



The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**

**Robert R. Scott, Commissioner**



January 26, 2018

John P. Bohenko, City Manager  
Portsmouth City Hall  
1 Junkins Avenue  
Portsmouth, NH 03801

**Subject: Drinking Water and Groundwater Trust Fund  
City of Portsmouth – Breakfast Hill Area Water Main Improvements  
Grant Agreement**

Dear Mr. Bohenko,

Congratulations on your grant from the Drinking Water and Groundwater Trust Fund (Trust Fund). The Trust Fund Advisory Commission authorized the award of up to **\$200,000** in grant funds to the City of Portsmouth for the Breakfast Hill Area Water Main Improvements project. The next step is to enter into a grant agreement and obtain Governor and Council approval once the budget for the Trust Fund is established. Currently, the budget is expected to be established by late February.

Enclosed is the grant agreement paperwork. Please review these documents carefully. If everything is satisfactory please submit the following by **February 5, 2018** to my attention at the address below:

1. **Original signed and notarized Grant Agreement** (attached). Initial and date page 2 & 3.
2. **Original Exhibit A-C** (attached). Initial and date all pages.
3. **Original signed and notarized Certificate of Authority** (example attached)
4. **Certificate of Insurance**

Once the required paperwork is returned and the Trust Fund's budget is in place, NHDES will submit the grant package to Governor and Council for approval. We look forward to working with you on your infrastructure project. Feel free to contact me at 271-7017 or [johnna.mckenna@des.nh.gov](mailto:johnna.mckenna@des.nh.gov) if you have any questions.

Sincerely,

Johnna McKenna  
Drinking Water and Groundwater Bureau

Enclosures: Grant Agreement, Exhibits A-C and Example Certificate

cc: Brian Goetz, Deputy Director, Portsmouth Department of Public Works

**Subject: City of Portsmouth**

## GRANT AGREEMENT

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

### GENERAL PROVISIONS

#### 1. Identification.

<b>1.1 State Agency Name</b> NH Department of Environmental Services		<b>1.2 State Agency Address</b> 29 Hazen Drive, Concord, NH 03301	
<b>1.3 Grantee Name</b> City of Portsmouth		<b>1.4 Grantee Address</b> 1 Junkins Avenue, Portsmouth, NH 03801	
<b>1.5 Effective Date</b> Upon G&C Approval	<b>1.6 Completion Date</b> June 1, 2019	<b>1.7 Audit Date</b> N/A	<b>1.8 Grant Limitation</b> \$200,000
<b>1.9 Grant Officer for State Agency</b> Johnna McKenna, Drinking Water & Groundwater Bureau, NH Department of Environmental Services		<b>1.10 State Agency. Telephone Number</b> 603-271-7017	
<b>1.11 Grantee Signature</b>		<b>1.12 Name &amp; Title of Grantee Signor</b>	
<b>1.13 Acknowledgment: State of _____, County of _____</b>  On _____, 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.			
<b>1.13.1 Signature of Notary Public or Justice of the Peace</b>  [SEAL]			
<b>1.13.2 Name &amp; Title of Notary Public or Justice of the Peace</b>			
<b>1.14 State Agency Signature(s)</b>		<b>1.15 Name/Title of State Agency Signor(s)</b>  Robert R. Scott, Commissioner NH Department of Environmental Services	
<b>1.16 Approval by Attorney General (Form, Substance and Execution)</b>  By: _____ On: _____			
<b>1.17 Approval by the Governor and Executive Council</b>  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: 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 Grantee officer shall be the representative of the State hereunder. In the event of any dispute hereunder, the interpretation of this Agreement by the Grantee 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 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 ("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

Grantee Initials \_\_\_\_\_

Date \_\_\_\_\_

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 or employee of the State of New Hampshire or of the governing body of the locality or localities in which the Project is to be performed, who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of such Project, shall participate in any decision relating to this Agreement which affects his or her personal interests or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested, nor shall he or she have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

14. **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, workers' 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 or 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 workers' compensation and employees liability insurance for all employees engaged in the performance of the Project, and

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

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

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

Grantee Initials \_\_\_\_\_  
Date \_\_\_\_\_

EXHIBIT A  
SCOPE OF SERVICES

City of Portsmouth (City):

The City of Portsmouth will use the grant funds to advance the design phase of a water main extension from the existing Portsmouth water system to the Breakfast Hill area of Breakfast Hill Road in Greenland. The grant funds will be used for the following tasks:

**Task 1- Hydraulic Modeling and Master Plan Supplement**

A. Hydraulic Modeling and Water Quality

- a. Update the Portsmouth water model for the proposed alternatives, based on hydraulic information provided by the City.
- b. Utilizing the existing hydraulic water model, evaluate the ability of the Portsmouth water system to serve the Study Area. System pressures in the study area will be estimated based on the City's current maximum day demands. Fire flows will also be evaluated to determine the available flows in the study area.
- c. Hydraulic Impacts to the City's system will be estimated based on the domestic and fire demands in the Study Area. Available fire flows will be identified.
- d. In addition to hydraulic impacts, the water model will be used to evaluate water age.
- e. Improvements to the City's system, if necessary, will be identified based on the above evaluation.
- f. From the modeling, provide recommendations on the following:
  - i. Recommended transmission main sizes for the loop.
  - ii. Needed system improvements in Portsmouth including storage, supply, and/or transmission mains.

B. Master Plan Supplement and Basis of Design

- a. Summarize/restate the existing supply capacity of Portsmouth water system.
- b. Summarize the contributing design flows (average and maximum) from the Project Area in Greenland. Design flows will be based on a 20-year planning window. Build- out flows will also be estimated.
- c. Provide a basis of design and Master Plan Supplement. The supplement will be in the form of a Technical Memorandum.

**Task 2 - Preliminary Field Investigations**

A. Topographic Survey (Preliminary)

- a. Provide preliminary mapping at 1"=40' scale of the project area (40,500 feet). This does not include the railroad corridor to Ocean Road. The preliminary survey will be used to develop the preliminary drawings.
- b. The preliminary survey will be based on existing (available) aerial mapping and/or

Grantee Initials \_\_\_\_\_  
Date \_\_\_\_\_

LIDAR aerial information. Record Drawings, where available, will be used to supplement the survey. Limited ground work will be completed at this time. The scope includes up to 5-days for additional ground survey, where needed. This may include the railroad crossing and or brook crossings.

- c. The bridge crossing over Route 93 will include a field survey from 200 feet either side of the abutments and will include information on the stringers and sleeve below.
- d. Supplemental final survey will be provided during final design utilizing ground techniques.

**B. Subsurface Investigations (Preliminary)**

- a. Conduct up to three days of subsurface investigations (borings and probes) to complete a preliminary assessment of groundwater, rock/refusal and other soil conditions.
- b. Contact Dig-Safe and mark out the drilling locations in advance.
- c. Obtain an excavation permit from NHDOT.
- d. Provide a technical memorandum with the findings and boring/probe logs.

**Task 3 - Preliminary Design**

**A. Kick-Off and Project Meetings**

- a. Attend and facilitate a kick-off meeting with stakeholders to review goals and objectives. It is anticipated this meeting will be with Greenland and Portsmouth.
- b. Attend and facilitate two (2) project meetings with stakeholders to review project status once during the mid-point of design and once when the preliminary design is complete. In addition to Greenland and Portsmouth, NHDOT and NHDES will be invited.

**B. Public Meetings**

- a. Attend and provide a presentation at the following public meetings.
  - i. Two (2) Greenland Selectmen's meetings
  - ii. One (1) Portsmouth City Council meeting

**C. Design Development**

- a. Complete a site walk with City of Portsmouth staff to identify the best corridor for the water transmission main, hydrants and valves.
- b. Investigate the potential for contaminated sites along the corridor using NHDES's One-Stop data site.
- c. Meet with NHDOT to discuss the bridge crossing details.
- d. Develop preliminary structural design of bridge crossing support system.
- e. Water services will be shown to the edge of the ROW.

**D. Routing Options**

- a. Consider the Ocean Road option further to see if there is benefit over the Lafayette Road option.
- b. For the railroad option, the following will be completed:
  - i. Meet with NHDOT.
  - ii. Identify easement needed with the landowner of the rail trail.

Grantee Initials \_\_\_\_\_  
Date \_\_\_\_\_

- iii. Evaluate this option using the hydraulic model.
- iv. Prepare a conceptual work plan.
- v. Develop a cost opinion for this option.
- vi. Identify potential permits and approvals needed for the work.
- vii. Note, this option will only be advanced to the conceptual design level. Survey and design drawings are not included.

**E. Opinions of Costs**

- a. Develop an opinion of probable cost based on the preliminary design. Opinion of cost will include work within the ROW.
- b. Provide a typical range of costs to identify the anticipated work for properties to connect outside of the ROW. This will include service installs as well as meter and backflow preventer installs within the buildings.
- c. Provide an opinion of cost relating to the cost savings or increases for the railroad corridor loop option.
- d. Additionally, although they will not be developed to preliminary design level, if certain improvements are needed within the City's existing water system, conceptual level opinions of costs will be provided for those as well.

**F. Project Drawing Preparation**

- a. Develop a preliminary design set of drawings.

**EXHIBIT B**  
**BUDGET & PAYMENT METHOD**

The NHDES shall pay to the Grantee the total reimbursable program costs in accordance with the following requirements:

Reimbursement requests for program costs shall be made by the Grantee using the Drinking Water and Groundwater Trust 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.

The total reimbursement shall not exceed the grant award of \$200,000. Requests for grant funds will be no more than monthly.

<b>Task #</b>	<b>Description</b>	<b>Grant Amount</b>
1	Hydraulic Modeling and Master Plan Supplement	\$20,200
2	Preliminary Field Investigations	\$47,900
3	Preliminary Design	\$113,500
4	Contingency	\$18,400
<b>TOTAL</b>		<b>\$200,000</b>

Grantee Initials \_\_\_\_\_  
Date \_\_\_\_\_

EXHIBIT C  
SPECIAL PROVISIONS

Changes to the Scope of Services require NHDES approval in advance. Work must be completed and request for reimbursement must be made by the completion date listed on the grant agreement (section 1.6).

Grantee Initials \_\_\_\_\_  
Date \_\_\_\_\_