invasive species spread and to aid in the restoration and protection of native plant diversity. Develop an NHDES Wetlands Bureau permit application according to RSA 482-A to address all components of the project (i.e., dam removal, stream restoration, and structure stabilization). Coordinate with the US Army Corps of Engineers to obtain approval of the project through the NH Statewide General Permit. Develop an NHDES Shoreland Protection permit application pursuant to RSA

Grantee Initials _____
Date 12/28/22

483-B. This task shall include coordination meetings as well as response to technical comments. Permit applications will be based on 50% design plans.

Timeframe: October 17, 2022 – March 26, 2024
Deliverables: Rare species conservation measures; Integrated Vegetation Management (IVM) Program; NHDES Wetlands permit application; US Army Corps of Engineers Clean Water Act Section 404 permit application; NHDES Shoreland Protection permit application.
Budget Estimate: $58,983

Task 4: Compliance with Section 106 of Historic Preservation Act
Convene a meeting with NH Division of Historical Resources (NHDHR) staff and the lead federal agency (assumed to be US Army Corps of Engineers) to complete a determination of effects and determine remaining Section 106 requirements. Following coordination with NHDHR, develop a Memorandum of Agreement (MOA) among consulting parties, NHDHR, and the lead federal agency that includes measures to mitigate for the removal of the dams.

Timeframe: May 1, 2022 –June 21, 2024
Deliverables: Determination of Effects memorandums; draft and final Advisory Council on Historic Preservation (ACHP) adverse effects report; draft and final Section 106 MOA stipulating mitigation measures.
Budget Estimate: $42,026

Task 5: Bid Phase
Prepare bid documents that include construction plans and specifications, and, following a public bid solicitation process, award a contract to the selected contractor to implement the construction phase plans.

Timeframe: March 28, 2024 – May 22, 2024
Deliverables: Bid package for advertising to contractors; construction contractor signed agreement.
Budget Estimate: $10,297

Task 6: Meetings, Coordination, and Reporting
Convene a kick-off meeting to discuss project scope, schedule, and regulatory/Section 106 coordination; five design phase team meetings to review interim submissions; a pre-bid conference; and additional meetings as needed to discuss Section 106 or other regulatory tasks. Convene regular meetings with the Town Council, abutters, or other stakeholders to provide status updates during the project duration. Convene up to two meetings with USACE, NHDES, and their state and federal partners, as well as up to two meetings with NHDHR and any consulting parties. NHDES shall be invited to attend all project meetings and must be present at the kick-off meeting, a mid-level progress update meeting, and a wrap-up meeting. The Town shall also share a summary of work and related deliverables with NHDES quarterly over the course of the project period, as well as prepare a final project report documenting the work performed under this grant.

Grantee Initials _____
Date 12/20/22

Timeframe: May 1, 2022 – December 31, 2024
Deliverables: Up to 18 meetings with supporting documents and notes; quarterly and final grant reports, as follows:

- The first quarterly report shall summarize the project activities during the period from Governor and Executive Council approval through March 31, 2023. Quarterly report #1 is due by April 30, 2023.
- The second quarterly report shall summarize the project activities during the period from April 1, 2023 through June 30, 2023. Quarterly report #2 is due by July 31, 2023.
- The third quarterly report shall summarize the project activities during the period July 1, 2023 through September 30, 2023. Quarterly report #3 is due by October 31, 2023.
- The fourth quarterly report shall summarize the project activities during the period from October 1, 2023 through December 31, 2023. Quarterly report #4 is due by January 31, 2024.
- The fifth quarterly report shall summarize the project activities during the period from January 1, 2024 through March 31, 2024. Quarterly report #5 is due by April 30, 2024.
- The sixth quarterly report shall summarize the project activities during the period from April 1, 2024 through June 30, 2024. Quarterly report #6 is due by July 31, 2024.
- The seventh quarterly report shall summarize the project activities during the period from July 1, 2024 through September 30, 2024. Quarterly report #7 is due by October 31, 2024.
- The final report shall summarize all of the work enabled by this agreement. The final report is due on or before the project completion date.

Budget Estimate: $35,257

Grantee Initials
Date 1/28/2022

EXHIBIT C
METHOD OF PAYMENT

The NHDES shall pay to the Grantee the total reimbursable program costs not to exceed the Grant Limitation of $284,226 in accordance with the following requirements:

Reimbursement requests for program costs shall be made no more than once per calendar month by the Grantee using the American Rescue Plan Act (ARPA) Disbursement form as supplied by the NHDES, which shall be completed and signed by the Grantee. The disbursement form shall be accompanied by proper supporting documentation based upon direct costs. The Grantee will maintain adequate documentation to substantiate all program related costs. All work shall be performed to the satisfaction of the NHDES before payment is made.

Changes to the Scope of Services require NHDES approval in advance. Work must be completed and request for reimbursement must be made prior to the completion date listed in this Grant Agreement (section 1.7).

Grantee Initials _____
Date 12/12/22

NEW HAMPSHIRE DEPARTMENT OF Environmental Services

CERTIFICATE OF VOTE OF AUTHORIZATION
INFRASTRUCTURE PROJECTS
GRANTS ONLY

American Rescue Plan Act (ARPA)

A Certificate of Vote of Authorization is a certificate that states that a grant applicant is willing to enter into a grant agreement with the State of NH Department of Environmental Services and that whoever signs the Grant Agreement (provided under separate cover) has the authority to do so. The Certificate must be signed and notarized on the same date as, or within 30 days of, the Grant Agreement signature. **This is a three-person form: Person Completing this Form, Authorized Representative, and a Public Notary.**

- ☒ **Completed and signed by someone other than the person being given authority.**
- ☒ **Must be notarized.**
- ☒ **Original is required for submittal.**

Certificate of Vote of Authorization

TOWN OF DURHAM, NH
8 Newmarket Road Durham NH 03824

I, April Talon of the Town of Durham NH do hereby certify that at a meeting held on July 11, 2022, the Durham Town Council voted to enter into a American Rescue Plan Act Fund (ARPA) grant agreement with the New Hampshire Department Environmental Services to fund a Stormwater improvement project.

The Durham Town Council further authorized the Durham Administrator Todd Selig to execute any documents which may be necessary to effectuate this grant agreement.

IN WITNESS WHEREOF, I have hereunto set my hand as Town Engineer of Town of Durham NH, the 20th day of December 2022.

April Talon Signature:
STATE OF NEW HAMPSHIRE, County of Strafford

On this 20th day of December 2022, Rachel M. Deane, before me (Notary Public) the undersigned Officer, personally appeared. April Talon, who acknowledged herself to be the Town Engineer of Town of Durham NH, 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
Rachel M. Deane

My commission expires: May 19, 2026

RACHEL M. DEANE
NOTARY PUBLIC
State of New Hampshire
My Commission Expires
May 19, 2026

Primex³
NH Public Risk Management Exchange

CERTIFICATE OF COVERAGE

The New Hampshire Public Risk Management Exchange (Primex³) is organized under the New Hampshire Revised Statutes Annotated, Chapter 5-B, Pooled Risk Management Programs. In accordance with those statutes, its Trust Agreement and bylaws, Primex³ is authorized to provide pooled risk management programs established for the benefit of political subdivisions in the State of New Hampshire.

Each member of Primex³ is entitled to the categories of coverage set forth below. In addition, Primex³ may extend the same coverage to non-members. However, any coverage extended to a non-member is subject to all of the terms, conditions, exclusions, amendments, rules, policies and procedures that are applicable to the members of Primex³, including but not limited to the final and binding resolution of all claims and coverage disputes before the Primex³ Board of Trustees. The Additional Covered Party's per occurrence limit shall be deemed included in the Member's per occurrence limit, and therefore shall reduce the Member's limit of liability as set forth by the Coverage Documents and Declarations. The limit shown may have been reduced by claims paid on behalf of the member. General Liability coverage is limited to Coverage A (Personal Injury Liability) and Coverage B (Property Damage Liability) only, Coverage's C (Public Officials Errors and Omissions), D (Unfair Employment Practices), E (Employee Benefit Liability) and F (Educator's Legal Liability Claims-Made Coverage) are excluded from this provision of coverage.

The below named entity is a member in good standing of the New Hampshire Public Risk Management Exchange. The coverage provided may, however, be revised at any time by the actions of Primex³. As of the date this certificate is issued, the information set out below accurately reflects the categories of coverage established for the current coverage year.

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 afforded by the coverage categories listed below.

Participating Member:	*Member Number:*	*Company Affording Coverage:*
Town of Durham 8 Newmarket Road Durham, NH 03824-2898	160	NH Public Risk Management Exchange - Primex³ Bow Brook Place 46 Donovan Street Concord, NH 03301-2624

	Type of Coverage	*Effective Date (mm/dd/yyyy)*	*Expiration Date (mm/dd/yyyy)*	*Limits* - NH Statutory Limits May Apply, If Not:	
X	**General Liability (Occurrence Form)**	7/1/2022	7/1/2023	Each Occurrence	$ 5,000,000
	Professional Liability (describe)			General Aggregate	$ 5,000,000
	☐ Claims Made ☐ Occurrence			Fire Damage (Any one fire)	
				Med Exp (Any one person)	
	Automobile Liability Deductible Comp and Coll: $1,000			Combined Single Limit (Each Accident)	
	Any auto			Aggregate	
X	**Workers' Compensation & Employers' Liability**	1/1/2022 1/1/2023	1/1/2023 1/1/2024	X Statutory	
				Each Accident	$2,000,000
				Disease – Each Employee	$2,000,000
				Disease – Policy Limit	
	Property (Special Risk includes Fire and Theft)			Blanket Limit, Replacement Cost (unless otherwise stated)	

Description: Proof of Primex Member coverage only. Pollution and hazardous waste related liabilities, expenses and claims are excluded from coverage in the coverage document.

CERTIFICATE HOLDER:	Additional Covered Party	Loss Payee	Primex³ – NH Public Risk Management Exchange
			By: *Mary Beth Purcell*
State of NH Department of Environmental Services 29 Hazen Drive PO Box 95 Concord, NH 03302			Date: 12/19/2022 mpurcell@nhprimex.org Please direct inquires to: **Primex³ Claims/Coverage Services** **603-225-2841 phone** **603-228-3833 fax**

ATTACHMENT A
BUDGET ESTIMATE

Task	Federal (ARPA)	Match	Match Type	Total
Task 1: Data Collection	$7,277	-	-	$7,277
Task 2: Final Design	$130,386	-	-	$130,386
Task 3: Environmental Permitting	$58,983	-	-	$58,983
Task 4: Compliance with Section 106 of Historic Preservation Act	$42,026	-	-	$42,026
Task 5: Bid Phase	$10,297	-	-	$10,297
Task 6: Meetings, Coordination, and Reporting	$35,257	-	-	$35,257
Totals	**$284,226**	-	-	**$284,226**

ATTACHMENT B
PROPOSAL SCORING MATRIX

Applicant	Project Title	Reviewers					Avg.	Rank
		A	B	C	D	E		
Rockingham County Conservation District	Coastal Resilience in New Castle – Pit Lane Crossing	85	90	88	100	91	90.8	1
Town of Durham	Restoration of the Oyster River through Removal of the Mill Pond Dam	96	88	86	88	92	90.0	2
City of Portsmouth	Pierce Island Road Coastal Resiliency Project	92	86	86	90	94	89.6	3
City of Dover	Stormwater and Flood Resilience Utility	93	77	84	100	93	89.4	4
The Nature Conservancy	Topaz Drive: Correcting Critical At-Risk Infrastructure in Barrington	87	85	89	92	91	88.8	5
Town of Hampton	Kings Highway Drainage Infrastructure Improvements	88	92	82.5	86	95	88.7	6
City of Rochester	Gonic Dams Removal Project	80	84	91	100	87	88.4	7
Town of Seabrook	Seabrook Wastewater Treatment Facility Climate Resilience Implementation Project	92	84	82	92	90	88.0	8
Municipal Alliance for Adaptive Management	Clean Sweep, innovative sweeping program for Great Bay	88	76	89	88	92	86.6	9
Town of Hampton	Sewer Manhole Vulnerability, Risk Assessment and Implementation	84	82	90.5	82	86	84.9	10
City of Portsmouth	Prescott Park Phase I Improvements	84	86	83	82	85	84.0	11
City of Rochester	Water Pollution and Flooding Reduction Study	82	77	80.5	84	89	82.5	12
Town of Durham	Bennett Road Culverts Resilience Project	83	82	81	78	88	82.4	13
Town of Sandown	Prioritization and Implementation of Nature-Based Stormwater BMPs	79	74	76.5	86	88	80.7	14

Applicant	Project Title	Reviewers					Avg.	Rank
		A	B	C	D	E		
Town of North Hampton	Old Locke Road Reconstruction	66	74	78	90	92	80.0	15
Town of Hampton	Bank Stabilization for the Hampton Seabrook Estuary and Eel Creek at Winnacunnet Road	86	74	82	73	77	78.4	16
Town of Exeter	Tan Lane Flood Study	84	61	82	82	81	78.0	17
University of New Hampshire	Implementation of Drainage Upgrades and Structural Stormwater BMPs	81	71	79	78	74	76.6	18
University of New Hampshire	Implementation of Street Sweeping and Catch Basin Cleaning	76	71	80.5	78	75	76.1	19
Town of Newmarket	Moody Point Stormwater Management Planning and Preliminary Design	79	77	63	66	87	74.4	20
Town of Exeter	Drinkwater Road Culvert Assessment	59	69	81.5	80	82	74.3	21
Strafford County Conservation District	Sam Plummer Culvert Replacement	81	67	71	73	78	74.0	22
City of Dover	Best Management Practice in highly urbanized Henry Law Park	72	68	75	71	79	73.0	23
Town of Newfields	Town Hall/Police Station and Library roof drainage run off reduction and treatment.	68	45	86.5	86.5	76	72.4	24
Town of Greenland	Stormwater Treatment Improvements for Municipal Properties	70	55	84	65	65	67.8	25
City of Dover	Cochecho Waterfront Public Infrastructure Project	88	66	57	51.5	74	67.3	26
City of Dover	Chapel Street Ravine Stormwater Treatment System Property Assessment	83	67	49.5	53.5	72	65.0	27
City of Dover	Blackwater Brook Bridge Reconstruction	69	67	50	59	62	61.4	28
Town of Hampton Falls	Depot Landing/NH State Causeway Restoration, Use & Preservation Analysis	62	51	42	83	65	60.6	29
Town of Newfields	Summer Street / Pleasant Street storm drain installation	50	44	79	63	65	60.2	30

Applicant	Project Title	Reviewers					Avg.	Rank
		A	B	C	D	E		
City of Dover	Reyners Brook Culvert Reconstruction	57	64	57	63	57	59.6	31
Town of Greenland	Meloon's Creek Culvert	62	48	80	51	52	58.6	32
Town of Barrington	Richardson Pond Dam	32	48	32.5	31	34	35.5	33

Review Team Members:

- Steve Couture, Coastal Program Administrator, 22 years of environmental planning and project management experience.
- Nathalie DiGeronimo, Resilience Project Manager, 11 years of coastal policy, project management, and resiliency experience.
- Deb Loiselle, Stormwater Coordinator, 29 years of environmental planning, stormwater, and project management experience.
- Sally Soule, Coastal Watershed Supervisor, 23 years of stormwater, watershed restoration, and project management experience.
- Ben Sweeney, Watershed Management Specialist, 6 years of stormwater and coastal resilience project management experience.