



The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner



102B

April 29, 2024

102B

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Environmental Services to award a grant to Manchester Water Works (MWW), (VC# 170435 -B002), Manchester, NH, in the amount of \$500,000, to protect approximately 193 acres within the hydrological area of concern of MWW, which serves as the drinking water source for the City of Manchester as well as sections of Auburn, Bedford, Goffstown, Hooksett and Londonderry, effective upon Governor and Council approval through December 31, 2025. 100% Drinking Water and Groundwater Trust Fund.

Funding is available in the following account:

	<u>FY 2024</u>
03-44-44-444010-7428-073-500581	\$500,000
Dept. Environmental Services, Drinking Water and Groundwater Trust Fund, Grants Non-Federal	

EXPLANATION

The Drinking Water and Groundwater Trust Fund (DWGTF) was created in 2016, using \$276 million of MtBE trial judgment funds, as authorized by RSA 485-F. The purpose of the DWGTF is to provide sustainable, long-term funding for the protection, preservation, and enhancement of the drinking water and groundwater resources of the State. The Drinking Water and Groundwater Advisory Commission (Advisory Commission) was established to administer the DWGTF and to provide guidance to the State on the use of the funds.

On November 20, 2023, the Advisory Commission voted to authorize grants for eleven drinking water source protection projects. MWW's request for \$500,000 was selected for grant funding from the DWGTF to acquire a conservation easement on +/- 193 acres of land within the hydrologic area of concern of MWW, which serves as the drinking water supply for the City of Manchester as well as sections of Auburn, Bedford, Goffstown, Hooksett and Londonderry. The Town of Auburn and MWW submitted letters to the Advisory Commission supporting this project.

The total project cost for MWW to purchase and acquire the conservation easements is \$2,124,570. The DWGTF will provide \$500,000 with \$1,624,570 in match provided by MWW from other funding sources. The purchase price of the property and value of conservation easements are based on a recent appraisal of fair market value.

Attachment A contains a map showing the relationship of the land to the protected water supply source. In the event that these funds become no longer available, general funds will not be requested to support this project. This agreement has been approved by the Attorney General's Office as to form, substance, and execution.

We respectfully request your approval.

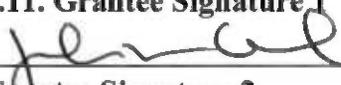
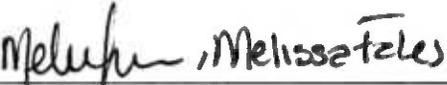
A handwritten signature in black ink, appearing to read "Robert R. Scott", written over a horizontal line.

Robert R. Scott
Commissioner

GRANT AGREEMENT

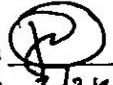
The State of New Hampshire and the Grantee hereby
Mutually agree as follows:
GENERAL PROVISIONS

1. Identification and Definitions.

1.1. State Agency Name NH Department of Environmental Services		1.2. State Agency Address 29 Hazen Drive, Concord NH 03302-0095	
1.3. Grantee Name Manchester Water Works		1.4. Grantee Address 281 Lincoln Street, Manchester, NH 03103	
1.5 Grantee Phone # 603-624-6494	1.6. Account Number 03-44-44-444010-7428-073	1.7. Completion Date 12/31/2025	1.8. Grant Limitation \$500,000
1.9. Grant Officer for State Agency Laura.M.Weit-Marcum@des.nh.gov		1.10. State Agency Telephone Number (603) 271-2862	
If Grantee is a municipality or village district: "By signing this form we certify that we have complied with any public meeting requirement for acceptance of this grant, including if applicable RSA 31:95-b."			
1.11. Grantee Signature 1 		1.12. Name & Title of Grantee Signor 1 John M. O'Neil watershed Land & Property Mgr	
Grantee Signature 2		Name & Title of Grantee Signor 2	
Grantee Signature 3		Name & Title of Grantee Signor 3	
1.13 State Agency Signature(s) 		1.14. Name & Title of State Agency Signor(s) Robert R. Scott, Commissioner	
1.15. Approval by Attorney General (Form, Substance and Execution) (if G & C approval required) By:  Assistant Attorney General, On: 5/10/24			
1.16. Approval by Governor and Council (if applicable) 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"), 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 B (the scope of work being hereinafter 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 on the date of approval of this Agreement by the Governor and Council of the State of New Hampshire if required (block 1.16), or upon signature by the State Agency as shown in block 1.14 ("the Effective Date").
 - 4.2. Except as otherwise specifically provided herein, the Project, including all reports required by this Agreement, shall be completed in ITS entirety prior to the date in block 1.7 (hereinafter referred to as "the Completion Date").
5. GRANT AMOUNT; LIMITATION ON AMOUNT; VOUCHERS; PAYMENT.
 - 5.1. The Grant Amount is identified and more particularly described in EXHIBIT C, attached hereto.
 - 5.2. The manner of, and schedule of payment shall be as set forth in EXHIBIT C.
 - 5.3. In accordance with the provisions set forth in EXHIBIT C, 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 payment 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 and RSA 31-95-b.
7. RECORDS and ACCOUNTS.
 - 7.1. Between the Effective Date and the date seven (7) years after the Completion Date, unless otherwise required by the grant terms or the Agency, 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, unless otherwise required by the grant terms or the Agency pursuant to subparagraph 7.1, 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 of 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 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 the 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 Grant Officer shall be the representative of the State hereunder. In the event of any dispute hereunder, the interpretation of this Agreement by the Grant Officer, and his/her decision on any dispute, shall be final.
9. DATA; RETENTION OF DATA; ACCESS. 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 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, paper, 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 (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 of 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

Grantee Initials 
Date 3/24/24

- 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 interest 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, workmen's 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 B 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, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Grantee or 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.**
 - 17.1 The Grantee shall, at its own 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 General liability insurance against all claims of bodily injuries, death or property damage, in amounts not less than \$1,000,000 per occurrence and \$2,000,000 aggregate 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. Grantee shall furnish to the State, certificates of insurance for all renewal(s) of insurance required under this Agreement no later than ten (10) days prior to the expiration date of each insurance policy.
 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 of 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, if required or by the signing State Agency.
 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.
 24. **SPECIAL PROVISIONS.** The additional or modifying provisions set forth in Exhibit A hereto are incorporated as part of this agreement.

EXHIBIT A

**SPECIAL PROVISIONS
Manchester Water Works**

1. Not applicable.

Grantee Initials

JL

Date

3/26/24

EXHIBIT B

SCOPE OF SERVICES

Manchester Water Works

Manchester Water Works will use the grant to acquire a conservation easement on approximately +/- 193 acres of land in the Hydrological Area of Concern of Lake Massabesic, which serves the City of Manchester's drinking water source. The +/- 193 acres are designated on current Auburn Tax Map 8 as Lot 15, Tax Map 10 as Lot 2 and Tax Map 11 as Lot 13. The land will be protected in perpetuity, as specified in conservation easement language, with water supply protection being one of the purposes of the conservation easement.

This Agreement consists of the following documents: Exhibits A, B, and C, which are all incorporated herein by reference as is fully set forth herein.

EXHIBIT C

GRANT AMOUNT & PAYMENT SCHEDULE

Manchester Water Works

Payment in the amount of \$500,000 shall be made to Manchester Water Works upon receipt of the following:

1. Survey of the parcel of land as specified in Env-Dw 1303.09(b)(1).
2. A copy of the appraisal as specified in Env-Dw 1303.09(b)(2).
3. Title examination as specified in Env-Dw 1303.09(b)(3).
4. Acceptable stewardship plan for the property that ensures the permanent protection of the water supply as specified in Env-Dw 1303.09(b)(6).
5. Completed baseline documentation report, which indicates the current condition of the property as specified in Env-Dw 1303.09(b)(6).
6. Documentation to support the match of \$1,624,570 provided by grantee.
7. The final conservation easement deed with restrictions to protect the Lake Massabesic's Hydrologic Area of Concern, meeting the requirements of NH Drinking Water and Groundwater Trust Fund "Rules for Source Water Protection Grants," adopted May 9, 2022 and revised May 15, 2023..



Philip W. Croasdale, Director

January 14, 2024

TO: BOARD OF WATER COMMISSIONERS

RE: Two NHDES Source Water Protection Grants

In accordance to the attached MOU between the Manchester Water Works and the Southeast Land Trust, staff would like to recommend the Board receive the following grants to fund the Eaton Hill Conservation Easement Project in Auburn, NH:

- 1) NHDES Source Water Protection Grant 369 (\$25,000 for legal costs):
- 2) NHDES Drinking Water & Groundwater Trust Fund Grant (\$500,000 for Land Purchase and Easement Purchase)

Both grants will be transferred to the Southeast Land Trust and legal counsel for completion of the land and easement purchase.

Manchester Water Works will receive fee ownership of the 70 +/- acres of watershed property currently owned by the Harland Eaton Heirs.

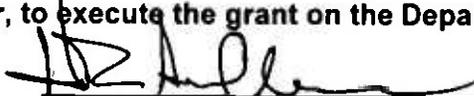
John O'Neil, Watershed Land & Property Manager, will be present to answer any questions the Board may have.

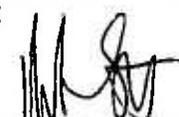
Staff recommends the Board approve these two Source Water Protection Grants to support the Eaton Hill Conservation Easement Project with the Southeast Land Trust.

I, the undersigned duly elected President of the Board of Water Commissioners for the City of Manchester Water Works Department, do hereby state that on February 22, 2024 at the regular monthly meeting of the Board of Water Commissioners, the Commissioners voted to approve and accept the proposed 2024 Local Source Water Protection Grant as stated in the letter dated January 18, 2024 and the proposed 2024 Drinking Water and Ground Water Trust Fund Grant as stated in the letter dated November 27, 2023 from the NH Department of Environmental Services.

The Board of Water Commissioner does hereby authorize, Mr. O'Neil, as Watershed Land & Property Manager, to execute the grant on the Department's behalf.

3/26/24
Date


Hal Sullivan, BWC President


Notary Public/Justice of the Peace
My commission expires: 2/22/28



Manchester Water Works

281 Lincoln St., Manchester, NH 03103, tel. 603-624-6494, fax: 603-628-6020

Kevin J. O'Neil
Risk Manager



CITY OF MANCHESTER
Office of Risk Management

CERTIFICATE OF COVERAGE

New Hampshire Department of Environmental Services
29 Hazen Drive P.O. Box 95
Concord, NH 03302-0095

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage within the financial limits of RSA 507-B as follows:

	Limits of Liability (in thousands 000)	
GENERAL LIABILITY	Bodily Injury and Property Damage	
	Each Person	325
	Each Occurrence	1000
	Aggregate	2000
AUTOMOBILE LIABILITY	Bodily Injury and Property Damage	
	Each Person	325
	Each Occurrence	1000
	Aggregate	2000
WORKER'S COMPENSATION	Statutory Limits	

The City of Manchester, New Hampshire maintains a Self-Insured, Self-Funded Program and retains outside claim service administration. All coverages are continuous until otherwise notified. Effective on the date Certificate issued and expiring upon completion of contract. Notwithstanding any requirements, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the coverage afforded by the limits described herein is subject to all the terms, exclusions and conditions of RSA 507-B.

DESCRIPTION OF OPERATIONS/LOCATION/CONTRACT PERIOD

Re: For the Local Source Water Protection Grants from March 9, 2024 through May 31 2025.

Issued the 26th of February, 2024



Risk Manager

Attachment A - Manchester Water Works, Eaton

Manchester Water Works HAC

Legend

-  Manchester Water Works - Eaton
-  Public Water Supply Wells
-  Water Supply Intake Protection Areas
-  Sanitary Protection Areas
-  Hydrologic Areas of Concern (HACs)
-  Wellhead Protection Areas (WHPAs)
-  High-Yield Stratified-Drift Aquifer (GA2)
-  Conservation Lands
-  Permanently Conserved Lands
-  Town Boundaries

Protected Water Supplies:
Manchester Water Works HAC

Total Project Acres: 195.38

High-Priority Water Supply Lands:
HAC Acres: 195.38 (100%)
WHPA Acres: 0 (0%)
GA2 Acres: 3 (2.4%)

