



The State of New Hampshire
Department of Environmental Services

JUL 31 '19 PM 2:50 DAS
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Robert R. Scott, Commissioner

July 29, 2019

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 Franklin (VC# 177390-B002), Franklin, NH in the amount not to exceed \$3,605,230 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.

Funds to support this request are anticipated to be available in the following account in FY 2020 upon the availability and continued appropriation of funds in the future operating budget. Funding is available in the account as follows:

03-44-44-441018-4791-301-500833	<u>FY 2020</u>
Dept Environmental Services, DWSRF Loan Repayments, Loans	\$3,605,230

EXPLANATION

The purpose of this loan agreement is to authorize the City of Franklin to borrow up to \$3,605,230 from the Drinking Water State Revolving Loan Fund (DWSRF) to finance water system improvements. The improvements include water main replacement along New Hampton Road. The project will improve water quality and reliability for this critical section of the water system.

The final loan amount will be based on the total DWSRF funds disbursed, and may be less than \$3,605,230. 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 2.704%. The City is eligible for principal forgiveness under the 2018 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 \$22,049,470 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.


Robert R. Scott, 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 7/29/19)	<u>\$22,049,470</u>
Less Loans Previously Approved	<u>\$0</u>
Funds Available for Loans	\$22,049,470
 New Loans Being Requested	
City of Franklin (Project#: 0851010-06)	(3,605,230)
Net Change to Loan(s)	<u>(3,605,230)</u>
 Balance Available After G & C Approval	 <u><u>\$18,444,240</u></u>

1 III. The Loan Recipient is eligible for the Disadvantaged System Program as outlined in Section
2 8 of the 2018 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.

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

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

24

1 VI. The interest rate applicable to the Note will be **2.704%**, as determined in accordance with
2 RSA 486:14 and Env-Dw 1100 et seq.

3
4 VII. The Loan Recipient hereby authorizes the State to compute the payments of principal and
5 interest on the Note. The principal shall be paid in full within **thirty (30)** years from the date of
6 the Note. Note payments shall commence within one year of the Substantial Completion date of
7 the Project or the Scheduled Completion date of the project, whichever is earlier. The Scheduled
8 Completion date is hereby determined to be **December 1, 2020**; however, should the project
9 experience an excusable delay, an extension may be granted by the Commissioner of the
10 Department of Environmental Services upon request in writing by the Loan Recipient. In no
11 event shall Note payments commence later than ten years from the effective date of this
12 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
18 Aid Grant funds payable to the Loan Recipient under RSA 486:A may be offset against and
19 applied to the payment of any obligations that are due hereunder. The Loan Recipient agrees to
20 be liable for all costs of collection, legal expenses, and attorney's fees incurred or paid by the
21 State in 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 XI. The Loan Recipient agrees to comply, and to require all of its contractors to comply, with all
2 applicable state and federal requirements contained in the Rules and applicable state and federal
3 laws, including those specific requirements outlined in Exhibit C.

4
5 XII. The Loan Recipient is required to develop an asset maintenance and renewal plan for the
6 assets(s) being funded under the loan or incorporate the funded asset(s) into an existing asset
7 management plan. At a minimum the plan must include a commitment to asset management,
8 financing and implementation strategy and an inventory of the funded asset(s).

9
10 XIII. The Loan Recipient agrees to permit the Comptroller General of the United States, an
11 appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of
12 1978 (5 U.S.C. App.), or an authorized representative of either of the foregoing officials, or of
13 the State of New Hampshire to have access to and the right to:

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

19
20 (ii) Interview any officer or employee regarding such transactions.

21
22 The Loan Recipient shall insert subparagraphs (i). and (ii). in the Construction Contract and
23 require the Contractor to insert subparagraphs (i). and (ii). in all subcontracts thereunder.

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 and subsequent amendments (SAA). The Loan Recipient further acknowledges that, if the Loan
14 Recipient expends more than the required threshold in federal financial assistance from all
15 sources in any fiscal year, it must perform an SAA audit in accordance with the requirements of
16 Office of Management and Budget Circular A-133. In that event, the Loan Recipient shall
17 provide the State with a copy of the SAA audit report within nine months of the end of the audit
18 period.

19
20 XVIII. 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:

CITY OF FRANKLIN, NEW HAMPSHIRE by:

2  7-31-19
Robert R. Scott Date

 7/11/2019
Jude Milner Date

3 Commissioner
Department of Environmental Services

City Manager

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This Agreement was approved by Governor and Executive Council on _____ as

Item No. _____

E X H I B I T A

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

PROJECT DESCRIPTION

The **City of Franklin** has applied for a Loan to be used for water system improvements including the replacement of water main along New Hampton Road.

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1 EXHIBIT B

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

4 PROMISSORY NOTE AND REPAYMENT SCHEDULE

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

14 REPAYMENT SCHEDULE

15 Payment Date Principal Payment Principal Forgiveness Interest Payment Total Payment

16 1
17 2
18 3
19 4
20 5
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SAMPLE

22 This Promissory Note (Note) is issued under and by virtue of the New Hampshire
23 Municipal Finance Act, an agreement duly entered into by the Loan Recipient and the Drinking
24 Water State Revolving Loan Fund Program, and is issued for the purpose of financing the cost of
25 the Project as described in Exhibit A of the Supplemental Loan Agreement (Agreement).

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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 City Manager on the date below.

CITY OF FRANKLIN, NEW HAMPSHIRE by:

Judie Milner
City Manager

Date

(Seal)

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/>.

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10 **SIGNAGE REQUIREMENT:** The Loan Recipient must communicate to the public that EPA funds are
11 contributing to the project by constructing a sign in accordance with EPA Memo SRF 15-02. The type
12 and location of the sign shall be mutually agreed upon between the Loan Recipient and NHDES. The
13 Loan Recipient shall maintain the sign throughout the duration of the project.

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

1 **AMERICAN IRON AND STEEL (AIS):** The Loan Recipient agrees to comply with Section 436 of the
2 Consolidated Appropriations Act, 2014 (P.L. 113-76), which requires that all of the iron and steel
3 products used in the Project are to be produced in the United States (“American Iron and Steel
4 Requirement”) unless (i) the Loan Recipient has requested and obtained a waiver from the Environmental
5 Protection Agency pertaining to the Project or (ii) the State has otherwise advised the Participant in
6 writing that the American Iron and Steel Requirement is not applicable to the Project. The Loan
7 Recipient further agrees to maintain records documenting compliance with the American Iron and Steel
8 Requirement, and to provide records and certifications to the State upon request.

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10 **GENERALLY ACCEPTED ACCOUNTING PROCEDURES:** The Loan Recipient shall maintain
11 project accounts in accordance with the Generally Accepted Accounting Principles (GAAP), including
12 standards relating to the reporting of infrastructure assets as issued by the Governmental Accounting
13 Standards Board (GASB). The full text of Governmental Accounting Reporting Standards is available
14 through the GASB website at: <http://www.gasb.org>

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

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22 **EXCLUDED PARTIES LIST SYSTEMS (EPLS):** The Loan Recipient shall not knowingly award a
23 construction contract to a contractor which has been debarred or suspended by the federal government.
24 The Loan Recipient or its agent shall compare the names of contractors who have bid on the project

1 against the searchable list in the federal “Excluded Parties List System” (EPLS) database, which can be
2 found at <https://www.sam.gov/portal/SAM/#1>.

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4 **SUPER CROSS-CUTTERS:**

5 -Title VI of the Civil Rights Act

6 -Section 13 of the Federal Water Pollution Control Act Amendments of 1972

7 -Section 504 of the Rehabilitation Act of 1973

8 -The Age Discrimination Act of 1975

9 -Equal Employment Opportunity requirements (Executive Order 11246)