FINANCIAL ASSISTANCE AGREEMENT

BY AND BETWEEN

THE AUTHORITY
AND
TOWN OF ARLINGTON, MASSACHUSETTS

This Financial Assistance Agreement is made by and between the Massachusetts Water Resources Authority, a body politic and corporate and public instrumentality, existing under Chapter 372 of the Acts of 1984, with its principal place of business at 100 First Avenue Charlestown, MA 02129, ("Authority" or "MWRA") and the Town of Arlington, MA, a municipal corporation duly organized and existing under the laws of the Commonwealth of Massachusetts, with its principal place of business at Town Hall, 730 Massachusetts Avenue, Arlington, MA 02476 ("Awardee") (collectively, "Parties");

WHEREAS, on August 19, 1992 the Authority Board of Directors voted to approve a program whereby the Authority was permitted to offer financial assistance to certain local communities committed to infiltration and inflow reduction or sewer system rehabilitation; and

WHEREAS, the Awardee intends to conduct, or is conducting, an infiltration/inflow ("I/I") reduction or sewer system rehabilitation project ("Project"); and

WHEREAS, the Awardee filed a Financial Assistance Application in which it furnished information about the Project to the Authority; and

WHEREAS, the MWRA will provide financial assistance to the Awardee for its Project under certain terms and conditions, hereinafter provided.

NOW THEREFORE, in consideration of the foregoing and the promises contained herein, the Parties agree that the Authority will provide and the Awardee will accept financial assistance under the following terms and conditions:

I. SCOPE OF SERVICES.

The Awardee has entered into or will enter into, within ninety (90) days of the execution of this Agreement, a contract with a consultant or contractor for sewer rehabilitation and/or I/I reduction services, in accordance with the Awardee's competitive procurement practice, and the scope of such work is listed in Attachment A.

II. FINANCIAL ASSISTANCE.

A. The Authority shall provide financial assistance ("Award") to the Awardee in the form of both a grant and a loan. The total amount of the Award shall be $760,000, of which $570,000 shall be in the form of a grant ("Grant") and $190,000 shall be in the form of an interest-free loan ("Loan").

B. The Loan shall be governed by the attached Loan Agreement, which is incorporated herein by reference as Attachment C.

C. Upon execution of the Loan Agreement, the Authority shall initiate an electronic transfer for the Total Award through the Automated Clearing House (ACH) having a pay date three business days after the execution date, including both the grant and the loan, to the following designated account of the Awardee:

MMDT Account No. 44261014 Federal Tax ID No. 04-600-1070

D. The Authority shall not be obligated to provide additional financial assistance above the Award amount regardless of additional Project costs which may be incurred by the Awardee.

E. In the event that the Project is not initiated as outlined in the Project Schedule, the Awardee shall return the entire Grant to the Authority within ninety (90) days.

III. EFFECTIVE DATE OF AGREEMENT.

This agreement will not become effective until the Loan Agreement is fully executed.

IV. TERM.

The term of this Agreement shall begin upon the date of execution of this Agreement, including the execution of the Loan Agreement, and shall be in effect until the Awardee fully repays the Loan to the Authority in accordance with the terms of the Loan Agreement. As evidence that the final payment has been made, the Authority will send a letter to the Awardee indicating that the Loan has been discharged.

V. PROJECT SCHEDULE.

Implementation of the Project must begin within ninety (90) calendar days of execution of the Agreement, including the Loan Agreement, or all grant funds must be returned to the Authority. The Project must comply with the Project Schedule listed in Attachment B.

It is the obligation of the Awardee to obtain all licenses, permits, easements or any other approvals necessary to begin and successfully complete the Project.

VI. EXPENDITURE VERIFICATION REQUIREMENTS.

A. Throughout the completion of the Project Scope of Services, the Awardee shall submit progress reports to the Authority, on forms provided by the Authority, which outline the overall progress of the Project, the progress of key Project tasks, and the total Project cost expended to date. The frequency and schedule for progress reporting is outlined within the I/I Local Financial Assistance Program Guidelines for Sewer Projects. Progress reports shall be submitted to:

Massachusetts Water Resources Authority
Charlestown Navy Yard
100 First Avenue
Boston, MA 02129
Attn: Community Support Program

B. The Awardee shall append to each progress report information which documents eligible Project costs, including, but not limited to, consultant and/or contractor invoices; awardee labor, equipment, materials and other costs; and ancillary expenses. Time sheets and work summaries documenting any requests for force account work reimbursement must also be provided.

C. The Awardee shall exercise its best efforts to accomplish the Project set forth in the Scope of Services within the Award Amount established. In the event that an increase or decrease in the total Project cost is anticipated, or in fact occurs, the Awardee shall immediately notify the Authority in writing, and shall submit a status report including reasons for changes in Project cost, work completed to date, total dollars expended to date, and an estimate of the cost required to complete the Project.

VII. PROJECT INSPECTION.

The Awardee shall make the Project site and all Project records available to the Authority staff for review during the course of the Project. Authority staff may periodically monitor the progress of work to insure that the Project is: (1) proceeding substantially as defined in the Scope of Services; (2) proceeding substantially within the Project Schedule; and (3) proceeding in a manner which will substantially produce the quantitative I/I reduction result which the Awardee estimated would be achieved in the Financial Assistance Application.

VIII. PROJECT CLOSEOUT PROVISIONS.

A. Upon completion of the Project, the Awardee shall notify the Authority that the Project is complete and shall certify, on a form provided by the Authority, that all work included in the Scope of Services has been completed and performed in accordance with this Agreement. The Awardee shall submit to the Authority a Project closeout package which shall include a summary of all Project expenditures and the final Project cost.

B. If the final Project cost meets or exceeds the Award, no revision to the Grant shall be made during Project closeout.

C. If the final Project cost is less than the Award, a revision to the Grant shall be made during Project closeout. The difference between the Award and the final Project closeout cost will be calculated and defined as the Project "Shortage Amount". The existence of a Project Shortage Amount will not affect the Loan repayment amount or schedule.

D. In the event that a Project Shortage Amount exists, the Awardee agrees to repay seventy-five percent (75%) of such Project Shortage Amount to the Authority. The Authority will send the Awardee a separate invoice for payment of the Project Shortage Amount forty-five (45) days prior to the next loan repayment date.

IX. PROJECT AUDIT PROVISIONS.

A. The Awardee, its engineers, and its contractors shall maintain books, records, and other documents that pertain to and involve transactions related to this Agreement in accordance with generally accepted accounting principals. The Awardee, its engineers, and its contractors shall also maintain the financial information and data used by the engineers and contractors in the preparation or support of all invoices and progress reports. The Authority and any other duly authorized person, shall have access to such books, records, documents, and other evidence for inspection, audit, and copying during normal business hours, upon ten (10) days notice and at the Authority's expense. The Awardee, its engineers, and its contractors shall provide proper facilities for such access and inspection. All documents shall be kept for at least seven (7) years after either the final payment to the engineer or contractor or after the closeout of the Project, whichever is later.

B. The Awardee agrees to include the wording of Section IX A, above, in all contracts and subcontracts hereafter awarded to third party contractors, vendors and service providers related to this Agreement.

C. Audits conducted by the Authority, or its duly authorized representatives, shall be in accordance with generally accepted government auditing standards and established procedures and guidelines of the Authority. Such audits shall be conducted at the expense of the Authority upon ten (10) days notice to the Awardee.

D. The Awardee agrees to provide the Authority with a copy of the Awardee's annual audited financial statements within a reasonable time after the issuance thereof, together with a certificate of the Awardee stating that the Awardee is in compliance with its obligations under this agreement.

X. INTERACTION WITH OTHER PROGRAMS OF ASSISTANCE.

The Awardee certifies that it has not and will not receive financial assistance under the State Revolving Fund (SRF) or any other state, federal, or other program of funding assistance for any Project costs for which financial assistance has been provided by the MWRA I/I Local Financial Assistance Program.

XI. AUTHORITY TO EXECUTE AGREEMENT.

Prior to the execution of this Agreement, the Awardee shall take all steps necessary to authorize it to properly execute this Agreement.

XII. GOVERNING LAW.

This Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Massachusetts.

XIII. COMPLIANCE WITH LOCAL LAWS.

The Awardee shall comply with all applicable laws, ordinances, and codes of the state and local governments, and shall commit no trespass on any public or private property in performing any of the work embraced by this Agreement.

XIV. INVALIDITY OF PARTICULAR PROVISIONS.

If any provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be deemed affected thereby.

XV. CONTRACTING/SUBCONTRACTING.

The Awardee shall have no capacity to involve the Authority in any contract nor to incur any liability on the part of the Authority.

XVI. CHANGES TO SCOPE OF SERVICES.

The Authority and the Awardee may, during the course of the project, mutually agree to revisions in the Scope of Services or Project Schedule. Such changes shall be incorporated into this Agreement by written amendment.

XVII. PROVISION OF CONTRACTS.

The Awardee agrees to submit to the Authority an executed copy of each contract for engineering services or construction relevant to the Scope of Services.

XVIII. EQUAL EMPLOYMENT OPPORTUNITY.

The Awardee shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, handicap status or national origin. The Awardee, its engineer(s), and its contractor(s) shall comply with all applicable laws and regulations pertaining to nondiscrimination, equal opportunity and affirmative action, including without limitation executive orders and rules and regulations of federal and state agencies of competent jurisdiction. The Awardee shall make positive efforts to achieve a goal of 7.18 percent participation of Minority-owned Business Enterprise(s) and 5.77 percent participation of Woman-owned Business Enterprise(s) within Professional Services contracts which are funded through financial assistance under this Agreement. For Non-Professional Services category work, the Awardee should make positive efforts to achieve a goal of 5.61 percent participation of Minority-owned Business Enterprise(s) and a goal of 4.88 percent participation of Woman-owned Business Enterprise(s) within project contracts.

For Construction, the Awardee shall require all construction contractors and subcontractors to make positive efforts to achieve: (1) a minority employee work force goal of 15.30 percent, (2) a woman employee work force goal of 6.90 percent, (3) a goal of 7.24 percent participation of Minority-owned Business Enterprise(s), and (4) a goal of 3.60 percent participation of Woman-owned Business Enterprise(s) within the project contracts.

XIX. INDEMNIFICATION.

The Awardee, at its expense, shall defend and shall indemnify and hold harmless the Authority, its members, officers and employees, from and against any and all claims, causes of action, suits, losses, damages and expenses, including attorneys' fees, arising out of or resulting from any acts, errors or omissions or breach of contractual duties by the Awardee and anyone employed by it (including Contractors, Subcontractors and/or Consultants and their employees) in performance of this Agreement. Such obligation shall not be construed to negate or abridge any other obligation of indemnification running to the Authority which would otherwise exist.

XX. MEMBERS, EMPLOYEES NOT LIABLE.

No member or employee of the Authority shall be charged personally or held contractually liable by or to the Awardee under any term or provision of this Agreement or because of any breach thereof or because of its execution or attempted execution.

XXI. INTEREST OF AWARDEE.

The Awardee covenants that its Contractors, Subcontractors and/or Consultants presently have no interest and shall not acquire any interest, direct or indirect, in the property to which this Agreement pertains or any parcels therein or any other interest which would conflict in any manner or degree with the performance of its services hereunder. The Awardee further covenants that no person having any such interest shall be employed in the performance of this Agreement.

XXII. INTEREST OF EMPLOYEES; M.G.L.C. 268A.

Neither Awardee, nor its Contractors, Subcontractors and/or Consultants shall, during the term of this Agreement, hire or employ on either a full-time or part-time basis any person or persons so long as such person shall be employed by the Authority.

The Awardee acknowledges that the Authority is a state agency for the purposes of Chapter 268A of the Massachusetts General Laws (the Massachusetts Conflict of Interest statute). The Awardee agrees to take actions and to forbear from taking actions, as circumstances require, so as to be in compliance at all times with said statute.

XXIII. ASSIGNABILITY.

The Awardee shall not assign any interest, in whole or in part, in this Agreement and shall not transfer any interest in the same, whether by assignment or novation, without the prior written approval of the Authority.

XXIV. PAYMENT NOT A WAIVER.

The Authority's payment to Awardee under this Agreement or its review, approval or acceptance of any actions by Awardee under this Agreement shall not operate as a waiver of any rights under this Agreement and the Awardee shall remain liable to the Authority for all damages incurred by the Awardee's failure to perform in accordance with the terms and conditions of this Agreement.

The rights and remedies of the Authority provided for under this Agreement are in addition to any other rights or remedies provided by law. The Authority may assert a right to recover damages by any appropriate means, including but not limited to set-off, suit, withholding, recoupment, or counter-claim either during or after performance of this Agreement.

XXV. TERMINATION OF THE AGREEMENT FOR CAUSE.

If, through any cause, the Awardee shall fail to fulfill in a timely and proper manner its obligations under this Agreement (including performance of the Scope of Services and maintenance of the Project Schedule); or if it is determined that there is probable cause to believe that the Award was obtained on the basis of fraud, deceit, or illegality; or if the Awardee has failed to comply with the terms and conditions of this Agreement; the Authority shall hereupon have the right to terminate this Agreement by giving written notice to the Awardee of such termination and specifying the effective date thereof.

The Awardee agrees that if this Agreement is terminated by the Authority, the Awardee shall immediately repay to the Authority the full Grant which is identified in Section II, above. The Awardee also agrees that the Loan shall not be affected by such termination and that the separate Loan Agreement shall remain in full effect.

XXVI. ATTACHMENTS.

Attachments to this Agreement are incorporated herein and are as follows:

Attachment A Scope of Services
Attachment B Project Schedule
Attachment C Loan Agreement

XXVII. PROJECT SPECIFIC ADDITIONAL TERMS AND CONDITIONS.

1. All reports prepared in conjunction with this project shall be submitted to the Authority for review and approval.

2. The community will submit to the Authority the proposed project's plans and specifications upon their completion for review and approval.

3. The Authority will be informed of the contract award for the construction phase of the proposed rehabilitation project and forwarded bid tabulation and contractor intent to award / notice to proceed documentation. The community will inform the Authority of the date for Final Inspection for the construction phase of the proposed rehabilitation project.

IN WITNESS WHEREOF, the parties have executed this Agreement this_____ day of _____, 2023.

MASSACHUSETTS WATER RESOURCES AUTHORITY

BY: _____
Matthew R. Horan, Treasurer

AWARDEE: Town of Arlington, Massachusetts

BY:_____

Print Name: Sandy Pooler

Print Title: Town Manager

MWRA I/I LOCAL FINANCIAL ASSISTANCE PROGRAM - PHASE 14
ATTACHMENT A
FINANCIAL ASSISTANCE AGREEMENT

MWRA PROJECT NO. WRA-P14-01-3-1404

TOWN OF ARLINGTON

PHASE #15 SANITARY SEWER REHABILITATION CONSTRUCTION AND
PHASE #13 POST-CONSTRUCTION FLOW EVALUATION

SCOPE OF SERVICES

The Town of Arlington requests funding for the following projects which are part of the Town's Sewer System Capital Improvement Program, which is designed to reduce Inflow and Infiltration. Each phase of the Program includes the most cost-effective repairs remaining within the Town. The work included in the Phase #15 Design and Rehabilitation Construction projects (Task 1 & 2) will be located in various portions of Investigation Area #1 through Area #11.

Task 1 – Phase #15 Design, Bid, & Award:
The goal of the Phase #15 Design, Bid & Award project is to design the removal of cost-effective sources of infiltration and inflow (I/I) and produce contract documents suitable for public bidding in the investigation areas named above.

Task 2 – Phase #15 Rehabilitation Construction & Construction Services:
The goal of the Phase #15 Construction project is to rehabilitate and repair sewer infrastructure and remove sources of I/I identified during previous Sewer System Investigation Projects and included in the Phase #15 Design, Bid & Award project, within the investigation areas stated above.

Task 3 – Phase #13 Post Construction Flow Evaluation:
The Phase #13 Post-Construction Flow Evaluation will compare pre- and post-rehabilitation ground water levels and flow isolation data to estimate the quantity of peak infiltration removed from the sewer system from the Phase #13 Construction project. A draft & Final Report will be prepared evaluating the pre- and post-construction flows.

The above work will be performed pursuant to the terms and conditions detailed within the Agreement For Engineering Services By and Between the Town of Arlington and Weston & Sampson Engineers, Inc. and the approved MWRA I/I Local Financial Assistance Project Application received January 13, 2023. Total project cost is estimated at $760,000. Eligible MWRA I/I Local Financial Assistance is $760,000 (Eligible Phase #15 Design, Bid, & Award Cost = $95,000 / Eligible Phase #15 Construction Cost = $520,000 / Eligible Phase #15 Construction Services Cost = $130,000 / Eligible Phase #13 Post Construction Flow Evaluation Cost =$15,000). Upon contract completion, this work will result in an estimated removal of 0.06 MGD of peak I/I flows from the sanitary sewer system.

MWRA I/I LOCAL FINANCIAL ASSISTANCE PROGRAM - PHASE 14
ATTACHMENT B
FINANCIAL ASSISTANCE AGREEMENT

MWRA PROJECT NO. WRA-P14-01-3-1404

TOWN OF ARLINGTON

PHASE #15 SANITARY SEWER REHABILITATION CONSTRUCTION AND PHASE #13 POST-CONSTRUCTION FLOW EVALUATION

PROJECT SCHEDULE

Description of Work	Start Date	Completion Date
Phase #15 Design, Bid & Award	January 2023	June 2023
Phase #15 Construction Rehabilitation	August 2023	November 2023
Phase #15 Construction Warranty Retest	May 2024	June 2024
Phase #13 Post-Construction Flow Evaluation	June 2023	July 2023

MWRA I/I LOCAL FINANCIAL ASSISTANCE PROGRAM - PHASE 14
ATTACHMENT C
FINANCIAL ASSISTANCE AGREEMENT

MWRA PROJECT NO. WRA-P14-01-3-1404

TOWN OF ARLINGTON

PHASE #15 SANITARY SEWER REHABILITATION CONSTRUCTION AND
PHASE #13 POST-CONSTRUCTION FLOW EVALUATION

LOAN AGREEMENT