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The State of New Hampshire

# Department of Environmental Services

**Thomas S. Burack, Commissioner**

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

September 11, 2012

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

## REQUESTED ACTION

Authorize the Department of Environmental Services to approve a Clean Water State Revolving Fund (CWSRF) loan agreement with the North Conway Water Precinct (VC #154445) in the amount of $2,050,000 to finance the WWTF Aeration System Improvements Project (Project) under the provisions of RSA 486:14 and N.H. Code of Administrative Rules Env-Wq 500, et seq., effective upon Governor & Council approval. 83% Clean Water State Revolving Fund, 17% Capital (General) Funds.

Funding is available in the accounts as follows:

| | FY 2013 |
|---|---|
| 03-44-44-441010-2003-301-500832<br>Dept. Environmental Services, CWSRF Loans, Loans | $1,701,500 |
| 03-44-44-441030-0521-034-500161<br>Dept. Environmental Services, 07,264:1-VII Wastewater SRF Match, Capital Loans | $348,500 |

## EXPLANATION

The purpose of this Original Loan Agreement (Agreement) is to authorize the North Conway Water Precinct to borrow up to $2,050,000 from the Clean Water State Revolving Fund (CWSRF) Program to finance the WWTF Aeration System Improvements Project. Under the provisions of the 2010 federal CWSRF Capitalization Grant, the Precinct is eligible for up to $615,000 in federal financial assistance in the form of principal forgiveness for this project. The loan will provide funding for the costs of upgrades to the wastewater treatment facility aeration system. These improvements will result in energy efficiency, allow greater control over the aeration system to accommodate seasonal variations in flow, and allow for the planned connection of sewer flows from Conway Village. This project will ultimately protect human health and water quality of the Saco River Watershed.

Attached are the Agreement and a tabulation of the CWSRF showing the effect of this action on the funds available for loans.

We respectfully request your approval.

Thomas S. Burack, Commissioner

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DEPARTMENT OF ENVIRONMENTAL SERVICES
WATER DIVISION
CLEAN WATER STATE REVOLVING FUND

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

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

| | CWSRF Cap Grant | CWSRF Repayment | ARRA |
|---|---|---|---|
| Repayment Funds as of September 7, 2012 | | $88,428,665 | |
| Federal Funds * | $306,447,231 | $0 | $37,697,344 |
| Plus 20% State Match | $63,871,173 | $0 | $0 |
| Total Funds Available | $370,318,404 | $88,428,665 | $37,697,344 |
| Less Loans Previously Approved | $342,281,936 | $0 | $36,781,793 |
| **Funds Available for Loans** | **$28,036,468** | **$88,428,665** | **$915,551** |
| **Loan Agreement(s) this Request:** | | | |
| North Conway Water Precinct | $2,050,000 | $0 | $0 |
| **Other Requested Action(s)** | | | |
| Town of Hinsdale (SLA) | $0 | ($38,174) | $0 |
| City of Portsmouth (SLA) | $0 | $0 | $0 |
| **Net Change** † | **$2,050,000** | **($38,174)** | **$0** |
| **Balance Available after G & C Approval** | **$25,986,468** | **$88,466,839** | **$915,551** |

*Is net of the 4% reduction in Federal dollars 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

# NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES
# CLEAN WATER STATE REVOLVING LOAN PROGRAM

**SRF Funds Available for Loans**

| | |
|---|---|
| 1989-2005 Capitalization Grants | $213,967,292 |
| Plus Amendments | $23,034,312 |
| Plus State Match | $47,408,321 |
| Less 4% Administration Fee | ($9,480,065) |
| Total 1989-2005 Funds Available for Loans | $274,929,860 |
| | |
| 2006 Capitalization Grant (08/08/07) | $8,739,500 |
| Plus State Match | $1,767,900 |
| Less 4% Admin. | ($349,580) |
| Total 2006 Funds Available for Loans | $10,157,820 |
| | |
| 2007 Capitalization Grant (09/11/08) | $10,695,762 |
| Plus State Match | $2,139,152 |
| Less 4% Admin. | ($427,830) |
| Total 2007 Funds Available for Loans | $12,407,084 |
| | |
| 2008 Capitalization Grant (02/04/09) | $6,769,000 |
| Plus State Match | $1,353,800 |
| Less 4% Admin. | ($270,760) |
| Total 2008 Funds Available for Loans | $7,852,040 |
| | |
| 2009 Capitalization Grant (07/22/09) | $6,769,000 |
| Plus State Match | $1,353,800 |
| 2009 Supplemental (ARRA) Capitalization Grant | $39,163,900 |
| Less 4% Admin. | ($1,837,316) |
| Transfer of Surplus ARRA Admin. | $100,000 |
| Total 2009 Funds Available for Loans | $45,549,384 |
| | |
| 2010 Capitalization Grant (08/10/2011) | $20,361,000 |
| Plus State Match | $4,072,200 |
| Less 4% Admin. | ($814,440) |
| Total 2010 Funds Available for Loans | $23,618,760 |
| | |
| 2011 Capitalization Grant (09/21/2011) | $14,757,000 |
| Plus State Match | $2,951,400 |
| Less 4% Admin. | ($590,280) |
| Total 2011 Funds Available for Loans | $17,118,120 |
| | |
| 2012 Capitalization Grant (06/05/2012) | $14,123,000 |
| Plus State Match | $2,824,600 |
| Less 4% Admin. | ($564,920) |
| Total 2012 Funds Available for Loans | $16,382,680 |
| | |
| Total Federal Grant $ Available (including ARRA) | $344,144,575 |
| Total Federal Grant $ Available (excluding ARRA) | $306,447,231 |
| Total State Match | $63,871,173 |
| **Total 1989 - 2012 Funds Available for Loans (including ARRA)** | **$408,015,748** |
| **Total 1989 - 2012 Funds Available for Loans (excluding ARRA)** | **$370,318,404** |

NH DEPT. OF ENVIRONMENTAL SERVICES
AUG 31 2012
RECEIVED

# STATE OF NEW HAMPSHIRE

WATER POLLUTION CONTROL REVOLVING FUND PROGRAM

NORTH CONWAY WATER PRECINCT
(Project No. CS-330066-04)

## ORIGINAL LOAN AGREEMENT

I. This AGREEMENT is made this _____ day of _____, 2012, between the State of New Hampshire Water Pollution Control Revolving Loan Fund Program (State) and the **North Conway (New Hampshire) Water Precinct** (Loan Recipient) in accordance with RSA 486:14 and New Hampshire Code of Administrative Rules Env-Wq 500 (Rules) for the purpose of financing, to the extent of the aggregate amount of funds transferred (Disbursements) to the Loan Recipient made hereunder, the **WWTF Aeration System Improvements Project** (Project) now being undertaken by the Loan Recipient. The Project is described in Exhibit A. The Loan Recipient shall abide by all of the requirements of RSA 486:14 and the Rules.

II. The State agrees to loan to the Loan Recipient, and the Loan Recipient agrees to repay to the State, in accordance with the terms of this Agreement, the principal sum of **Two Million, Fifty Thousand and 00/100 Dollars ($2,050,000.00)** (Principal Sum) or such lesser amount as shall equal the aggregate of Disbursements made hereunder by the State to the Loan Recipient. In addition to the principal sum, the Loan Recipient agrees to pay the applicable interest accrued as described in Paragraphs III, V, and VII. A portion of the Principal Sum, not to exceed **Six Hundred Fifteen Thousand Dollars ($615,000.00)** or up to **30%** of the aggregate of Disbursements, whichever is less, shall be provided through the State in the form of federal principal forgiveness as described in Paragraph VI. Notwithstanding the foregoing, in no event shall the amount of funds available for principal forgiveness exceed $2 million. Federal financial assistance provided through the State Water Pollution Control Revolving Fund Program (CFDA

#66.458) will comprise the balance of the Principal Sum. Any Disbursement or other payment from the State to the Loan Recipient is contingent upon the availability of funds.

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

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

V. The interest rate applicable to the Note will be determined in accordance with RSA 486:14 and Env-Wq 500 et seq. Such interest rate will be the lesser of **3.1040%** and the adjusted market rate as determined by the 11-GO Bond Buyer Index in effect on the date of the Note.

VI. Pursuant to the Federal Fiscal Year 2010 Capitalization Grant conditions, the Loan Recipient is eligible for up to **30%** forgiveness of the principal sum described in Paragraph II, not to exceed $2 million. Principal forgiveness will be applied at the time of the initial loan repayment; provided, however, that such principal forgiveness is contingent upon the Loan Recipient complying with all requirements of this agreement. In accordance with the Rules, this original loan agreement may, at the discretion of the State, be terminated if the Loan Recipient does not comply with all conditions of this Agreement.

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

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

IX. In the event of a default in the full and timely remittance of any Note payment, any State Aid Grant funds payable to the Loan Recipient under RSA 486:1 may be offset against and applied to the payment of any obligations that are due hereunder. The Loan Recipient agrees to

be liable for all costs of collection, legal expenses, and attorney fees incurred or paid by the State in enforcing this agreement or in collecting any delinquent payments due hereunder.

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

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

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

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

XIV. The Loan Recipient acknowledges that by accepting the Loan it will be a sub-recipient of federal financial assistance and, as such, subject to requirements of the federal Single Audit Act of 1984, as amended by the Single Audit Act Amendments of 1996 (the "SAA"). The Loan

Recipient further acknowledges that, if the Loan Recipient expends more than $500,000 in federal financial assistance from all sources in any fiscal year, it must perform an SAA audit in accordance with the requirements of Office of Management and Budget Circular A-133. In that event, the Loan Recipient shall provide the State with a copy of the SAA audit report within nine months of the end of the audit period.

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

STATE OF NEW HAMPSHIRE

By: Vicki A. Clair 9/27/12
Thomas S. Burack Date
Commissioner,
Department of Environmental Services

NORTH CONWAY WATER PRECINCT

By: James J. Umberger 8/29/12
Commissioner Date

John Santucci 8/29/12
Commissioner Date

Robert Porter 8/29/12
Commissioner Date

# EXHIBIT A

## STATE OF NEW HAMPSHIRE

## WATER POLLUTION CONTROL REVOLVING LOAN FUND PROGRAM

## PROJECT DESCRIPTION

The North Conway Water Precinct has applied for a Loan to be used for the Wastewater Treatment Facility (WWTF) Aeration System Improvements Project. The project will include a comprehensive upgrade to the aeration system in order to improve the function of the system, allow the system to be operated efficiently during both winter and summer, reduce energy usage, and meet the treatment requirements for future flow from North Conway and Conway Village.

# EXHIBIT B

## STATE OF NEW HAMPSHIRE

## WATER POLLUTION CONTROL 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 **Two Million, Fifty Thousand and 00/100 Dollars ($2,050,000.00)** 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

| Year | Principal | Interest | Principal Forgiveness | Payment Due |
|---|---|---|---|---|
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |
| 6 | | | | |
| 7 | | | | |
| 8 | | | | |
| 9 | | | | |
| 10 | | | | |
| 11 | | | | |

This Note is issued under and by virtue of the New Hampshire Municipal Finance Act, an agreement duly entered into by the Loan Recipient and the Water Pollution Control Revolving Loan Fund Program (Agreement), a vote of the Loan Recipient at it's the 2012 Annual Meeting of the North Conway Water Precinct on March 28, 2012, and a duly-adopted resolution of the Governing Body of the Loan Recipient and is issued for the purpose of financing the cost of the Project as described in said Resolution and Agreement.

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

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

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

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

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

**NORTH CONWAY WATER PRECINCT**

By its Commissioners:

_____

_____

_____

(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) through1(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) through1(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.

If problems are incurred, contact EPLS help desk:

**Phone:** 1-866-GSA-EPLS
1-866-472-3757
**Email:** support@epls.gov
eplscomments@epls.gov