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The State of New Hampshire
**Department of Environmental Services**

**Thomas S. Burack, Commissioner**

April 27, 2016

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 Town of Salem (VC#177472 B001), Salem, NH in the amount not to exceed $1,664,000 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 | FY 2016 |
| Dept Environmental Services, DWSRF Loan Repayments, Loans | $1,664,000 |

## EXPLANATION

The purpose of this loan agreement is to authorize the Town of Salem to borrow up to $1,664,000 from the Drinking Water State Revolving Loan Fund (DWSRF) to finance water system improvements. The improvements include improvements to the Manor Parkway pump station and construction of an additional pump station on Commercial Drive in Salem. The project will improve operating pressure and reliability. The final loan amount will be based on the total DWSRF funds disbursed, and may be less than $1,664,000. 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 2.464%.

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 $32,299,530 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

Thomas S. Burack
Commissioner

DEPARTMENT OF ENVIRONMENTAL SERVICES
WATER DIVISION

DRINKING WATER STATE REVOLVING FUND

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

| | REPAYMENT |
|---|---|
| Repayment Account (Balance as of 4/27/16) | $37,070,979 |
| Less Loans Previously Approved | $3,107,449 |
| Funds Available for Loans | $33,963,530 |
| **New Loan Being Requested** | |
| Town of Salem (Project #: 2051010) | (1,664,000) |
| Net Change to Loan(s) | (1,664,000) |
| **Balance Available After G & C Approval** | **$32,299,530** |

**STATE OF NEW HAMPSHIRE**

DRINKING WATER STATE REVOLVING FUND PROGRAM

**TOWN OF SALEM**
(Project No. **2051010**)

# ORIGINAL LOAN AGREEMENT

I. This AGREEMENT is made this 18th day of May, 2016, between the State of New Hampshire, Drinking Water State Revolving Loan Fund Program (the "State") and the **Town of Salem** (the "Loan Recipient") in accordance with RSA 486:14 and New Hampshire Code of Administrative Rules Env-Dw 1100 (the "Rules") for the purpose of financing, to the extent of the aggregate amount of funds transferred ("Disbursements") to the Loan Recipient made hereunder, **Exit 2 Area Water 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 **One Million Six Hundred Sixty Four Thousand Dollars ($1,664,000)** ("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 V, VII, and IX. Federal financial assistance provided through Capitalization Grants for Drinking Water State Revolving Funds (CFDA #66.468) may comprise all or a portion 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-Dw 1104.01, as applicable. Interest on any Disbursement shall accrue from the date of the Disbursement at the rate of 1% per annum computed on the basis of 30-day months and 360-day years until the date of Substantial Completion ("Substantial Completion") of the Project. Such interest may be paid (1) semi-annually, prior to the commencement of Loan repayment, (2) prior to the commencement of Loan repayment, (3) at the time of the first Loan repayment, or (4) added to the principal outstanding Loan balance at the option of the Loan Recipient so long as the Loan Recipient's authority to borrow is not exceeded.

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-Dw 1100 et seq. Such interest rate will be the lesser of **2.464 %** and the adjusted market rate as determined by Env-Dw 1106 in effect on the date of the Note.

VI. The Loan Recipient hereby authorizes the State to compute the payments of principal and interest on the Note. The principal shall be paid in full within **twenty (20)** years from the date of the Note. Note payments shall commence on the first day of the month following the first anniversary of the Substantial Completion date of the Project or the first anniversary of the Scheduled Completion date of the project, whichever is earlier. The Scheduled Completion date is hereby determined to be **June 1, 2017;** however, should the project experience excusable delay beyond this date, an extension may be granted by the Commissioner upon request in writing by the Loan Recipient. In no event shall Note payments commence later than ten years from the effective date of this agreement.

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

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

IX. 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.

X. 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 federal requirements applicable to this agreement for the loan recipient.

XI. The Loan Recipient acknowledges that by accepting the Loan it will be a sub-recipient of federal financial assistance and, as such, subject to requirements of the federal Single Audit Act of 1984, as amended by the Single Audit Act Amendments of 1996 (the "SAA"). The Loan Recipient further acknowledges that, if the Loan Recipient expends more than $750,000 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.

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

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

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

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

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

XIV. 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.

XV. 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.

XVI. 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: | | TOWN OF SALEM by: | |
|---|---|---|---|
| Thomas S. Burack | 4/29/2016 | Leon I. Goodwin III | 4/25/16 |
| Thomas S. Burack<br>Commissioner<br>Department of Environmental Services | Date | Leon I. Goodwin III<br>Town Manager<br>Town of Salem | Date |
| | | Melanie Murray | 4/26/16 |
| | | Name: MELANIE MURRAY<br>Finance Director<br>Town of Salem | Date |

# E X H I B I T A

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

## PROJECT DESCRIPTION

The Town of Salem has applied for a Loan to be used for water system improvements including improvements to the existing Manor Parkway pump station and the construction of an additional pump station at 7 Commercial Drive.

**EXHIBIT B**

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

## PROMISSORY NOTE AND REPAYMENT SCHEDULE

The **Town of Salem** ("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.

REPAYMENT SCHEDULE

| Year | Principal | Interest | Total P&I | Payment Due |
|---|---|---|---|---|
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |
| 6 | | | | |
| 7 | | | | |
| 8 | | | | |
| 9 | | | | |
| 10 | | | | |
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| 16 | | | | |
| 17 | | | | |
| 18 | | | | |
| 19 | | | | |
| 20 | | | | |

This Note is issued under and by virtue of the New Hampshire Municipal Finance Act, an agreement duly entered into by the Loan Recipient and the Drinking Water State Revolving Loan Fund Program ("Agreement"), a vote of the Loan Recipient at its _____________ Meeting on _________, ________, and a duly-adopted resolution of the Governing Body of the Loan Recipient and is issued for the purpose of financing the cost of the Project as described in said Resolution and Agreement.

The Loan Recipient reserves the right to prepay, at any time and without penalty, all or any part of the outstanding principal or interest 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 ____________________, and the seal of the Loan Recipient to be affixed hereto, as of the _____ day of ____________, 20__.

TOWN OF SALEM by:

____________________________
Leon I. Goodwin III
Town Manager
Town of Salem

(Seal)

____________________________
Name
Finance Director
Town of Salem

# EXHIBIT C

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

## FEDERAL REQUIREMENTS

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

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

**AMERICAN IRON AND STEEL (AIS):** 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.

**GENERALLY ACCEPTED ACCOUNTING PROCEDURES:** The Loan Recipient shall maintain project accounts in accordance with the Generally Accepted Accounting Principles (GAAP), including standards relating to the reporting of infrastructure assets as issued by the Governmental Accounting Standards Board (GASB). The most recent applicable standard is GASB Statement No. 34 (GASB 34) issued in June 1999, which details governmental reporting requirements including standards for reporting of infrastructure assets. The full text of GASB 34 is available through the GASB website at: http://www.gasb.org/jsp/GASB/Document_C/GASBDocumentPage?cid=1176160029121&acceptedDisclaimer=true

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

**EXCLUDED PARTIES LIST SYSTEMS (EPLS):** 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.