



The State of New Hampshire
Department of Environmental Services

Clark B. Freise, Assistant Commissioner



February 8, 2017

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

REQUESTED ACTION

Authorize the Department of Environmental Services to approve a loan agreement with the City of Rochester (VC# 177467-B002), Rochester, NH in the amount not to exceed \$540,000 to finance water system improvements under the provisions of RSA 486:14 and N.H. Code of Administrative Rules Env-Dw 1100 et seq. effective upon Governor & Council approval. 100% Drinking Water State Revolving Loan Fund (DWSRF) Repayment Funds.

Funding is available in the account as follows:

03-44-44-441018-4791-301-500833	<u>FY 2017</u>
Dept Environmental Services, DWSRF Loan Repayments, Loans	\$540,000

EXPLANATION

The purpose of this loan agreement is to authorize the City of Rochester to borrow up to \$540,000 from the Drinking Water State Revolving Loan Fund (DWSRF) to finance water system improvements. The improvements include the replacement of aging infrastructure at the Rochester Water Treatment Plan including pumps and electric gear needed to transfer water from the reservoir to the treatment plant.

The final loan amount will be based on the total DWSRF funds disbursed, and may be less than \$540,000. 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 1.225%. The City of Rochester is eligible for principal forgiveness under the 2015 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 \$25,093,356 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.

Clark B. Freise
Assistant Commissioner

His Excellency, Governor Christopher T. Sununu
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 1/31/17)	<u>\$25,988,756</u>
Less Loans Previously Approved	<u>\$895,400</u>
Funds Available for Loans	\$25,093,356
 New Loan Being Requested	
City of Rochester (Project #: 2001010-10)	(540,000)
 Net Change to Loan(s)	<u>(540,000)</u>
 Balance Available After G & C Approval	 <u><u>\$24,553,356</u></u>

1 **STATE OF NEW HAMPSHIRE**
2 **DRINKING WATER STATE REVOLVING LOAN FUND PROGRAM**

3 **CITY OF ROCHESTER, NEW HAMPSHIRE**
4 **(Project No. 2001010-10)**

5 **ORIGINAL LOAN AGREEMENT**

6 I. This Agreement between the State of New Hampshire Drinking Water State Revolving Loan
7 Fund Program (State) and the **City of Rochester, New Hampshire** (Loan Recipient) in
8 accordance with RSA 486:14 and New Hampshire Code of Administrative Rules Env-Dw 1100
9 (Rules) is for the purpose of financing, to the extent of the aggregate amount of funds transferred
10 (Disbursements) to the Loan Recipient made hereunder, the **Raw Water Pump Station**
11 **Upgrade Project** (Project) now being undertaken by the Loan Recipient. The Project is
12 described in Exhibit A. The Loan Recipient shall abide by all of the requirements of RSA
13 486:14 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 **Five Hundred Forty**
17 **Thousand and 00/100 Dollars (\$540,000)** (Principal Sum) or such lesser amount as shall equal
18 the aggregate of Disbursements made hereunder by the State to the Loan Recipient. In addition
19 to the principal sum, the Loan Recipient agrees to pay the applicable interest accrued as
20 described in Paragraphs IV, VI, and VIII. Federal financial assistance provided through
21 Capitalization Grants for Drinking Water State Revolving Funds (CFDA #66.468) may comprise
22 all or a portion of the Principal Sum. Any Disbursement or other payment from the State to the
23 Loan Recipient is contingent upon the availability of funds.

1 III. The Loan Recipient is eligible for the Disadvantaged System program as outlined in Section
2 8 of the 2015 State of New Hampshire Drinking Water State Revolving Loan Fund Intended Use
3 Plan. The amount of principal forgiveness will be determined when the aggregate principal loan
4 amount is established and the project is complete and will be applied to the loan upon the initial
5 repayment.

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

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

1 VI. The interest rate applicable to the Note will be determined in accordance with RSA 486:14
2 and Env-Dw 1100 et seq. Such interest rate will be the lesser of **1.225 %** and the adjusted
3 market rate as determined by the Rules.

4
5 VII. The Loan Recipient hereby authorizes the State to compute the payments of principal and
6 interest on the Note. The principal shall be paid in full within **ten (10)** years from the date of the
7 Note. Note payments shall commence within one year of Substantial Completion of the Project
8 or the Scheduled Completion date of the Project, whichever is earlier. The Scheduled
9 Completion date is hereby determined to be **December 2, 2017**; however, should the project
10 experience excusable delay beyond this date, an extension may be granted by the Commissioner
11 upon request in writing by the Loan Recipient. In no event shall Note payments commence later
12 than ten years from the effective date of this Agreement.

13
14 VIII. The Loan Recipient reserves the right to prepay, at any time and without penalty, all or any
15 part of the outstanding principal or interest of the Note.

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

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

1

2 XI. The Loan Recipient agrees to comply, and to require all of its contractors to comply, with all
3 applicable state and federal requirements contained in the Rules and applicable federal law.
4 Exhibit C contains specific federal requirements applicable to this agreement for the Loan
5 Recipient.

6

7 XII. The Loan Recipient is required to develop an asset maintenance and renewal plan for the
8 assets(s) being funded under the loan or incorporate the funded asset(s) into an existing asset
9 management plan. At a minimum the plan must include a commitment to asset management,
10 financing and implementation strategy and an inventory of the funded asset(s).

11

12 XIII. The Loan Recipient agrees to permit the Comptroller General of the United States, an
13 appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of
14 1978 (5 U.S.C. App.), or an authorized representative of either of the foregoing officials, or of
15 the State of New Hampshire to have access to and the right to:

16

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

20

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

22

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

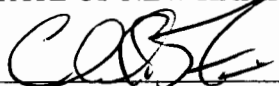
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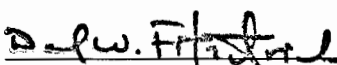
1 XIV. The effective date of this Agreement shall be the date of its approval by the Governor and
2 Executive Council. This Agreement may be amended, waived, or discharged only by a written
3 instrument signed by the parties hereto and only after approval of such amendment, waiver, or
4 discharge by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

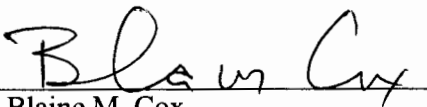
5
6 XV. This Agreement shall be construed in accordance with the laws of the State of New
7 Hampshire and is binding upon and inures to the benefit of the parties and their respective
8 successors. The parties hereto do not intend to benefit any third parties and, consequently, the
9 Agreement shall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

10
11 XVI. 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 the required
15 threshold in federal financial assistance from all sources in any fiscal year, it must perform an
16 SAA audit in accordance with the requirements of Office of Management and Budget Circular
17 A-133. In that event, the Loan Recipient shall provide the State with a copy of the SAA audit
18 report within nine months of the end of the audit period.

19
20 XVII. 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 by:
2  2/14/17
3 Clark B. Freise Date
4 Assistant Commissioner
Department of Environmental Services

CITY OF ROCHESTER, NH by:
 FEB 03 2017
Daniel Fitzpatrick Date
City Manager
City of Rochester

 2/2/17
Blaine M. Cox Date
Deputy City Manager
City of Rochester

11 This agreement was approved by Governor and Executive Council on _____,
12 as Item # _____.
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EXHIBIT A

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

PROJECT DESCRIPTION

The City of Rochester has applied for a Loan to be used for water system improvements including replacement of aging critical infrastructure at the Rochester Water Treatment Plant. Current pumps and electric gear needed to transfer water from the reservoir to the treatment plant will be replaced.

1 EXHIBIT B

2 STATE OF NEW HAMPSHIRE
3 DRINKING WATER STATE REVOLVING LOAN FUND PROGRAM
4 PROMISSORY NOTE AND REPAYMENT SCHEDULE

5 The City of Rochester (Loan Recipient) promises to pay to the Treasurer of the State of
6 New Hampshire the principal sum of _____ Dollars
7 (_____) in installments on _____ (month) ____ (day) in each year as set forth below,
8 commencing on the first principal payment date and annually thereafter on each principal
9 payment date, including interest at the rate of _____% per annum, computed on the basis of
10 30-day months and 360-day years, in the respective years set forth below. A total of _____
11 Dollars (\$____) or ____% of principal will be forgiven. Principal forgiveness will be granted as
12 reflected in the payment schedule shown below.
13

14 REPAYMENT SCHEDULE

15

<u>Payment Date</u>	<u>Principal Payment</u>	<u>Interest Payment</u>	<u>Total Payment</u>
16 1			
17 2			
18 3			
19 4			
20 5			
21 6			
22 7			
23 8			
24 9			
25 10			

22 This Note is issued under and by virtue of the New Hampshire Municipal Finance Act, an
23 agreement duly entered into by the Loan Recipient and the Drinking Water State Revolving Loan
24 Fund Program, a vote of the Loan Recipient at its _____ Meeting on _____,
25 _____, and a duly-adopted resolution of the Governing Body of the Loan Recipient and is

1 issued for the purpose of financing the cost of the Project as described in said Resolution and
2 Agreement.

3

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

6

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

9

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

14

15 IN WITNESS whereof, the Loan Recipient has caused this Note to be signed by its
16 _____, as of the date(s) below.

17

18 CITY OF ROCHESTER, NH by:

19

_____	_____
Daniel Fitzpatrick	Date
City Manager	
City of Rochester	

21

_____	_____
Blaine M. Cox	Date
Deputy City Manager	
City of Rochester	

23

24

25

1 **EXHIBIT C**

2 **STATE OF NEW HAMPSHIRE**
3 **DRINKING WATER STATE REVOLVING LOAN FUND PROGRAM**

4 **FEDERAL REQUIREMENTS**

5 **DUNS Number:** The Loan Recipient must obtain a Data Universal Numbering System (DUNS) number.
6 The federal government has adopted the use of DUNS numbers to track how federal grant money is
7 allocated. DUNS numbers identify your organization. A DUNS number may be obtained by visiting
8 <http://fedgov.dnb.com/webform/>.
9

10 **WAGE RATE REQUIREMENTS (DAVIS-BACON):** Davis-Bacon (DB) prevailing wage
11 requirements apply to the Project in accordance with the federal fiscal year (FY) 2014 Consolidated
12 Appropriations Act (P.L. 113-76). The Loan Recipient shall insert in full in any contract in excess of
13 \$2,000 which is entered into for Project construction the standard Davis-Bacon contract clause as
14 specified by 29 CFR §5.5(a). The Loan Recipient shall obtain the wage determination for the locality in
15 which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes
16 or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage
17 determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts
18 must contain a provision requiring that subcontractors follow the wage determination incorporated into
19 the prime contract.
20

21 **AMERICAN IRON AND STEEL (AIS):** The Loan Recipient agrees to comply with Section 436 of the
22 Consolidated Appropriations Act, 2014 (P.L. 113-76), which requires that all of the iron and steel
23 products used in the Project are to be produced in the United States ("American Iron and Steel
24 Requirement") unless (i) the Loan Recipient has requested and obtained a waiver from the Environmental
25 Protection Agency pertaining to the Project or (ii) the State has otherwise advised the Participant in

1 writing that the American Iron and Steel Requirement is not applicable to the Project. The Loan
2 Recipient further agrees to maintain records documenting compliance with the American Iron and Steel
3 Requirement, and to provide records and certifications to the State upon request.

4
5 **GENERALLY ACCEPTED ACCOUNTING PROCEDURES:** The Loan Recipient shall maintain
6 project accounts in accordance with the Generally Accepted Accounting Principles (GAAP), including
7 standards relating to the reporting of infrastructure assets as issued by the Governmental Accounting
8 Standards Board (GASB). The most recent applicable standard is GASB Statement No. 34 (GASB 34)
9 issued in June 1999, which details governmental reporting requirements including standards for reporting
10 of infrastructure assets. The full text of GASB 34 is available through the GASB website at:

11 http://www.gasb.org/jsp/GASB/Document_C/GASBDocumentPage?cid=1176160029121&acceptedDiscl
12 [aimer=true](#)

13
14 **DISADVANTAGED BUSINESS ENTERPRISE (DBE):** Pursuant to 40 CFR, Section 33.301, the
15 Loan Recipient shall make good faith efforts to utilize small, minority and women's business enterprises
16 whenever procuring construction, equipment, services and supplies under an EPA financial assistance
17 agreement, and shall require that prime contractors also comply. Records documenting compliance with
18 the six good faith efforts shall be retained.

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