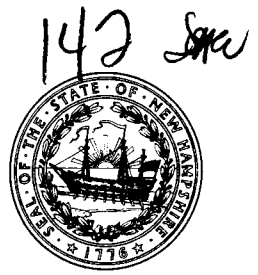




The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**



**Thomas S. Burack, Commissioner**

June 3, 2014

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 two Clean Water State Revolving Fund (CWSRF) loan agreements with the City of Lebanon (VC #177422) in the amount not to exceed \$5,700,000 to finance wastewater system improvements under the provisions of RSA 486:14 and N.H. Code of Admin. Rules Env-Wq 500 et seq., effective upon Governor & Executive Council approval. 100% CWSRF Repayment Funds.

<b>Wastewater System Project</b>	<b>Borrower</b>	<b>Loan Amount</b>
CSO 10- Dana & Craft Ave Area	City of Lebanon	\$3,200,000
Etna Rd./NH Rt. 120 Sewer Replacement	City of Lebanon	\$2,500,000
Total		\$5,700,000

Funding is available in the accounts as follows:

FY 2014

03-44-441018-2001-301-500832

\$5,700,000

Dept. Environmental Services, CWSRF Loan Repayments, Loans

**EXPLANATION**

The purpose of the first Original Loan Agreement is to authorize the City of Lebanon to borrow up to \$3,200,000 from the CWSRF to finance the Combined Sewer Overflow Project No. 10. This project will include design and construction of separate sanitary and storm water sewers in a section of Lebanon and will result in the elimination of Combined Sewer Overflow #24 outfall to the Connecticut River.

The purpose of the second Original Loan Agreement is to authorize the City of Lebanon to borrow up to \$2,500,000 from the CWSRF to finance the Etna Road/NH Route 120 Sewer Replacement Project. This project will include design and construction of the replacement and upgrade of sanitary sewers in a section of Lebanon to reduce infiltration and increase capacity.

The final loan amounts will be based on the total CWSRF funds disbursed and may be less than \$5,700,000. The loan interest rates may be adjusted downward if the CWSRF loan rate in effect

DES Web site: [www.des.nh.gov](http://www.des.nh.gov)

**P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095**

Telephone: (603) 271-3503 • Fax: (603) 271-2982 • TDD Access: Relay NH 1-800-735-2964

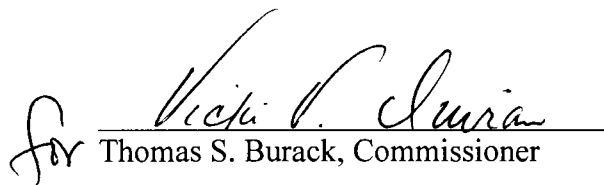
Her Excellency, Governor Margaret Wood Hassan  
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upon project completion is less than the current rate of 3.392%. The projects will ultimately protect human health and improve the quality of the effluent discharged to the Connecticut River.

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

We respectfully request your approval.

for Vicki L. Surina  
Thomas S. Burack, Commissioner

Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Council

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DEPARTMENT OF ENVIRONMENTAL SERVICES  
WATER DIVISION  
**CLEAN WATER STATE REVOLVING FUND**

Supplemental information to Governor and Council request for loan agreements under RSA 486:14 and N.H. Admin. Rules Env-Wq 500 for the municipality listed below:

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

	<u>CWSRF Cap Grant</u>	<u>CWSRF Repayment</u>
Repayment Funds as of April 29, 2014		\$163,844,401
Federal Funds *	\$356,952,895	\$0
Plus 20% State Match*	\$63,877,990	\$0
Total Funds Available	<u>\$420,830,885</u>	<u>\$163,844,401</u>
Less Loans Previously Approved	<u>\$419,305,195</u>	<u>\$0</u>
<b>Funds Available for Loans</b>	<b>\$1,525,690</b>	<b>\$163,844,401</b>
<b>Loan Agreement(s) This Request:</b>		
City of Lebanon (CSO 10)		
Original Loan Amount †	\$0	\$3,200,000
City of Lebanon (Etna Rd/Rt 120)		
Original Loan Amount †	\$0	\$2,500,000
<b>Other Requested Action(s)</b>		
None	<u>\$0</u>	<u>\$0</u>
<b>Net Change †</b>	<b>\$0</b>	<b>\$5,700,000</b>
<b>Balance Available after G &amp; C Approval</b>	<b><u>\$1,525,690</u></b>	<b><u>\$158,144,401</u></b>

\*Is net of the 4% reduction for CWSRF Program administration

† Negative numbers in this row indicate funds returned to account

See SRF Loan Status Table for breakdown of Grants by year

RECEIVED

MAY 1 2014

DES-WEB

1 STATE OF NEW HAMPSHIRE

2 WATER POLLUTION CONTROL REVOLVING FUND PROGRAM

3 CITY OF LEBANON, NEW HAMPSHIRE

4 (Project No. CS-330092-09)

5 ORIGINAL LOAN AGREEMENT

6 I. This AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2014, between the State of  
7 New Hampshire Water Pollution Control Revolving Loan Fund Program (State) and the City of  
8 Lebanon, New Hampshire (Loan Recipient) in accordance with RSA 486:14 and New  
9 Hampshire Code of Administrative Rules Env-Wq 500 (Rules) for the purpose of financing, to  
10 the extent of the aggregate amount of funds transferred (Disbursements) to the Loan Recipient  
11 made hereunder, the **Etna Road / NH 120 Sewer Replacement Project** (Project) now being  
12 undertaken by the Loan Recipient. The Project is described in Exhibit A. The Loan Recipient  
13 shall abide by all of the 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 **Two Million, Five**  
17 **Hundred Thousand and 00/100 Dollars (\$2,500,000.00)** (Principal Sum) or such lesser amount  
18 as shall equal the aggregate of Disbursements made hereunder by the State to the Loan  
19 Recipient. In addition to the principal sum, the Loan Recipient agrees to pay the applicable  
20 interest accrued as described in Paragraphs III, V, and VII. Federal financial assistance provided  
21 through the State Water Pollution Control Revolving Fund Program (CFDA #66.458) may  
22 comprise a portion of the Principal Sum. Any Disbursement or other payment from the State to  
23 the Loan Recipient is contingent upon the availability of funds.

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

11  
12 IV. Upon Substantial Completion of the Project, the aggregate of the Disbursements shall be  
13 consolidated by a Promissory Note (Note) of the Loan Recipient issued under and in accordance  
14 with the applicable provisions of the Municipal Finance Act, RSA 33, as amended and  
15 supplemented, including the provisions of RSA 486:14. The Note shall be substantially in the  
16 form of Exhibit B.

17  
18 V. The interest rate applicable to the Note will be determined in accordance with RSA 486:14  
19 and Env-Wq 500 et seq. Such interest rate will be the lesser of **3.3920%** and the adjusted market  
20 rate as determined by the 11-GO Bond Buyer Index in effect on the date of the Note.

21  
22 VI. The Loan Recipient hereby authorizes the State to compute the payments of principal and  
23 interest on the Note. The principal shall be paid in full within **20 years** from the date of the  
24 Note. Note payments shall commence on the first day of the month following the first  
25 anniversary of the Substantial Completion date of the Project or the first anniversary of the

1 Scheduled Completion date of the project, whichever is earlier. The Scheduled Completion date  
2 is hereby determined to be **April 1, 2015**; however, should the project experience an excusable  
3 delay beyond this date, an extension may be granted by the Commissioner upon request in  
4 writing by the Loan Recipient. In no event shall Note payments commence later than ten years  
5 from the effective date of this agreement.

6  
7 VII. The Loan Recipient reserves the right to prepay, at any time and without penalty, all or any  
8 part of the outstanding principal and/or interest of the Note.

9  
10 VIII. In the event of a default in the full and timely remittance of any Note payment, any State  
11 Aid Grant funds payable to the Loan Recipient under RSA 486:1 may be offset against and  
12 applied to the payment of any obligations that are due hereunder. The Loan Recipient agrees to  
13 be liable for all costs of collection, legal expenses, and attorney fees incurred or paid by the State  
14 in enforcing this agreement or in collecting any delinquent payments due hereunder.

15  
16 IX. No delay or omission on the part of the State in exercising any right hereunder shall operate  
17 as a waiver of such right or of any other right under this agreement. A waiver on any one  
18 occasion shall not be construed as bar to any right and/or remedy on any future occasion.

19  
20 X. The Loan Recipient agrees to comply, and to require all of its contractors to comply, with all  
21 applicable state and federal requirements contained in the Rules and applicable federal law.  
22 Exhibit C contains specific requirements for prevailing wages applicable to this agreement  
23 (Davis-Bacon Requirements).

1 XI. The effective date of this agreement shall be the date of its approval by the Governor and  
2 Executive Council. This agreement may be amended, waived, or discharged only by a written  
3 instrument signed by the parties hereto and only after approval of such amendment, waiver, or  
4 discharge by the Governor and Executive Council.

5  
6 XII. This agreement shall be construed in accordance with the laws of the State of New  
7 Hampshire and is binding upon and inures to the benefit of the parties and their respective  
8 successors. The parties hereto do not intend to benefit any third parties and, consequently, the  
9 agreement shall not be construed to confer any such benefit.

10  
11 XIII. The Loan Recipient acknowledges that by accepting the Loan it will be a sub-recipient of  
12 federal financial assistance and, as such, subject to requirements of the federal Single Audit Act  
13 of 1984, as amended by the Single Audit Act Amendments of 1996 (the "SAA"). The Loan  
14 Recipient further acknowledges that, if the Loan Recipient expends more than \$500,000 in  
15 federal financial assistance from all sources in any fiscal year, it must perform an SAA audit in  
16 accordance with the requirements of Office of Management and Budget Circular A-133. In that  
17 event, the Loan Recipient shall provide the State with a copy of the SAA audit report within nine  
18 months of the end of the audit period.

19  
20 XIV. This agreement, which may be executed in a number of counterparts, each of which shall  
21 be deemed an original, constitutes the entire agreement and understanding between the parties  
22 and supersedes all prior agreements and understandings relating thereto. Nothing herein shall be  
23 construed as a waiver of sovereign immunity, such immunity being hereby specifically reserved.

1 STATE OF NEW HAMPSHIRE

2 By: Vicki A. Quira 6/3/14  
3 Thomas S. Burack Date  
4 Commissioner,  
Department of Environmental Services

CITY OF LEBANON NEW HAMPSHIRE

By: [Signature] 4/28/14  
City Manager Date  
[Signature] 4-28-14  
Finance Director Date

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**EXHIBIT B**  
**STATE OF NEW HAMPSHIRE**  
**WATER POLLUTION CONTROL REVOLVING LOAN FUND PROGRAM**  
**PROMISSORY NOTE AND REPAYMENT SCHEDULE**

The City of Lebanon, New Hampshire (“Loan Recipient”) promises to pay to the Treasurer of the State of New Hampshire the sum of **Two Million, Five Hundred Thousand and 00/100 Dollars (\$2,500,000.00)** 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.

REPAYMENT SCHEDULE

<u>Year</u>	<u>Principal</u>	<u>Interest</u>	<u>Payment Due</u>
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11 This Note is issued under and by virtue of the New Hampshire Municipal Finance Act, an  
12 agreement duly entered into by the Loan Recipient and the Water Pollution Control Revolving  
13 Loan Fund Program (Agreement), a vote of the Loan Recipient at its City Council Meetings on  
14 December 19, 2012 and December 18, 2013, and a duly-adopted resolution of the Governing  
15 Body of the Loan Recipient and is issued for the purpose of financing the cost of the Project as  
16 described in said Resolution and Agreement.

17

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

20

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

23

24 It is hereby certified and recited that all acts, conditions, and things required to be done  
25 precedent to and in the issuing of this Note have been done, have happened, and have been

1 performed in regular and due form and, for the payment hereof when due, the full faith and credit  
2 of the Loan Recipient are hereby irrevocably pledged.

3

4 IN WITNESS whereof the Loan Recipient has caused this Note to be signed by its  
5 \_\_\_\_\_, and the seal of the Loan Recipient to be affixed hereto, as of the  
6 \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

7

8 **CITY OF LEBANON, NEW HAMPSHIRE** by:

9 Name/Title \_\_\_\_\_

10 Authorized Representative \_\_\_\_\_

11

(Seal)

## **EXHIBIT C**

### **STATE OF NEW HAMPSHIRE**

#### **WATER POLLUTION CONTROL REVOLVING LOAN FUND PROGRAM**

##### **DUNS NUMBER**

The Loan Recipient must obtain a Data Universal Numbering System (DUNS) number. 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?

##### **PREVAILING WAGE REQUIREMENT**

In accordance with P.L. 111-88, 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:

###### **1(a) Minimum wages.**

1(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 1(a)(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 1(a)(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.

1(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.

1(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.

1(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.

1(a)(ii)(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1(a)(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.

1(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.

1(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.

1(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.

1(c) Payrolls and basic records.

1(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.

1(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 copies of 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).

1(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.

1(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 1(c)(2)(ii)(B) of this section.

1(c)(2)(ii)(D) Each disbursement request submitted by the Loan Recipient to the State shall be accompanied by a "Statement of Compliance" signed by the Loan Recipient or his agent certifying the following:

(1) That the contractor has submitted to the Loan Recipient or his agent all documents described in paragraph 1(c)(2)(ii)(B) of this section for the payroll periods subject to the disbursement request and that the documents are complete and comply with all contract provisions, to the best of the Loan Recipient's knowledge.

1(c)(2)(ii)(E) The falsification of any of the above certifications may subject the loan recipient, 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.

1(c)(2)(iii) The loan recipient, contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of 29 CFR 5.5 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.

#### 1(d) Apprentices and trainees--

1(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.

1(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.

1(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.

1(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.

1(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.

1(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.

1(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.

1(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.

1(j) Certification of eligibility.

1(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).

1(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).

1(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.

1(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(k)(i) 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.

1(k)(ii) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1(k)(i) 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 1(k)(i) 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 1(k)(i) of this section.

1(k)(iii) Withholding for unpaid wages and liquidated damages. The loan 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 1(k)(ii) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph 1(k)(i) through 1(k)(iv) 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 1(k)(i) through 1(k)(iv) of this section.

1(l) In any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR § 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.

2. **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/>.

Before visiting the database, your web browser must be configured to allow secure connections using TLS 1.0. Instructions are provided below:

### **Internet Explorer**

To enable TLS in Internet Explorer, perform the following steps:

1. Click the **Tools** drop down menu and select **Internet Options** to open the **Internet Options** dialog window.
2. Click the **Advanced** tab at the top of the Internet Options dialog window.
3. Scroll down to the end of the list of items and locate the item labeled "Use TLS 1.0".
4. Check the box next to "Use TLS 1.0".
5. Click the **OK** button at the bottom of the dialog window to confirm the change.
6. You should now be able to access the EPLS web site at [https://www.epls.gov](https://www.epls.gov/).

### **Firefox**

To enable TLS in Firefox, perform the following steps:

1. Click the **Tools** drop down menu and select **Options...** to open the **Options** dialog window.
2. Click the **Advanced** icon at the top of the Options dialog window.
3. Click the **Encryption** tab in the area of the window below the icons.
4. Check the box next to "Use TLS 1.0".
5. Click the **OK** button at the bottom of the dialog window to confirm the change.
6. You should now be able to access the EPLS web site at [https://www.epls.gov](https://www.epls.gov/).

If problems are incurred, contact EPLS help desk:

**Phone:** 1-866-GSA-EPLS  
1-866-472-3757

**Email:** [support@epls.gov](mailto:support@epls.gov)  
[eplscomments@epls.gov](mailto:eplscomments@epls.gov)

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MAY 1 2014

DES-WEB

1 STATE OF NEW HAMPSHIRE

2 WATER POLLUTION CONTROL REVOLVING FUND PROGRAM

3 CITY OF LEBANON, NEW HAMPSHIRE

4 (Project No. CS-330092-08)

5 ORIGINAL LOAN AGREEMENT

6 I. This AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2014, between the State of  
7 New Hampshire Water Pollution Control Revolving Loan Fund Program (State) and the City of  
8 Lebanon, New Hampshire (Loan Recipient) in accordance with RSA 486:14 and New  
9 Hampshire Code of Administrative Rules Env-Wq 500 (Rules) for the purpose of financing, to  
10 the extent of the aggregate amount of funds transferred (Disbursements) to the Loan Recipient  
11 made hereunder, the **Combined Sewer Overflow 10: Dana and Crafts Avenue Area Project**  
12 (Project) now being undertaken by the Loan Recipient. The Project is described in Exhibit A.  
13 The Loan Recipient shall abide by all of the 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 **Three Million, Two**  
17 **Hundred Thousand and 00/100 Dollars (\$3,200,000.00)** (Principal Sum) or such lesser amount  
18 as shall equal the aggregate of Disbursements made hereunder by the State to the Loan  
19 Recipient. In addition to the principal sum, the Loan Recipient agrees to pay the applicable  
20 interest accrued as described in Paragraphs III, V, and VII. Federal financial assistance provided  
21 through the State Water Pollution Control Revolving Fund Program (CFDA #66.458) may  
22 comprise a portion of the Principal Sum. Any Disbursement or other payment from the State to  
23 the Loan Recipient is contingent upon the availability of funds.

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

11  
12 IV. Upon Substantial Completion of the Project, the aggregate of the Disbursements shall be  
13 consolidated by a Promissory Note (Note) of the Loan Recipient issued under and in accordance  
14 with the applicable provisions of the Municipal Finance Act, RSA 33, as amended and  
15 supplemented, including the provisions of RSA 486:14. The Note shall be substantially in the  
16 form of Exhibit B.

17  
18 V. The interest rate applicable to the Note will be determined in accordance with RSA 486:14  
19 and Env-Wq 500 et seq. Such interest rate will be the lesser of **3.3920%** and the adjusted market  
20 rate as determined by the 11-GO Bond Buyer Index in effect on the date of the Note.

21  
22 VI. The Loan Recipient hereby authorizes the State to compute the payments of principal and  
23 interest on the Note. The principal shall be paid in full within **20 years** from the date of the  
24 Note. Note payments shall commence on the first day of the month following the first  
25 anniversary of the Substantial Completion date of the Project or the first anniversary of the

1 Scheduled Completion date of the project, whichever is earlier. The Scheduled Completion date  
2 is hereby determined to be **December 1, 2015**; however, should the project experience an  
3 excusable delay beyond this date, an extension may be granted by the Commissioner upon  
4 request in writing by the Loan Recipient. In no event shall Note payments commence later than  
5 ten years from the effective date of this agreement.

6  
7 VII. The Loan Recipient reserves the right to prepay, at any time and without penalty, all or any  
8 part of the outstanding principal and/or interest of the Note.

9  
10 VIII. In the event of a default in the full and timely remittance of any Note payment, any State  
11 Aid Grant funds payable to the Loan Recipient under RSA 486:1 may be offset against and  
12 applied to the payment of any obligations that are due hereunder. The Loan Recipient agrees to  
13 be liable for all costs of collection, legal expenses, and attorney fees incurred or paid by the State  
14 in enforcing this agreement or in collecting any delinquent payments due hereunder.

15  
16 IX. No delay or omission on the part of the State in exercising any right hereunder shall operate  
17 as a waiver of such right or of any other right under this agreement. A waiver on any one  
18 occasion shall not be construed as bar to any right and/or remedy on any future occasion.

19  
20 X. The Loan Recipient agrees to comply, and to require all of its contractors to comply, with all  
21 applicable state and federal requirements contained in the Rules and applicable federal law.  
22 Exhibit C contains specific requirements for prevailing wages (Davis-Bacon Requirements) and  
23 American Iron and Steel Requirements applicable to this agreement.



1 XI. The effective date of this agreement shall be the date of its approval by the Governor and  
2 Executive Council. This agreement may be amended, waived, or discharged only by a written  
3 instrument signed by the parties hereto and only after approval of such amendment, waiver, or  
4 discharge by the Governor and Executive Council.

5  
6 XII. This agreement shall be construed in accordance with the laws of the State of New  
7 Hampshire and is binding upon and inures to the benefit of the parties and their respective  
8 successors. The parties hereto do not intend to benefit any third parties and, consequently, the  
9 agreement shall not be construed to confer any such benefit.

10  
11 XIII. The Loan Recipient acknowledges that by accepting the Loan it will be a sub-recipient of  
12 federal financial assistance and, as such, subject to requirements of the federal Single Audit Act  
13 of 1984, as amended by the Single Audit Act Amendments of 1996 (the "SAA"). The Loan  
14 Recipient further acknowledges that, if the Loan Recipient expends more than \$500,000 in  
15 federal financial assistance from all sources in any fiscal year, it must perform an SAA audit in  
16 accordance with the requirements of Office of Management and Budget Circular A-133. In that  
17 event, the Loan Recipient shall provide the State with a copy of the SAA audit report within nine  
18 months of the end of the audit period.

19  
20 XIV. This agreement, which may be executed in a number of counterparts, each of which shall  
21 be deemed an original, constitutes the entire agreement and understanding between the parties  
22 and supersedes all prior agreements and understandings relating thereto. Nothing herein shall be  
23 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* *6/3/14*  
Thomas S. Burack Date  
Commissioner,  
Department of Environmental Services

CITY OF LEBANON, NEW HAMPSHIRE

By: *[Signature]* *4/23/14*  
City Manager Date  
*[Signature]* *4-28-14*  
Finance Director Date



**EXHIBIT B**  
**STATE OF NEW HAMPSHIRE**  
**WATER POLLUTION CONTROL REVOLVING LOAN FUND PROGRAM**  
**PROMISSORY NOTE AND REPAYMENT SCHEDULE**

The **City of Lebanon, New Hampshire** (“Loan Recipient”) promises to pay to the Treasurer of the State of New Hampshire the sum of **Three Million, Two Hundred Thousand and 00/100 Dollars (\$3,200,000.00)** 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.

REPAYMENT SCHEDULE

<u>Year</u>	<u>Principal</u>	<u>Interest</u>	<u>Payment Due</u>
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10 20

11 This Note is issued under and by virtue of the New Hampshire Municipal Finance Act, an  
12 agreement duly entered into by the Loan Recipient and the Water Pollution Control Revolving  
13 Loan Fund Program (Agreement), a vote of the Loan Recipient at its City Council Meeting on  
14 December 19, 2012, and a duly-adopted resolution of the Governing Body of the Loan Recipient  
15 and is issued for the purpose of financing the cost of the Project as described in said Resolution  
16 and Agreement.

17

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

20

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

23

24 It is hereby certified and recited that all acts, conditions, and things required to be done  
25 precedent to and in the issuing of this Note have been done, have happened, and have been

1 performed in regular and due form and, for the payment hereof when due, the full faith and credit  
2 of the Loan Recipient are hereby irrevocably pledged.

3

4 IN WITNESS whereof the Loan Recipient has caused this Note to be signed by its  
5 \_\_\_\_\_, and the seal of the Loan Recipient to be affixed hereto, as of the  
6 \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

7

8 **CITY OF LEBANON, NEW HAMPSHIRE** by:

9 Name/Title \_\_\_\_\_

10 Authorized Representative \_\_\_\_\_

11 (Seal)

**E X H I B I T C**  
**STATE OF NEW HAMPSHIRE**  
**WATER POLLUTION CONTROL REVOLVING LOAN FUND PROGRAM**

**DUNS NUMBER**

The Loan Recipient must obtain a Data Universal Numbering System (DUNS) number. 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?

**AMERICAN IRON AND STEEL REQUIREMENT**

The Loan Recipient agrees to comply with Section 436 of the Consolidated Appropriations Act, 2014 (P.L. 113-76), which requires that all of the iron and steel products used in the Project are to be produced in the United States (“American Iron and Steel Requirement”) unless (i) the Loan Recipient has requested and obtained a waiver from the Environmental Protection Agency pertaining to the Project or (ii) the State has otherwise advised the Participant in writing that the American Iron and Steel Requirement is not applicable to the Project. The Loan Recipient further agrees to maintain records documenting compliance with the American Iron and Steel Requirement, and to provide records and certifications to the State upon request.

The application of Buy American requirements apply for the entirety of the construction activities financed by the assistance agreement through completion of construction no matter when construction commenced. The requirement applies to the entire project regardless if additional funds from other sources are used.

Additional Guidance from the USEPA is available on their website at [http://water.epa.gov/grants\\_funding/aisrequirement.cfm](http://water.epa.gov/grants_funding/aisrequirement.cfm)

## **PREVAILING WAGE REQUIREMENT**

In accordance with P.L. 111-88, 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:

### 1(a) Minimum wages.

1(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 1(a)(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 1(a)(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.

1(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.

1(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.

1(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.

1(a)(ii)(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1(a)(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.

1(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.

1(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.

1(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.

1(c) Payrolls and basic records.

1(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.

1(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 copies of 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).

1(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.

1(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 1(c)(2)(ii)(B) of this section.

1(c)(2)(ii)(D) Each disbursement request submitted by the Loan Recipient to the State shall be accompanied by a "Statement of Compliance" signed by the Loan Recipient or his agent certifying the following:

(1) That the contractor has submitted to the Loan Recipient or his agent all documents described in paragraph 1(c)(2)(ii)(B) of this section for the payroll periods subject to the disbursement request and that the documents are complete and comply with all contract provisions, to the best of the Loan Recipient's knowledge.

1(c)(2)(ii)(E) The falsification of any of the above certifications may subject the loan recipient, 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.

1(c)(2)(iii) The loan recipient, contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of 29 CFR 5.5 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.

1(d) Apprentices and trainees--

1(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.

1(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.

1(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.

1(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.

1(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.

1(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.

1(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.

1(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.

1(j) Certification of eligibility.

1(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).

1(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).

1(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.

1(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(k)(i) 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.

1(k)(ii) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1(k)(i) 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 1(k)(i) 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 1(k)(i) of this section.

1(k)(iii) Withholding for unpaid wages and liquidated damages. The loan 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 1(k)(i) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph 1(k)(i) through 1(k)(iv) 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 1(k)(i) through 1(k)(iv) of this section.

1(l) In any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR § 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.

2. 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/>.

Before visiting the database, your web browser must be configured to allow secure connections using TLS 1.0. Instructions are provided below:

## **Internet Explorer**

To enable TLS in Internet Explorer, perform the following steps:

1. Click the **Tools** drop down menu and select **Internet Options** to open the **Internet Options** dialog window.
2. Click the **Advanced** tab at the top of the Internet Options dialog window.
3. Scroll down to the end of the list of items and locate the item labeled "Use TLS 1.0".
4. Check the box next to "Use TLS 1.0".
5. Click the **OK** button at the bottom of the dialog window to confirm the change.
6. You should now be able to access the EPLS web site at <https://www.epls.gov>.

## **Firefox**

To enable TLS in Firefox, perform the following steps:

1. Click the **Tools** drop down menu and select **Options...** to open the **Options** dialog window.
2. Click the **Advanced** icon at the top of the Options dialog window.
3. Click the **Encryption** tab in the area of the window below the icons.
4. Check the box next to "Use TLS 1.0".
5. Click the **OK** button at the bottom of the dialog window to confirm the change.
6. You should now be able to access the EPLS web site at <https://www.epls.gov>.
7. If problems are incurred, contact EPLS help desk:

**Phone:** 1-866-GSA-EPLS

1-866-472-3757

**Email:** [support@epls.gov](mailto:support@epls.gov)

[eplscomments@epls.gov](mailto:eplscomments@epls.gov)