

The State of New Hampshire
Department of Environmental Services

Thomas S. Burack, Commissioner

*Celebrating 25 Years of Protecting
New Hampshire's Environment*



STATE OF NEW HAMPSHIRE
**American Recovery
and Reinvestment Act**



March 29, 2013

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

ARRA
FUNDS

REQUESTED ACTION

Authorize the Department of Environmental Services to amend a loan agreement (PO# 1015609) with the Winnepesaukee River Basin Project (VC # 177894) to reallocate the funding sources by increasing the American Recovery and Reinvestment Act of 2009 (ARRA) funding in the amount of \$915,551.08, and decreasing the Clean Water State Revolving Fund (CWSRF) Repayment funding by \$915,551.08, effective upon Governor & Council approval. This is a zero dollar change to the original loan amount of \$8,400,000, which was approved by G&C on August 9, 2009 as Item 61. 100% Federal ARRA Funds.

Funding is available in the account as follows:

03-44-44-449910-0846-301-500832
Dept. Environmental Services CWSRF ARRA Loans, Loans

FY 2013
\$915,551.08

EXPLANATION

The amendment to this loan agreement is to authorize the reallocation of the funding sources for the Winnepesaukee River Basin Project's existing loan from the CWSRF for the purpose of financing the UV Disinfection and Plant Water Upgrade Project. The existing loan agreement was funded entirely with CWSRF Repayment funds. This amendment will be funded with only ARRA funds, resulting in the loan being funded with 11 percent ARRA and 89 percent CWSRF Repayment funds. The addition of ARRA funding will allow principal forgiveness to be provided upon completion of the project, resulting in a lessening of the financial burden to the member communities for this project. The project will ultimately protect human health and improve the quality of the effluent discharged to the Merrimack River.

Attached is a tabulation of the CWSRF showing the effect of these actions on the funds available for loans.

We respectfully request your approval.

Thomas S. Burack, Commissioner

DEPARTMENT OF ENVIRONMENTAL SERVICES
WATER DIVISION
CLEAN WATER STATE REVOLVING FUND

Supplemental information to Governor and Council request for loan agreement(s) under RSA 486:14 and N.H. Admin. Rules Env-Wq 500, et seq.:

This request will change the balance available for loans as follows:

	<u>CWSRF Cap Grant</u>	<u>CWSRF Repayment</u>	<u>ARRA</u>
Repayment Funds as of March 29, 2013		\$92,638,468	
Federal Funds *	\$292,889,151	\$0	\$37,697,344
Plus 20% State Match	\$61,046,573	\$0	\$0
Total Funds Available	\$370,318,404	\$92,638,468	\$37,697,344
Less Loans Previously Approved	\$353,421,814	\$0	\$36,781,793
Funds Available for Loans	\$16,896,590	\$92,638,468	\$915,551
Loan Agreement(s) This Request:			
Winnepesaukee River Basin Program			
Original Loan Amount †	\$0	(\$8,400,000)	\$0
Amended Loan Amount	\$0	\$7,484,449	\$915,551
Change, this Request †	\$0	(\$915,551)	\$915,551
Other Requested Action(s)			
Town of Newmarket †	\$0	\$0	\$0
Net Change †	\$0	(\$915,551)	\$915,551
Balance Available after G & C Approval	\$16,896,590	\$93,554,019	\$0

* Is net of the 4% reduction in Federal dollars for CWSRF Program administration

† Negative numbers in this row indicate funds returned to account



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

August 24, 2009

His Excellency Governor John H. Lynch
 and the Honorable Council
 State House
 Concord, New Hampshire 03301

APPROVED G & C
 DATE 9/9/09
 ITEM # 61

REQUESTED ACTION

Authorize the Department of Environmental Services to approve loan agreements with the following entities in the principal amount of \$13,224,000, to finance wastewater improvement projects under the provisions of RSA 486:14 and N.H. Administrative Rules Env-Wq 500 effective upon Governor & Council approval.

Funding is available in account as follows:

03-44-44-442010-2001-301-500832-Loans \$13,224,000
 Dept Environmental Services, CWSRF Loans, Repayment

Entity	Vendor No.	Loan Amount
Winnepesaukee River Basin Program	177894	\$2,000,000
Winnepesaukee River Basin Program	177894	\$8,400,000
Town of Merrimack	177436	\$2,824,000
	Total	\$13,224,000

EXPLANATION

The purpose of these original loan agreements is to authorize the Entities listed above to borrow up to the total amount shown from the Clean Water State Revolving Fund Program (SRF) to finance wastewater improvement projects. The projects will ultimately protect human health and improve the quality of the effluent discharged. A summary of each entity's project is provided in the supplemental information on page 2.

The Repayment Account has an uncommitted balance of \$16,947,609 as of August 23, 2009 that has accumulated from repayment of loans to municipalities. New loans are made with these funds. Attached is a tabulation of the Repayment Account showing the effect of these loans on the funds available.

We respectfully request your approval.

Thomas S. Burack
 Thomas S. Burack, Commissioner



American Recovery and Reinvestment Act

NH RECOVERY
putting new Hampshire to work

AMENDMENT No. 1
TO
STATE OF NEW HAMPSHIRE
WATER POLLUTION CONTROL REVOLVING FUND PROGRAM

WINNIPESAUKEE RIVER BASIN PROGRAM

ORIGINAL LOAN AGREEMENT

For Project CS-330203-07

To amend the Winnepesaukee River Basin Program's loan for Project CS-330203-07 to reallocate the funding sources as follows: increase the American Recovery and Reinvestment Act of 2009 (ARRA) funding by \$915,551.08 to a total of \$915,551.08 and decrease funding from the CWSRF Repayment Account by \$915,551.08 to a total of \$7,484,448.92. The existing loan amount (\$8,400,000) is unchanged by this amendment.

To amend the CWSRF loan number from CS-330203-07 to CS-333203-07 for ARRA project tracking.

To amend the Scheduled Completion date to April 1, 2013 to accommodate changes in the construction schedule.

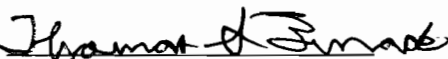
As a result of the allocation of ARRA funds to this loan all applicable federal requirements contained in the ARRA will apply, including, but not limited to: Davis Bacon and Related Acts, and Buy American provisions. Exhibit C of the attached Amended Loan Agreement contains a list of ARRA-specific requirements applicable to this agreement.

Now therefore, amend the ORIGINAL LOAN AGREEMENT for Project CS-330203-07, as approved by Governor and Council on September 9, 2009, in the following manner:

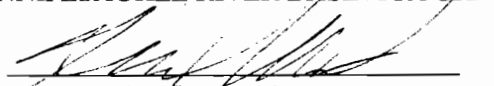
Replace the Original Loan Agreement in its entirety with the attached Amended Loan Agreement.

Acceptance of this Amendment is indicated by the signatures below and on Page 6 of the attached Amended Loan Agreement.

STATE OF NEW HAMPSHIRE

By: 
Thomas S. Burack, Commissioner
Environmental Services

WINNIPESAUKEE RIVER BASIN PROGRAM

By: 
Authorized Representative

In support and concurrence
WINNIPESAUKEE RIVER BASIN PROGRAM
ADVISORY BOARD

By: 
Chairman, WRBP Advisory Board



American Recovery and Reinvestment Act



STATE OF NEW HAMPSHIRE

WATER POLLUTION CONTROL REVOLVING FUND PROGRAM
and
AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

WINNEPESAUKEE RIVER BASIN PROGRAM
(Project No. CS-333203-07;
Formerly Project No. CS-330203-07)

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AMENDED LOAN AGREEMENT

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I. This AMENDED LOAN AGREEMENT (Agreement) is made this _____ day of _____, 2013, between the State of New Hampshire, Water Pollution Control Revolving Loan Fund Program (State) and the Winnepesaukee River Basin Program (Loan Recipient) in accordance with RSA 486:14 and New Hampshire Code of Administrative Rules Env-Wq 500 (Rules). This Agreement replaces the Original Loan Agreement, approved by Governor and Executive Council on September 9, 2009, in its entirety. This Agreement is made for the purpose of financing, to the extent of the aggregate amount of funds transferred (Disbursements) to the Loan Recipient made hereunder, the **UV Disinfection and Plant Water Upgrade Project** (Project) now being undertaken by the Loan Recipient. The Project is described in Exhibit A. The Loan Recipient shall abide by all of the requirements of RSA 486:14 and the Rules and the American Recovery and Reinvestment Act of 2009 (ARRA).

II. The State agrees to loan to the Loan Recipient, and the Loan Recipient agrees to repay to the State, in accordance with the terms of this Agreement, the principal sum of **Eight Million, Four Hundred Thousand and 00/100 Dollars (\$8,400,000.00)** (Principal Sum) or such lesser amount as shall equal the aggregate of Disbursements made hereunder by the State to the Loan Recipient. A portion of the Principal Sum, not to exceed **Nine Hundred Fifteen Thousand, Five Hundred Fifty One and 08/100 Dollars (\$915,551.08)** or up to 50% of the aggregate of

1 Disbursements, whichever is less, shall be provided in the form of federal financial assistance
2 from ARRA through the State. Base federal financial assistance provided through the State
3 Water Pollution Control Revolving Fund Program (CFDA #66.458) may comprise a portion of
4 the Principal Sum. Any Disbursement or other payment from the State to the Loan Recipient is
5 contingent upon the availability of funds.

6
7 III. Disbursements shall be made on a periodic basis, as requested by the Loan Recipient, but not
8 more frequently than monthly, subject to the approval of the amount of each Disbursement by
9 the State. The State shall approve the amount requested if it determines that the costs covered by
10 the request are eligible under Env-Wq 505.02 through Env-Wq 505.05, as applicable. Interest on
11 any Disbursement shall accrue from the date of the Disbursement at the rate of 1% per annum
12 computed on the basis of 30-day months and 360-day years until the date of Substantial
13 Completion (Substantial Completion) of the Project. Such interest may be paid (1) semi-
14 annually, prior to the commencement of Loan repayment, (2) prior to the commencement of
15 Loan repayment, (3) at the time of the first Loan repayment, or (4) added to the principal
16 outstanding Loan balance at the option of the Loan Recipient so long as the Loan Recipient's
17 authority to borrow is not exceeded.

18
19 IV. Upon Substantial Completion of the Project, the aggregate of the Disbursements shall be
20 consolidated by a Promissory Note (Note) of the Loan Recipient issued under and in accordance
21 with the applicable provisions of the Municipal Finance Act, RSA 33, as amended and
22 supplemented, including the provisions of RSA 486:14. The Note shall be substantially in the
23 form of Exhibit B.

V. The interest rate applicable to the Note will be determined in accordance with RSA 486:14 and Env-Wq 500 et seq. Such interest rate will be the lesser of **3.744%** and the adjusted market rate as determined by the 11-GO Bond Buyer Index in effect on the date of the Note.

VI. Pursuant to ARRA, the Loan Recipient is eligible for forgiveness of up to \$915,551.08 of the Principal Sum described in Paragraph II. Principal forgiveness will be applied at the time of the initial loan repayment; provided, however, that such forgiveness is contingent upon the Loan Recipient maintaining compliance with all conditions of this Agreement including all requirements of ARRA throughout the duration of the project. In accordance with the Rules, this Agreement may, at the discretion of the State, be terminated if the Loan Recipient does not comply with all conditions of this Agreement.

VII. If the Loan agreement is terminated by the State, the Loan Recipient may be offered financing, without ARRA funds and principal forgiveness, through base federal financial assistance, if available, provided through the State.

VIII. The Loan Recipient hereby authorizes the State to compute the payments of principal and interest on the Note. The principal shall be paid in full within **20** years from the date of the Note. Note payments shall commence on the first day of the month following of the first anniversary of the Substantial Completion date of the Project or the first anniversary of the Scheduled Completion date of the project, whichever is earlier. The Scheduled Completion date is hereby determined to be **April 1, 2013**; however, should the project experience excusable delay beyond this date, an extension may be granted by the Commissioner upon request in writing by the Loan Recipient. In no event shall Note payments commence later than ten years from the effective date of this agreement.

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IX. The Loan Recipient reserves the right to prepay, at any time and without penalty, all or any part of the outstanding principal of the Note.

X. In the event of a default in the full and timely remittance of any Note payment, any State Aid Grant funds payable to the Loan Recipient under RSA 486:1 may be offset against and applied to the payment of any obligations that are due hereunder. The Loan Recipient agrees to be liable for all costs of collection, legal expenses, and attorney’s fees incurred or paid by the State in enforcing this agreement or in collecting any delinquent payments due hereunder.

XI. No delay or omission on the part of the State in exercising any right hereunder shall operate as a waiver of such right or of any other right under this agreement. A waiver on any one occasion shall not be construed as bar to any right and/or remedy on any future occasion.

XII. The Loan Recipient acknowledges that by accepting the Loan it will be a sub-recipient of federal financial assistance and, as such, subject to requirements of the federal Single Audit Act of 1984, as amended by the Single Audit Act Amendments of 1996 (SAA). The Loan Recipient further acknowledges that, if the Loan Recipient expends more than \$500,000 in federal financial assistance from all sources in any fiscal year, it must perform an SAA audit in accordance with the requirements of Office of Management and Budget Circular A-133. In that event, the Loan Recipient shall provide the State with a copy of the SAA audit report within nine months of the end of the audit period.

1 XIII. The Loan Recipient agrees to comply, and to require all of it's contractors to comply, with
2 all applicable state and federal requirements contained in the Rules and the ARRA. Exhibit C
3 contains a list of ARRA-specific requirements applicable to this agreement.
4

5 XIV. The effective date of this agreement shall be the date of its approval by the Governor and
6 Executive Council. This agreement may be amended, waived, or discharged only by a written
7 instrument signed by the parties hereto and only after approval of such amendment, waiver, or
8 discharge by the Governor and Executive Council.
9

10 XV. This agreement shall be construed in accordance with the laws of the State of New
11 Hampshire and is binding upon and inures to the benefit of the parties and their respective
12 successors. The parties hereto do not intend to benefit any third parties and, consequently, the
13 agreement shall not be construed to confer any such benefit.
14

15 XVI. This agreement, which may be executed in a number of counterparts, each of which shall
16 be deemed an original, constitutes the entire agreement and understanding between the parties
17 and supersedes all prior agreements and understandings relating thereto. Nothing herein shall be
18 construed as a waiver of sovereign immunity, such immunity being hereby specifically reserved.
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STATE OF NEW HAMPSHIRE

By: Thomas S. Burack
Thomas S. Burack, Commissioner
Environmental Services

WINNIPESAUKEE RIVER BASIN PROGRAM

By: [Signature]
Authorized Representative

In support and concurrence:
WINNIPESAUKEE RIVER BASIN PROGRAM
ADVISORY BOARD

By: [Signature]
Chairman, WRBP Advisory Board

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EXHIBIT A
STATE OF NEW HAMPSHIRE
WATER POLLUTION CONTROL REVOLVING LOAN FUND PROGRAM
and
AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009
PROJECT DESCRIPTION

The Winnepesaukee River Basin Program has applied for a Loan to be used for the UV Disinfection and Plant Water Upgrade Project.

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EXHIBIT B
STATE OF NEW HAMPSHIRE
WATER POLLUTION CONTROL REVOLVING LOAN FUND PROGRAM
and
AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

PROMISSORY NOTE AND REPAYMENT SCHEDULE

The Winnepesaukee River Basin Program (Loan Recipient) promises to pay to the Treasurer of the State of New Hampshire the sum of _____ Dollars (\$ _____) in installments on the anniversary date of this Promissory Note (Note) in each year as set forth below, commencing on the first principal payment date and annually thereafter on each principal payment date, including interest at the rate of _____% per annum, computed on the basis of 30-day months and 360-day years, in the respective years set forth below. A sum of _____ in principal forgiveness will be forgiven at the time of the initial loan repayment as shown below.

REPAYMENT SCHEDULE

<u>Year</u>	<u>Principal</u>	<u>Interest</u>	<u>(Less P&I Forgiveness)</u>	<u>Payment Due</u>
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16 This Note is issued under and by virtue of the New Hampshire Municipal Finance Act, an
17 agreement duly entered into by the Loan Recipient and the State of New Hampshire Water
18 Pollution Control Revolving Loan Fund Program (State), and is issued for the purpose of
19 financing the cost of the **UV Disinfection and Plant Water Upgrade Project** as described in
20 Exhibit A of the Supplemental Loan Agreement (Agreement).

21 The Loan Recipient reserves the right to prepay, at any time and without penalty, all or
22 any part of the outstanding principal on this Note.

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24 The terms and provisions of the Agreement are hereby incorporated in and made a part of
25 this Note to the same extent as if said terms and provisions were set forth in full herein.

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It is hereby certified and recited that all acts, conditions, and things required to be done precedent to and in the issuing of this Note have been done, have happened, and have been performed in regular and due form and, for the payment hereof when due, the full faith and credit of the Loan Recipient are hereby irrevocably pledged.

IN WITNESS whereof the Loan Recipient has caused this Note to be signed by its _____, and the seal of the Loan Recipient to be affixed hereto, as of the ____ day of _____, 20__.

WINNIPEASUKEE RINVER BASIN PROGRAM by:

Name/Title _____
Authorized Representative _____

(Seal)

In support and concurrence:

WINNIPESAUKEERIVER BASIN PROGRAM ADVISORY BOARD by:

Chairman, WRBP Advisory Board

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EXHIBIT C
STATE OF NEW HAMPSHIRE
WATER POLLUTION CONTROL REVOLVING LOAN FUND PROGRAM
and
AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009
SPECIAL ARRA REQUIREMENTS

1. DUNS Number. The Loan Recipient must obtain a Data Universal Numbering System (DUNS) number for the purpose of registering with the Central Contractor Registry (CCR) and reporting data. A DUNS number may be obtained by visiting <http://fedgov.dnb.com/webform/> and providing the following information:

- a. Legal Name
- b. Tradestyle, Doing Business As (DBA), or other name by which your organization is commonly recognized
- c. Physical Address, City, State and Zip Code
- d. Mailing Address (if separate)
- e. Telephone Number
- f. Contact Name
- g. SIC Code (Line of Business)
- h. Number of Employees at your location
- i. Headquarters name and address (if there is a reporting relationship to a parent corporate entity)
- j. Is this a home-based business?

2. CCR Registration. The Loan Recipient must register with the Central Contractor Registry by visiting www.ccr.gov and providing the following information:

- a. DUNS Number
- b. U.S. Federal Tax Identification Number
- c. Point of Contact
- d. Electronic Business Point of Contact
- e. Marketing Partner ID (A Password)

3. Jobs Created/Retained. During the duration of the project, the Loan Recipient must report to the state (NHDES) by the seventh day of each month, the following jobs data for the previous month:

- a. An evaluation of the completion status of the project or activity;
- b. An estimate of the number of jobs created by the project or activity;

- c. The total number of jobs retained by the project or activity;
- d. The total number of jobs created by the project or activity;
- e. Total hours of employees working on the project or activity (subtotal by new-hire and existing);
- f. Total wages for employees working on the project or activity (subtotal by new-hire and existing);
- g. Detailed information on any first tier subcontracts awarded by the prime contractor.

The following definitions are provided for the purposes of this section:

Contract: means a mutually binding legal relationship obligating one party to provide materials or services (including construction) and the other to pay for them.

First-tier subcontract: means a subcontract awarded directly by a prime contractor whose contract is funded by the Recovery Act.

Jobs created: means an estimate of those new positions created and filled, or previously existing unfilled positions that are filled, as a result of funding by the ARRA. This definition covers only prime contractor positions established in the United States. The number shall be expressed as “full-time equivalent” (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each month.

Jobs retained: means an estimate of those previously existing filled positions that are retained as a result of funding by the ARRA. This definition covers only prime contractor positions established in the United States. The number shall be expressed as “full-time equivalent” (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each month.

4. Compensation of Loan Recipient Executives and Officers. Loan Recipients must provide to the state (NHDES), upon approval of the ARRA CWSRF loan agreement, the names and total compensation of its five most highly compensated executives and officers if all three of the following criteria apply:

- a. The Loan Recipient received 80 percent or more of its annual gross revenues in Federal awards; and
- b. The Loan Recipient received \$25,000,000 or more in annual gross revenues from Federal awards; and
- c. The public does not have access to information about the compensation of the Loan Recipient’s senior executives and officers through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986 [26 USCS § 6104].

For purposes of this requirement:

Total compensation: means the cash and non-cash dollar value earned by the executive or officer during the Loan Recipient's past fiscal year of the following (for more information see 17 CFR 229.402(c)(2)) and includes:

- a. Salary and bonus.
- b. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- c. Earnings for services under non-equity incentive plans. Does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- d. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- e. Above-market earnings on deferred compensation which is not tax-qualified.
- f. Other compensation. For example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property if the value for the executive exceeds \$10,000.

5. Access to Records. The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), or an authorized representative of either of the foregoing officials, or of the State of New Hampshire shall have access to and the right to:

- a. Examine any of the Loan Recipient's, contractor's or any subcontractor's records that pertain to and involve transactions relating to this contract or a subcontract hereunder; and
- b. Interview any officer or employee regarding such transactions.
- c. The Loan Recipient shall insert paragraphs a. and b. in its contract with the Contractor and require the Contractor to insert paragraphs a. and b. in all subcontracts under this contract.

6. Whistleblower Protection. ARRA Section 1553 establishes whistleblower protections that apply to the Loan Recipient, Contractor, and any sub-contractor pursuant to this agreement. The Loan Recipient shall post notice of employees rights and remedies for whistleblower protections provided under ARRA Section 1553, insert this paragraph in its contract with the Contractor, and cause the Contractor to include the substance of this paragraph in all subcontracts.

7. Limitation on Use of Funds. The Loan Recipient agrees that in compliance with ARRA section 1604, none of the funds appropriated or otherwise made available in this Act may be used by any Loan Recipient for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

8. Buy American. The Loan Recipient agrees to comply with the Buy American requirements of ARRA Section 1605. Unless this requirement has been waived by a competent federal

authority pursuant to 2 CFR 176.140, none of the funds appropriated or otherwise made available by the American Recovery and Reinvestment Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.

When using funds appropriated under the ARRA, the definition of “domestic manufactured construction material” requires manufacture in the United States but does not include a requirement with regard to the origin of the components. Production in the United States of the iron or steel used as construction material requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives. These requirements do not apply to steel or iron used as components or subcomponents of other manufactured construction material. There is no requirement with regard to the origin of components or subcomponents in other manufactured construction material, as long as the manufacture of the construction material occurs in the United States.

As used in this “Buy American” term and condition:

- a. Manufactured good means a good brought to the construction site for incorporation into the building or work that has been:
 - (i) Processed into a specific form and shape; or
 - (ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

- b. Public building and public work means a public building of and a public work of a governmental entity. These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

- c. Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

The “Buy American Act,” 41 U.S.C.A. §10A-10D, exists as separate and additional legal limitation on the use of ARRA federal funds. The Loan Recipient agrees to use only domestic manufactured construction material, as required by the Buy American Act.

Loan Recipient agrees to include the following provision in each construction contract using ARRA funds:

“The Contractor acknowledges to and for the benefit of the State of New Hampshire that it understands the goods and services under this Agreement are being funded with monies made available by the federal American Recovery and Reinvestment Act of 2009 (ARRA) and such law contains provisions commonly known as “Buy American;” that requires all of the iron, steel, and manufactured goods used in the project be produced in the United States (“Buy American

Requirements”) including iron, steel, and manufactured goods provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the State that (a) the Contractor has reviewed and understands the Buy American Requirements, (b) all of the iron, steel, and manufactured goods used in the project funded by this agreement will be and/or have been produced in the United States in a manner that complies with the Buy American Requirements, unless a waiver of the requirements has been approved by federal authorities, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Buy American Requirements, as may be requested by the State. Notwithstanding any other provision of the Agreement, any failure to comply with this paragraph by the Contractor shall permit the State to recover as damages any loss, expense or cost (including without limitation attorney’s fees) incurred by the State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State).”

The Loan Recipient shall require the selected Contractor to provide the following certification before awarding the bid:

1. Identification of American-made Iron, Steel, and Manufactured Goods: Consistent with the terms of the bid solicitation and the provisions of ARRA Section 1605, the Contractor certifies that the bid on which this contract is based reflects the Contractor’s best, good faith effort to identify domestic sources of iron, steel, and manufactured goods for every component contained in the bid solicitation where such American-made components are available on the schedule and consistent with the deadlines prescribed in or required by the bid solicitation.
2. Verification of U.S. Production: The Contractor certifies that all components contained in the bid solicitation that are American-made have been so identified, and the Contractor agrees that it will provide reasonable, sufficient, and timely verification to the State of the U.S. production of each component so identified.

Upon Substantial Completion of the project, the Loan Recipient shall require the Contractor to provide, and the Loan Recipient shall acknowledge, the Buy American Certification attached to this guidance as Attachment 1.

9. Prevailing Wage Requirement. The Loan Recipient agrees to comply with the Wage Rate Requirements in Section 1606 of ARRA.

In accordance with 2 C.F.R. §176.190, the standard Davis-Bacon contract clause as specified by 29 CFR §5.5(a) and set forth below shall be included in the bid package:

(9)(a) Minimum wages.

9(a)(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)),

the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

9(a)(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

9(a)(ii)(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the

contracting officer within the 30-day period that additional time is necessary.

9(a)(ii)(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

9(a)(ii)(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

9(a)(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

9(a)(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

9(b) Withholding. The Loan Recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other State contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Loan Recipient may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

9(c) Payrolls and basic records.

9(c)(i) Payrolls and basic records relating thereto shall be maintained by the contractor

during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

9(c)(ii)(A). The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Loan Recipient. The Loan Recipient shall forward the payrolls to the State. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Loan Recipient who shall forward the employee information to the State. If so requested, the Loan Recipient shall forward the payrolls and employee information to the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

9(c)(2)(ii)(B). Each payroll submitted to the State by the Loan Recipient shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

9(c)(2)(ii)(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (a)(3)(ii)(B) of this section.

9(c)(2)(ii)(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code or New Hampshire Revised Statutes Annotated Chapter 641.

9(c)(2)(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State of New Hampshire or the federal Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the government agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

9(d) Apprentices and trainees--

9(d)(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The

allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

9(d)(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

9(d)(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

9(e) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

9(f) Subcontracts. The contractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

9(g) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

9(h) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9(i) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the federal Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

9(j) Certification of eligibility.

9(j)(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

9(j)(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

9(j)(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001 and New Hampshire RSA Chapter 641.

9(k) Contract Work Hours and Safety Standards Act. For any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States and the State of New Hampshire, for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The *(write in the name of the government agency or the loan or grant recipient)* shall upon its own action or upon written request of an authorized representative of the federal Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

9(1) In any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in § 5.1, the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the State

of New Hampshire and the federal Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

10. Debarment. The Loan Recipient shall not knowingly award a construction contract to a contractor which has been debarred or suspended by the federal government. The Loan Recipient or its agent shall compare the names of contractors who have bid on the project against the searchable list in the federal “Excluded Parties List System” (EPLS) database, which can be found at <https://www.epls.gov/>.

ATTACHMENT 1

**STATE OF NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES
CLEAN WATER STATE REVOLVING FUND (CWSRF)**

AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (ARRA)

CERTIFICATION OF ARRA "BUY AMERICAN" PROVISION

Instructions

This certification must be completed and signed by the authorized representative of the Contractor, acknowledged by the authorized representative of the Owner, and submitted to the New Hampshire Department of Environmental Services upon substantial completion of the project.

Project Name: _____

City/Town/Entity: _____

Contractor Name: _____

Contractor Address: _____

Name/Title of Contractor Certifying Representative: _____

I hereby certify on behalf of the above named Contractor,

(please check one of the following and provide documentation as necessary)

That the "Buy American" provisions of Section 1605 of the American Recovery and Reinvestment Act of 2009 (ARRA) have been met and that all iron, steel, and manufactured goods used in the project named above have been manufactured in the United States.

OR

That the "Buy American" provisions of Section 1605 of the American Recovery and Reinvestment Act of 2009 (ARRA) were unable to be met. Not all of the iron, steel, or other manufactured goods used in the project named above have been produced in the United States.

Attach all documentation including EPA approved waivers for all materials and goods that do not meet the Buy American requirements of ARRA.

Signature of Certifying Contractor Representative: _____

Date: _____

Acknowledged by Authorized Owner Representative: _____

Date: _