NHDES

The State of New Hampshire

DEPARTMENT OF ENVIRONMENTAL SERVICES





May 2, 2013

Her Excellency, Governor Margaret Wood Hassan and the Honorable Council State House Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Environmental Services to award a Local Source Water Protection grant to Monadnock Tenants Cooperative, Inc., (Vendor Code #156433), Rindge, NH in the amount of \$4,640.00 to complete a project to protect public drinking water systems, effective upon Governor and Council approval through May 31, 2014. 100% Federal Funds.

Funding is available in the account as follows:

03-44-44-442010-4718-072-500574

Dept Environmental Services, DWSRF Administration, Grants-Federal

FY 2013 \$4,640.00

EXPLANATION

The Department of Environmental Services issued a request for proposals for 2013 Local Source Water Protection Grants. These grants are funded by set-asides under the Drinking Water State Revolving Loan Fund. They can be used to develop and implement protection plans for active sources of public drinking water. Sixteen proposals were received. The proposals were evaluated and ranked based on criteria included in the request for proposals such as whether the project fulfills a component of a source water protection program, that the proposed project addresses appropriate threats, and that the project will deliver a valuable and useful product. Based on the available federal funding, the Department determined that it could offer grants to six source protection planning projects and three source security projects. The Department intends to support the remaining eligible projects through separate requests. See attachment A for the proposal rankings and list of reviewers.

The Monadnock Tenants Cooperative will use the grant funds to replace two existing aboveground heating oil storage tanks that are within close proximity to the Cooperative's drinking water wells with two new Roth style aboveground tanks in order to protect their drinking water.

In the event that federal funds no longer become available, general funds will not be requested to support this program.

We respectfully request your approval.

Burack

Thomas S. Burack Commissioner

DES Web Site: www.des.nh.gov
P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

Subject: Monadnock Tenants Cooperative, Inc.

GRANT AGREEMENT

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

GENERAL PROVISIONS

1. Identification and Definitions.

1: Identification and Bellin	itions.				
1.1 State Agency Name	_	1.2 State Agency Address			
NH Department of Environmental Services		29 Hazen Drive, Concord, NH 03301			
1.3 Grantee Name		1.4 Grantee Address			
Monadnock Tenants Cooperative, Inc.		78 Park Drive, Rindge, NH 03461			
1.5 Effective Date	1.6 Completion Date	1.7 Audit Date 1.8 Price Limitation			
Upon G & C Approval	May 31, 2014	N/A \$4,640.00			
1.9 Grant Officer for State A	gency	1.10 State Agency. Te	lephone Number		
Johnna McKenna		603-271-7017			
NH Department of Environme	ntal Services				
l.ll Grantee Signature		1.12 Name & Title of	Grantee Signor		
/ / / /		CATherine 1	L. Le Ray		
/ m//le		Trees	 4		
1.13 Acknowledgment: State		11 casurer	M. T. C.		
1.13 Acknowledgment: State	of New Hampshire,	County of <u>Chishi</u>	<u>.e.</u>		
	,				
On $\frac{\gamma-10-13}{5}$, before the u	ndersigned officer, person	ally appeared the perso	on identified in block 1.12, or		
this document in the capacity		gned in block 1.11, and	acknowledged that s/he executed		
1.13.1 Signature of Notary P		00			
i 1.13.1 Signature of Notary F	ublic of Justice of the Feat				
[SEAL]			N MAE OLSON blic - New Hampshire		
Henny	ne Olson		n Expires February 6, 2018		
1 13 2 Name & Title of Notar	ry Public or Justice of the	<u> </u>			
1.13.2 Name & Title of Notary Public or Justice of the Peace					
1.14 State Agency Signature	<u>(s)</u>	1.15 Name/Title of State Agency Signor(s)			
Thomas &	3.000	Thomas S. Burack, Con	mmissioner		
showar ~	2017003	NH Department of Environmental Services			
1.16 Approval by Attorney General (Form, Substance and Execution)					
		,			
11-30-12					
By: On: $4-30-13$					
1.17 Approval by the Governor and Council					
	,				
	,				

- 2. SCOPE OF WORK. In exchange for grant funds provided by the state of New Hampshire, acting through the agency identified in block 1.1 (hereinafter referred to as "the State"), pursuant to RSA 21-O, the Grantee identified in block 1.3 (hereinafter referred to as "the Grantee"), shall perform that work identified and more particularly described in the scope of work attached hereto as EXHIBIT A (the scope of work being referred to as "the Project").
- 3. <u>AREA COVERED.</u> Except as otherwise specifically provided for herein, the Grantee shall perform the Project in, and with respect to, the State of New Hampshire.

4. EFFECTIVE DATE: COMPLETION OF PROJECT.

- 4.1 This Agreement, and all obligations of the parties hereunder, shall become effective on the date in block 1.5 or on the date of approval of this Agreement by the Governor and Council of the State of New Hampshire whichever is later (hereinafter referred to as the "Effective Date").
- 4.2 Except as otherwise specifically provided for herein, the Project, including all reports required by this Agreement, shall be completed in ITS entirety prior to the date in block 1.6 (hereinafter referred to as the "Completion Date").

5. GRANT AMOUNT: LIMITATION ON AMOUNT: PAYMENT.

- 5.1 The Grant Amount is identified and more particularly described in EXHIBIT B, attached hereto.
- 5.2 The manner of, and schedule of payment shall be as set forth in EXHIBIT B.
- 5.3 In accordance with the provisions set forth in EXHIBIT B, and in consideration of the satisfactory performance of the Project, as determined by the State, and as limited by subparagraph 5.5 of these general provisions, the State shall pay the Grantee the Grant Amount. The State shall withhold from the amount otherwise payable to the Grantee under this subparagraph 5.3 those sums required, or permitted, to be withheld pursuant to N.H. RSA 80:7 through 7-c.
- 5.4 The payment by the State of the Grant amount shall be the only, and the complete, compensation to the Grantee for all expenses, of whatever nature, incurred by the Grantee in the performance hereof, and shall be the only, and the complete, compensation to the Grantee for the Project. The State shall have no liabilities to the Grantee other than the Grant Amount.
- 5.5 Notwithstanding anything in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made, hereunder exceed the Grant limitation set forth in block 1.8 of these general provisions.
- 6. COMPLIANCE BY GRANTEE WITH LAWS AND REGULATIONS. In connection with the performance of the Project, the Grantee shall comply with all statues, laws, regulations, and orders of federal, state, county, or municipal authorities, which shall impose any obligations, or duty upon the Grantee, including the acquisition of any and all necessary permits.

7. RECORDS AND ACCOUNTS.

- 7.1 Between the Effective Date and the date seven (7) years after the Completion Date the Grantee shall keep detailed accounts of all expenses incurred in connection with the Project, including, but not limited to, costs of administration, transportation, insurance, telephone calls, and clerical materials and services. Such accounts shall be supported by receipts, invoices, bills and other similar documents.
- 7.2 Between the Effective Date and the date seven (7) years after the Completion Date, at any time during the Grantee normal business hours, and as often as the State shall demand, the Grantee shall make available to the State all records pertaining to matters covered by this Agreement. The Grantee shall permit the State to audit, examine, and reproduce such records, and to make audits of all contracts, invoices, materials, payrolls, records or personnel, data (as that term is hereinafter defined), and other information relating to all matters covered by this Agreement. As used in this paragraph, Cont includes all persons, natural or fictional, affiliated with, controlled by, or under common ownership with, the entity identified as the Grantee in block 1.3 of these general provisions.

8.PERSONNEL.

- 8.1 The Grantee shall, at its own expense, provide all personnel necessary to perform the Project. The Grantee warrants that all personnel engaged in the Project shall be qualified to perform such Project, and shall be properly licensed and authorized to perform such Project under all applicable laws.
- 8.2 The Grantee shall not hire, and it shall not permit any subcontractor, subgrantee, or other person, firm or corporation with whom it is engaged in a combined effort to perform such Project, to hire any person who has a contractual relationship with the State, or who is a State officer or employee, elected or appointed.

8.3 The Grantee officer shall be the representative of the State hereunder. In the event of any dispute hereunder, the interpretation of this Agreement by the Grantee Officer, and his/her decision on any dispute, shall be final.

9. DATA: RETENTION OF DATA; ACCESS.

- 9.1 As used in this Agreement, the word data shall mean all information and things developed or obtained during the performance of, or acquired or developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.
- 9.2 Between the Effective Date and the Completion Date the Grantee shall grant to the State, or any person designated by it, unrestricted access to all data for examination, duplication, publication, translation, sale, disposal, or for any other purpose whatsoever.
- 9.3 No data shall be subject to copyright in the United States or any other country by anyone other than the State.
- 9.4 On and after the Effective Date all data, and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason, whichever shall first occur.
- to publish, disclose, distribute and otherwise use, in whole or in part, all data.

 10. CONDITIONAL NATURE OR AGREEMENT. Notwithstanding anything in this Agreement to the contrary, all obligations of the State hereunder, including without limitation, the continuance of payments hereunder, are contingent upon the availability or continued appropriation of

9.5 The State, and anyone it shall designate, shall have unrestricted authority

hereunder, are contingent upon the availability or continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available or appropriated funds. In the event of a reduction or termination of those funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Grantee notice of such

11. EVENT OF DEFAULT; REMEDIES.

- 11. Any one or more of the following acts or omissions of the Grantee shall constitute an event of default hereunder (hereinafter referred to as "Events of Default"):
- 11.1.1 failure to perform the Project satisfactorily or on schedule; or
- 11.1.2 failure to submit any report required hereunder; or
- 11.1.3 failure to maintain, or permit access to, the records required hereunder;
- 11.1.4 failure to perform any of the other covenants and conditions of this Agreement.
- 11.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:
- 11.2.1 give the Grantee a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Grantee notice of termination; and
- 11.2.2 give the Grantee a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the Grantee Amount which would otherwise accrue to the Grantee during the period from the date of such notice until such time as the State determines that the Grantee has cured the Event of Default shall never be paid to the Grantee; and
- 11.2.3 set off against any other obligation the State may owe to the Grantee any damages the State suffers by reason of any Event of Default; and
- 11.2.4 treat the agreement as breached and pursue any of its remedies at law or in equity, or both.

12. TERMINATION.

- 12.1 In the event of any early termination of this Agreement for any reason other than the completion of the Project, the Grantee shall deliver to the Grant Officer, not later than fifteen (15) days after the date of termination, a report (hereinafter referred to as the Termination Report) describing in detail all Project Work performed, and the Grant Amount earned, to and including the date of termination.
- 12.2 In the event of Termination under paragraphs 10 or 12.4 of these general provisions, the approval of such a Termination Report by the State shall entitle the Grantee to receive that portion of the Grant amount earned to and including the date of termination.

- 12.3 In the event of Termination under paragraphs 10 or 12.4 of these general provisions, the approval of such a Termination Report by the State shall in no event relieve the Grantee from any and all liability for damages sustained or incurred by the State as a result of the Grantee's breach of its obligations hereunder.
- 12.4 Notwithstanding anything in this Agreement to the contrary, either the State or except where notice default has been given to the Grantee hereunder, the Grantee, may terminate this Agreement without cause upon thirty (30) days written notice.
- 13. CONFLICT OF INTEREST. No officer, member or employee of the Grantee and no representative, officer of employee of the State of New Hampshire or of the governing body of the locality or localities in which the Project is to be performed, who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of such Project, shall participate in any decision relating to this Agreement which affects his or her personal interests or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested, nor shall he or she have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.
- 14. GRANTEE'S RELATION TO THE STATE. In the performance of this Agreement the Grantee, its employees, and any subcontractor or subgrantee of the Grantee are in all respects independent contractors, and are neither agents nor employees of the State. Neither the Grantee nor any of its officers, employees, agents, members, or subcontractors, shall have authority to bind the State nor are they entitled to any of the benefits, workmen's compensation or emoluments provided by the State to it's employees.
- 15. ASSIGNMENT AND SUBCONTRACTS. The Grantee shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the State. None of the Project Work shall be subcontracted or subgranteed by the Grantee other than as set forth in Exhibit A without the prior written consent of the State.
- 16.INDEMNIFICATION. The Grantee shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based on or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Grantee of Subcontractor, or subgrantee or other agent of the Grantee. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this Agreement.

17. INSURANCE AND BOND.

- 17.1 The Grantee shall, at its sole expense, obtain and maintain in force, or shall require any subcontractor, or assignee performing Project work to obtain and maintain in force, both for the benefit of the State, the following insurance:
- 17.1.1 statutory workmen's compensation and employees liability insurance for all employees engaged in the performance of the Project, and
- 17.1.2 comprehensive public liability insurance against all claims of bodily injuries, death or property damage, in amounts not less than \$2,000,000 for bodily injury or death any one incident, and \$500,000 for property damage in any one incident; and
- 17.2 The policies described in subparagraph 18.1 of this paragraph shall be the standard form employed in the State of New Hampshire, issued by underwriters acceptable to the State, and authorized to do business in the State of New Hampshire. Each policy shall contain a clause prohibiting cancellation of modification of the policy earlier than ten (10) days after written notice the of has been received by the State.
- 18. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event, or any subsequent Event. No express waiver of any Event of Default shall be deemed a waiver of any provisions hereof. No such failure or waiver shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other default on the part of the Grantee.
- 19. <u>NOTICE</u>. Any notice by a party hereto the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses first above given.
- 20.AMENDMENT. This agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Council of the State of New Hampshire.

- 21. <u>CONSTRUCTION OF AGREEMENT AND TERMS.</u> This Agreement shall be construed in accordance with the law of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assignees. The captions and contents of the "subject" blank are used only as a matter of convenience, and are not to be considered a part of this Agreement or to be used in determining the intent of the parties hereto.
- 22. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit
- 23.ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings relating hereto.

EXHIBIT A SCOPE OF SERVICES

Monadnock Tenants Cooperative, Inc.

The Monadnock Tenants Cooperative (MTC) will use the grant funds to remove two existing aboveground heating oil storage tanks and replace them with two new Roth style aboveground storage tanks in order to protect their drinking water sources from contamination. The MTC will be responsible for obtaining all applicable local and state permits and maintenance of the new tanks. Specifically, the following tasks, as described in the application submitted to DES, will be accomplished:

1.

- a. Install two new aboveground Roth style 275 gallon heating oil storage tanks with oil lines in a non-metallic conduit between the tank and the home, Roth tank cover and concrete tank pad at 58 Park Drive and 66 Park Drive. The new tanks shall be placed on a one-piece reinforced concrete pad that is set on a properly prepared sub-base. Tanks will be anchored to the concrete pads and located at the gable ends of the buildings or a minimum of 18 inches away from the drip line of the roof or otherwise protected from potential ice and snow damage from the roof. Unprotected outdoor filters are not permitted. Additionally, the supply lines (and return lines if applicable) shall be continuous poly-coated copper from the tank to the furnace. The use of compression fittings on supply or return lines is not permitted and heavy duty frost proof hardware shall be used as applicable. The installation, as well as the disposal of the old tanks and any residual content, shall be in accordance with NFPA 31, DES Best Management Practices for the Installation and Upgrading of On-Premise-Use Heating Oil Tanks, and any applicable codes.
- b. Inspection conducted by DES Waste Division.
- c. Submit photos and invoices to DES.

EXHIBIT B BUDGET & PAYMENT METHOD

All services shall be performed to the satisfaction of the Department of Environmental Services before payment is made. All payments shall be made upon receipt and approval of stated outputs and upon receipt of associated invoice. If invoice is less than initial estimate only the amount on the invoice will be paid. Payments shall be made in accordance with the following schedule based upon completion of specific tasks:

Task Number/Description	Source Water Protection Grant		
1. Install 2 New Roth style tanks	\$4,640.00		
TOTAL	\$4,640.00		

EXHIBIT C SPECIAL PROVISIONS

Subparagraphs 1.7 of the General Provisions shall not apply to this Agreement.

Changes to the Scope of Services or reallocation of grant funds require DES approval in advance. Payments will be made based on submitted invoices.

Work must be completed by the completion date listed on the grant agreement (section 1.6). Requests for payment along with required proof of work must be submitted no later than 90 days after the completion date or the grant will be closed out and funds will no longer be available.

If a deadline extension is requested the grantee must make that request for approval at least two months before the completion date. Failure to do so may result in lower rankings of future grant applications.

Federal Funds paid under this agreement are from a Grant to the State from the U.S. Environmental Protection Agency, Drinking Water State Revolving Fund Set-Asides under CFDA #66.468. All applicable requirements, regulations, provisions, terms and conditions of this Federal Grant are hereby adopted in full force and effect to the relationship between this Department and the grantee.

Monadnock Tenants Cooperative, Inc. 78 Park Drive Rindge, NH 03461

Certificate of Vote of Authorization

I, Rock Mason, Chairman of the Board of the Monadnock Tenants Cooperative, Inc., do hereby certify that at a special meeting of the Board of Directors held on Wednesday, April 10, 2013, the Monadnock Tenants Cooperative, Inc. Board of Directors voted to enter into a grant agreement with the NH Department Environmental Services to complete a source water protection project. This project is to install two (2) new oil tanks. The Monadnock Tenants Cooperative, Inc. further authorized the Treasurer, Catherine L. LeRay to execute any documents, which may be necessary to effectuate this grant agreement.

Notary Public Alex Mas Olson My commission expires: HELEN MAE OLSON
Notary Public - New Hampshire
My Commission Expires February 6, 2018

In witness thereof, I have set my hand and official seal.

State of New Hampshire Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that MONADNOCK TENANTS COOPERATIVE, INC. is a New Hampshire Consumer Cooperative Association formed under RSA 301-A on November 23, 1987. I further certify that it is in good standing as far as this office is concerned, having filed the annual report(s) and paid the fees required by law.



In TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 20th day of March, A.D. 2013

William M. Gardner Secretary of State



CERTIFICATE OF LIABILITY INSURANCE

DATE (MWDD/YYYY) 4/16/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED

REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER. IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(les) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate doe

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Attachment A 2013 Local Source Water Protection Grants

Grant Reviewer List

Name	Department	Bureau	Title	Justification (Experience)
Paul Susca	NHDES	Drinking Water & Groundwater	Administrator III	Source Water Protection Program Manager (8
		Bureau		years)
Johnna McKenna	NHDES	Drinking Water & Groundwater Bureau	Supervisor VII	Grant Program Manager (14 years)
Pierce Rigrod	NHDES	Drinking Water & Groundwater Bureau	Environmentalist IV	Grant Project Management (8 years)

Applications and Rankings

Source Protection Planning Projects

Grant Applicant	Project Location	Grant Amount	Rank	Notes	
Lake Winnipesaukee Watershed					
Association	Lake Waukewan-Meredith	\$11,740	1		
NH Lakes Association	Canobie Lake-Salem	\$18,606	2		
Lakes Region Planning					
Commission	Paugus Bay-Laconia	\$12,475	3		
Plymouth Water & Sewer	Plymouth	\$15,000	4		
Strafford Regional Planning					
Commission	Oyster River	\$10,065	5		
Monadnock Tenants Coop	Rindge	\$4,640	6		
City of Rochester	Rochester	\$9,150	7	Unable to fund	
Southern NH Planning Commission	Londonderry	\$19,055	8	Unable to fund	
UNH-PREP	Seacoast	\$18,963	9	Unable to fund	
Pennichuck Water Works	Nashua	\$20,000	10	Unable to fund	
Sunray Shores Water Dist.	Belmont	\$19,841	11	Unable to fund	
City of Portsmouth	Portsmouth	\$17,108	12	Unable to fund	

Source Security Projects

Grant Applicant	Project Location	Grant Amount	Rank	Notes
City of Claremont	Claremont	\$5,297	1	
Village District of Eastman	Grantham	\$18,570	2	
Town of Troy Water & Sewer	Troy	\$2,529	3	
Monadnock Tenants Co-op	Rindge	\$9,685	4	Unable to fund