



The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**



**Thomas S. Burack, Commissioner**

May 9, 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 an Asset Management and Financial Planning grant to Pennichuck Water Works, Inc., Nashua, NH (Vendor Code #155870, in the amount of \$15,000 to improve public water system management, effective upon Governor and Council approval through May 31, 2014. 100% Federal Funds.

Funding is available in the account as follows:

	<u>FY 2013</u>
03-44-44-442010-4718-072-500574	\$15,000
Dept Environmental Services, DWSRF Administration, Grants- Federal	

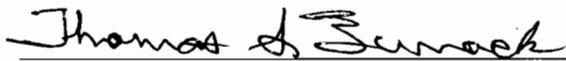
EXPLANATION

The Department of Environmental Services issued a request for proposals for 2012/2013 Asset Management and Financial Planning Grants. These grants are funded by set-asides under the Drinking Water State Revolving Loan Fund. They can be used to develop and implement asset management plans for public water systems. Twenty proposals were received, then evaluated and ranked based on criteria included in the request for proposals, such as whether the project completes a condition assessment on all assets, that a financial plan is developed and addresses investment priorities, and that the plan is communicated to customers and decision-makers. Based on the available federal funding, the Department determined that it could offer grants to twelve of the twenty applicants. See attachment A for the project rankings and list of reviewers.

The Pennichuck Water Works, Inc. will use the grant funds to develop and prepare an asset inventory, GIS mapping, and financial and communications plans.

In the event that federal funds no longer become available, general funds will not be requested to support this program. This agreement has been approved by the Attorney General's Office as to form, substance and execution.

We respectfully request your approval.

  
Thomas S. Burack, Commissioner

Subject: Pennichuck Water Works Inc.

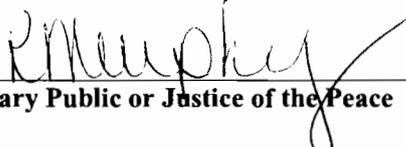


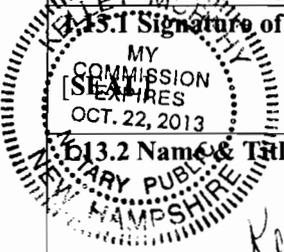
**GRANT AGREEMENT**

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

**GENERAL PROVISIONS**

**1. Identification.**

<b>1.1 State Agency Name</b> NH Department of Environmental Services		<b>1.2 State Agency Address</b> 29 Hazen Drive, Concord, NH 03301	
<b>1.3 Grantee Name</b> Pennichuck Water Works Inc.		<b>1.4 Grantee Address</b> 25 Manchester Street, Merrimack, NH 03054	
<b>1.5 Effective Date</b> Upon G&C Approval	<b>1.6 Completion Date</b> May 31, 2014	<b>1.7 Audit Date</b> N/A	<b>1.8 Grant Limitation</b> \$15,000
<b>1.9 Grant Officer for State Agency</b> Adam Torrey, Infrastructure Sustainability Manager NH Department of Environmental Services		<b>1.10 State Agency. Telephone Number</b> 603-271-2950	
<b>1.11 Grantee Signature</b> 		<b>1.12 Name &amp; Title of Grantee Signor</b> John L. Paton Chief Executive Officer & President	
<b>1.13 Acknowledgment:</b> State of <u>New Hampshire</u> , County of <u>Hillsborough</u>			
On <u>May 2, 2013</u> before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
<b>1.13.1 Signature of Notary Public or Justice of the Peace</b> 			
<b>1.13.2 Name &amp; Title of Notary Public or Justice of the Peace</b> Kelley Murphy, Engineering Administrator			
<b>1.14 State Agency Signature(s)</b> 		<b>1.15 Name/Title of State Agency Signor(s)</b> Thomas S. Burack, Commissioner NH Department of Environmental Services	
<b>1.16 Approval by Attorney General (Form, Substance and Execution)</b>			
By: 		On: <u>5-17-13</u>	
<b>1.17 Approval by the Governor and Executive Council</b>			
By:		On:	



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. **AREA COVERED.** 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 statutes, 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's 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, "Grantee" 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.

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

11. **EVENT OF DEFAULT: REMEDIES.**

11.1 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; or

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 grant 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 ("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.

Grantee Initials SP  
Date 5-2-2013

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 or 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, subcontractors or subgrantees, shall have authority to bind the State nor are they entitled to any of the benefits, workers' compensation or emoluments provided by the State to its 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 subgranted 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, subgrantee 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 workers' 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 17.1 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 or modification of the policy earlier than ten (10) days after written notice thereof 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. **NOTICE.** Any notice by a party hereto to 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. **CONSTRUCTION OF AGREEMENT AND TERMS.** 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.

Grantee Initials SW  
Date 5-2-2013

EXHIBIT A  
SCOPE OF SERVICES

Pennichuck Water Works Inc.

The Pennichuck Water Works Inc. will use these funds for asset management and financial planning initiatives for the water system. Specifically, the following task(s), as described in the application submitted to DES, will be accomplished:

1. Asset Management and Financial Planning. Submit documentation 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 invoices. **If invoice is less than initial estimate only the amount on the invoice will be paid.**

<b>Task Number/Description</b>	<b>Asset Management Grant</b>
Task 1: Electronic Data Collection and Presentation (DPaC) including asset based electronic work orders and real time data collection and information delivery to and from the field.	\$5,000
Task 2: Computerized Maintenance Management System development and implementation including company wide access across all functions.	\$5,000
Task 3: Geographical Information Systems (GIS) development and implementation.	\$5,000
<b>TOTAL</b>	<b>\$15,000</b>

EXHIBIT C  
SPECIAL PROVISIONS

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 final 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.



25 MANCHESTER STREET  
PO Box 1947  
MERRIMACK, NH 03054-1947  
(603) 882-5191  
FAX (603) 913-2305  
WWW.PENNICHUCK.COM

## PENNICHUCK WATER WORKS, INC.

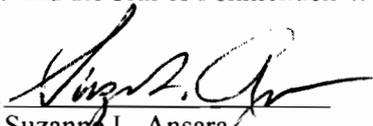
### CORPORATE SECRETARY'S CERTIFICATE

I, Suzanne L. Ansara, the duly elected Corporate Secretary of Pennichuck Water Works, Inc., a New Hampshire corporation, do hereby certify that:

1. The following resolution was adopted by the Board of Directors of Pennichuck Water Works, Inc. on April 26, 2013, and such resolution has not been amended, modified, or rescinded, and is in full force and effect, as of the date hereof:

Resolution: that the corporation does hereby approve the Grant Agreement between the State of New Hampshire, Department of Environmental Services and Pennichuck Water Works, Inc., substantially in the form presented at this meeting; and that John L. Patenaude, Chief Executive Officer, or Donald L. Ware, Chief Operating Officer, acting singly, are hereby authorized to execute and deliver the Grant Agreement on behalf of the corporation, with such changes as they, in their sole discretion, may deem necessary or advisable to carry out the intent of this resolution.

In Witness Whereof, I have hereunto set my hand and the seal of Pennichuck Water Works, Inc. this 30th day of April, 2013.

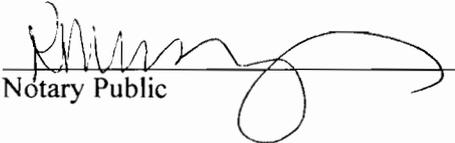


Suzanne L. Ansara  
Corporate Secretary

STATE OF NEW HAMPSHIRE  
COUNTY OF HILLSBOROUGH

On this 30<sup>th</sup> day of April, 2013, before me, Kelley Murphy, the undersigned Officer, personally appeared Suzanne L. Ansara, who acknowledged herself to be the Corporate Secretary of Pennichuck Water Works, Inc., and being authorized so to do, executed the foregoing instrument for the purpose therein contained.

In Witness Whereof, I have set my hand and official seal.



Notary Public



# 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 PENNICHUCK WATER WORKS, INC. is a New Hampshire corporation duly incorporated under the laws of the State of New Hampshire on January 17, 1983. I further certify that all fees and annual reports required by the Secretary of State's office have been received and that articles of dissolution have not been filed.



In TESTIMONY WHEREOF, I hereto  
set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 13<sup>th</sup> day of May, A.D. 2013

A handwritten signature in black ink, appearing to read "William M. Gardner".

William M. Gardner  
Secretary of State



## DESCRIPTIONS (Continued from Page 1)

**The Southwood Corporation**

**This Evidence of Insurance is issued as a matter of information only and confers no rights upon the holder and does not amend, extend or alter the coverage afforded by policies designated on the Evidence.**

**Attachment A  
2012-2013 Grant Round – Asset Management & Financial Planning**

**Applications and Rankings**

<b>PWS ID</b>	<b>Applicant</b>	<b>Amount Requested</b>	<b>Ranking Score</b>
2041010	Rye Water District	\$15,000	65
2111010	Seabrook Water System	\$15,000	65
1221010	Jaffrey Water Dept	\$15,000	60
1521010	Town of Meredith	\$15,000	55
0972010	Crotched Mt. Rehab Center	\$8,000	50
0481010	Town of Colebrook	\$12,500	50
0511010	Conway Village Fire District	\$15,000	50
0161020	Lower Bartlett Water Precinct	\$15,000	50
0511030	North Conway Water Precinct	\$15,000	50
2561010	Wolfeboro Water & Sewer	\$15,000	50
1941010	Plymouth Village Water & Sewer	\$15,000	50
1621010	Pennichuck Water Works	\$15,000	50
: : : : : : : : PROJECTS CURRENTLY ELIGIBLE FOR FUNDING LISTED ABOVE THIS LINE : : : : : : : :			
0851010	City of Franklin	\$15,000	45
2151010	Somersworth Water Works	\$15,000	45
1531010	Merrimack Village District	\$7,000	45
1681010	Newfields Water & Sewer District	\$13,000	40
1241010	City of Keene	\$15,000	40
0651010	Dover Water Dept	\$15,000	40
2011010	Rollinsford Water & Sewer	\$15,000	35
1051010	Aquarion Water Company	\$15,000	35

**Grant Reviewer List**

<b>Name</b>	<b>Department</b>	<b>Bureau</b>	<b>Title</b>	<b>Years Experience</b>
Richard Skarinka	NHDES	Drinking Water & Groundwater Bureau	Sanitary Engineer III	Twelve years managing the grant program
Daniel Dudley	NHDES	Drinking Water & Groundwater Bureau	Sanitary Engineer III	One year managing the grant program
Adam Torrey	NHDES	Drinking Water & Groundwater Bureau	Environmental Program Manager	One year managing the grant program