



The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner



October 30, 2017

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

REQUESTED ACTION

Authorize the Department of Environmental Services to approve a loan agreement with the Berlin Water Works (VC# 273697 B001), Berlin, NH in the amount not to exceed \$1,500,000 to finance water system improvements under the provisions of RSA 486:14 and N.H. Code of Administrative Rules Env-Dw 1100 et seq. effective upon Governor & Council approval. 100% Drinking Water State Revolving Loan Fund (DWSRF) Repayment Funds.

Funding is available in the account as follows:

03-44-44-441018-4791-301-500833	<u>FY 2018</u>
Dept Environmental Services, DWSRF Loan Repayments, Loans	\$1,500,000

EXPLANATION

The purpose of this loan agreement is to authorize the Berlin Water Works to borrow up to \$1,500,000 from the Drinking Water State Revolving Loan Fund (DWSRF) to finance water system improvements. The improvements include water main replacement throughout the City's distribution system. The project will improve reliability of the water system.

The final loan amount will be based on the total DWSRF funds disbursed, and may be less than \$1,500,000. 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 2.424%. The Berlin Water Works is eligible for principal forgiveness under the 2017 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 \$18,725,141 in the DWSRF available for new loans. In addition, there is currently a balance of \$13,260,141 in Repayment funds 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 10/27/17)	<u>\$13,260,141</u>
Less Loans Previously Approved	<u>\$0</u>
Funds Available for Loans	\$13,260,141
 New Loans Being Requested	
Berlin Water Works (Project #: 0231010-12)	(1,500,000)
Net Change to Loan(s)	<u>(1,500,000)</u>
 Balance Available After G & C Approval	 <u><u>\$11,760,141</u></u>

1 Plan. The amount of principal forgiveness will be determined when the aggregate principal loan
2 amount is established and the project is complete and will be applied to the loan upon the initial
3 repayment.

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

16
17 V. The aggregate of the Disbursements shall be consolidated by a Promissory Note (Note) of the
18 Loan Recipient in a Supplemental Loan Agreement issued under and in accordance with the
19 applicable provisions of this Agreement and the Municipal Finance Act, RSA 33, as amended
20 and supplemented, including the provisions of RSA 486:14. The Note shall be substantially in
21 the form of Exhibit B.

22
23 VI. The interest rate applicable to the Note will be **2.424%**, as determined in accordance with
24 RSA 486:14 and Env-Dw 1100 et seq.

1 VII. The Loan Recipient hereby authorizes the State to compute the payments of principal and
2 interest on the Note. The principal shall be paid in full within **twenty (20)** years from the date of
3 the Note. Note payments shall commence within one year of the Substantial Completion date of
4 the Project or the Scheduled Completion date of the project, whichever is earlier. The Scheduled
5 Completion date is hereby determined to be **June 2, 2020**; however, should the project
6 experience an excusable delay, an extension may be granted by the Commissioner of the
7 Department of Environmental Services upon request in writing by the Loan Recipient. In no
8 event shall Note payments commence later than ten years from the effective date of this
9 Agreement.

10
11 VIII. The Loan Recipient reserves the right to prepay, at any time and without penalty, all or any
12 part of the outstanding principal or interest of the Note.

13
14 IX. In the event of a default in the full and timely remittance of any Note payment, any State
15 Aid Grant funds payable to the Loan Recipient under RSA 486:A may be offset against and
16 applied to the payment of any obligations that are due hereunder. The Loan Recipient agrees to
17 be liable for all costs of collection, legal expenses, and attorney's fees incurred or paid by the
18 State in enforcing this Agreement or in collecting any delinquent payments due hereunder.

19
20 X. No delay or omission on the part of the State in exercising any right hereunder shall operate
21 as a waiver of such right or of any other right under this Agreement. A waiver on any one
22 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 XIII. 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 XIV. 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 that pertain to and involve transactions relating to this Agreement, the
17 Construction Contract, the Engineering Contract or a subcontract thereunder; and

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

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

23
24 XV. The effective date of this Agreement shall be the date of its approval by the Governor and
25 Executive Council. This Agreement may be amended, waived, or discharged only by a written

1 instrument signed by the parties hereto and only after approval of such amendment, waiver, or
2 discharge by the Governor and Executive Council.

3
4 XVI. This Agreement shall be construed in accordance with the laws of the State of New
5 Hampshire and is binding upon and inures to the benefit of the parties and their respective
6 successors. The parties hereto do not intend to benefit any third parties and, consequently, the
7 Agreement shall not be construed to confer any such benefit.

8
9 XII. The Loan Recipient acknowledges that by accepting the Loan it will be a sub-recipient of
10 federal financial assistance and, as such, subject to requirements of the federal Single Audit Act
11 and subsequent amendments (SAA). The Loan Recipient further acknowledges that, if the Loan
12 Recipient expends more than the required threshold in federal financial assistance from all
13 sources in any fiscal year, it must perform an SAA audit in accordance with the requirements of
14 Office of Management and Budget Circular A-133. In that event, the Loan Recipient shall
15 provide the State with a copy of the SAA audit report within nine months of the end of the audit
16 period.

17
18 XVII. This Agreement, which may be executed in a number of counterparts, each of which shall
19 be deemed an original, constitutes the entire agreement and understanding between the parties
20 and supersedes all prior agreements and understandings relating thereto. Nothing herein shall be
21 construed as a waiver of sovereign immunity, such immunity being hereby specifically reserved.

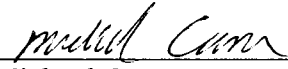
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STATE OF NEW HAMPSHIRE by:

BERLIN WATER WORKS,

NEW HAMPSHIRE by:

 10-31-17
Robert R. Scott Date
Commissioner
Department of Environmental Services

 10/17/17
Michael Caron Date
Chairperson
Board of Water Commissioners

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 **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.

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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 **Berlin Water Works, 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
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This Promissory Note (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, and is issued for the purpose of financing the cost of the Project as described in Exhibit A of the Supplemental Loan Agreement (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.

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IN WITNESS whereof the Loan Recipient has caused this Note to be signed by its

_____, on the date(s) below.

BERLIN WATER WORKS, NEW HAMPSHIRE by:

Michael Caron
Chairperson
Board of Water Commissioners

Date

(Seal)

SAMPLE

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)
6 number. The federal government has adopted the use of DUNS numbers to track how federal
7 grant money is allocated. DUNS numbers identify your organization. A DUNS number may be
8 obtained by visiting <http://fedgov.dnb.com/webform/>.

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

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

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

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

13 http://www.gasb.org/jsp/GASB/Document_C/GASBDocumentPage?cid=1176160029121&acceptedDisclaimer=true

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

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

1 who have bid on the project against the searchable list in the federal “Excluded Parties List
2 System” (EPLS) database, which can be 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