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TITLE 490 – WATER RESOURCES BOARD

CHAPTER 00 – N/A

SUBCHAPTER 00 – N/A

PART 6 – Rhode Island Water Facilities Program Administrative Procedure

6.1 General Provisions

6.1.1 Scope and Construction of Rules

- A. The following shall constitute the regulations governing disposition of appropriations for the purpose of providing twenty-five (25) percent and/or fifty (50) percent of the cost of approved water transmission facilities for public water supply pursuant to R.I. Gen. Laws Chapter 46-15.2, as amended. These rules prescribe procedures for application, minimum standards of conduct of grantees, and performance standards for the development of potable water transmission facilities.
- B. The regulations shall be liberally construed to permit the Board to effectuate the purpose of the law.

6.1.2 Purpose of Rules

- A. These rules are promulgated for the following purposes:
 - 1. To implement the purposes and objectives of the Rhode Island Water Facilities Program, R.I. Gen. Laws Chapter 46-15.2, as amended;
 - 2. To establish policies and procedures for administration of funds appropriate for the purpose of granting to municipal and quasi-municipal, potable water supply agencies twenty-five (25) percent and/or fifty (50) percent, as the case may be, of the cost of the development of approved potable water transmission facilities;
 - 3. To protect the public and State of Rhode Island by ensuring that funds appropriated are spent in a proper manner and for the intended purposes;
 - 4. To ensure that the distribution and use of appropriated funds are consistent with the laws and policies of the State of Rhode Island;
 - 5. To establish minimum standards of conduct to prevent conflicts of interest and ensure proper administration of grants;

6. To establish accounting procedures for administration of grants.

6.1.3 Practice Governing Rules

The Board may rescind, amend, or expand these procedures from time to time in conformance with the Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35, as amended.

6.1.4 Procedure for Obtaining a Water Facilities Assistance Grant

- A. Each potential applicant for a water facilities assistance grant shall:
 1. Determine if it meets the eligibility criteria of § 6.2.3 of this Part;
 2. Arrange for a preapplication conference as required in § 6.2.4 of this Part;
 3. Complete the application procedures required by § 6.2.5 of this Part.

6.2 Grant Procedures and Requirements

6.2.1 Scope

This section prescribes procedures and requirements for the award of State grants of twenty-five (25) percent and/or fifty (50) percent of the cost of approved water facilities pursuant to R.I. Gen. Laws Chapter 46-15.2, as amended.

6.2.2 Definitions

- A. The following words and terms, when used in this section shall have the following meaning:
 1. “Act” means the Rhode Island Water Facilities Assistance Program, R.I. Gen. Laws Chapter 46-15.2, as amended.
 2. “Applicant” means municipal and quasi-municipal potable water supply agency that applies for a grant pursuant to the provisions of these rules and regulations.
 3. “Board” means the Rhode Island Water Resources Board as established by R.I. Gen. Laws Chapter 46-15, as amended.
 4. “Construct” and “Construction” means to build or rebuild in a systematic manner.
 5. “Council” means the State Planning Council as established by R.I. Gen. Laws Chapter 42-11, as amended.
 6. “Design life” means an assigned and/or given time period of project usefulness as determined by a systematic program of engineering.

7. "Distribution facilities" means the pipes and appurtenant facilities employed specifically to deliver, to dispense, to render, or to circulate potable water directly for the benefit of a consumer or a community of consumers.
8. "Division" means the Division of Public Utilities and Carriers established by R.I. Gen. Laws Chapter 39-1, as amended.
9. "Eligible project scope" means the construction of potable water supply transmission facilities consisting of pipes and appurtenances including but not limited to pump stations, valves, surge chambers, storage facilities which convey potable water, the acquisition of land or rights of way, and necessary engineering and design services.
10. "Grantee" means an applicant which has received a grant pursuant to the Rhode Island Water Facilities Assistance Program, R.I. Gen. Laws Chapter 46-15.2, as amended, and these procedures, and which has executed a grant award document.
11. "Interconnection" means a potable water supply connection with another potable water supply system.
12. "Intersystem facilities" means transmission facilities designed and constructed by the owner of any public water system having the capacity to serve two or more water systems at the same time.
13. "Municipal" and "Quasi-municipal" means any political subdivision within the State of Rhode Island established by Public Law of the State of Rhode Island and/or established by legislatively approved Home Rule Charter(s) for Cities and Towns Amendment of the Constitution of the State of Rhode Island.
14. "Project" means any work relating to the construction of potable water supply transmission facilities.
15. "Transmission facilities" means the pipes and appurtenances pumping stations, and storage facilities required to carry potable water from a water source(s) to, or throughout an area served by, or to be served by, a public water system(s) for the specific purpose of supplying potable water to support a general population. Transmission facilities do not include the distribution system. Final determination of transmission facilities is the prerogative of the Board.
16. "Water source" means the origin and/or starting point from which potable water is transmitted.

6.2.3 Eligibility Criteria

- A. An applicant is eligible for a grant pursuant to these regulations upon satisfactorily completing the application process in a timely manner, meets the eligibility criteria set forth in this section, and ranks high enough on the priority list to be funded. To receive a grant pursuant to these regulations, the project shall meet the following criteria to the satisfaction of the Board
1. The project must receive a fundable priority ranking as set forth in § 6.2.12 of this Part.
 2. The eligible project scope shall be an independent and complete potable water supply project. An independent and complete project is one that by its implementation alone will render the specified portion of the system adequate and efficient and will accomplish the purpose set forth in the application.
 3. The project shall not conflict with other public water supply projects.
 4. The eligible project scope must link a water source with a water distribution system, both of which are complete and operational, or will be so at the time that the eligible project scope is completed, or is projected for future construction. The capacity of both the water source and the distribution system must be adequate to meet present and future needs, considering all other demands that may be placed on the same sources and distribution systems
 5. The quality of water to be conveyed through the eligible project scope must meet the Rhode Island Department of Health potable water supply requirements.
 6. The eligible project scope must be designed and constructed to ensure that the project will remain operational for its design life with routine maintenance.
 7. The eligible project scope must be consistent with a plan adopted and kept current by the Board in accordance with R.I. Gen. Laws § 46-15-6 and with applicable elements of the state guide plan as adopted and kept current by the Council in accordance with R.I. Gen. Laws § 42-11-10(c).
 8. Legal, amortization, borrowing, and all other costs attendant to the funding of the project are not eligible for financial assistance under these procedures and must be fully borne by the applicant. The cost of distribution facilities as defined in this section is not eligible for financial assistance under these procedures.
 9. The final determination of applicant eligibility, eligible project scope, eligible project costs, preliminary award, and final award shall be made by the Board.

6.2.4 Preapplication Procedures

- A. Every applicant may request an informal conference prior to making a formal application for a grant. During the conference, the Board shall identify and explain all grant application documents. The Board shall identify and answer questions concerning other required approvals the applicant must obtain prior to awarding a grant. This preapplication conference is not part of the formal public application procedure and any statements, comments, or any other ideas and/or suggestions made or offered by members of the Board during the conference are not legally binding on or against the Board or its members.
- B. Questions concerning the program and requests for a preapplication conference should be directed to the agency.

6.2.5 Application Procedure

- A. To apply for a Water Facilities Assistance Program Grant, an applicant shall comply with all the pertinent requirements of these regulations. The application shall be submitted to the Board on forms approved by the Board for that purpose.
- B. An applicant for a Water Facilities Assistance Grant shall submit:
 - 1. A completed grant application;
 - 2. A demonstration that its seventy-five (75) percent share and/or its fifty (50) percent share of the eligible project costs is available and obligated to the project.
 - 3. A description of how the grantee plans to repay any loans and pay any other expenses necessary to fully complete and implement the project, the steps it plans to take before receiving the grant that will guarantee that at the time of the signing of the grant award document, it will be irrevocably committed to completing the eligible project scope and pay any other expenses necessary to fully complete, implement, operate and maintain the project.
 - 4. A written explanation of the need for the project.
 - 5. A complete proposal outlining the problems or issues, cause and effect of these problems or issues, and the proposed solution to same accompanied by a discussion of any alternatives to the proposed solution as contained in the grant proposal.
 - 6. Written proof or evidence that all federal, state and local agencies with jurisdiction over the area and/or project have been notified of the project, particularly any water supply system that may be affected by interconnection.

7. A proposed construction schedule for the project.
8. All forms, agreements, and sub agreements the Board may require.
9. An estimate of development and construction cost by unit prices for the project. Labor, equipment, material, supplies, overhead, and contractor's and consultant's profit shall be included to substantiate the estimate of unit costs accompanied by supporting background and summary sheets. Total project costs and those project costs that the applicant reasonably anticipates are required to be eligible for a grant shall be separately itemized and summarized.
10. A written description of the environmental impact assessments required, completed, or to be completed, including identification of any known or suspected environmental impacts on water quality, plant and animal life, project site land characteristics, historical sites and any other environmental factors; and
11. All documentation and other information as may be necessary for the Board to adequately determine the applicant's priority.

C. Signature

1. Applications shall be signed for the applicant by a person authorized by resolution or ordinance of the governing body to file an application for a grant and to obligate the applicant to the terms and conditions of the grant award document.
2. Each application shall constitute an undertaking to accept the requirements of these procedures and the terms and conditions of the grant award document.

D. Applications should be submitted well in advance of the proposed starting date of the project for which the applicant desires to be awarded a grant.

E. Upon receipt of an application, the Board, in its sole discretion, shall determine whether the application is complete and that same contains all necessary information. Applications the Board determines are insufficient and/or incomplete shall be returned to the applicants. The Board shall indicate whether any application it deemed insufficient and/or incomplete may be resubmitted to the Board. The Board shall forward a copy of each application accepted to the Division and to the Council.

6.2.6 Use and Disclosure of Information

All loan applications and other submittals upon receipt by the Board shall constitute a public record(s). The Board shall make such records available to persons who request their release to the extent allowed by the State of Rhode

Island and federal law. The Board may assert any State of Rhode Island and/or federal law exception and/or exemption to the release of such public record(s).

6.2.7 Evaluation of Application

- A. The Board shall inform the applicant that it has received the application and is evaluating the application pursuant to these procedures. Each application shall be subject to:
1. Preliminary administrative and legal review to determine completeness of the application.
 2. Program, technical, scientific and environmental evaluation to determine the merit and relevance of the project to the Board's program objectives have been met, and to ensure that:
 - a. The design and engineering of the project free of omissions and defects, and illustrate the project will remain operational for its design life when supported by routine maintenance
 - b. The need exists in the community for the potable water supply that would be provided by the project;
 - c. The project connects a water source with a water distribution system;
 - d. The distribution system has or will continue to have sufficient capacity to carry the projected volumes of water;
 - e. The proposed water source is of sufficient capacity to meet the applicant's needs and/or will have sufficient capacity to serve future demands imposed by the applicant in combination with other consumers;
 - f. The quality of water meets the standards established by the Rhode Island Department of Health for public potable water supplies;
 - g. The project incorporates conservation efforts consistent with R.I. Gen. Laws Chapters 46-15.3 and 46-15.8; and
 - h. The project is properly coordinated with all other water systems serving adjacent or abutting areas in terms of interconnections and mutual support
 3. Budget evaluation to determine that the proposed project costs are eligible, reasonable, applicable, and allowable and that seventy-five (75) percent and/or fifty (50) percent of the eligible project cost is available to the applicant and obligated to the project; and

4. Final administrative evaluation - the Board will not approve a project unless sufficient state funds to provide the state's twenty-five (25) percent and/or fifty (50) percent share of eligible project cost are available, and, the project has been approved by the Division and the Council, as set forth in §§ 6.2.7(B) and (C) of this Part, provided, however, that with respect to any project which has been approved by the Board and which thereafter becomes eligible to participate as an inter-system facilities project, the submission to, and approval by, the Division and Council shall not be required.
- B. The Division of Public Utilities and Carriers will review the financing aspects of all projects, in particular, the cost(s) that will be imposed on water consumers. The Division will perform an analysis of the proposed cost(s) and benefit(s) of the project and make a determination based upon its findings as to whether approval of the project is in the best interest of the water consumer. If the Division determines the project is in the best interest of the water consumer, the Division shall approve the project. If the Division determines that the project is not in the best interest, of the water consumer, the Division will disapprove the project. Since the Division's review must be based on estimated cost(s), and speculative interest rate(s), the full financing cost(s) may not be precise. The absence of specificity concerning financing cost(s) is a factor to be considered by the Division.
- C. The State Planning Council will review all proposed projects to determine that the project is consistent with all relevant elements of the State Guide Plan. Upon determination that a project is consistent with the State Guide Plan, the Council will approve the project. Upon determination that the project is not consistent with the State Guide Plan, the Council shall disapprove the project.

6.2.8 Board Approval/ Disapproval

- A. After full review and evaluation of an application, the Board shall take one of the following actions:
 1. Approve the application for a grant and place the applicant on a priority list for funding; may condition the approval of any intersystem facilities applicant agreeing that the applicant will not charge any water system which uses such facility an amount in excess of the applicant's costs for purchase, production, and transmission of water to such user, and an appropriate portion of the applicant's cost of repair, maintenance, and replacement of such facilities based upon the capacity allocated to such user.
 2. Disapprove the application, indicating the reason(s) for disapproval.

- B. The applicant will be promptly notified in writing of approval or disapproval. A disapproval of an application may not preclude reconsideration or resubmission of an application.

6.2.9 Amount and Terms of Grant

- A. Upon approval of the proposed eligible project scope by the Board, the Division, and the Council, the Board will so notify the applicant and will establish the amount and terms of said participation in the project representing twenty-five (25) percent of eligible project costs to serve a single water system and/or fifty (50) percent of eligible project costs to serve intersystem facilities as determined from the application. Costs incurred, for any reason, more than those eligible project cost(s) as set forth in the application and approved by the Board will not automatically increase the amount of State participation. The applicant, however may submit a subsequent application in accordance with these procedures that requests State participation in such additional cost(s). If the eligible project scope is completed at an eligible project cost below that as set forth in the application and as approved by the Board the amount of State participation will be reduced proportionately.
- B. The Board will establish, a schedule by which State funds will be paid to the applicant that ensures that funds are disbursed only when required for the project.
- C. The applicant will certify to the Board that the State's share of eligible project costs cannot be used by or transferred to a private investor and/or investor-owned company.
- D. The Board will set the terms for determining the priority and scheduling of all project activities with specific emphasis on the eligible project cost items to ensure that, all engineering design, construction and land or right-of-way acquisition involved in the project is properly managed and successfully completed.
- E. All amounts, terms, and conditions as approved by the Board in accordance with this regulation and with R.I. Gen. Laws Chapter 46-15.2 shall be set forth in a Grant Award Document.

6.2.10 Grant Award Document

- A. Upon approval of an application, the Board shall prepare a grant award document and transmit four copies of the document to the applicant.
 - 1. The applicant shall execute the grant award document and return the document to the Board within 30 calendar days following the date of receipt of same. The Board may, in its sole discretion, extend the time for execution of the document. The loan award document shall be executed by the signature of a person authorized by resolution or ordinance of the

applicant's governing body to legally bind and contract the applicant to the amounts, terms, and conditions set forth in the grant award document.

2. The grant award document shall set forth the amount, terms, and conditions of the project funding; the amount, terms and conditions of the grant award; the approved eligible project scope; the approved eligible project costs; and the approved commencement and completion dates for the project and its major phases.
3. The grant award document shall be deemed to incorporate all requirements, provisions, and information in documents or papers submitted to the Board in the application process.
4. After the Board has completed its internal processing of the grant award document, it shall transmit a copy of the executed grant award document to the grantee.

6.2.11 Effect of Grant Award

- A. The grant award document shall become effective immediately upon its execution by the Board and the applicant, and shall constitute a contractual obligation of the State of Rhode Island in the amount of the grant award and for the specific purposes stated in the grant award document.
- B. The award of the grant shall not commit or obligate the Board to award and/or grant additional funds and/or monies to the grantee to cover cost overruns or other additional items for any project. Cost overruns or any other additional items that any add to the original cost of the approved project are the sole responsibility of the grantee.

6.2.12 Fundable Priority Ranking

- A. Each eligible project scope approved by the Board will be assigned a priority ranking by the Board for awarding of a grant in accordance with the criteria contained in this subsection:
 1. The Board shall determine that sufficient state funds are available to provide the twenty-five (25) percent share and/or the fifty (50) percent share of the eligible project costs.
 2. The Board shall weigh the character and extent of the water supply issues and/or problems which require action by the State of Rhode Island. This process shall be utilized to alleviate the issues and/or problems in a manner which best protects the general welfare of all the citizens of the State
 3. The Board shall weigh the proposed project's impact on retaining and encouraging the expansion of the State's present industries; the attraction

of new industries, and the promotion of economic growth for the entire State.

4. The Board shall weigh the proposed project's capacity to ensure an adequate supply of potable water for present and future domestic, industrial and recreational use, and to supply potable water in equitable apportionment to areas of greatest need throughout the State.
 5. The Board shall weigh the proposed project's design, construction, operation, and financing methods relative to a coordinated allocation of the State's potable water supplies for the proper development, conservation, apportionment, and use of the water resources of the state.
 6. The Board will give specific weight to potable water scarcity in a region or area and the degree to which the region or area will not support acceptable standards for human habitation unless the scarcity is satisfied by transportation of potable water into the region or area.
 7. The Board shall weigh the comments of the Council and the Division in their approval of the proposed eligible project scope.
- B. The Board shall review annually its priority rankings. If sufficient changes in a proposed project(s) are evident, the Board may adjust its priority rankings accordingly.
1. In cases or circumstances involving a threat to the health and safety of the inhabitants of a region or area, the Board may suspend the requirement for the approved project to achieve a Fundable Priority Ranking and accordingly permit said project to supersede all other projects in priority of award for a grant.

6.2.13 Project Development Phase Grantee

- A. Upon approval of the grant, each grantee within thirty (30) days after receipt of notice of grant award shall arrange a pre-design conference with the personnel of the Board. The grantee shall submit all materials required by the subsection to the Board within six months after receipt of the notice of the grant approval or within time limits and/or extensions granted by the Board of any extension granted pursuant to subsection
- B. During the pre-design conference the Board's personnel will identify and explain the requirements of this subsection including design criteria and including review of the requirements for any environmental analysis as outlined in § 6.2.13(D) of this Part. Based on information furnished by the grantee, Board personnel will determine if an approval is required for the project or any portion thereof pursuant to R.I. Gen. Laws Chapter 46-15.

1. If an approval is required pursuant to R.I. Gen. Laws Chapter 46-15, the Board will provide reasonable assistance to the grantee to insure compliance with the statutory requirements as applicable.
- C. The grantee shall submit all materials required by this subsection, prepared in accordance with accepted engineering practices within the time period specified by the Board.
1. A complete Engineers Report shall be prepared, signed and sealed, by a Rhode Island licensed professional engineer experienced in the field of water supply. The report shall include, but not be limited to the engineering assumptions, references, calculations and conclusions relative to the structural, sanitary and hydraulic design of all elements within the project scope including all information, narratives, data and computations necessary to support and describe the design developed and shall be in such detail as to permit complete understanding of project design. Depending on the project scope it the Engineer's Report shall address the transmission and/or distribution network, topographic conditions, geotechnical considerations, pump station performance, and operating characteristics of the transmission and/or distribution storage system, including capacity, adequacy, condition, etc.
 2. The plans for the project as prepared by an engineer licensed by the State of Rhode Island shall be signed and sealed and shall have a title block giving the name and location of the project, the scale or scales used, date, the name of the engineer and his license number. The plans shall clearly reference elevation datum. The National Geodetic Vertical Datum of 1929 (U.S.G.S.) or the North American Vertical Datum of 1988 (NAVD 88) should be used wherever possible or an equation converting to that datum given. The plans shall clearly reflect and shall include but not be limited to:
 - a. A vicinity map showing the location of the project. A U.S.G.S. 7 ½ Minute Quadrangle Map or acceptable substitute shall be used for this purpose.
 - b. A profile and a plan of the entire project that is to be constructed. The plan shall include but not be limited to an index map, water transmission mains, water distribution pipes, service connections, fire hydrants, gage valves, blow off valves, air relief valves, pressure reducing valves, pumping stations, surge chambers and storage tanks. The plan, also, shall include but not be limited to the location of all utilities and sewer lines, i.e., pipelines and telephone lines, electrical conduits, and sanitary and storm sewers that will have an effect on the project implementation.

- c. If required by the Board, a topographic and pressure contour map of the transmission grid system showing ground elevations, and water pressure at various points in the system.
 - d. Plan and elevation views of all storage tanks that are to be constructed.
 - e. Plan and elevation views of all pumping stations that are to be constructed
 - f. Standard details of all gate valves, check valves, air release valves, drains, surge control equipment, expansion joints, insulation joints, manholes, pump stations, gages, risers, headers and other components of the system that are to be installed and/or constructed.
 - 3. The construction specifications for the project shall include but not be limited to:
 - a. The general provisions, which shall specify the rights, duties, and responsibilities of the Owner, Grantee, engineer(s), builder(s) and the prescribed order of work.
 - b. The technical provisions, which shall prescribe carefully and in detail the approved work methods, equipment and materials to be used, the results to be obtained, and the project and payment schedule. The technical provision should comply with the construction standards pursuant to the Ten State Standards for development of water supply facilities. The Board will consider and accept substitutes and/or alternatives to the Ten State Standards upon adequate and thorough justification by the grantee.
 - 4. A detailed cost estimate of engineering, design, and construction of the system and appurtenances thereto. The breakdown of cost estimates shall be by unit prices covering estimated labor, equipment, materials, supplies, and contractor overhead and profit. Background sheets shall be furnished detailing the computation of unit prices. A summary form showing item number/ description, estimated quantity, unit, unit price, and estimated amount is required.
- D. All grantees except those excluded by § 6.2.13(E) of this Part shall submit a statement of environmental analyses, describing the possible direct and indirect effects of the project on public safety, health, and welfare; on public and private property; on water quality and quantity; on the preservation of areas, sites, and structures and objects determined to have significant historical, archeological, or cultural value; on the public trust in wetlands, wildlife, and fisheries; and on the protection of the natural environment. The grantee shall describe and analyze:

1. Temporary and permanent physical changes caused by the project and the impact of these changes on the project area and immediate environs;
 2. Project measures proposed which reduce or avoid environmental damage;
 3. All steps taken during and after completion of the construction to reduce or eliminate detrimental onsite and offsite effects;
 4. Adverse environmental conditions which cannot be predicted and why same cannot be avoided.
- E. At the pre-design conference, the Board will specify those aspects of the environmental statement it places emphasis on. The Board reserves the right to waive the environmental statement requirement for those projects which it determines in its sole discretion have no significant impact on the environment.
- F. The Board shall disburse funds to those grantees who obtain and submit all required permits and all materials to the satisfaction of the Board, within six (6) months after the signing of the Grant Award Document or within the time limit set on any extension granted pursuant to § 6.2.13(G) of this Part below.
- G. Any grantee who fails to submit all materials required by the Board in the proper format and the required permits within the six (6) month period or a Board authorized extension thereof shall be considered in default of the grant award and the grantee shall lose all entitlement to the grant funds.

6.2.14 Eligible Project Costs

- A. Eligible project costs will be allowed to the extent permitted by the subsection and the Grant Award Document. Eligible project costs shall be those costs set forth below and as approved by the Board.
1. Construction and/or reconstruction of all or part of any potable water supply transmission facility that links a potable water source with a potable water distribution system;
 2. Engineering, design, and resident inspection for construction and/or reconstruction of any potable water transmission facility;
 3. Special and outside services, e.g., professional geological, hydraulic, surveying, water testing services, required as pertinent to the engineering and design of the construction and/or reconstruction of a potable water supply transmission facility;
 4. Acquisition costs of land or rights-of-way necessary for the construction and/or reconstruction of a potable water supply transmission facility.
- B. Ineligible project costs shall be those costs set forth below;

1. Salaries of regular municipal or quasi-municipal water purveyor employees, expenses of municipally or quasi-municipally owned equipment, and any other such municipal or quasi-municipal force account expenses;
 2. Costs of borrowing funds and amortization costs in a manner or for any purpose;
 3. Legal expenses;
 4. Distribution systems and water supply source development;
 5. Financial, professional and any other services not directly involved in the engineering and design effort;
 6. Organization, operating, and other related expenses of a municipal or quasi-municipal agency prior to or during construction and/or reconstruction of a potable water supply transmission facility.
- C. Development and Construction project contracts must be awarded in accordance with R.I. Gen. Laws Title 37, as amended; The Rhode Island Division of Purchases General Terms and Conditions of Purchase; and any other applicable, rules and regulations as may be adopted.
- D. Grantees shall be allocated grant award funds based on the actual costs incurred and other documented eligible project costs up to the maximum award amount specified in the grant award document.
- E. Eligible project engineering and design costs shall not be reimbursed until construction contracts are awarded.

6.2.15 Unused Grant Funds

Any difference in grant funds between actual eligible project costs for implementation and the estimated eligible project cost for grant award purposes shall be retained by the State of Rhode Island and shall at the Board's determination be applied to any eligible project pursuant to R.I. Gen. Laws Chapter 46-15.2, and to these regulations.

6.2.16 Fraud and Other Unlawful or Corrupt Practices

- A. The grantee shall administer the grant, award contracts and subcontracts pursuant to the grant award document in accordance with all applicable local, State, and federal law. The grantee bears the primary responsibility for the prevention, and detection of any violation of applicable law. Further, the grantee shall fully cooperate in the prosecution of any such violation of applicable.

- B. The grantee shall forthwith notify the Board immediately after any violation of applicable law. Grantee shall advise the Board in writing every thirty (30) days of the status and ultimate disposition of any relevant legal proceeding. Failure to forthwith notify the Board of same may, in the Board's sole discretion, result in the termination of funding pursuant to grant award document and/or referral of the Grantee to the appropriate law enforcement agency for prosecution.

6.2.17 Grant Conditions

- A. The following requirements in addition to such other statutes rules, terms, and conditions as may be applicable to grants, are conditions of each grant and conditions precedent to each payment under a grant award document.
1. The project or phase of the project must be initiated and completed in accordance with the time schedule specified in the grant award document.
 2. All contracts, agreements, change orders, etc., between the grantee and any contractor, consultant or others employed on the project which commit payments to be made as part of the eligible project costs shall be approved by the Board as to form and content.
 3. The Board or a designated representative of the Board shall participate in the selection and/ or appointment of all consultants, contractors, and other employments the grantee may engage to perform the eligible project scope.
 4. The grantee must submit proof that the grantee's employees and the grantee's contractors, consultants, are in compliance with all hazard insurance requirements as specified in the grant award document and shall written certification of same that the required insurance(s) is in full force and effect.
 5. The grantee shall certify that the grantee's employees and the grantee's contractors, consultants, maintain their financial records in accordance with generally accepted accounting principles. Said financial records shall be available to the Board or its authorized representative upon request.
 6. The grantee shall certify that the grantee and the grantee's employees and the grantee's contractors, and consultants are in compliance with the antidiscrimination and affirmative action provisions of The Civil Rights Act of 1964, 42 U.S.C. § 2000(e) The Rehabilitation Act of 1973, 29 U.S.C. § 504, and all applicable state and federal laws, including these rules and regulations.
 7. The grantee shall include in all its construction and development contracts for the project a requirement that the contractor(s) post a performance bond or other performance guarantee in the amount equal to the full cost of the project. The performance bond or guarantee shall remain in effect

until the Board's final inspection of the project and the Board determines in writing that the project is satisfactorily completed. The performance bond or performance guarantee shall be both nondiscriminatory and financially acceptable to the Board.

8. The grantee shall certify that it is in full compliance with all other standards and conditions as required by the Grant Award Document.
9. The grantee shall certify that in the construction of the project, including letting of contracts in connection therewith, the grantee has conformed to all applicable requirements of federal, state, local laws, ordinances, rules and regulations.

6.2.18 Administration and Performance of Grant

The grantee bears primary responsibility for administration and success of the project, including any sub-agreements made by the grantee for accomplishing grant objectives and/or successful completion of the project. Although grantees are encouraged to seek advice and opinion of the Board on problems or issues that may arise, the giving of such advice and/or opinion shall not shift the responsibility for final decisions regarding the completion of the project to the Board. The Board is responsible to ensure that the grant funds awarded shall be used in conformance with these regulations, the purposes set forth in R.I. Gen. Laws Chapter 46-15.2, shall comply with the grant award document to achieve grant objectives and be used in compliance with all applicable local, State, and federal law, and with the purposes set forth in R.I. Gen. Laws Chapter 46-15.2.

6.2.19 Access

The grantee and the grantee's employees, contractors, and consultants shall give and provide to the Board's personnel access to the facilities, premises, and records related to the project. The grantee shall submit to the Board such documents and information as requested by the Board. The grantee and the grantee's employees, contractors, and consultants may be subject to a financial audit as determined by the Board. All records shall be retained by the grantee and available to the Board for a period of seven (7) years after issuance of the final grant award payment.

6.2.20 Grant Award Payments

Grant award funds shall be released to the grantee upon completion of the entire project as determined by the Board, or on an interim basis as approved by the Board. If interim payments are made, such payments will be equal to the amount corresponding to twenty-five percent of the total eligible project costs. Ten percent of all grant payments made shall be withheld by the Board as permissible, and agreed upon retainage until the entire project is completed to the full satisfaction of the Board. No grant payments shall be made until the Board receives acceptable cost documentation which shall include all forms and

information required by the Board and completed in a manner satisfactory to the Board.

6.2.21 Assignment

The right to receive payment from the State of Rhode Island under a grant award may not be assigned, nor may payments due under a grant award be similarly encumbered, unless the grantee receives written approval of same from the Board.

6.2.22 Publicity and Signs

A project identification sign, at least eight feet long and four feet high, bearing the emblem of the State of Rhode Island, shall be displayed in a prominent location at each publicly visible project site and facility, except as may be prohibited by local zoning ordinances. The sign shall identify the project, amount of State grant support, and any other information required by the Board.

6.2.23 Debarment

No grantee shall enter into contract for work on a grant award project with any contractor, consultant, or other person debarred, suspended, or disqualified from contracting with the State of Rhode Island pursuant to the rules and regulations established by and promulgated under R.I. Gen. Laws Chapter 37-2, as amended.

6.2.24 Project Changes and Grant Award Modifications

- A. A grant award modification is defined as any written alteration of the terms, conditions, budget, project method, project scope, or other administrative, technical, or financial agreements contained in the grant award document.
- B. Due to the limited amounts of funds available for Water Facilities Assistance Program grants, there shall be no grant modifications that increase the original grant amount awarded. All increased eligible project costs from a written grant modification shall be the responsibility of the grantee.
- C. The grantee shall promptly notify the Board in writing via certified mail, return receipt requested of events and/or proposed changes, which may require a written grant modification to include but not be limited to the following:
 - 1. Re-Budgeting,
 - a. Changes in approved technical plans or specifications for the project,
 - b. Changes, which may affect the approved scope or objective of the project,

- c. Significant or substantial changed conditions at the project site,
 - d. Any changes in the time and schedule for performance and/or completion of the project, or any major phase thereof,
 - e. Changes which may increase or substantially decrease the total cost of the project, and
 - f. Changes in key personnel identified in the grant award document or a reduction in time or effort devoted to the project by such personnel.
- D. If the Board decides a formal grant amendment is necessary, the Board shall notify the grantee and a formal grant award document amendment shall be prepared in accordance with § 6.2.25 of this Part. If the Board decides no formal grant award document amendment is necessary, the Board shall follow § 6.2.26 of this Part.

6.2.25 Formal Grant Award Document Amendments

- A. The Board shall require a formal grant document amendment to change principal provisions of the grant award document where project changes substantially alter the cost, schedule, and/or time of performance of the project or any major phase of the project.
- B. The Board and the grantee shall effect a formal grant award amendment only by written amendment to the grant award document. Same must be signed and certified by the appropriate authorities.

6.2.26 Administrative Grant Changes

Administrative changes by the Board such as a change in the designation of key Board personnel or of the location to which a report is to be transmitted by the grantee, or a change in the payment schedule of the grant for planning, engineering and design, and construction of the project, constitute changes in the grant award document but not necessarily changes to the project performance, and therefore do not affect the substantive rights of the Board or the grantee. The Board may issue such changes unilaterally. Such changes shall be in writing and shall generally be effected by a certified letter to the grantee via first class mail with a return receipt requested.

6.2.27 Other Changes

All other changes, which do not require formal grant award document amendment, require written approval of the Board.

6.2.28 Noncompliance

- A. In addition to any other rights or remedies available to the Board pursuant to law, in the event of noncompliance with any grant condition, requirements of these regulations, and/or grant award document requirements or specifications, the Board may take any of the following actions or combinations of same:
1. Issue a notice of noncompliance pursuant to § 6.2.29 of this Part,
 2. Withhold grant funds pursuant to § 6.2.30 of this Part,
 3. Order suspension of the project work pursuant to § 6.2.31 of this Part, and
 4. Terminate or annul a grant pursuant to §§ 6.2.32 and 6.2.33 of this Part.

6.2.29 Notice of Noncompliance

When the Board determines that the grantee is not in compliance with any condition and/or requirement of law, of these regulations, and/or of the grant award document, the Board shall notify the grantee of its compliance. The Board may require the grantee, its employees, its consultants, and its contractors to undertake and complete corrective action within thirty (30) working days of receipt of notice of noncompliance. If the grantee, its employees, its consultants, and its contractors do not undertake corrective action or if such action is not deemed adequate by the Board, the Board may issue a stop work order or withhold payment. The Board, however, may withhold payment pursuant to § 6.2.30 of this Part or issue a stop order pursuant to § 6.2.31 of this Part without prior notice to the grantee pursuant to this subsection.

6.2.30 Withholding of funds and Payments

The Board may withhold a grant payment or any portion of same when it determines in writing that a grantee has failed to comply with any grant condition, any provision of these procedures, or any specification or requirement of the grant award document.

6.2.31 Stop Work Orders

- A. The Board may order work to be stopped for "good cause" shown. "Good cause" shall include, but not be limited to, default in performance or noncompliance with the terms and/or conditions of the grant. The Board will issue a stop work order in situations where the Board deems it advisable to suspend work on the project or a portion or a phase of the project for identifiable and substantive program and/or project consideration.
- B. Prior to issuance of a stop work order, the Board will afford the grantee an opportunity to discuss the stop work order with the Board. The Board may consider same prior to issuing a stop work order. Stop work orders will contain:
1. The reason(s) for issuance of the stop work order,

2. A clear description of the work to be suspended,
 3. Instructions as to the issuance of further orders by the grantee for materials or services,
 4. Guidance as to action being taken on sub agreements, and
 5. Other suggestions to the grantee for minimizing costs.
- C. The Board may, by written order to the grantee sent via certified mail first class with a return receipt requested from the grantee, require the grantee to stop all, or any part of, the project work for a period of not more than forty-five (45) days after the grantee receives the order, and for any additional time period which the Board may deem necessary.
- D. Effect of stop work order
1. Upon receipt of a stop work order, the grantee shall immediately comply with the terms of same and take all reasonable steps to minimize the incurrence of additional costs associated with the work covered by the stop work order during the period of work stoppage. Within the suspension period or an extension thereof, to which the parties have agreed, the Board will either:
 - a. Rescind the stop work order, in full or in part,
 - b. Terminate the work covered by such order,
 - c. Authorize resumption of work.
 2. If a stop work order is cancelled or the period of the order or any extension thereof expires without any action being taken by the Board within ten (10) days following the expiration date, the grantee shall promptly resume the previously suspended work. An equitable adjustment shall be made in the grant period, the project work program or both, and the Grant Award Document shall be modified accordingly in the sole discretion of the Board.

6.2.32 Termination of Grant

- A. The Board may terminate a grant award in whole or in part for "good cause" subject to negotiations and payment of appropriate termination costs for the State's share of the eligible project cost. The term "good cause" shall include but not be limited to substantial failure to comply with the terms and conditions of the grant, or default in performance by the grantee, its employees, its contractors, and consultants.

1. The Board shall give written notice to the grantee via certified mail first class, with, return receipt requested from the grantee, of the Board's intent to terminate a grant award in whole or in part at least ten (10) days prior to the intended date of termination. Said notice shall concisely state the reason(s) for termination.
 2. The Board may afford the grantee an opportunity for consultation prior to any termination. After such consultation, the Board may in writing via certified mail first class, with return receipt requested from the grantee, terminate the grant award in whole or in part.
- B. A grantee shall not unilaterally terminate the project work for which a grant has been awarded. The grantee shall promptly give written notice to the Board of any proposed, complete, or partial termination of the project work. If the Board determines that there exists "good cause" for the proposed termination of all or part of the project for which the grant has been awarded, the Board may enter into a termination agreement with the grantee. The termination agreement may be subject to negotiation and payment of appropriate termination costs for the State's share of the eligible project costs. If the Board determines that a grantee has terminated work on the project unilaterally, the Board may unilaterally terminate the grant award pursuant to the subsection or annul the grant award pursuant to § 6.2.33 of this Part.
- C. The Board and the grantee may enter into an agreement to terminate the grant award at any time pursuant to terms consistent with this subsection. The agreement shall establish the effective date of termination of the project; the grant award; the basis for settlement of termination costs applicable to the grant award and/or the amount and date of payment of any sums due.
- D. Upon termination, the grantee shall forthwith refund the State of Rhode Island for that portion of any payment(s) made to the grantee for work the grantee did not complete due to termination. The grantee shall make no new commitments to the project without Board approval.
1. The Board shall make the final determination of allowable termination costs.

6.2.33 Annulment

- A. The Board may, in writing via certified mail first class, with return receipt requested from the grantee, annul the grant award if it determines that;
1. Substantial performance, determined in the Board's sole discretion, of the project work did not occur;
 2. The grant award was obtained by fraud, or any unlawful method and/or means; or

3. Gross abuse and/or corrupt practices, determined in the Board's sole discretion, in the administration of the project occurred.
- B. At least ten (10) days prior to the date of annulment, the Board may give written notice to the grantee of intent to annul the loan. The Board may afford the grantee an opportunity for consultation prior to annulment of the grant award. Upon annulment of grant award, the grantee shall forthwith return all grant funds paid to the grantee. The Board will make no further payments to the grantee. In addition, the Board shall pursue all available remedies pursuant to federal, state, and local law.

6.2.34 Administrative Hearings

The Board shall decide all disputes under a grant award. The grantee may request a hearing within fifteen (15) days by notifying the Board in writing of any disputes and/or disagreements the grantee may allege in the interpretation of the grant award. The Board shall grant and conduct such a hearing in accordance with the provisions of the Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35. Following a hearing, the Board shall issue a written decision and furnish a copy of same to the grantee.

6.2.35 Liberal Construction

The provisions of these regulations shall be construed to accomplish the purposes hereof and where any specific power is given to any agency by the provisions hereof, the statement thereof shall not be deemed, to exclude or impair any power otherwise in these regulations conferred upon that agency.

6.2.36 Rules and Regulations

The Board may issue, amend and/or repeal these regulations in its discretion and in accordance with the Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35.

6.2.37 Severability

If any section, subsection, provision, clause or portion of these regulations is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of these regulations shall not be affected thereby.

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TITLE 490 - WATER RESOURCES BOARD

CHAPTER 00 - N/A

SUBCHAPTER 00 - N/A

PART 6 - RI WATER FACILITIES PROGRAM ADMINISTRATIVE PROCEDURE

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