



The State of New Hampshire
Department of Environmental Services



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Robert R. Scott, Commissioner

December 29, 2023

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

REQUESTED ACTION

Authorize the New Hampshire Department of Environmental Services (NHDES) to amend an Aquatic Resource Mitigation (ARM) Fund grant (PO # 1081931) to the Town of Warner, NH (Vendor Code #177493-B001) by increasing the grant amount by \$100,000 to \$265,000 from \$165,000 for the purpose of replacing deficient culverts for stream restoration and extending the completion date to December 31, 2029 from December 31, 2026, effective upon G&C approval. The original agreement was approved by Governor and Council on August 18, 2021, item #94. 100% Federal Funds.

Funding is available in the following account:

03-44-44-440010-2476-072-500574
Dept. Environmental Services, ARPA DES Loans, Grants Federal
Activity Code: 00FRF602WB44010

FY 2024
\$100,000

EXPLANATION

NHDES is requesting approval of an amendment to the Aquatic Resource Mitigation (ARM) grant agreement to provide the Town of Warner additional funds through the American Rescue Plan Act (ARPA) to complete the agreed upon scope of services for the Ballard Brook Connectivity Project in Warner, NH. Upon receipt of the ARM grant in 2021, the Town of Warner conducted the design and permitting for the first downstream culvert project. The project has experienced unforeseen increased design and construction costs and gap funding is needed to ensure construction and project completion. The original project budget increased from \$297,000 to \$397,000 due to inflation of construction costs. The request for \$100,000 in ARPA funding will be applied to the increased construction and associated costs to complete the construction of an improved crossing that passes the 100-year storm event and allows aquatic organism passage and sediment transport. This is an allowable use of ARPA funds under Section 602 (c)(1)(D) to make necessary investments in water, sewer, or broadband infrastructure. The extension to the completion date from December 31, 2026 to December 31, 2029 will accommodate the five (5) year post-construction monitoring period required to document success of the project and fully meet the ARM Fund program goals. To date, \$0 of the original \$165,000 grant has been spent.

New Hampshire RSA 482-A:3 and Federal law require a wetland permit for any proposed project that involves dredging or filling of a wetland. Before a wetland permit is issued, applicants must show that the proposed project will avoid adverse impacts to wetlands and will minimize and provide compensation for those wetland impacts which are unavoidable. The Aquatic Resource Mitigation Fund (ARM) authorizes the collection of mitigation funds in lieu of other forms of wetland mitigation as part of a Wetlands Permit Application. As sponsor of the New Hampshire In-Lieu Fee Program, the ARM Fund is responsible for ensuring the successful completion of compensatory mitigation projects to meet the State's obligations to the U.S. Army Corps of Engineers. Supplemental funding to complete this compensatory mitigation project is necessary to successfully accomplish the project objectives and outcome.

The 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

His Excellency, Governor Christopher T. Sununu
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Page 2 of 2

effects of the COVID-19 pandemic and the resultant recession. The Act defines eligible uses of the state and local funding, including responding to public health emergencies, responding to workers performing essential work during the COVID-19 emergency, providing revenue relief to states and making investments in water, sewer, and broadband infrastructure.

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

We respectfully request your approval.



Robert R. Scott, Commissioner

Agreement for Services with Town of Warner
Amendment No. 1

This Agreement (hereinafter called the "Amendment") dated this 16th day of December, 2023, is by and between the State of New Hampshire, acting by and through its Department of Environmental Services (hereinafter referred to as the "State") and the Town of Warner, acting by and through the Director of Public Works, Timothy Allen (hereinafter referred to as the "Grantee").

WHEREAS, pursuant to an Agreement (hereinafter called the "Agreement") approved by the Governor and Executive Council on August 21, 2021, agreed to perform certain services upon the terms and conditions specified in the Agreement and in consideration of payment by the State of certain sums as specified therein; and

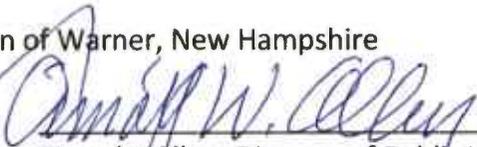
WHEREAS, The Grantee and the State have agreed to amend the Agreement in certain respects;

NOW THEREFORE, in consideration of the foregoing, and the covenants and conditions contained in the Agreement, and set forth herein, the parties hereto do hereby agree as follows:

1. Amendment and Modification of Agreement: The Agreement is hereby amended as follows:
 - (A) The Completion Date as set forth in Item 1.6 of the Agreement shall be changed from December 31, 2026, to December 31, 2029.
 - (B) The Grant Limitation as set forth in Item 1.8 of the Agreement shall be changed from \$165,000 to \$265,000.
 - (C) Grant Officer for State Agency as set forth in Item 1.9 of the Agreement shall be changed from Lori Sommer to Emily Nichols.
 - (D) The grant period as set forth in sub-paragraph B of Exhibit B shall be changed from December 31, 2026, to December 31, 2029.
 - (E) The grant award as set forth in sub-paragraph C of Exhibit C shall be changed from 165,000 to \$265,000.
 - (F) Exhibit A shall be replaced with the attached Amendment 1-Exhibit A Special Provisions.
 - (G) The project scope and project monitoring as set forth in sub-paragraphs F and G in Exhibit B shall be replaced with the attached Amendment 1- Exhibit B, Scope of Services.
 - (H) The Budget Payment Method as set forth in Exhibit C shall be replaced with the attached Amendment 1-Exhibit C, Budget & Payment Method.
2. Effective Date of Amendment: This Amendment shall take effect upon the date of approval of this Amendment by the Governor and Executive Council of the State of New Hampshire.
3. Continuance of Agreement: Except as specifically amended and modified by the terms and conditions of this Amendment, the Agreement, and the obligations of the parties thereunder, shall remain in full force and effect in accordance with the terms and conditions set forth therein.

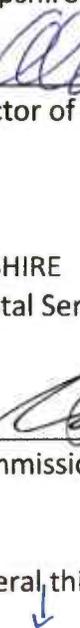
IN WITNESS WHEREOF, the parties have hereunto set their hands as of the day and year first above written.

Town of Warner, New Hampshire

By 
Timothy Allen, Director of Public Works

Date December 16, 2023.

THE STATE OF NEW HAMPSHIRE
Department of Environmental Services

By 
Robert R. Scott, Commissioner

1/11/24
Date

Approved by Attorney General, this 12th day of January, 2024

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As to form, content +
execution,

OFFICE OF ATTORNEY GENERAL

By 
Melissa Fales, ESQ

AMENDMENT 1 - 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 to conduct audits or other investigations.

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 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 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
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).

III. OTHER SPECIAL PROVISIONS

- A. In addition to the above special provisions, the following provisions as required by federal regulations apply to this Agreement:
1. **Financial management.** The Contractor shall comply with 2 CFR part 200 Subpart D and the specific standards regarding financial reporting, accounting records, internal control, budget control, allowable cost, source documentation, and cash management outlined therein.
 2. **Allowable costs.** All costs charged to this Agreement shall be eligible, necessary, and reasonable for performing the tasks outlined in the approved project scope of services. The costs, including match, shall be incurred during the period of performance of the project, and shall be allowable, meaning that the costs must conform to specific federal requirements detailed in 2 CFR part 200 Subpart E.
 3. **Property Management.** The Contractor shall comply with the property management and procedures detailed in 2 CFR Part 200 Subpart D.
 4. **Restrictions on Lobbying.** The Contractor shall comply with the terms of 15 CFR part 28 and 2 CFR Part 200 Subpart E which prohibit the use of federal Contract funds to influence (or attempt to influence) a federal employee and requires the submission of Standard Form LLL ("Disclosure of Lobbying Activities") if nonfederal funds have been used to influence (or attempt to influence) a federal employee.
 5. **Drug-Free Workplace.** The Contractor shall comply with the terms of 2 CFR part 1329 which require that as a condition of the Agreement, certification that they maintain a drug-free workplace. By signing and submitting the Agreement, the Contractor certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity associated with the Agreement.
 6. **Protection for Whistleblowers.** The Contractor shall comply with the terms of 41 U.S.C. §471 regarding Whistleblower protections. As described in 41 USC §471 "an employee of a contractor, subcontractor, grantee, or subgrantee or personal services contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (2) information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant."

AMENDMENT 1 - EXHIBIT B
SCOPE OF SERVICES

A. Project Title:

Ballard Brook Connectivity Project

B. Project Period:

August 1, 2021 through December 31, 2029

C. Grant Amount:

Total funds available for payment of allowable costs incurred under this Grant Agreement shall not exceed \$265,000. The Town of Warner will use the American Recovery Plan Act (ARPA) grant funds and Aquatic Resource Mitigation (ARM) Funds to restore aquatic connectivity and improve geomorphic processes on Ballard Brook at three deficient stream crossings in Warner, NH. The New Hampshire Department of Environmental Services (NHDES) will not reimburse the Town of Warner (the GRANTEE) for costs exceeding the amount specified in this paragraph.

D. Effective Date and Commencement of Work:

This Grant Agreement and all obligations of the parties hereunder shall become effective on the date the Governor and Executive Council of the State of New Hampshire approve this Agreement ("Effective Date") and shall end on December 31, 2029. Any work performed by the GRANTEE prior to the Effective Date shall be at the **sole risk** of the GRANTEE. In the event this Grant Agreement does not become effective, NHDES shall be under no obligation to pay the GRANTEE for any costs incurred or work performed; however, if this Agreement becomes effective, costs incurred prior to the Effective Date that would otherwise be allowable are eligible for payment under the terms of this Agreement.

E. Objectives:

F. There are currently three stream crossings on Red Chimney Road in Warner that intersect with Ballard Brook and have reduced aquatic organism passage and preventing resident brook trout from traveling upstream to spawning habitat. In addition, all three crossings are undersized and cannot accommodate storm flows, that have resulted in erosion and flood issues. With funds from this grant, the Town of Warner (GRANTEE) will improve habitat connectivity and habitat for brook trout spawning and increase flood resiliency within the Warner watershed by upgrading a series of deficient culverts in a multi-phased approach. The first downstream crossing on Ballard Brook (i.e. Phase I culvert) is an undersized 6' metal pipe that is a barrier to aquatic animal passage and prohibits sediment transport. Under this agreement, the GRANTEE will replace the Phase I culvert and complete the engineering design on the two upstream culverts (i.e. Phase II culverts). The new box culvert installed as Phase I, will reduce flood risks and be the first step at restoring brook trout access to three miles of upstream habitat in the Warner watershed.

F. Scope of Work:

The GRANTEE agrees to complete the following under this grant agreement with the New Hampshire Department of Environmental Services (NHDES):

Task 1: Engineering Design and Permitting for Phase I Culvert

The GRANTEE, with partners, will expand the current preliminary design plans for the three stream crossings and develop final Professional Engineer stamped designs suitable for permitting, contractor

bidding, and construction. The GRANTEE will participate in a NHDES Wetlands Bureau pre-application meeting to ensure full compliance with NH Stream Crossing Guidelines. The GRANTEE will work with the NHDES Wetlands permitting staff to finalize the design, construction timeline and conditions, and submit a Wetlands Permit in Spring 2021 for the Phase I culvert to be replaced in summer 2024.

Task 2: Site Construction and Installation of Phase I Culvert

The GRANTEE will replace the first downstream pipe with a 16' embedded box culvert following the NHDES Stream Crossing Guidelines. The design will include stream simulation for fish and wildlife passage and accommodate natural sediment and water transport processes. Work under this task includes site preparation and mobilization, removal of the old pipe culvert, excavating the site and installation of the new box, and demobilization. Restoration of areas where temporary impacts occur will be addressed per the NHDES permit conditions. Construction reports will be submitted to NHDES via email periodically during active construction and will include activities completed and photos of the work site. Following construction, the CONTRACTOR will conduct one as-built survey of the site to establish baseline conditions of the topography, culvert elevations, sediment distributions, and plantings. One As-Built report will be submitted to the NHDES Wetlands Bureau within 60 days of construction completion.

Task 3: Engineering Design and Permitting for Phase II Culverts

The GRANTEE, with partners, will expand the current preliminary design plans for the two upstream crossings and develop final Professional Engineer stamped designs suitable for permitting, contractor bidding, and construction. The GRANTEE will participate in an NHDES Wetlands Bureau pre-application meeting to ensure full compliance with NH Stream Crossing Guidelines.

Task 4: Fish and Habitat Monitoring

The GRANTEE, with assistance from the New Hampshire Fish and Game Department (NHFG), will begin surveys for fish and stream habitat in the summer 2025 and continue periodically over the following five years to evaluate the success of the project. Reports will be submitted to the NHDES Wetlands Bureau and include information on fish passage and trout habitat.

Task 5: Long-term Performance Monitoring and Adaptive Management

The NHDES Wetlands Bureau will monitor the new Phase I culvert annually from 2024-2029 and provide summary reports to the GRANTEE. The GRANTEE, NHDES, and project partners will collaboratively review the monitoring results on an annual basis during project meetings and site walks, to evaluate whether the site is meeting the expected performance standards. Based upon review of the monitoring results, the GRANTEE will develop a plan and implement remedial actions if necessary for the site to meet the performance standards. If adaptive management actions are needed for the new box culvert to maintain fish passage and accommodate streamflow, then the GRANTEE has committed to maintenance and repair as noted in the NHDES Aquatic Resource Mitigation grant proposal. Should the new box culvert require repair or adaptive management actions to meet the established performance standards, the GRANTEE agrees to use in-kind services of up to \$26,134 to address the recommended remedial actions.

Task 6: Sign for Public Information

The GRANTEE agrees to place a sign at a prominent location on or near the Property. The sign should contain as a minimum the NHDES logo and the following statement: "This project has been completed with assistance from the New Hampshire Aquatic Resource Mitigation Fund." Should the NHDES sign be

damaged or destroyed, the GRANTEE agrees to work with NHDES to repair or replace it with identical signage and to share any costs associated with that repair or replacement to the extent reasonably practicable.

G. Deliverable Schedule:

Task	Deliverable	Due Date
1	Phase I culvert design and wetlands permit	7/31/21
2	Phase 1 culvert installation construction reports, as-built survey and report	12/31/2024
3	Phase II culvert design and wetlands permits	12/1/2024
4	Fish and habitat monitoring reports	December 2025, December 2027, and December 2029
5	Annual performance monitoring and Adaptive Management	December 2025-2029
6	Photos of sign posted at the site	December 2024

H. Project Monitoring:

The Property involved in the project will be monitored by NHDES on an annual basis for five years post construction to ensure the success of the activities taken and to ensure that no actions are occurring which could be detrimental to the attributes of the Property. NHDES will provide a copy of the annual monitoring report to the GRANTEE to review property conditions and design any remedial measures needed. The GRANTEE and partners will monitor fish and stream habitat for five years and submit three reports to NHDES.

EXHIBIT C
METHOD OF PAYMENT

The GRANTEE shall submit requests for payment after completing each task and submitting evidence of the associated deliverable. Budgeted amounts by Task are estimated. The Grantee is authorized to move funds between Tasks based on actual expenses incurred by Task with an award amount not to exceed \$265,000.

The ARPA grant is in concert with \$165,000 in ARM Fund grant. Each disbursement request will be paid 100% of eligible expenses as ARPA grant funds not to exceed \$100,000. **To the greatest extent possible, ARPA grant funds shall be fully disbursed prior to other funding sources. All ARPA funds must be spent by September 1, 2026.**

Upon receipt and approval by NHDES of the invoices, NHDES shall issue payment to the GRANTEE in accordance with the following:

Task 1: Engineering Design and Permitting for Phase I Culvert	\$20,000
Task 2: Site Construction and Installation of Phase I Culvert	\$205,000
Task 3: Engineering Design and Permitting for Phase II Culverts	\$40,000
Task 4: Fish and Habitat Monitoring	\$0 (cash match)
Task 5: Long-term Performance Monitoring and Adaptive Management	\$0 (cash match)
Task 6: Project Monumentation	\$0 (cash match)
TOTAL NHDES ARM FUNDS	\$165,000
TOTAL ARPA FUNDS	\$100,000
<u>Total amount to be authorized following approval by the Governor and Executive Council:</u>	<u>\$265,000</u>

Payments shall be made by NHDES to the GRANTEE upon approval of stated outputs and verification of the value of completed work through submittal of invoices for services rendered. Invoices shall be approved by the Contract Officer before payment is processed. NHDES will pay the GRANTEE within 30 days of receiving the invoice.

The payments listed above are inclusive of project labor and expenses. Invoices shall be formatted to note completion of services.

The billing address shall be as follows:

NH Department of Environmental Services
29 Hazen Drive, PO Box 95
Concord, NH 03302-0095
ATTN: Emily Nichols, Wetlands Bureau, ARM Fund Program

Emily.P.Nichols@des.nh.gov

Invoices shall be approved by the Contract Officer before payment is processed.



TOWN OF WARNER

PO Box 265
Warner, New Hampshire 03278-0265
Telephone: (603) 456-2298 Fax: (603) 456-2297
Warnernh.gov

Select Board
Harry Seidel, Chair
Faith Minton
Allan N Brown
selectboard@warnernh.gov
Butch Burbank,
Interim Town Administrator
administrator@warnernh.gov

December 12, 2023

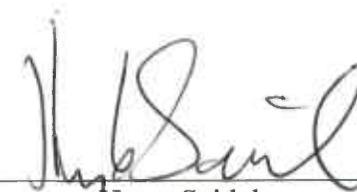
RE: NHDES Aquatic Resources Mitigation (ARM) Fund Grant

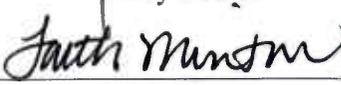
The Warner Selectboard, at their December 12, 2023 meeting, duly authorized Timothy Allen, Director of Public Works, to enter into agreement with the New Hampshire Department of Environmental Services to execute any documents which may be necessary to effectuate this agreement.

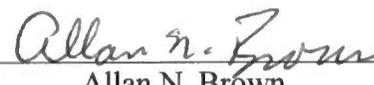


Alfred "Butch" Burbank,
Interim Town Administrator

12/12/23
Date

Selectboard Chair  _____
Harry Seidel Date 12/12/23

Selectperson  _____
Faith Minton Date 12/12/23

Selectperson  _____
Allan N. Brown Date 12/12/23



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: Town of Warner 5 East Main Street PO Box 265 Warner, NH 03278	Member Number: 317	Company Affording Coverage: NH Public Risk Management Exchange - Primex ³ PO Box 23 Hooksett, NH 03106-9716
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	Type of Coverage	Effective Date (mm/dd/yyyy)	Expiration Date (mm/dd/yyyy)	Limits - NH Statutory Limits May Apply, If Not:	
<input checked="" type="checkbox"/>	General Liability (Occurrence Form) Professional Liability (describe) <input type="checkbox"/> Claims Made <input type="checkbox"/> Occurrence	1/1/2024	1/1/2025	Each Occurrence	\$ 2,000,000
				General Aggregate	\$ 10,000,000
				Fire Damage (Any one fire)	
				Med Exp (Any one person)	
<input checked="" type="checkbox"/>	Automobile Liability Deductible Comp and Coll: \$1,000 <input type="checkbox"/> Any auto	1/1/2024	1/1/2025	Combined Single Limit (Each Accident)	\$2,000,000
				Aggregate	\$10,000,000
<input checked="" type="checkbox"/>	Workers' Compensation & Employers' Liability	1/1/2024	1/1/2025	<input checked="" type="checkbox"/> Statutory	\$ 2,000,000
				Each Accident	\$ 2,000,000
				Disease – Each Employee	
				Disease – Policy Limit	
<input checked="" type="checkbox"/>	Property (Special Risk includes Fire and Theft)	1/1/2024	1/1/2025	Blanket Limit, Replacement Cost (unless otherwise stated)	Deductible: \$1,000

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: <i>Mary Beth Purcell</i>
			Date: 11/21/2023 mpurcell@nhprimex.org
NH Department of Environmental Services 29 Hazen Drive PO Box 95 Concord, NH 03301			Please direct inquires to: Primex³ Claims/Coverage Services 603-225-2841 phone 603-228-3833 fax

His Excellency, Governor Christopher T. Sununu
and The Honorable Council

Page 2 of 2

NHDES announced the decision to fund the project in the Contoocook River watershed. The project proposed by the Town of Warner was recommended for funding by the ARM Fund Site Selection Committee. Attachment A lists the proposals received and Committee members involved in the decision. The review of the awards by the Army Corps of Engineers and the New Hampshire Wetland Council resulted in full support of the recommendations. A summary of the watershed balance as of June 30, 2021 is attached.

The project will restore aquatic connectivity within Ballard Brook by initiating the first phase of a series of culvert upgrades. The target culvert for replacement in this first phase is a 6-foot pipe arch that impedes aquatic animal passage and prohibits sediment transport by the stream. This first stage will replace the downstream and most problematic culvert with a 16-foot wide box culvert, embedded with 2-feet of stream simulation, to improve fish and wildlife passage, accommodate the 100-year storm, allow for natural sediment transport, and reduce scour at the outlet. The riparian corridor along Ballard Brook is highest ranked habitat and highest ranked habitat in the biological region by the New Hampshire Fish and Game Wildlife Action Plan. Ballard Brook supports populations of brook trout and burbot (both species of greatest conservation need), as well as the more common species. A component of this first phase includes developing final designs for the two remaining upstream culverts to support their replacement in subsequent phases. Attachment B includes a map of the property.

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

We respectfully request your approval.



Robert R. Scott, Commissioner

DEPARTMENT OF ENVIRONMENTAL SERVICES
WATER DIVISION/WETLANDS BUREAU
AQUATIC RESOURCE MITIGATION FUND

Supplemental information to Governor and Council request for grant agreements under RSA 482-A:29 and Admin. Rules Env-Wt 800 for the organization listed below:

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

	<u>Contoocook River Watershed Balance</u>
Funds as of June 30, 2021	\$206,674
Grant Agreement This Request: Town of Warner	\$165,000
Net Change	<u>\$165,000</u>
Balance Available After G & C Approval	\$41,674

Subject: Aquatic Resource Mitigation Fund Grant

GRANT AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATIONS

1.1 State Agency Name NH Department of Environmental Services		1.2 State Agency Address 29 Hazen Drive, Concord, NH 03302-0095	
1.3 Grantee Name: Town of Warner		1.4 Grantee Address Po Box 265 Warner, NH 03263	
1.5 Effective Date Upon G&C approval	1.6 Completion Date December 31, 2026	1.7 Audit Date N/A	1.8 Grant Limitation \$165,000.00
1.9 Grant Officer for State Agency Lori Sommer, DES Wetlands Bureau		1.10 State Agency Telephone Number (603) 271-4059	
1.11 Grantee Signature <i>Timothy W. Allen - DPW</i>		1.12 Name & Title of Grantee Signor <i>Timothy W. Allen, Public Works Director</i>	
1.13 Acknowledgment: State of <u>NH</u> , County of <u>Merrimack</u>			
On <u>6/22/2021</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 (Seal) <i>Judith A. Newman-Rogers</i>		<div style="border: 1px solid black; padding: 5px; text-align: center;"> JUDITH ANN NEWMAN-ROGERS Notary Public New Hampshire My Commission Expires 06-06-23 </div>	
1.13.2 Name & Title of Notary Public or Justice of the Peace <i>Judith A. Newman-Rogers, Notary Public</i>			
1.14 State Agency Signature(s) <i>Robert R. Scott</i>		1.15 Name/Title of State Agency Signor(s) Robert R. Scott, Commissioner	
1.16 Approval by Attorney General's Office (Form, Substance and Execution)			
By: <i>[Signature]</i>		Attorney, On: <u>7/27/2021</u>	
1.17 Approval by the Governor and Council			
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"), pursuant to RSA 21-O, 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 A (the scope of work being 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 in block 1.5 or on the date of approval of this Agreement by the Governor and Council of the State of New Hampshire whichever is later (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. **GRANT AMOUNT: LIMITATION ON AMOUNT: VOUCHERS: PAYMENT.**

5.1 The Grant 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 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, compensation 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.

7. **RECORDS AND ACCOUNTS.**

7.1 Between the Effective Date and the date seven (7) years after the Completion Date 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, 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 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, "Grantee" includes all persons, natural or fictional, affiliated with, controlled by, or under common ownership with, the entity identified as the Grantee in block 1.3 of these general

provisions.

8. **PERSONNEL.**

8.1 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 to perform such Project under all applicable laws.

8.2 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 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 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 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 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 OF 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

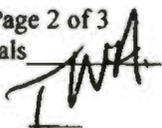
11.1.3 failure to maintain, or permit access to, the records required hereunder; or

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

Page 2 of 3
Initials



Contractor

Date 6/21/2021

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 or employee of the Grantee and no representative, officer of 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. **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, worker'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 A 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 of 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 AND BOND.

17.1 The Grantee shall, at its sole 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 worker's 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 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. Each policy shall contain a clause prohibiting cancellation or modification of the policy earlier than ten (10) days after written notice 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 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.

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.

EXHIBIT A
SCOPE OF SERVICES

A. Project Title:

Ballard Brook Connectivity Project

B. Project Period:

January 1, 2021 through December 31, 2026

C. Grant Amount:

Total funds available for payment of allowable costs incurred under this Grant Agreement shall not exceed \$165,000. NHDES will not reimburse the CONTRACTOR for costs exceeding the amount specified in this paragraph.

D. Effective Date and Commencement of Work:

This Grant Agreement and all obligations of the parties hereunder shall become effective on the date the Governor and Executive Council of the State of New Hampshire approve this Agreement ("Effective Date") and shall end on December 31, 2026. Any work performed by the CONTRACTOR prior to the Effective Date shall be at the sole risk of the CONTRACTOR. In the event this Grant Agreement does not become effective, NHDES shall be under no obligation to pay the CONTRACTOR for any costs incurred or work performed; however, if this Agreement becomes effective, costs incurred prior to the Effective Date that would otherwise be allowable are eligible for payment under the terms of this Agreement.

E. Objectives:

There are currently three stream crossings on Red Chimney Road in Warner that intersect with Ballard Brook and have reduced aquatic organism passage and preventing resident brook trout from traveling upstream to spawning habitat. In addition, all three crossings are undersized and cannot accommodate storm flows, that have resulted in erosion and flood issues. With funds from this grant, the Town of Warner (CONTRACTOR) will improve habitat connectivity and habitat for brook trout spawning, and increase flood resiliency within the Warner watershed by upgrading a series of deficient culverts in a multi-phased approach. The first downstream crossing on Ballard Brook (i.e. Phase I culvert) is an undersized 6' metal pipe that is a barrier to aquatic animal passage and prohibits sediment transport. Under this agreement, the CONTRACTOR will replace the Phase I culvert and complete the engineering design on the two upstream culverts (i.e. Phase II culverts). The new box culvert installed as Phase I, will reduce flood risks and be the first step at restoring brook trout access to three miles of upstream habitat in the Warner watershed.

F. Scope of Work:

The CONTRACTOR agrees to complete the following under this grant agreement with the New Hampshire Department of Environmental Services (NHDES):

Task 1: Engineering Design and Permitting for Phase I Culvert

The CONTRACTOR, with partners, will expand the current preliminary design plans for the three stream crossings and develop final Professional Engineer stamped designs suitable for permitting, contractor bidding, and construction. The CONTRACTOR will participate in a NHDES Wetlands Bureau pre-application meeting to ensure full compliance with NH Stream Crossing Guidelines. The CONTRACTOR

Contractor Initials

Date

TWA.
6/21/2024

will work with the NHDES Wetlands permitting staff to finalize the design, construction timeline and conditions, and submit a Wetlands Permit in Spring 2021 for the Phase I culvert to be replaced in summer 2022.

Task 2: Site Construction and Installation of Phase I Culvert

The CONTRACTOR will replace the first downstream pipe with a 16' embedded box culvert following the NHDES Stream Crossing Guidelines. The design will include stream simulation for fish and wildlife passage and accommodate natural sediment and water transport processes. Work under this task includes site preparation and mobilization, removal of the old pipe culvert, excavating the site and installation of the new box, and demobilization. Restoration of areas where temporary impacts occur will be addressed per the NHDES permit conditions. Construction reports will be submitted to NHDES via email periodically during active construction and will include activities completed and photos of the work site. Following construction, the CONTRACTOR will conduct one as-built survey of the site to establish baseline conditions of the topography, culvert elevations, sediment distributions, and plantings. One As-Built report will be submitted to the NHDES Wetlands Bureau within 60 days of construction completion.

Task 3: Engineering Design and Permitting for Phase II Culverts

The CONTRACTOR, with partners, will expand the current preliminary design plans for the two upstream crossings and develop final Professional Engineer stamped designs suitable for permitting, contractor bidding, and construction. The CONTRACTOR will participate in an NHDES Wetlands Bureau pre-application meeting to ensure full compliance with NH Stream Crossing Guidelines.

Task 4: Fish and Habitat Monitoring

The CONTRACTOR, with assistance from the New Hampshire Fish and Game Department (NHFG), will begin surveys for fish and stream habitat in the summer 2022 and continue periodically over the following five years to evaluate the success of the project. Reports will be submitted to the NHDES Wetlands Bureau and include information on fish passage and trout habitat.

Task 5: Long-term Performance Monitoring and Adaptive Management

The NHDES Wetlands Bureau will monitor the new Phase I culvert annually from 2022-2026 and provide summary reports to the CONTRACTOR. The CONTRACTOR, NHDES, and project partners will collaboratively review the monitoring results on an annual basis during project meetings and site walks, to evaluate whether the site is meeting the expected performance standards. Based upon review of the monitoring results, the CONTRACTOR will develop a plan and implement remedial actions if necessary for the site to meet the performance standards. If adaptive management actions are needed for the new box culvert to maintain fish passage and accommodate streamflow, then the CONTRACTOR has committed to maintenance and repair as noted in the NHDES Aquatic Resource Mitigation grant proposal. Should the new box culvert require repair or adaptive management actions to meet the established performance standards, the CONTRACTOR agrees to use in-kind services of up to \$26,134 to address the recommended remedial actions.

Task 6: Sign for Public Information

The CONTRACTOR agrees to place a sign at a prominent location on or near the Property. The sign should contain as a minimum the NHDES logo and the following statement: "This project has been completed with assistance from the New Hampshire Aquatic Resource Mitigation Fund." Should the NHDES sign be damaged or destroyed, the CONTRACTOR agrees to work with NHDES to repair or replace

Contractor Initials TWA
Date 6/21/2021

it with identical signage and to share any costs associated with that repair or replacement to the extent reasonably practicable.

G. Deliverable Schedule:

Task	Deliverable	Due Date
1	Phase I culvert design and wetlands permit	7/31/21
2	Phase 1 culvert installation construction reports	During active construction between 7/31/21 and 9/30/2022
2	Phase I culvert as-built survey and report	10/30/2022
3	Phase II culvert design and wetlands permits	12/1/2023
4	Fish and habitat monitoring reports	December 2022, December 2024, and December 2026
5	Annual performance monitoring meetings	May 2022, 2023, 2024, 2025, and 2026
5	Adaptive management site work and construction reports	Submitted as needed 2022-2026
6	Photos of sign posted at the site	December 2023

H. Project Monitoring:

The Property involved in the project will be monitored by NHDES on an annual basis for five years post construction to ensure the success of the activities taken and to ensure that no actions are occurring which could be detrimental to the attributes of the Property. NHDES will provide a copy of the annual monitoring report to the CONTRACTOR to review property conditions and design any remedial measures needed. The CONTRACTOR and partners will monitor fish and stream habitat for five years and submit three reports to NHDES.

EXHIBIT B
BUDGET & PAYMENT METHOD

The CONTRACTOR shall submit requests for payment after completing each task and submitting evidence of the associated deliverable. Upon receipt and approval by NHDES of the invoices, NHDES shall issue payment to the CONTRACTOR in accordance with the following:

Task 1: Engineering Design and Permitting for Phase I Culvert	\$8,000
Task 2: Site Construction and Installation of Phase I Culvert	\$149,000
Task 3: Engineering Design and Permitting for Phase II Culverts	\$7,500
Task 4: Fish and Habitat Monitoring	\$0 (cash match)
Task 5: Long-term Performance Monitoring and Adaptive Management	\$0 (\$26,134 cash match)

Contractor Initials TWA.
Date 6/21/2021

Task 6: Sign for Public Information \$500
TOTAL NHDES ARM FUNDS \$165,000

Total amount to be authorized following approval by the
Governor and Executive Council: \$165,000.00

Payments shall be made by NHDES to the CONTRACTOR upon approval of stated outputs and verification of the value of completed work through submittal of invoices for services rendered. NHDES will pay the CONTRACTOR within 30 days of receiving the invoice.

The payments listed above are inclusive of project labor and expenses. Invoices shall be formatted to note completion of services.

The billing address shall be as follows:

NH Department of Environmental Services
29 Hazen Drive, PO Box 95
Concord, NH 03302-0095
ATTN: Lori Sommer, Wetlands Bureau

Invoices shall be approved by the Contract Officer before payment is processed.

EXHIBIT C
SPECIAL PROVISIONS

This section is intentionally left blank.

Contractor Initials TWA
Date 6/21/2021

**ATTACHMENT A
2020 Aquatic Resource Mitigation Fund Grants**

Applications and Funding Amounts

Grant Applicant	Location/Town	Requested Funding Amount	Score	Approved for Funding
Ausbon Sargent Land Preservation Trust	Newbury	\$175,000	38	Yes – full funding
Town of Warner	Warner	\$165,000	46	Yes – full funding

(Note: Each Committee member scores the projects and their scores are combined to create the total score.)

Site Selection Committee List

Name	Agency/Organization	Title	Years of Experience
Peter Bowman	NH Dept. of Resources & Economic Development	Ecological Information Specialist	22
Michael Marchand	NH Fish and Game Department	Nongame and Endangered Species Coordinator	18
Peter Steckler	The Nature Conservancy	Director Freshwater Science & Conservation	18
Michael Burke	NH Rivers Council/ American Rivers	Water Resources Engineer	16
Tracy Tarr	NH Association of Natural Scientists	Wetland Scientist	20
Stephen Walker	Office of Strategic Initiatives	CLSP Director	27
Rick Van de Pol	NH Association of Conservation Commissions	Town of Sandwich	42
Brian Hotz	Society for the Protection of NH Forests	Vice President for Land Conservation	25

ATTACHMENT B
BALLARD BROOK CONNECTIVITY RESTORATION PROJECT/WARNER

Landscape Connectivity Map - Ballard Brook, Warner

