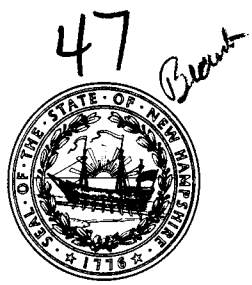




The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**

JAN13'15 PM 1:45 DAS  
Thomas S. Burack, Commissioner



January 8, 2015

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 Berlin Water Works (VC#177362-B006), Berlin, NH in the amount not to exceed \$2,000,000 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:

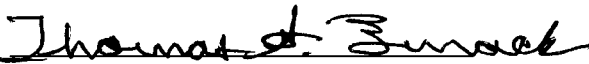
	<u>FY 2015</u>
03-44-44-441018-4791-301-500833	\$2,000,000
Dept Environmental Services, DWSRF Loan Repayments, Loans	

**EXPLANATION**

The purpose of this loan agreement is to authorize the Berlin Water Works to borrow up to \$2,000,000 from the Drinking Water State Revolving Loan Fund (DWSRF) to finance water system improvements. These improvements include replacing water mains within the City of Berlin and improvements to the Godfrey Raw Water Transmission Pipeline. The new water mains will improve reliability and quality throughout the water system. The final loan amount will be based on the total DWSRF funds disbursed, and may be less than \$2,000,000. 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 2.97%. Berlin Water Works is eligible for principal forgiveness under the 2014 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 \$28,673,692 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

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## DRINKING WATER STATE REVOLVING FUND

This request will affect the balance of the loan funds as follows.

	<u>REPAYMENT</u>
Repayment Account (Balance as of 1/3/15)	\$36,832,317
Total Funds Authorized/Available	<u>\$36,832,317</u>
Less Loans Previously Approved	<u>\$8,158,625</u>
Funds Available for Loans	\$28,673,692
 <b>New Loan(s) Being Requested</b>	
Berlin Water Works (Project#: 0231010-11)	(2,000,000)
 Net Change to Loan(s)	 <u>(2,000,000)</u>
 <b>Balance Available After G &amp; C Approval</b>	 <u><b>\$26,673,692</b></u>

STATE OF NEW HAMPSHIRE

DRINKING WATER STATE REVOLVING FUND PROGRAM

BERLIN WATER WORKS

(Project No. 0231010-11)

ORIGINAL LOAN AGREEMENT

I. This AGREEMENT is made this 28<sup>th</sup> day of January, 2015, between the State of New Hampshire, Drinking Water State Revolving Loan Fund Program (the "State") and the **Berlin Water Works** (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, **Water Main Replacement and Transmission Pipeline 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 Dollars (\$2,000,000)** ("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 IV, VI, and VIII. 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.

1 III. The Loan Recipient is eligible for the Disadvantaged System Program as outlined in Section  
2 8 of the 2014 State of New Hampshire Drinking Water State Revolving Fund Intended Use Plan.  
3 The amount of principal forgiveness will be determined when the aggregate principal loan  
4 amount is established and the project is complete.

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

17  
18 V. Upon Substantial Completion of the Project, the aggregate of the Disbursements shall be  
19 consolidated by a Promissory Note ("Note") of the Loan Recipient issued under and in  
20 accordance with the applicable provisions of the Municipal Finance Act, RSA 33, as amended  
21 and supplemented, including the provisions of RSA 486:14. The Note shall be substantially in  
22 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 **2.97 %** and the adjusted market  
3 rate as determined by Env-Dw 1106 in effect on the date of the Note.

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 **fifteen (15)** years from the date of  
7 the Note. Note payments shall commence on the first day of the month following the first  
8 anniversary of the Substantial Completion date of the Project or the first anniversary of the  
9 Scheduled Completion date of the project, whichever is earlier. The Scheduled Completion date  
10 is hereby determined to be **December 1, 2016**; however, should the project experience excusable  
11 delay beyond this date, an extension may be granted by the Commissioner upon request in  
12 writing by the Loan Recipient. In no event shall Note payments commence later than ten years  
13 from the effective date of this agreement.

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

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

1 X. No delay or omission on the part of the State in exercising any right hereunder shall operate  
2 as a waiver of such right or of any other right under this agreement. A waiver on any one  
3 occasion shall not be construed as bar to any right and/or remedy on any future occasion.  
4

5 XI. The Loan Recipient acknowledges that by accepting the Loan it will be a sub-recipient of  
6 federal financial assistance and, as such, subject to requirements of the federal Single Audit Act  
7 of 1984, as amended by the Single Audit Act Amendments of 1996 (the "SAA"). The Loan  
8 Recipient further acknowledges that, if the Loan Recipient expends more than \$750,000 in  
9 federal financial assistance from all sources in any fiscal year, it must perform an SAA audit in  
10 accordance with the requirements of Office of Management and Budget Circular A-133. In that  
11 event, the Loan Recipient shall provide the State with a copy of the SAA audit report within nine  
12 months of the end of the audit period.  
13

14 XII. The Loan Recipient agrees to permit the Comptroller General of the United States, an  
15 appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of  
16 1978 (5 U.S.C. App.), or an authorized representative of either of the foregoing officials, or of  
17 the State of New Hampshire to have access to and the right to:  
18

19 (i) Examine any of the Borrower's, the contractor's or any subcontractor's records  
20 that pertain to and involve transactions relating to this Agreement, the Construction  
21 Contract, the Engineering Contract or a subcontract thereunder; and  
22

23 (ii) Interview any officer or employee regarding such transactions.  
24  
25

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

3  
4 XIII. Davis-Bacon (DB) prevailing wage requirements apply to the Project in accordance with  
5 the federal fiscal year (FY) 2014 Consolidated Appropriations Act (P.L. 113-76). The Loan  
6 Recipient shall insert in full in any contract in excess of \$2,000 which is entered into for Project  
7 construction the standard Davis-Bacon contract clause as specified by 29 CFR §5.5(a). The  
8 Loan Recipient shall obtain the wage determination for the locality in which a covered activity  
9 subject to DB will take place prior to issuing requests for bids, proposals, quotes or other  
10 methods for soliciting contracts (solicitation) for activities subject to DB. These wage  
11 determinations shall be incorporated into solicitations and any subsequent contracts. Prime  
12 contracts must contain a provision requiring that subcontractors follow the wage determination  
13 incorporated into the prime contract.

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

1 XV. The Loan Recipient shall not knowingly award a construction contract to a contractor which  
2 has been debarred or suspended by the federal government. The Loan Recipient or its agent  
3 shall compare the names of contractors who have bid on the project against the searchable list in  
4 the federal "Excluded Parties List System" (EPLS) database, which can be found at  
5 <https://www.epis.gov/>; and

6  
7 XVI. Pursuant to 40 CFR, Section 33.301, the Loan Recipient shall make good faith efforts to  
8 utilize small, minority and women's business enterprises whenever procuring construction,  
9 equipment, services and supplies under an EPA financial assistance agreement, and shall require  
10 that prime contractors also comply. Records documenting compliance with the six good faith  
11 efforts shall be retained.

12  
13 XVII. The effective date of this agreement shall be the date of its approval by the Governor and  
14 Executive Council. This agreement may be amended, waived, or discharged only by a written  
15 instrument signed by the parties hereto and only after approval of such amendment, waiver, or  
16 discharge by the Governor and Executive Council.

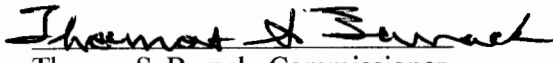
17  
18 XVIII. This agreement shall be construed in accordance with the laws of the State of New  
19 Hampshire and is binding upon and inures to the benefit of the parties and their respective  
20 successors. The parties hereto do not intend to benefit any third parties and, consequently, the  
21 agreement shall not be construed to confer any such benefit.

22  
23 XIX. This agreement, which may be executed in a number of counterparts, each of which shall  
24 be deemed an original, constitutes the entire agreement and understanding between the parties  
25

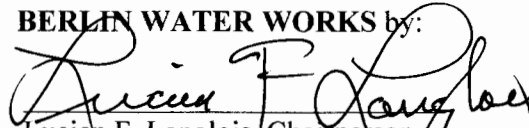


1 and supersedes all prior agreements and understandings relating thereto. Nothing herein shall be  
2 construed as a waiver of sovereign immunity, such immunity being hereby specifically reserved.

3  
4 STATE OF NEW HAMPSHIRE by:

5   
6 Thomas S. Burack, Commissioner  
Department of Environmental Services

BERLIN WATER WORKS by:

  
Lucien F. Langlois, Chairperson  
Board of Water Commissioners

**EXHIBIT A**

**STATE OF NEW HAMPSHIRE**

**DRINKING WATER STATE REVOLVING LOAN FUND PROGRAM**

**PROJECT DESCRIPTION**

The Berlin Water Works has applied for a Loan to be used for water system improvements including water main replacement within the Berlin Water Works distribution system and improvements to the Godfrey Raw Water Transmission Pipeline.

1 EXHIBIT B

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

4 PROMISSORY NOTE AND REPAYMENT SCHEDULE

5 The **Berlin Water Works** ("Loan Recipient") promises to pay to the Treasurer of the  
6 State of New Hampshire the sum of \_\_\_\_\_ Dollars (\_\_\_\_\_)  
7 in installments on the anniversary date of this Promissory Note ("Note") in each year as set forth  
8 below, 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 sum of \_\_\_\_\_% of  
11 each principal and interest installment payment will be forgiven at the time each installment is  
12 due.

13 REPAYMENT SCHEDULE

14

<u>Year</u>	<u>Principal</u>	<u>Interest</u>	<u>Total P&amp;I</u>	<u>Payment Due</u>
15 1				
16 2				
17 3				
18 4				
19 5				
20 6				
21 7				
22 8				
23 9				
24 10				
25 11				
	12			
	13			
	14			
	15			

24 This Note is issued under and by virtue of the New Hampshire Municipal Finance Act, an  
25 agreement duly entered into by the Loan Recipient and the Drinking Water State Revolving Loan

1 Fund Program ("Agreement"), a vote of the Loan Recipient at its Board Meeting on \_\_\_\_-  
2 \_\_\_\_, \_\_\_\_\_, and a duly-adopted resolution of the Governing Body of the Loan Recipient  
3 and is issued for the purpose of financing the cost of the Project as described in said Resolution  
4 and Agreement.

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

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

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

16  
17 IN WITNESS whereof the Loan Recipient has caused this Note to be signed by its  
18 \_\_\_\_\_, and the seal of the Loan Recipient to be affixed hereto, as of the  
19 \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

20  
21 BERLIN WATER WORKS by:

22 \_\_\_\_\_  
Name, Title

23  
24 (Seal)