

**American Rescue Plan Act of 2021 Coronavirus State and Local Fiscal Recover Funds
Subaward Agreement
Between
The Town of Windham, Maine
and
Portland Water District**

Article I. Overview.

Section 1.1. Parties. The parties to this agreement are the Town of Windham, Maine, a municipal corporation existing under the laws of the State of Maine located in the Cumberland County (the “Town”), and the Portland Water District, a quasi-municipal corporation with a place of business at 225 Douglass Street, Portland, Maine (the “Subrecipient”).

Section 1.2. Definitions. The definitions in 2 CFR 200.1 are hereby incorporated into this Agreement.

Section 1.3. Roles. For the purposes of this Agreement, the Town serves as a pass-through entity.

Section 1.4. Source of Funding. This Agreement is funded by a portion of the \$1,823,790.67] allocated to the Town by the Coronavirus State Local Fiscal Recovery Fund created under section 603 of the American Rescue Plan Act of 2021 (ARPA/CSLFRF).

Section 1.5. Purpose. The purpose of this Agreement is to establish the terms and conditions for a subaward allocated to the Subrecipient from the Town.

Section 1.6. Disclosures. Federal regulations, specifically 2 CFR 200.331(a)(1), require the Town to provide the Subrecipient with specific information about this subaward. All required information is listed in Exhibit A (Subaward Data).

Section 1.7. Term. This Agreement shall govern the performance of the parties for the period December 12, 2024 (the “Effective Date”) through June 30, 2026 (“Expiration Date”), unless earlier terminated by either party in accordance with the terms of this Agreement (“Agreement Term”).

Article II. Scope of Funded Activities.

Section 2.1. Scope of Services. Subrecipient shall perform all activities described in the scope of activities, attached hereto as Exhibit B (Approved Activities).

Section 2.2. Budget. Subrecipient shall perform the Approved Activities in accordance with the program budget as approved by the Town and attached hereto as Exhibit C (Approved Budget).

Section 2.3. Prior Approval for Changes. Subrecipient may not transfer allocated funds among cost categories within a budgeted program account without the prior written approval of the Town; nor shall Subrecipient make any changes, directly or indirectly, to program design, Approved Activities, or Approved Budget without the prior written approval of the Town.

Article III. Compensation.

Section. 3.1. Payment of Funds. The Town agrees to reimburse Subrecipient for costs actually incurred and paid by Subrecipient in accordance with the Approved Budget and for the performance of the Approved Activities under this Agreement in an amount not to exceed \$1,823,709.67 (“Total Agreement Funds”). The amount of Total Agreement Funds, however, is subject to adjustment by the Town if a substantial change is made in the Approved Activities that affects this Agreement or if this Agreement is terminated prior to the expiration of the Agreement. Program funds shall not be expended prior to the Effective Date or following the earlier of the Expiration Date or the last day of the Agreement Term. Costs incurred shall only be as necessary and allowable to carry out the purposes and activities of the Approved Activities and may not exceed the maximum limits set in the Approved Budget. Expenses charged against the Total Agreement Funds shall be incurred in accordance with this Agreement.

Section. 3.2. Invoices. The Town shall pay Subrecipient in the form of reimbursements. On or before the twentieth (20th) day of each month and in any event no later than thirty (30) days after the earlier of the expiration or termination of this Agreement, Subrecipient shall submit invoices and associated receipts, in a format dictated by the Town for the most recent month ended, to the Town’s Treasurer via email, setting forth actual expenditures of Subrecipient in accordance with this Agreement. Within ten (10) working days from the date it receives such invoice, the Town may disapprove the requested reimbursement claim. If the reimbursement claim is so disapproved, the Town shall notify Subrecipient as to the disapproval. A decision by the Town to disapprove a reimbursement claim is final. There is no appeal process for subrecipient. If the Town approves payment, then the Town will disburse the funds without further notice.

Section. 3.3. The Town’s Subaward Obligations Contingent on Federal Funding and Subrecipient Compliance. The payment of funds to Subrecipient under the terms of this Agreement shall be contingent on Subrecipient’s continued eligibility to receive funds under the applicable provisions of state and federal laws. If the amount of funds that the Town receives from the ARPA/CSLFRF is reduced, the Town may reduce the amount of funds awarded under this Agreement or terminate this Agreement. The Town also may deny payment for Subrecipient’s expenditures for Approved Activities where invoices or other reports are not submitted by the deadlines specified in this Agreement or for failure of Subrecipient to comply with the terms and conditions of this Agreement.

Article IV. Financial Accountability and Grant Administration.

Section. 4.1. Financial Management. Subrecipient shall maintain a financial management system and financial records related to all transactions with funds received pursuant to this Agreement and with any program income earned as a result of funds received pursuant to this Agreement. Subrecipient must administer funds received pursuant to this Agreement in accordance with all applicable federal and state requirements, including the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200, as required by the ARPA/CSLFRF Assistance Listing (21.027). Subrecipient shall adopt such additional financial management procedures as may from time-to-time be prescribed by the Town if required by applicable federal or state laws or regulations, or guidelines from US Department of Treasury. Subrecipient shall maintain detailed, itemized documentation and other necessary records of all income received and expenses incurred pursuant to this Agreement.

Section. 4.2. Limitations on Expenditures. The Town shall only reimburse Subrecipient for documented expenditures incurred during the Agreement Term that are: (i) reasonable and necessary

to carry out the scope of Approved Activities described in Exhibit B; (ii) documented by contracts or other evidence of liability consistent with the established Town and Subrecipient procedures; and (iii) incurred in accordance with all applicable requirements for the expenditure of funds payable under this Agreement. The Town may not reimburse or otherwise compensate Subrecipient for any expenditures incurred or services provided prior to the Effective Date or following the earlier of the expiration or termination of this Agreement.

Section. 4.3. Indirect Cost Rate. The indirect cost rate, if any, indicated in Exhibit C (Approved Budget) shall apply to this Agreement.

Section. 4.4. Financial and Other Reports. Subrecipient shall submit to the Town such reports and back-up data as may be required by the Federal Government or the Town including such reports which enable the Town to submit its own reports to the US Department of Treasury, in accordance with the following schedule, which may be amended from time to time:

<u>REPORT</u>	<u>DEADLINE</u>
Annual Project and Expenditure Report	April 30, 2025 and/or April 30, 2026 and .or
Closeout Report	April 30, 2027

This provision shall survive the expiration or termination of this Agreement with respect to any reports which the Subrecipient is required to submit to the Town following the expiration or termination of this Agreement.

Section. 4.5. Improper Payments. Any item of expenditure by Subrecipient under the terms of this Agreement which is found by auditors, investigators, and other authorized representatives of the Town, the US Department of Treasury, or other federal or state instrumentality to be improper, unallowable, in violation of federal or state law, or the terms of this Agreement, or involving any fraudulent, deceptive, or misleading representations or activities of Subrecipient, shall become Subrecipient's liability, and shall be paid solely by Subrecipient, immediately upon notification of such, from funds other than those provided by the Town under this Agreement or any other agreements between the Town and Subrecipient. This provision shall survive the expiration or termination of this Agreement.

Section. 4.6. Audits and Access to Records. Subrecipient certifies compliance with applicable provisions of 2 CFR 200.501-200.521, and continued compliance with these provisions during the term of this section. If Subrecipient is not required to have a Single Audit as defined by 200.501, US Department of Treasury requirements, or the Single Audit Act, then Subrecipient shall have a financial audit performed yearly by an independent Certified Public Accountant. Subrecipient shall provide notice of the completion of any required audits and will provide access to such audits and other financial information related to the Agreement upon request. Subrecipient certifies that it will provide the Town with notice of any adverse findings which impact this Agreement. This obligation extends for one year beyond the expiration or termination of this Agreement.

Section. 4.7. Closeout. Final payment request(s) under this Agreement must be received by the Town no later than thirty (30) days after the earlier of the Expiration Date or the last day of the Agreement Term. The Town will not accept a payment request submitted after this date without prior authorization from the Town. In consideration of the execution of this Agreement by the Town, Subrecipient agrees that acceptance of final payment from the Town will constitute an agreement by Subrecipient to release and forever discharge the Town, its agents, employees, officers,

representatives, affiliates, successors and assigns from any and all claims, demands, damages, liabilities, actions, causes of action or suits of any nature whatsoever, which Subrecipient has at the time of acceptance of final payment or may thereafter have, arising out of, in connection with or in any way relating to any and all injuries and damages of any kind as a result of or in any way relating to this Agreement. The Subrecipient's obligations to the Town under this Agreement shall not terminate until all closeout requirements are completed to the satisfaction of the Town. Such requirements shall include submitting final reports to the Town and providing any closeout-related information requested by the Town by the deadlines specified by the Town. This provision shall survive the expiration or termination of this Agreement.

Article V. Compliance with Grant Agreement and Applicable Laws.

Section. 5.1. General Compliance. Subrecipient shall perform all Approved Activities funded by this Agreement in accordance with this Agreement, the award agreement between the Town and the US Department of Treasury, and all applicable federal, state and local requirements, including all applicable statutes, rules, regulations, executive orders, directives or other requirements. Such requirements may be different from Subrecipient's current policies and practices. The Town may assist Subrecipient in complying with all applicable requirements. However, Subrecipient remains responsible for ensuring its compliance with all applicable requirements.

Section. 5.2. Expenditure Authority. This Agreement is subject to the laws, regulations, and guidance documents authorizing and implementing the ARPA/CSLFRF grant, including, but not limited to, the following:

Authorizing Statute. Section 603 of the *Social Security Act* (42 U.S.C. 803), as added by section 9901(a) of the *American Rescue Plan Act of 2021* (Pub. L. No. 117-2).

Implementing Regulations. Subpart A of 31 CFR Part 35 (Coronavirus State and Local Fiscal Recovery Funds), as adopted in the *Coronavirus State and Local Fiscal Recovery Funds* interim final rule (86 FR 26786, applicable May 17, 2021 through March 31, 2022) and final rule (87 FR 4338, applicable January 27, 2022 through the end of the ARPA/CSLFRF award term), and other subsequent regulations implementing Section 603 of the Social Security Act (42 U.S.C. 803).

Guidance Documents. Applicable guidance documents issued from time-to-time by the US Department of Treasury, including the currently applicable version of the *Compliance and Reporting Guidance: State and Local Fiscal Recovery Funds*.¹

This Agreement is also subject to all applicable laws of the State of Maine.

Section. 5.3. Federal Grant Administration Requirements. Subrecipient shall comply with the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, 2 CFR Part 200 (UG), as adopted by the Department of Treasury at 2 CFR Part 1000 and as set forth in the [Assistance Listing for ARPA/CSLFRF \(21.027\)](#). These requirements dictate how Subrecipient must administer the subaward and how the Town must oversee Subrecipient.

The applicable UG provisions are as follows:

¹ <https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf>.

[Subpart A, Acronyms and Definitions](#)

[Subpart B, General provisions](#)

[Subpart C, Pre-Federal Award Requirements and Contents of Federal](#)

[Awards](#) (except 2 CFR 200.204, .205, .210, and .213)

[Subpart D, Post Federal; Award Requirements](#) (except 2 CFR 200.305(b)(8) & (9), .308, .309, and .320(c)(4))

[Subpart E, Cost Principles](#)

[Subpart F, Audit Requirements](#)

[2 CFR Part 25](#) (Universal Identifier & System for Award Management)

[2 CFR Part 170](#) (Reporting Subaward and Executive Compensation Information)

[2 CFR Part 180](#) (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement))

Subrecipient shall document compliance with UG requirements, including adoption and implementation of all required policies and procedures, within thirty (30) days of the execution of this Agreement and during all subsequent reviews during the term of the Agreement, the Town may provide sample policies or other assistance to Subrecipient in meeting these compliance requirements. Regardless of the Town's assistance, it is the Subrecipient's responsibility to properly comply with all UG requirements. Failure to do so may result in termination of the Agreement by the Town.

Section. 5.4. Procurement Requirements.

(a) **Federal.** Consistent with UG compliance requirements, including the standards in 2 CFR 200.318 for the acquisition of property, equipment, supplies, or services required under this Agreement, Subrecipient shall adopt and enact procurement procedures. Subrecipient's documented procurement procedures must conform to the procurement standards identified in Subpart D of 2 CFR Part 200 (Procurement Standards). Such standards include, but are not limited to, the following:

1. All procurement transactions for property or services shall be conducted in a manner providing full and open competition, consistent with standards outlined in 2 CFR 200.320(1)-(3) and (5), which allows for non-competitive procurements only if either (1) the item is below the micro-purchase threshold; (2) the item is only available from a single source; (3) the public exigency or emergency will not permit a delay from publicizing a competitive solicitation; or (4) after solicitation of a number of sources, competition is determined inadequate.
2. Subrecipient shall maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
3. Subrecipient shall maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts in conformance with 2 CFR 200.318(c). Subrecipient shall immediately disclose in writing to the Town any potential conflict of interest affecting the awarded funds in accordance with 2 CFR 200.112.
4. Pursuant to 2 CFR 200.321, Subrecipient shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

5. Subrecipient shall “maintain records sufficient to detail the history of procurement. These records will include but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.” 2 CFR 200.318(i).

(b) Local. In addition to the requirements described in subsection (a), the Subrecipient shall comply with the following:

1. **Reporting.** Subrecipient shall document, in its quarterly report to the Town the status of all contracts executed in connection with this Agreement.
2. **The Town’s review of solicitations.** Except for micro-purchases made pursuant to 2 CFR 200.320(a)(1) or procurements by small purchase procedures pursuant to 2 CFR 200.320(a)(2), if Subrecipient proposes to enter into any contract for the performance of any of the Approved Activities under this Agreement, then the Subrecipient shall forward to the Town a copy of any solicitation (whether competitive or non-competitive) at least fifteen (15) days prior to the publication or communication of the solicitation. The Town will review the solicitation and provide comments, if any, to Subrecipient within three (3) business days. Failure to respond within three (3) business days does not constitute approval by the Town. Consistent with 2 CFR 200.324, the Town will review the solicitation for compliance with applicable procurement standards. The Town’s review and comments shall not constitute a binding approval of the solicitation. Regardless of the Town’s review, Subrecipient remains bound by all applicable laws, regulations, and Agreement terms. If during its review the Town identifies any deficiencies, then the Town will communicate those deficiencies to Subrecipient as quickly as possible within the three (3) business day window outlined above.
3. **The Town’s review of contracts.** Except for micro-purchases pursuant to 2 CFR 200.320(a), if Subrecipient proposes to enter into any contracts for the performance of any of the Approved Activities under this Agreement, then Subrecipient shall forward to the Town a copy of the written contract prior to contract execution. The Town review the unexecuted contract for compliance with applicable requirements and provide comments, if any, to Subrecipient within three (3) business days. Failure to respond within three (3) business days does not constitute approval by the Town. Consistent with 2 C.F.R. §200.324, the Town will review the unexecuted contract for compliance with the procurement standards outlined in 2 C.F.R. §§200.318 through 200.327 as well as Appendix II to 2 C.F.R. Part 200. The Town’s review and comments shall not constitute an approval of the contract. Regardless of the Town’s review, Subrecipient remains bound by all applicable laws, regulations, and Agreement terms. If during its review the Town identifies any deficiencies, then the Town will communicate those deficiencies to Subrecipient as soon as possible within the three (3) business day window outlined above. Subrecipient must correct the noted deficiencies before executing the contract.

(c) Mandatory Contract Provisions. Subrecipient must include contract provisions required by UG and other state and federal laws and regulations, and as otherwise dictated by the Town.

Section 5.5. Subawards. In executing this Agreement, Subrecipient may not enter a subaward without prior written approval from the Town.

Section 5.6. Property Management. All real property acquired or improved, and equipment or supplies purchased in whole or in part with ARPA/CSLFRF funds, must be used, insured, managed, and disposed of in accordance with 2 CFR 200.311 through 2 CFR 200.316, as well as all other federal, state and local laws.

Section 5.7 Program Income. If Subrecipient earns program income, as defined in 2 CFR 200.1 during the term of the subaward, it must segregate the gross proceeds of the program income and follow the provisions in 2 CFR 200.307

Section. 5.8. Federal Restrictions on Lobbying. Subrecipient shall comply with the restrictions on lobbying in 31 CFR Part 21. Pursuant to this regulation, Subrecipient may not use any federal funds to pay any person to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. Subrecipient shall certify in writing that Subrecipient has not made, and will not make, any payment prohibited by these requirements using the form provided in Exhibit D (Lobbying Certifications).

Section. 5.9. Universal Identifier and System for Award Management (SAM). Subrecipient shall obtain, and provide to the Town a unique entity identifier assigned by the System for Award Management (SAM), which is accessible at www.sam.gov.

Section. 5.10. Equal Opportunity & Other Requirements. Subrecipient shall adopt and enact a nondiscrimination policy consistent with the requirements in this section.

Civil Rights Laws. Subrecipient shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d *et seq.*) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance.

Fair Housing Laws. Subrecipient shall comply with the Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 *et seq.*), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability.

Disability Protections. Subrecipient shall comply with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance.

Age Discrimination. Subrecipient shall comply with the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101 *et seq.*), and Treasury's implementing regulations at 31 CFR Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance.

Americans with Disabilities Act. Subrecipient shall comply with Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

Section. 5.11. Suspension and Debarment. Subrecipient shall comply with the Office of Management and Budget (OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR Part 180, as adopted by the U.S. Department of Treasury at 31 CFR Part 19. Subrecipient represents that neither it, nor any of its principals has been debarred, suspended, or otherwise determined ineligible to participate in federal assistance awards or contracts. Subrecipient further agrees that it will notify the Town immediately if it or any of its principals is placed on the list of parties excluded from federal procurement or nonprocurement programs available at www.sam.gov.

Section. 5.12. Federal Funding Accountability and Transparency Act of 2006. Subrecipient shall provide the Town with all information requested by the Town to enable the Town to comply with the reporting requirements of the *Federal Funding Accountability and Transparency Act of 2006* (31 U.S.C. 6101 note).

Section. 5.13. Licenses, Certifications, Permits, Accreditation. Subrecipient shall obtain and keep current any license, certification, permit, or accreditation required by federal, state, or local law and shall submit to the Town proof of any licensure, certification, permit or accreditation upon request.

Section. 5.14. Publications. Any publications produced with funds from this Agreement shall display the following language: “This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to the Town of Windham, Maine by the U.S. Department of the Treasury.”

Section 5.15. Program for Enhancement of Contractor Employee Protections. Subrecipient is hereby notified that they are required to: inform its employees working on any federal award that they are subject to the whistleblower rights and remedies of the program; inform its employees in writing of employee whistleblower protections under 41 U.S.C §4712 in the predominant native language of the workforce; and include such requirements in any agreement made with a subcontractor or subgrantee.

Section 5.16. Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment. Pursuant to 2 CFR 200.216, Subrecipient shall not obligate or expend funds received under this Subaward to: (1) procure or obtain; (2) extend or renew a contract to procure or obtain; or (3) enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services (as described in Public Law 115-232, section 889) as a substantial or essential component of any system, or as a critical technology as part of any system.

Section 5.17. Use of Name. Neither party to this Agreement shall use the other party’s name, trademarks, or other logos in any publicity, advertising, or news release without the prior written approval of an authorized representative of that party. The parties agree that each party may use factual information regarding the existence and purpose of the relationship that is the subject of this Agreement for legitimate business purposes, to satisfy any reporting and funding obligations, or as required by applicable law or regulation without written permission from the other party. In any such statement, the relationship of the parties shall be accurately and appropriately described.

Section 5.18. Highest Compensated Officers. The names and total compensation of the five most highly compensated officers of Subrecipient shall be listed if the Subrecipient in the preceding fiscal year received 80 percent or more of its annual gross revenues in Federal awards; and

\$25,000,000 or more in annual gross revenues from Federal awards; and the public does not have access to this information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. See FFATA § 2(b)(1) Code of 1986. If this requirement applies to Subrecipient, Subrecipient will submit the list of its five most highly compensated officers to the Town within thirty (30) days of the execution of this Agreement and yearly thereafter during the Agreement term.

Section 5.19. Statement of Assurances. Subrecipient certifies compliance with SF 424B (Statement of Assurances – Non-Construction) and SF424D (Statement of Assurances – Construction).

Section 5.20. Drug-free Workplace Requirements. Subrecipient agrees to follow all drug-free workplace requirements provided for in state and federal law.

Section 5.21. Stevens Amendments Requirements. Subrecipient shall identify that federal assistance funds were used to fund Approved Activities under this Agreement in any publicity and /or signage relating to the funded project or program.

Article VI. Cooperation in Monitoring and Evaluation.

Section. 6.1. The Town's Responsibilities. The Town shall monitor, evaluate, and provide guidance and direction to Subrecipient in the conduct of Approved Activities performed under this Agreement. The Town must determine whether Subrecipient has spent funds in accordance with applicable laws, regulations, including the federal audit requirements and agreements and shall monitor the activities of Subrecipient to ensure that Subrecipient has met such requirements. The Town may require Subrecipient to take corrective action if deficiencies are found.

The following specific monitoring activities apply to this Agreement:

The Town will meet monthly and review all invoices, activities, payments with Portland Water District.

Section. 6.2. Subrecipient Responsibilities.

- (a) **Cooperation with the Town's Oversight.** Subrecipient shall permit the Town to carry out monitoring and evaluation activities, including any performance measurement system required by applicable law, regulation, funding sources guidelines or by the terms and conditions of the applicable grant award, and Subrecipient agrees to ensure, to the greatest extent possible, the cooperation of its agents, employees and board members in such monitoring and evaluation efforts. This provision shall survive the expiration or termination of this Agreement.
- (b) **Cooperation with Audits.** Subrecipient shall cooperate fully with any reviews or audits of the activities under this Agreement by authorized representatives of the Town, the State of Maine, the US Department of Treasury, and the US Government Accountability Office. Subrecipient agrees to ensure to the extent possible the cooperation of its agents, employees, and board members in any such reviews and audits. This provision shall survive the expiration or termination of this Agreement.

Section 6.3. Interventions. If the Town determines that Subrecipient is not in compliance with this Agreement, the Town may initiate an intervention, in accordance with 2 CFR 200.208 and 2 CFR

200.339. The degree of Subrecipient's performance or compliance deficiency will determine the degree of intervention. All possible interventions are listed below and will depend on the degree of deficiency in Subrecipient's performance or compliance deficiency.

If the Town determines that an intervention is warranted, it shall provide written notice to Subrecipient of the intervention within thirty (30) days of the completion of a report review, desk review, onsite review, audit review, or procedures engagement review or as soon as possible after the Town otherwise learns of a compliance or performance deficiency related to the execution of this Agreement. The written notice shall notify Subrecipient of the following related to the intervention:

- (1) The nature of the additional requirements;
- (2) The reason why the additional requirements are being imposed;
- (3) The nature of the action needed to remove the additional requirement, if applicable;
- (4) The time allowed for completing the actions if applicable; and
- (5) The method for requesting reconsideration of the additional requirements imposed.

The Town may impose the following interventions on Subrecipient, based on the level of compliance or performance deficiency that the Town determines:

Level 1 Interventions. These interventions may be required for minor compliance or performance issues.

- (1) Subrecipient addresses specific internal control, documentation, financial management, compliance, or performance issues within a specified time period
- (2) More frequent or more thorough reporting by the Subrecipient
- (3) More frequent monitoring by the Town
- (4) Required Subrecipient technical assistance or training

Level 2 Interventions. These interventions may be required for more serious compliance or performance issues.

- (1) Restrictions on funding payment requests by Subrecipient
- (2) Disallowing payments to Subrecipient
- (3) Requiring repayment for disallowed cost items
- (4) Imposing probationary status on Subrecipient

Level 3 Interventions. These interventions may be required for significant and/or persistent compliance or performance issues.

- (1) Temporary or indefinite funding suspension to Subrecipient
- (2) Nonrenewal of funding to Subrecipient in subsequent year
- (3) Terminate funding to Subrecipient in the current year
- (4) Initiate legal action against Subrecipient

Interventions will remain in place until the underlying performance or compliance deficiency is addressed to the sole satisfaction of the Town.

Section 6.4. Records Retention and Access. Subrecipient shall maintain all records, books, papers and other documents related to its performance of Approved Activities under this Agreement (including without limitation personnel, property, financial and medical records) through at least December 31, 2031, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving this Agreement. Subrecipient shall make all records, books, papers and other documents that relate to this Agreement available at all reasonable times for inspection, review and audit by the authorized representatives of the Town, the State of Maine, the

US Department of Treasury, the US Government Accountability Office, and any other authorized state or federal oversight office.

Section 6.5. Key Personnel. Subrecipient shall identify all personnel who will be involved in performing Approved Activities and otherwise administering the Agreement, including at least one project manager and one fiscal officer (Key Personnel). Subrecipient shall notify the Town of any changes to these personnel within thirty (30) days of the change. Key personnel names, titles, and contact information see attached listing. (Key Personnel).

Article VII. Default and Termination.

Section. 7.1. Termination for Cause. The Town may terminate this Agreement for cause after three days written notice. Cause may include misuse of funds, fraud, lack of compliance with applicable rules, laws and regulations, failure to perform on time, or failure to comply with any of the requirements of this Agreement.

Sec. 7.2. Termination Without Cause. The Town may terminate this Agreement for any reason, in its sole discretion, by providing Subrecipient with thirty (30) days prior written notice.

Sec. 7.3. Termination by Mutual Agreement. The Town and Subrecipient may agree to terminate this Agreement for their mutual convenience through a written amendment to this Agreement. The amendment will state the effective date of the termination and the procedures for proper closeout of the Agreement.

Sec. 7.4. Termination Procedures. If this Agreement is terminated, Subrecipient may not incur new obligations for the terminated portion of the Agreement after Subrecipient has received the notification of termination. Subrecipient must cancel as many outstanding obligations as possible. Costs incurred after receipt of the termination notice will be disallowed. Subrecipient shall not be relieved of liability to the Town because of any breach of Agreement by Subrecipient. The Town may, to the extent authorized by law, withhold payments to Subrecipient for the purpose of set-off until the exact amount of damages due to the Town from Subrecipient is determined.

Article VIII. General Conditions.

Section. 8.1. Indemnification. To the extent permitted by law, Subrecipient agrees to indemnify and hold harmless the Town and any of its officers, agents and employees, and the Federal Government from any claims of third parties arising out of any act or omission of Subrecipient in connection with the performance of this Agreement.

Section. 8.2. Insurance. Subrecipient must maintain and keep in full force and effect at all times during the term of this Agreement a policy of commercial general liability insurance and automotive liability insurance with an insurance company licensed to do business in the State of Maine, each in an amount not less than \$1,000,000, or such larger amount as needed to reflect changes in municipal liability exposure under the Maine Tort Claims Act, as amended from time to time and with the Town named as additional insured on such coverage; and workers' compensation liability insurance with an insurance company licensed to do business in the State of Maine in the statutory amount, as amended from time to time. Subrecipient shall provide the Town with a copy of the certificate evidencing such insurance upon the commencement date of this Agreement and upon the

anniversary of the commencement date of this Agreement thereafter. The Certificate of Insurance and policies of insurance shall include a sixty (60) day notice to the Town of cancellation, non-renewal or material change in coverage or form. Further, Subrecipient shall replace certificates of insurance pursuant to this Agreement. It is required that the Town be named as an Additional Insured on the General Liability and Automobile Liability policies.

Section. 8.3. Venue and Jurisdiction. The Town and Subrecipient agree that they executed and performed this Agreement in Windham, Maine. This Agreement will be governed by and construed in accordance with the laws of Maine. The exclusive forum and venue for all actions arising out of this Agreement will be brought in a court of the State of Maine located in Cumberland County, Maine. Such actions may not be commenced in, nor removed to, federal court unless required by law.

Section. 8.4. Nonwaiver. No action or failure to act by the Town constitutes a waiver of any of its rights or remedies that arise out of this Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach of this Agreement, except as specifically agreed in writing.

Section. 8.5. Limitation of the Town's Authority. Nothing contained in this Agreement may be deemed or construed to in any way stop, limit, or impair the Town from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

Section. 8.6. Severability. If any provision of this Agreement is determined to be unenforceable in a judicial proceeding, the remainder of this Agreement will remain in full force and effect to the extent permitted by law.

Section. 8.7. Assignment. Subrecipient may not assign or delegate any of its rights or duties that arise out of this Agreement without the Town's prior written consent. Unless the Town otherwise agrees in writing, Subrecipient and all assigns are subject to all of the Town's defenses and are liable for all Subrecipient's duties that arise from this Agreement and all the Town's claims that arise from this Agreement.

Section. 8.8. Integration. This Agreement contains the entire agreement between the parties pertaining to the subject matter of this Agreement. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed, or implied, between the parties, other than as set forth or referenced in this Agreement.

Section. 8.9. Notices. All notices and other communications required or permitted by this Agreement must be in writing and must be given either by personal delivery, approved carrier, email, or mail, addressed as follows:

- (a) If to the Town:
8 School Road
Windham, ME 04062
batibbetts@windhammaine.us
- (b) If to the Subrecipient:
225 Douglass St
Portland, ME 04102
Greg Pellerin, gpellerin@pwd.org

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly constituted legal representatives and is effective as of the Effective Date.

WITNESS:

TOWN OF WINDHAM

By: _____

Barry A. Tibbetts

Its Town Manager

WITNESS:

PORTLAND WATER DISTRICT

By: _____

Chris Crovo

General Manager

Exhibit A: Subaward Data

Subrecipient Name	Portland Water District
Subrecipient Unique Entity Identifier:	Portland Water District
Federal Award Identification Number (FAIN):	[
Federal Award Date of Award to the Recipient by the Federal Agency:	September 14, 2021
Subaward Period of Performance Start Date:	December 12, 2024
Subaward Period of Performance End Date:	April 1, 2027
Amount of Federal Funds Obligated by this Action by the Pass-Through Entity to the Subrecipient:	\$1,823,790.67
Total Amount of Federal Funds Obligated to the Subrecipient by the Pass-Through Entity Including the Current Obligation:	\$1,823,790.67
Total Amount of the Federal Award Committed to the Subrecipient by the Pass-Through Entity:	\$1,823,790.67
Federal Award Project Description:	North Windham Sewer Project
Name of Federal Awarding Agency:	Department of Treasury
Name of Pass-Through Entity:	Town of Windham, Maine
Contact Information for Town of Windham Authorizing Official:	Barry A. Tibbetts, Town Manager batibbetts@windhammaine.us
Contact Information for Project Manager:	Robert Burns, Assistant Town Manager rjburns@windhammaine.us
CFDA Number and Name:	21.027- Coronavirus State and Local Fiscal Recovery Funds
Identification of Whether Subaward is R&D:	Not R&D
Subrecipient Indirect Costs:	See <u>Exhibit C</u> – Approved Budget

Exhibit B: Approved Activities

[DESCRIBE IN DETAIL WHAT THE SUBRECIPIENT WILL DO WITH THE MONEY]

This award is for the North Windham Sewer Project the subrecipient will be the Portland Water District. The monies will be used for these items in connecting businesses to main truck line(s);

- Design and review
- Installation of Sewer (excavation, backfill, tank filling, restoration of site)
- Connection of Sewer (plumbing, electrical, mechanical, utility related)
- Reviewing all invoices, verifying all expenses as necessary
- Testing & verification of final connection and reviews.

PWD may reassign the subrecipient award after receiving written Town approval meeting all requirements.

Exhibit C: Approved Budget

<u>REVENUES</u>		Total Revenue
Town of Windham Coronavirus State and Local Fiscal Recovery Funds Awarded		\$ 1,823,790.67
<u>Budget Cost Categories</u>		Total Expenditures
1.	Personnel (Salary and Wages)	\$
2.	Fringe Benefits	\$
3.	Travel	\$
4.	Equipment	\$
5.	Supplies	\$
6.	Contractual Services and Subawards	\$ 1,823,790.67
7.	Consultant (Professional Service)	\$
8.	Construction	\$
9.	Occupancy (Rent and Utilities)	\$
10.	Research and Development (R&D)	\$
11.	Telecommunications	\$
12.	Training and Education	\$
13.	Direct Administrative Costs	\$
14.	Miscellaneous Costs	\$
a.	Advertising and public relations costs	
b.	Materials and supplies costs, including costs of computing devices	
15.	Add additional cost items as needed	
16.	Total Direct Costs (add lines 1-15)	\$ 1,823,790.67
17.	Total Indirect Costs	0
	Rate %:	\$
	Base*:	0
18.	Total Costs Federal Grant Funds (Lines 16 and 17) <u>MUST EQUAL REVENUE TOTALS ABOVE</u>	\$ 1,823,790.67

* The Base is modified direct total costs (MTDC) of the subaward project. Pursuant to 2 CFR 200.68, MTDC means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of \$25,000. Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs.

Exhibit D: Lobbying Certification

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Barry A. Tibbetts, Town Manager

Portland Water District, General Manager

Date

Exhibit E: Key Personnel

TOWN INFORMATION	
Administrative Address:	8 School road, Windham, Maine 04062
Invoice Address:	
Project Manager Name:	Robert Burns
Project Manager Title:	Assistant Town Manager
Project Manager Email:	rjburns@windhammaine.us
Project Manager Phone:	207-892-1907
Fiscal Officer Name:	Susan Rossignol. And Levi Robinson
Fiscal Officer Title:	Director of Finance. And Deputy Director of Finance
Fiscal Officer Email:	srossignol@windhammaine.us ltrobinson@windhammaine.us
Fiscal Officer Telephone:	207-892-1907
SUBRECIPIENT INFORMATION	
Administrative Address:	Portland Water District,
Invoice Address:	225 Douglass St, Portland Maine 04102
Project Manager Name:	Greg Pellerin
Project Manager Title:	Director of Engineering
Project Manager Email:	gpellerin@pwd.org
Project Manager Telephone:	Greg Pellerin 207-761-8310
Fiscal Officer Name:	David Kane
Fiscal Officer Title:	Finance Director
Fiscal Officer Email:	dkane@pwd.org
Fiscal Officer Telephone:	207-761-8310