

## The State of New Hampshire

## DEPARTMENT OF ENVIRONMENTAL SERVICES



## Thomas S. Burack, Commissioner

August 21, 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 approve a loan agreement with the City of Rochester (VC#177467) Rochester, NH in the amount not to exceed \$1,820,000 to finance water system improvements under the provisions of RSA 486:14 and N.H. Code of Administrative Rules Env-Dw 1100 et seq. effective upon Governor & Council approval. 100% Drinking Water State Revolving Loan Fund (DWSRF) Repayment Funds.

Funding is available in the account as follows:

03-44-44-441018-4791-301-500833 Dept Environmental Services, DWSRF Loan Repayments, Loans FY 2014 \$1,820,000

#### **EXPLANATION**

The purpose of this loan agreement is to authorize the City of Rochester to borrow up to \$1,820,000 from the DWSRF to finance water system improvements. These improvements include upgrade of the existing filters, chemical feed systems, SCADA communication system, and the fluoride addition system at the Rochester Surface Water Treatment Facility and installing stream gauges at the existing reservoir for improved monitoring of the reservoir level. The final loan amount will be based on the total DWSRF funds disbursed, and may be less than \$1,820,000. The loan interest rate may be adjusted downward if the DWSRF loan rate in effect upon project completion is less than the current rate of 2.72%. The City of Rochester is eligible for principal forgiveness under the 2012 DWSRF Intended Use Plan. The amount of principal forgiveness will be determined when the aggregate principal amount is established and the project is complete.

The DWSRF is authorized by RSA 486:14 and N.H. Code of Administrative Rules Env-Dw 1100 et seq. There is currently a balance of \$26,106,405 in the DWSRF available for new loans. Attached is a tabulation of the DWSRF showing the effect of this loan on the funds available for loans.

We respectfully request your approval.

Thomas S. Burack, Commissioner

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Her Excellency, Governor Margaret Wood Hassan and the Honorable Council

Page 2

# DEPARTMENT OF ENVIRONMENTAL SERVICES WATER DIVISION

#### DRINKING WATER STATE REVOLVING FUND

Supplemental information to Governor and Council request of the loan agreement(s) under RSA 486:14 and N.H. Code of Administrative Rules Env-Dw 1100 et seq. for the public water system(s) listed below.

This request will affect the balance of the loan funds as follows:

|   | REPAYMENT FUND |
|---|----------------|
| Federal Funds                           | 0              |
| Repayment Account                       | \$29,842,203   |
| Total Funds Authorized/Available        | \$29,842,203   |
| Less Loans Previously Approved          | \$3,735,798    |
| Funds Available for Loans               | \$26,106,405   |
| New Loan(s) Being Requested             |                |
| City of Rochester (Project #2001010-09) | (\$1,820,000)  |
| Net Change to Loan(s)                   | (\$1,820,000)  |
| Balance Available After G & C Approval  | \$24,286,405   |

# STATE OF NEW HAMPSHIRE

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| 1  | STATE OF NEW HAMISHIKE  |  |
|----|---|--|
|    | DRINKING WATER STATE REVOLVING FUND PROGRAM   |  |
| 3  | CITY/TOWN OF ROCHESTER<br>(Project No. 2001010-09)  |  |
| 4  | ORIGINAL LOAN AGREEMENT   |  |
| 5  |   |  |
| 6  | I. This AGREEMENT is made this 18 <sup>th</sup> day of September, 2013, between the State of New  |  |
| 7  | Hampshire, Drinking Water State Revolving Loan Fund Program (the "State") and the City of         |  |
| 8  | Rochester (the "Loan Recipient") in accordance with RSA 486:14 and New Hampshire Code of          |  |
| 9  | Administrative Rules Env-Dw 1100 (the "Rules") for the purpose of financing, to the extent of     |  |
| 10 | the aggregate amount of funds transferred ("Disbursements") to the Loan Recipient made            |  |
| 11 | hereunder, Water Treatment Plant Upgrades ("Project") now being undertaken by the Loan            |  |
| 12 | Recipient. The Project is described in Exhibit A. The Loan Recipient shall abide by all of the    |  |
| 13 | requirements of RSA 486:14 and the Rules.   |  |
| 14 |   |  |
| 15 | II. The State agrees to loan to the Loan Recipient, and the Loan Recipient agrees to repay to the |  |
| 16 | State, in accordance with the terms of this Agreement, the principal sum of One Million Eigh      |  |
| 17 | Hundred Twenty Thousand Dollars (\$1,820,000) ("Principal Sum") or such lesser amount as          |  |
| 18 | shall equal the aggregate of Disbursements made hereunder by the State to the Loan Recipient.     |  |
| 19 | Federal financial assistance provided through Capitalization Grants for Drinking Water State      |  |
| 20 | Revolving Funds (CFDA #66.468) may comprise all or a portion of the Principal Sum. Any            |  |
| 21 | Disbursement or other payment from the State to the Loan Recipient is contingent upon the         |  |
| 22 | availability of funds.  |  |
| 23 |   |  |
| 24 | III. The Loan Recipient is eligible for the Disadvantaged System Program as outlined in Section   |  |
| 25 | 8 of the 2012 State of New Hampshire Drinking Water State Revolving Fund Intended Use Plan.       |  |
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1 The amount of principal forgiveness will be determined when the aggregate principal loan

2 amount is established and the project is complete.

IV. Disbursements shall be made on a periodic basis, as requested by the Loan Recipient, but not more frequently than monthly, subject to the approval of the amount of each Disbursement by the State. The State shall approve the amount requested if it determines that the costs covered by the request are eligible under Env-Dw 1104.01, as applicable. Interest on any Disbursement shall accrue from the date of the Disbursement at the rate of 1% per annum computed on the basis of 30-day months and 360-day years until the date of Substantial Completion ("Substantial Completion") of the Project. Such interest may be paid (1) semi-annually, prior to the commencement of Loan repayment, (2) prior to the commencement of Loan repayment, (3) at the time of the first Loan repayment, or (4) added to the principal outstanding Loan balance at the option of the Loan Recipient so long as the Loan Recipient's authority to borrow is not

exceeded.

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

VI. The interest rate applicable to the Note will be determined in accordance with RSA 486:14 and Env-Dw 1100 et seq. Such interest rate will be the lesser of **2.72** % and the adjusted market

rate as determined by the 11-GO Bond Buyer Index in effect on the date of the Note.

VII. 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 **twenty (20)** years from the date of the Note. Note payments shall commence on the first day of the month following 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 **January 1, 2015**; 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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VIII. 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.

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IX. 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.

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20 X. No delay or omission on the part of the State in exercising any right hereunder shall operate 21 as a waiver of such right or of any other right under this agreement. A waiver on any one 22 occasion shall not be construed as bar to any right and/or remedy on any future occasion.

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XI. 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 (the "SAA"). The Loan

2 Recipient further acknowledges that, if the Loan Recipient expends more than \$500,000 in

3 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

6 months of the end of the audit period.

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8 XII. The Loan Recipient agrees to permit 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 to have access to and the right to:

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(i) Examine any of the Borrower's, the contractor's or any subcontractor's records that pertain to and involve transactions relating to this Agreement, the Construction

Contract, the Engineering Contract or a subcontract thereunder; and

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(ii) Interview any officer or employee regarding such transactions.

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19 The Borrower shall insert subparagraphs (i) and (ii) in the Construction

20 Contract and require the Contractor to insert subparagraphs (i) and (ii) in all subcontracts

21 thereunder.

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XIII. Davis-Bacon (DB) prevailing wage requirements apply to the Project in accordance with

the federal fiscal year (FY) 2012 Consolidated Appropriations Act (P.L. 112-74). The Loan

Recipient shall insert in full in any contract in excess of \$2,000 which is entered into for Project

construction the standard Davis-Bacon contract clause as specified by 29 CFR §5.5(a). The 1 Loan Recipient shall obtain the wage determination for the locality in which a covered activity 2 subject to DB will take place prior to issuing requests for bids, proposals, quotes or other 3 methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime 5 6 contracts must contain a provision requiring that subcontractors follow the wage determination 7 incorporated into the prime contract. 8 9 XIV. The Loan Recipient shall not knowingly award a construction contract to a contractor 10 which has been debarred or suspended by the federal government. The Loan Recipient or its 11 agent shall compare the names of contractors who have bid on the project against the searchable 12 list in the federal "Excluded Parties List System" (EPLS) database, which can be found at 13 https://www.epls.gov/; and 14 15 XV. Pursuant to 40 CFR, Section 33.301, the Loan Recipient shall make good faith efforts to 16 utilize small, minority and women's business enterprises whenever procuring construction, 17 equipment, services and supplies under an EPA financial assistance agreement, and shall require 18 that prime contractors also comply. Records documenting compliance with the six good faith 19 efforts shall be retained. 20 21 XVI. The effective date of this agreement shall be the date of its approval by the Governor and 22 Executive Council. This agreement may be amended, waived, or discharged only by a written 23

instrument signed by the parties hereto and only after approval of such amendment, waiver, or

discharge by the Governor and Executive Council.

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1 XVII. This agreement shall be construed in accordance with the laws of the State of New 2 Hampshire and is binding upon and inures to the benefit of the parties and their respective 3 successors. The parties hereto do not intend to benefit any third parties and, consequently, the agreement shall not be construed to confer any such benefit. 5 6 XVIII. This agreement, which may be executed in a number of counterparts, each of which shall 7 be deemed an original, constitutes the entire agreement and understanding between the parties 8 and supersedes all prior agreements and understandings relating thereto. Nothing herein shall be 9 construed as a waiver of sovereign immunity, such immunity being hereby specifically reserved. 10 11 12 13 STATE OF NEW HAMPSHIRE by: CITYOF ROCHESTER 14 15 Thomas S. Burack, Commissioner Title DANIEL W. FITZPATRICK Department of Environmental Services CITY MANAGER 18 19 20 21 22 23 24 25

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| 1  | EXHIBITA   |
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|    | STATE OF NEW HAMPSHIRE   |
| 2  | DRINKING WATER STATE REVOLVING LOAN FUND PROGRAM   |
| 3  | PROJECT DESCRIPTION  |
| 4  |  |
| 5  | The City of Rochester has applied for a Loan to be used for water system improvements at the       |
| 6  | Rochester Surface Water Treatment Facility including but not limited to the following: upgrade     |
| 7  | of the existing filters, upgrade of the chemical feed systems, upgrade of the SCADA                |
| 8  | communication system, and upgrade of the fluoride addition system. Also, several stream            |
| 9  | gauges will be installed at the existing reservoir for improved monitoring of the reservoir level. |
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**EXHIBIT B** 

# STATE OF NEW HAMPSHIRE DRINKING WATER STATE REVOLVING LOAN FUND PROGRAM

PROMISSORY NOTE AND REPAYMENT SCHEDULE

The City of Rochester ("Loan Recipient") promises to pay to the Treasurer of the State of New Hampshire the sum of One Million Eight Hundred Twenty Thousand Dollars (\$1,820,000) 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 % of each principal and interest installment payment will be forgiven at the time each installment is due.

# REPAYMENT SCHEDULE

<u>Ye</u>ar Principal Interest Total P&I Payment Due 

This Note is issued under and by virtue of the New Hampshire Municipal Finance Act, an agreement duly entered into by the Loan Recipient and the Drinking Water State Revolving Loan Fund Program ("Agreement"), a vote of the Loan Recipient at its Town/City Council Meeting on \_\_\_\_\_, and a duly-adopted resolution of the Governing Body of the Loan Recipient and is issued for the purpose of financing the cost of the Project as described in said Resolution and Agreement. The Loan Recipient reserves the right to prepay, at any time and without penalty, all or any part of the outstanding principal on this Note. The terms and provisions of the Agreement are hereby incorporated in and made a part of this Note to the same extent as if said terms and provisions were set forth in full herein. 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. 

| , and the seal of the Loan Recipient to be affixed hereto, as of |       |  |
|--|-------|--|
| day of, 2  | 2013. |  |
| CITY OF ROCHESTER  | by:   |  |
| , Title  |       |  |
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