

**PROGRAMMATIC
AGREEMENT BETWEEN
THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGION 1;
NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL
SERVICES;
AND THE
NEW HAMPSHIRE STATE HISTORIC PRESERVATION OFFICER**

WHEREAS, the United States Environmental Protection Agency Region 1 (EPA) proposes to administer certain water infrastructure financing programs, including the Congressionally Directed Spending (CDS) Grant Program, with funds appropriated and authorized each year through the Federal Consolidated Appropriations Act, passed by the United States Congress and signed by the President of the United States (hereafter the “CDS Water Infrastructure funding Program”), and

WHEREAS, the New Hampshire Department of Environmental Services (NHDES) proposes to administer certain water infrastructure financing programs, including the Clean Water State Revolving Fund (CWSRF), Drinking Water State Revolving Funds (DWSRF) with funds from the U.S. Environmental Protection Agency (EPA), under RSA 486:14, Section 1452 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300j-12 and 33 U.S.C 1384, and 40 CFR Part 35 Subpart L and 40 CFR Part 35 Subpart K, or other related federal legislation as amended from time to time, such as the Water Infrastructure for the Nation Act (WIIN) and the Sewer Overflow and Stormwater Reuse Municipal Grants (OSG) Program, and the Drinking Water and Groundwater Trust Fund (DWGTF), PFAS Remediation Loan and Grant Fund (PFAS RLF), and American Rescue Plan Act (ARPA) (hereafter the "Water Infrastructure Funding Programs"); and

WHEREAS, for the purposes of this Programmatic Agreement (PA), the Water Infrastructure Funding Programs of the NHDES and the CDS Water Infrastructure Program of the EPA (together, “Programs”) provide assistance in the form of low-interest loans and/or grant funding to government entities, nonprofits, and other entities (Applicants) for wastewater infrastructure projects (collection systems, pumping stations, and wastewater treatment); other water pollution control projects (nonpoint source, watershed protection or restoration, and estuary management); and to public water systems to finance the cost of drinking water infrastructure projects to help support and promote safe and reliable drinking water to the citizens of New Hampshire; and

WHEREAS, EPA and NHDES have determined that implementing the Programs may result in Undertakings (as defined by 54 U.S.C. § 300320 and 36 C.F.R. § 800.16(y)) that may affect properties listed in or eligible for listing in the National Register of Historic Places (National Register) pursuant to 36 C.F.R. Part 60 (historic properties), and NHDES and EPA have consulted with the New Hampshire Division of Historical Resources State Historic Preservation Officer (NHSHPO) pursuant to Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. §§ 306108 and 306114, and the regulations implementing the NHPA at 36 C.F.R. Part 800 (Protection of Historic Properties); and

WHEREAS, EPA and NHDES have determined that their Programs may result in Undertakings with the potential to affect historic properties having religious and cultural significance to

Tribes, including sites that may contain human remains and/or associated cultural items; and

WHEREAS, there are currently no Federally Recognized Tribes within New Hampshire; and

WHEREAS, for the review of specific Undertakings under this Agreement, EPA and/or NHDES may invite other agencies, state recognized tribes, organizations, and individuals to participate as consulting parties; and

WHEREAS, EPA and NHDES have determined that the requirement to take into account the effects to historic properties of its undertakings may be more effectively and efficiently fulfilled through the use of a Programmatic Agreement; and

NOW THEREFORE, EPA, NHDES, and the NHSPO agree that the Programs shall be administered in accordance with the following stipulations to satisfy NHDES' Section 106 responsibilities for individual Water Infrastructure Funding Programs:

STIPULATIONS

EPA and NHDES will ensure that the following measures are carried out:

- I. **IDENTIFICATION OF PROPERTIES.** In accordance with 36 CFR 800.4, EPA and NHDES in consultation with the NHSPO will identify historic properties.
 - A. Level of Identification Efforts:
 1. EPA, NHDES, or its Applicants will submit a Request for Project Review form according to the NHSPO's manual in order to initiate Section 106 review for all project activities not exempt under Appendix 1.
 2. NHSPO's site files and previous reviews are available for EPA, NHDES, or its Applicants to review prior to submission. Survey information will be made available to NHDES, EPA or its applicants by in-person appointment at 19 Pillsbury Street, Concord, NH or by subscription to the New Hampshire Division of Historical Resource's online/GIS database, Enhanced Mapping and Management Information Tool (EMMIT) to retrieve records on previously surveyed properties.
 3. EPA, NHDES, or its Applicants may be required to complete New Hampshire Inventory forms according to NHSPO's guide, "How to Complete the New Hampshire Individual Inventory Form," in order to expedite review. EPA or NHDES may be required to use the services of an Architectural Historian qualified under 36 CFR 61 to complete NH Inventory forms.
 4. If ground disturbing activities are proposed (other than those exempted under Appendix 1), EPA, NHDES or its Applicants will consult with the NHSPO prior to any such activity to determine if the activity has the potential to affect National Register or National Register eligible archaeological properties. If such potential exists, the Funding Recipient/Applicant will conduct an archaeological survey in accordance with 36 CFR 66, Appendices B and C.
 5. If archaeological resources are found that meet the National Register criteria, they will be avoided or preserved in place whenever feasible. If this is not feasible, EPA, NHDES or its Applicants will consult with the NHSPO to develop and implement a

treatment consistent with the Advisory Council on Historic Preservation's (hereafter the "Council") handbook, Treatment of Archaeologic Properties, and approved by the NHSHPPO.

- B. Due to their non-adverse impacts, the activities listed in Appendix 1 are exempt from NHSHPPO's review and do not require consultation with the NHSHPPO.

II. TREATMENT

- 1. If EPA, NHDES or its Applicants, in consultation with NHSHPPO, finds an Undertaking may affect historic properties in the area of potential effects (APE), including those of religious or cultural significance to affected Tribe(s), EPA, NHDES must apply the criteria of adverse effect to historic properties within the APE(s), taking into account the views of the consulting parties and the public concerning effects in accordance with 36 C.F.R. § 800.5(a).
- 2. If EPA, NHDES, or its Applicants, in consultation with NHSHPPO, determines that an Undertaking may adversely affect a historic property, it must resolve the effects of the Undertaking in consultation with the NHSHPPO, participating Tribe(s), the Council, if participating, and other consulting parties, by the consultation process, MOA, or project-specific programmatic agreement depending upon the severity of the adverse effect as well as the determination of the historic property's significance on a local, state, or national level.

- III. PUBLIC INVOLVEMENT. Each year EPA and NHDES will notify the public of and make available for public inspection documentation on the Program. Included in this documentation will be general information on the funds; information on identified historic properties which might be affected by these activities; the amount of funds available in the current program year; and how interested persons can receive further information on the programs.

ADMINISTRATIVE CONDITIONS

- I. PERSONNEL QUALIFICATIONS. For projects that have been determined to have an adverse effect to National Register properties, EPA and NHDES shall ensure that all historic preservation work carried out pursuant to this PA will be by or under the direct supervision of a person or persons meeting at a minimum the Secretary of the Interior's Professional Qualification Standards for Architectural Historian Professionals (48 FR 44738-9). EPA and NHDES shall ensure that all archaeological investigations carried out pursuant to this Agreement will be by or under the direct supervision of a person or persons meeting at a minimum the Secretary of the Interior's Professional Qualification Standards for Archaeologists (48 FR 44738-9).
- II. LATE DISCOVERY. If any unanticipated discoveries of historic properties or archaeological sites are encountered during any of the work covered under this PA, EPA and NHDES shall suspend work in the area of the discovery and shall comply with 36 CFR 800.6(c)(6). EPA, NHDES, or its applicants will notify the NHSHPPO within

twenty-four (24) hours of the discovery. NHDES and/or its applicants and the NHSHPO will meet at the location within seventy-two (72) hours of the NHSHPO's initial notification to determine appropriate treatment of the discovery prior to the resumption of construction activities in the area of the discovery.

- III. MONITORING AND REPORTING. Every year after the execution of this PA, NHDES shall provide all parties to this PA a summary report detailing work undertaken pursuant to its terms. Such report shall include a list of exempted undertakings, any problems encountered, and any disputes and objections received in NHDES's efforts to carry out the terms of this PA.
- IV. AMENDMENTS. Any party to this PA may propose that the PA be amended, whereupon the parties shall consult with one another to consider such an amendment in accordance with 36 CFR 800.6(c)(7).

V. RESOLVING OBJECTIONS.

A. Should any party to this PA object in writing to EPA or NHDES regarding any action carried out or proposed with respect to any work covered under this agreement or to the manner in which such work is being implemented under this PA, EPA or NHDES shall consult with the objecting party to resolve the objection. If after initiating such consultation, EPA or NHDES determines that the objection cannot be resolved through consultation, EPA or NHDES shall forward all documentation relevant to the objection to the Council including the proposed response to the objection of EPA or NHDES. Within thirty (30) days after receipt of all pertinent documentation, the Council shall exercise one of the following options:

1. Advise EPA or NHDES that the Council concurs in the proposed response to the objection, whereupon EPA or NHDES shall respond to the objection accordingly; or
 2. Provide EPA or NHDES with recommendations, which EPA or NHDES shall take into account in reaching a final decision regarding its response to the objection; or
 3. Notify EPA or NHDES that the objection will be referred for comment pursuant to 36 CFR 800.7 and proceed to refer the objection and comment. The resulting comment shall be taken into account by EPA or NHDES in accordance with 36 CFR 800.7(c)(4) and Part 110(1) of the NHPA.
- B. Should the Council not exercise one of the above options within thirty (30) days after receipt of all pertinent documentation, EPA or NHDES may assume the Council's concurrence in its proposed response to the objections.
- C. EPA or NHDES shall take into account any Council recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; EPA's and NHDES's responsibility to carry out all actions under this PA that are not the subjects of the objection shall remain unchanged.

- VI. RESOLUTION OF OBJECTIONS BY THE PUBLIC. Should an objection pertaining to historic preservation or implementation of the items of this PA be raised by a member of the public in a timely and substantive manner, NHDES shall notify the parties to this PA and take the objection into account, consulting with the objector and, should the objector so request, with any of the parties to this PA to resolve the objection.
- VII. DURATION. This agreement is effective ten (10) years from the date of signing.
- VIII. TERMINATION. If EPA or NHDES determines that it cannot implement the terms of this PA, or the NESHPO determines that the PA is not being properly implemented, NHDES, EPA or the NESHPO may propose to the other parties that this PA be terminated.

The party proposing to terminate this PA shall so notify all parties to this PA, explaining the reasons for termination and affording them at least thirty (30) days to consult and seek alternatives to termination. The parties shall then consult.

Should consultation fail, EPA, NHDES, or the NESHPO may terminate the PA by so notifying all parties. All applicable requirements of the Section 106 process for the Programs shall continue to apply.

Execution of this Programmatic Agreement and carrying out its terms evidence that EPA and NHDES have afforded the Council a reasonable opportunity to comment on this undertaking and has satisfied its Section 106 responsibilities for all individual undertakings of certain water infrastructure financing programs as defined above.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 1

By:

Ken Moraff, Water Division Director

Date:

NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES

By:

Robert R. Scott, Commissioner
NH Department of Environmental Services

Date:

NEW HAMPSHIRE HISTORIC PRESERVATION OFFICER

By:

Nadine Miller, Deputy State Historic Preservation Officer

Date:

APPENDIX 1

The following activities DO NOT require review by the NHSHPO, pursuant to Stipulation I.B.

- 1) Work on or demolition of any building or drinking water or wastewater infrastructure (infrastructure) that is less than 50 years of age and not listed or eligible for listing in the National Register of Historic Places as a historic district.
- 2) Purchase, replacement, modification to, and installation of equipment, accessories, or appurtenances necessary for the operation of existing infrastructure, and or water treatment equipment (including chemical feeds, drums, backwash drainage); wastewater treatment facilities, sewage disposal systems and stormwater systems, provided all work will occur within the existing footprint or disturbed areas and modifications to the treatment system (i.e. backwash discharge) will not result in ground disturbance in undisturbed areas.
- 3) Replacement of lead service lines, small diameter mains, fittings containing lead, meters, backflow prevention, and minor interior plumbing upgrades to private residences provided all work will occur within the existing road surface, utility trenches, and previously disturbed areas. Excludes all service line replacement that will result in new ground disturbance.
- 4) Repair, replacement, or installation of drinking water mains and wastewater or stormwater conveyance systems (gravity sewers and pump stations/force mains) and associated drinking water infrastructure such as curb stops, service connections, valves, etc. provided all work will occur within the existing road surfaces, utility trenches, and previously disturbed areas and no excavation shall be conducted within 25 feet of a known burial site or within 25 feet of the boundaries of an established burial ground or cemetery.
- 5) Installation of water and wastewater mains by means of directional drilling as long as disturbance for access pits, staging, etc. is limited to previously disturbed areas.
- 6) Minor amendments or revisions to previously approved projects as long as such activities will result in no new ground or environmental disturbance.
- 7) Drilling geotechnical borings during the design of a project provided ground disturbance beyond borings is not required and the drill holes do not exceed 4 inches in diameter.
- 8) Preliminary siting and drilling of test wells for purposes of exploring for public water supply sources provided work is limited to the temporary equipment staging area (not to exceed 20ft by 20ft) and construction of access road or tree/shrub removal and stumping is not required.
- 9) Acquisition of land where no infrastructure will be constructed, and ground disturbance is not anticipated.

APPENDIX2

Definitions

"Advisory Council on Historic Preservation (the Council)" is an independent federal agency that promotes the preservation, enhancement, and productive use of our nation's historic resources, and advises the President and Congress on national historic preservation policy.

"Area of Potential Effects" means the geographic area(s) within which a project undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. •

"Applicants" means government entities, nonprofits, and other entities receiving financial assistance for water infrastructure projects through any of the NHDES Water Infrastructure Funding Programs.

"Backwash discharge" means disposal of any wastewater produced from cleaning a filter with a reverse flow of water onto or into the ground or groundwater.

"Backwash lagoon" means a pit or excavation designed or used to receive backwash discharge that has no barrier to prohibit the downward or lateral flow of the deposited waste, its constituents, or leachate.

"Collector sewer" means a lateral sewer installed primarily to collect wastewater directly from individual building sewers or private property.

"Combined sewer" means a sewer that serves as both a sanitary sewer and a storm sewer.

"Distribution system" means that portion of the public water system which includes pipes, storage facilities, pressure booster facilities, and all measuring and control devices used to convey potable water to the system users.

"Drinking Water Infrastructure" means all structures and all mechanical and electrical equipment that connect a source of water to end users in a water system or that provide source water protection, including but not limited to all sources, treatment, storage, and distribution facilities and the land necessary therefor. Includes well/pump houses, vaults, meter pits, utility panels, treatment equipment, accessories, and appurtenances.

"Disturbance" means any earth moving including filling, grading, dredging, mining, excavation, construction, removal of topsoil, removal of stumps, removal of vegetation, stockpiling of earth material, or any other activity that results in a change to the preexisting ground conditions or contours, or both.

"Environmental disturbance" means impacts to the atmospheric, flora/fauna, flood plain, socio-economic, water, or other resources that may result from a proposed water infrastructure project.

"Historic District" means a group of buildings, properties, or sites that have been designated as either listed or eligible for listing in the National Register of Historic Places.

"Infiltration/Inflow (I/I)" means water other than wastewater that enters a sewer system.

"Lead service line" means a service line made of lead which connects the water main to the building inlet and any lead pigtail, gooseneck or other fitting which is connected to such lead line.

"National Register of Historic Places" means the official list of the Nation's historic places worthy of preservation and is used as part of Section 106 of the National Historic Preservation Act to identify properties that warrant review. A property can be listed on the register or simply be "eligible" for listing.

"Nonpoint source (NPS) pollution" means pollution caused by sources that are not regulated as point sources, such as pollution caused by runoff from agricultural, silvicultural, and urban areas.

"Replacement" means the installation of new or refurbished equipment, accessories, or appurtenances for existing equipment, accessories, or appurtenances that no longer perform as originally intended.

"Septage" means, as defined in RSA 485-A:2, IX-a, material removed from septic tanks, cesspools, holding tanks, or other sewage treatment storage units, excluding sewage sludge from public treatment works and industrial waste and any other sludge.

"Sewage" means, as defined in RSA 485-A:2, X, the water-carried waste products from buildings, public or private, together with such groundwater infiltration and surface water as may be present.

"Sewage disposal system" means any private sewage disposal or treatment system, other than a publicly owned and operated system.

"Wastewater" means the spent water of a community. The term includes water carrying domestic, commercial, and industrial wastes as well as other wastes.

"Wastewater facilities" means, as defined in RSA 485-A:2, XIX, the structures, equipment, and processes required to collect, convey, and treat domestic and industrial wastes, and dispose of the effluent and sludge.

"Wastewater Infrastructure" means all structures and all mechanical and electrical equipment that contain and/or convey wastewater from the point of generation to the point of discharge after treatment, and the land necessary for such structures and equipment, whether for wastewater treatment, nonpoint source pollution control, watershed management, or estuary management.

"Wastewater treatment plant" means, as defined in RSA 485-A:2, XVI-a, the treatment facility or group of treatment devices which treats domestic or combined domestic and industrial wastewater through alteration, alone or in combination, of the physical, chemical, or bacteriological quality of the wastewater and which dewateres and handles sludge removed from the wastewater.