



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

August 14, 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 a loan agreement with the North Conway Water Precinct, (VC#154445) North Conway, NH in the amount not to exceed \$797,000 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:

| | |
|---|----------------|
| | <u>FY 2015</u> |
| 03-44-44-441018-4791-301-500833 | \$797,000 |
| Dept Environmental Services, DWSRF Loan Repayments, Loans | |

EXPLANATION

The purpose of this loan agreement is to authorize the North Conway Water Precinct to borrow up to \$797,000 from the DWSRF to finance a water system improvement project at their water system. These improvements include replacement of water mains along Crown Ridge Road. This project will improve the reliability and quality of the water system.

The final loan amount will be based on the total DWSRF funds disbursed, and may be less than \$797,000. 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 North Conway Water Precinct is eligible for principal forgiveness under the 2013 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 \$15,065,360 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

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Council

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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.

| | <u>REPAYMENT</u> |
|--|--------------------------------|
| Repayment Account (Balance as of 8/7/14) | <u>\$28,657,860</u> |
| Total Funds Authorized/Available | \$28,657,860 |
| Less Loans Previously Approved | <u>\$6,945,500</u> |
| Funds Available for Loans | \$21,712,360 |
| New Loan Request: | |
| North Conway Water Precinct | \$ (797,000) |
| Other Pending Loans Requests: | |
| City of Manchester Water Works | \$ (5,000,000) |
| City of Rochester | \$ (250,000) |
| Emerald Lake Village District | \$ (600,000) |
| Net Change to Loan(s) | <u>\$ (6,647,000)</u> |
| Balance Available After G & C Approvals | <u><u>\$15,065,360</u></u> |

1 **S T A T E O F N E W H A M P S H I R E**

2 **D R I N K I N G W A T E R S T A T E R E V O L V I N G F U N D P R O G R A M**

3 **N O R T H C O N W A Y W A T E R P R E C I N C T**
4 **(Project No. 0511030-01)**

4 =====

5 **O R I G I N A L L O A N A G R E E M E N T**

5 =====

6 I. This AGREEMENT is made this 3rd day of September, 2014, between the State of New
7 Hampshire, Drinking Water State Revolving Loan Fund Program (the “State”) and the **North**
8 **Conway Water Precinct** (the “Loan Recipient”) in accordance with RSA 486:14 and New
9 Hampshire Code of Administrative Rules Env-Dw 1100 (the “Rules”) for the purpose of
10 financing, to the extent of the aggregate amount of funds transferred (“Disbursements”) to the
11 Loan Recipient made hereunder, **Water Main 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 **Seven Hundred**
17 **Ninety Seven Thousand Dollars (\$797,000)** (“Principal Sum”) or such lesser amount as shall
18 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 2013 State of New Hampshire Drinking Water State Revolving Fund Intended Use Plan.

1 The amount of principal forgiveness will be determined when the aggregate principal loan
2 amount is established and the project is complete.

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

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

21
22 VI. The interest rate applicable to the Note will be determined in accordance with RSA 486:14
23 and Env-Dw 1100 et seq. Such interest rate will be the lesser of 2.72 % and the adjusted market
24 rate as determined by the 11-GO Bond Buyer Index in effect on the date of the Note.

1 VII. The Loan Recipient hereby authorizes the State to compute the payments of principal and
2 interest on the Note. The principal shall be paid in full within **twenty (20)** years from the date of
3 the Note. Note payments shall commence on the first day of the month following the first
4 anniversary of the Substantial Completion date of the Project or the first anniversary of the
5 Scheduled Completion date of the project, whichever is earlier. The Scheduled Completion date
6 is hereby determined to be **December 31, 2014**; however, should the project experience
7 excusable delay beyond this date, an extension may be granted by the Commissioner upon
8 request in writing by the Loan Recipient. In no event shall Note payments commence later than
9 ten years from the effective date of this agreement.

10
11 VIII. The Loan Recipient reserves the right to prepay, at any time and without penalty, all or any
12 part of the outstanding principal of the Note.

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

19
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.

23
24 XI. The Loan Recipient acknowledges that by accepting the Loan it will be a sub-recipient of
25 federal financial assistance and, as such, subject to requirements of the federal Single Audit Act

1 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
4 accordance with the requirements of Office of Management and Budget Circular A-133. In that
5 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.

7
8 XII. The Loan Recipient agrees to permit the Comptroller General of the United States, an
9 appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of
10 1978 (5 U.S.C. App.), or an authorized representative of either of the foregoing officials, or of
11 the State of New Hampshire to have access to and the right to:

12
13 (i) Examine any of the Borrower's, the contractor's or any subcontractor's records
14 that pertain to and involve transactions relating to this Agreement, the Construction
15 Contract, the Engineering Contract or a subcontract thereunder; and

16
17 (ii) Interview any officer or employee regarding such transactions.

18
19 The Borrower shall insert subparagraphs (i). and (ii). in the Construction Contract and require the
20 Contractor to insert subparagraphs (i). and (ii). in all subcontracts thereunder.

21
22 XIII. Davis-Bacon (DB) prevailing wage requirements apply to the Project in accordance with
23 the federal fiscal year (FY) 2013 Consolidated and Further Continuing Appropriations Act (P.L.
24 113-6). The Loan Recipient shall insert in full in any contract in excess of \$2,000 which is
25 entered into for Project construction the standard Davis-Bacon contract clause as specified by 29

1 CFR §5.5(a). The Loan Recipient shall obtain the wage determination for the locality in which a
2 covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes
3 or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage
4 determinations shall be incorporated into solicitations and any subsequent contracts. Prime
5 contracts must contain a provision requiring that subcontractors follow the wage determination
6 incorporated into the prime contract.
7

8
9 XIV. The Loan Recipient agrees to comply with Section 436 of the Consolidated Appropriations
10 Act, 2014 (P.L. 113-76), which requires that all of the iron and steel products used in the Project
11 are to be produced in the United States (“American Iron and Steel Requirement”) unless (i) the
12 Loan Recipient has requested and obtained a waiver from the Environmental Protection Agency
13 pertaining to the Project or (ii) the State has otherwise advised the Participant in writing that the
14 American Iron and Steel Requirement is not applicable to the Project. The Loan Recipient
15 further agrees to maintain records documenting compliance with the American Iron and Steel
16 Requirement, and to provide records and certifications to the State upon request.
17

18 XV. The Loan Recipient shall not knowingly award a construction contract to a contractor which
19 has been debarred or suspended by the federal government. The Loan Recipient or its agent
20 shall compare the names of contractors who have bid on the project against the searchable list in
21 the federal “Excluded Parties List System” (EPLS) database, which can be found at
22 <https://www.epls.gov/>; and
23

24 XVI. Pursuant to 40 CFR, Section 33.301, the Loan Recipient shall make good faith efforts to
25 utilize small, minority and women’s business enterprises whenever procuring construction,

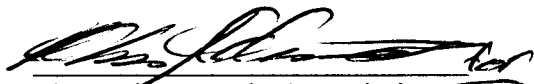
1 equipment, services and supplies under an EPA financial assistance agreement, and shall require
2 that prime contractors also comply. Records documenting compliance with the six good faith
3 efforts shall be retained.

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

9
10 XVIII. This agreement shall be construed in accordance with the laws of the State of New
11 Hampshire and is binding upon and inures to the benefit of the parties and their respective
12 successors. The parties hereto do not intend to benefit any third parties and, consequently, the
13 agreement shall not be construed to confer any such benefit.

14
15 XIX. This agreement, which may be executed in a number of counterparts, each of which shall
16 be deemed an original, constitutes the entire agreement and understanding between the parties
17 and supersedes all prior agreements and understandings relating thereto. Nothing herein shall be
18 construed as a waiver of sovereign immunity, such immunity being hereby specifically reserved.

19
20 STATE OF NEW HAMPSHIRE by:

21 

22 Thomas S. Burack, Commissioner
23 Department of Environmental Services

20 NORTH CONWAY WATER PRECINCT by:

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22 David Bernier
23 Superintendent

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EXHIBIT A
STATE OF NEW HAMPSHIRE
DRINKING WATER STATE REVOLVING LOAN FUND PROGRAM
PROJECT DESCRIPTION

The North Conway Water Precinct has applied for a Loan to be used for water system improvements including replacement of water mains along Crown Ridge Road.

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

The North Conway Water Precinct (“Loan Recipient”) promises to pay to the Treasurer of the State of New Hampshire the sum of _____ Dollars (_____) in installments on the anniversary date of this Promissory Note (“Note”) in each year as set forth below, commencing on the first principal payment date and annually thereafter on each principal payment date, including interest at the rate of _____% per annum, computed on the basis of 30-day months and 360-day years, in the respective years set forth below. A sum of _____% of each principal and interest installment payment will be forgiven at the time each installment is due.

REPAYMENT SCHEDULE

| <u>Year</u> | <u>Principal</u> | <u>Interest</u> | <u>Total P&I</u> | <u>Payment Due</u> |
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1 This Note is issued under and by virtue of the New Hampshire Municipal Finance Act, an
2 agreement duly entered into by the Loan Recipient and the Drinking Water State Revolving Loan
3 Fund Program ("Agreement"), a vote of the Loan Recipient at its _____ Meeting on
4 _____, _____, and a duly-adopted resolution of the Governing Body of the Loan
5 Recipient and is issued for the purpose of financing the cost of the Project as described in said
6 Resolution and Agreement.

7
8 The Loan Recipient reserves the right to prepay, at any time and without penalty, all or
9 any part of the outstanding principal on this Note.

10
11 The terms and provisions of the Agreement are hereby incorporated in and made a part of
12 this Note to the same extent as if said terms and provisions were set forth in full herein.

13
14 It is hereby certified and recited that all acts, conditions, and things required to be done
15 precedent to and in the issuing of this Note have been done, have happened, and have been
16 performed in regular and due form and, for the payment hereof when due, the full faith and credit
17 of the Loan Recipient are hereby irrevocably pledged.

18
19 IN WITNESS whereof the Loan Recipient has caused this Note to be signed by its
20 _____, and the seal of the Loan Recipient to be affixed hereto, as of the
21 ____ day of _____, 2014.

22
23 NORTH CONWAY WATER PRECINCT by:

24 _____
25 Name, Title

(Seal)