



Department of Environmental Services

Robert R. Scott, Commissioner



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March 26, 2018

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 Lebanon (VC# 177422-B002), Lebanon, NH in the amount not to exceed \$189,000 to finance water system improvements under the provisions of 485:F effective upon Governor & Council approval. 100% Drinking Water and Groundwater Trust Fund.

Funding is available in the account as follows:

03-44-44-442010-3904-301-500580	<u>FY 2018</u>
Dept Environmental Services, DWGW Trust, Loans	\$189,000

EXPLANATION

The Drinking Water and Ground Water Trust Fund was created in 2016, using \$276 million of MtBE trial judgement funds, as authorized by RSA 485-F. The purpose of the Trust Fund is to provide sustainable, long-term funding for the protection, preservation, and enhancement of the drinking water and groundwater resources of the state. The Drinking Water and Groundwater Advisory Commission was established to administer the Trust Fund and to provide guidance to the State on the use of the Trust Fund.

On November 2, 2017, the Advisory Commission voted to authorize ten grants and eleven loans to various communities for drinking water improvement projects. The City of Lebanon's CSO #12 & #13 Water Main Replacement Design Project request for \$189,000 was on the list for an initial round of funding from the Drinking Water and Groundwater Trust Fund (DWGTF). The purpose of this loan agreement is to authorize the City of Lebanon to borrow up to \$189,000 from the DWGTF to finance water system improvements. The improvements include the design and engineering for water main replacement within the City's combined sewer outfall (CSO) #12 and #13 project areas. This project is a continuation of a City wide CSO separation project.

The final loan amount will be based on the total DWGTF funds disbursed, and may be less than \$189,000. The City is eligible for 10% principal forgiveness. The amount of principal forgiveness will be determined when the aggregate principal amount is established and the project is complete.

We respectfully request your approval.

Robert R. Scott
Commissioner

1 **STATE OF NEW HAMPSHIRE**
2 **DRINKING WATER AND GROUNDWATER TRUST FUND**

3 **CITY OF LEBANON, NEW HAMPSHIRE**
4 (Project No. **DWGT-17**)

5 **ORIGINAL LOAN AGREEMENT**

6 I. This Agreement is between the State of New Hampshire Drinking Water and Groundwater
7 Trust Fund Loan Program (State) and the **City of Lebanon, New Hampshire** (Loan Recipient)
8 in accordance with RSA 485-F for the purpose of financing, to the extent of the aggregate
9 amount of funds transferred (Disbursements) to the Loan Recipient made hereunder, the **CSO**
10 **#12 & 13 Water Main Replacement Design Project** (Project) now being undertaken by the
11 Loan Recipient. The Project is described in Exhibit A. The Loan Recipient shall abide by all of
12 the requirements of RSA 485:F.

13
14 II. The State agrees to loan to the Loan Recipient, and the Loan Recipient agrees to repay to the
15 State, in accordance with the terms of this Agreement, the principal sum of **One Hundred**
16 **Eighty Nine Thousand and 00/100 Dollars (\$189,000)** (Principal Sum) or such lesser amount
17 as shall equal the aggregate of Disbursements made hereunder by the State to the Loan
18 Recipient. In addition to the principal sum, the Loan Recipient agrees to pay the applicable
19 interest accrued as described in Paragraphs IV, VI, and VIII. Any Disbursement or other
20 payment from the State to the Loan Recipient is contingent upon the availability of funds.

21
22 III. The Loan Recipient is eligible for principal forgiveness. The amount of principal forgiveness
23 is 10% of the total dollar amount of Disbursements and will be determined when the aggregate
24 principal loan amount is established and the project is complete and will be applied to the loan
25 upon the initial repayment.

1 IV. Disbursements shall be made on a periodic basis, as requested by the Loan Recipient, but
2 not more frequently than monthly, subject to the approval of the amount of each Disbursement
3 by the State. The State shall approve the amount requested if it determines that the costs covered
4 by the request are eligible under and consistent with the purposes of RSA485-F, and consistent
5 with the project application as approved by the N.H. Drinking Water and Groundwater Advisory
6 Commission. Such approval shall be within the sole discretion of the State but shall not be
7 unreasonably withheld. Interest on each Disbursement shall accrue on the outstanding principal
8 balance from the date of the Disbursement at the rate of 1% per annum computed on the basis of
9 30-day months and 360-day years until the date of Substantial Completion of the Project or the
10 date of Scheduled Completion as noted in Paragraph VII, whichever is earlier. At the option of
11 the Loan Recipient, such interest may be paid (1) prior to the commencement of Loan
12 repayment, (2) at the time of the first Loan repayment, or (3) by adding the charges to the
13 outstanding principal Loan balance so long as the Loan Recipient's authority to borrow is not
14 exceeded.

15
16 V. The aggregate of the Disbursements shall be consolidated by a Promissory Note (Note) of the
17 Loan Recipient in a Supplemental Loan Agreement issued under and in accordance with the
18 applicable provisions of this Agreement and the Municipal Finance Act, RSA 33, as amended
19 and supplemented, including the provisions of RSA 485-F. The Note shall be substantially in the
20 form of Exhibit B.

21
22 VI. The interest rate applicable to the Note will be **2.424%**.

23
24 VII. The Loan Recipient hereby authorizes the State to compute the payments of principal and
25 interest on the Note. The principal shall be paid in full within **twenty (20)** years from the date of

1 the Note. Note payments shall commence within one year of the Substantial Completion date of
2 the Project or the Scheduled Completion date of the project, whichever is earlier. The Scheduled
3 Completion date is hereby determined to be **June 1, 2019**; however, should the project
4 experience an excusable delay, an extension may be granted by the Commissioner of the
5 Department of Environmental Services upon request in writing by the Loan Recipient.

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

9
10 IX. In the event of a default in the full and timely remittance of any Note payment, any State
11 Grant funds payable to the Loan Recipient under RSA 486-A may be offset against and applied
12 to the payment of any obligations that are due hereunder. The Loan Recipient agrees to be liable
13 for all costs of collection, legal expenses, and attorney's fees incurred or paid by the State in
14 enforcing this Agreement or in collecting any delinquent payments due hereunder.

15
16 X. No delay or omission on the part of the State in exercising any right hereunder shall operate
17 as a waiver of such right or of any other right under this Agreement. A waiver on any one
18 occasion shall not be construed as a bar to any right and/or remedy on any future occasion.

19
20 XI. The Loan Recipient agrees to comply, and to require all of its contractors to comply, with all
21 applicable state requirements, including those specific requirements outlined in Exhibit C.

22
23 XIII. The Loan Recipient is required to develop an asset maintenance and renewal plan for the
24 assets(s) being funded under the loan or incorporate the funded asset(s) into an existing asset

1 management plan. At a minimum the plan must include a commitment to asset management,
2 financing and implementation strategy and an inventory of the funded asset(s).

3
4 XIV. The Loan Recipient agrees to permit an authorized representative of the State of New
5 Hampshire to have access to and the right to:

6
7 (i) Examine any of the Loan Recipient's, the contractor's or any subcontractor's
8 records that pertain to and involve transactions relating to this Agreement, the
9 Construction Contract, the Engineering Contract or a subcontract thereunder; and

10
11 (ii) Interview any officer or employee regarding such transactions.

12
13 The Loan Recipient shall insert subparagraphs (i). and (ii). into the Construction Contract and
14 require the Contractor to insert subparagraphs (i). and (ii). into all subcontracts thereunder.

15
16 XV. The effective date of this Agreement shall be the date of its approval by the Governor and
17 Executive Council. This Agreement may be amended, waived, or discharged only by a written
18 instrument signed by the parties hereto and only after approval of such amendment, waiver, or
19 discharge by the Governor and Executive Council.

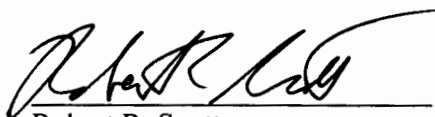
20
21 XVI. This Agreement shall be construed in accordance with the laws of the State of New
22 Hampshire and is binding upon and inures to the benefit of the parties and their respective
23 successors. The parties hereto do not intend to benefit any third parties and, consequently, the
24 Agreement shall not be construed to confer any such benefit.

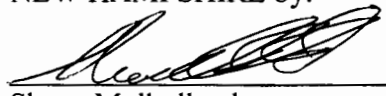
1 XVII. This Agreement, which may be executed in a number of counterparts, each of which shall
2 be deemed an original, constitutes the entire agreement and understanding between the parties
3 and supersedes all prior agreements and understandings relating thereto. Nothing herein shall be
4 construed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

8 STATE OF NEW HAMPSHIRE by:

CITY OF LEBANON,

NEW HAMPSHIRE by:

9
10  3-29-18
11 Robert R. Scott Date
12 Commissioner
13 Department of Environmental Services

 3/25/18
14 Shaun Mulholland Date
15 City Manager
16 City of Lebanon

17 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 AND GROUNDWATER TRUST FUND**

PROJECT DESCRIPTION

The **CITY OF LEBANON** has applied for a Loan to be used for design and engineering for water main replacement within the City's Combined Sewer Outfall (CSO) #12 and #13 project areas.

1 **EXHIBIT B**

2 **STATE OF NEW HAMPSHIRE**
3 **DRINKING WATER AND GROUNDWATER TRUST FUND**

4 **PROMISSORY NOTE AND REPAYMENT SCHEDULE**

5
6 The **CITY OF LEBANON, 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
21 6
22 7
23 8
24 9
25 10

1 11
2 12
3 13
4 14
5 15
6 16
7 17
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11
12 This Promissory Note (Note) is issued under and by virtue of the New Hampshire
13 Municipal Finance Act, an agreement duly entered into by the Loan Recipient and the Drinking
14 Water and Groundwater Trust Fund, and is issued for the purpose of financing the cost of the
15 Project as described in Exhibit A of the Supplemental Loan Agreement (Agreement).

16
17 The Loan Recipient reserves the right to prepay, at any time and without penalty, all or
18 any part of the outstanding principal or interest on this Note.

19
20 The terms and provisions of the Agreement are hereby incorporated in and made a part of
21 this Note to the same extent as if said terms and provisions were set forth in full herein.

22
23 It is hereby certified and recited that all acts, conditions, and things required to be done
24 precedent to and in the issuing of this Note have been done, have happened, and have been

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

3

4 IN WITNESS whereof the Loan Recipient has caused this Note to be signed by its City
5 Manager, on the date below.

6

7 CITY OF LEBANON, NEW HAMPSHIRE by:

8

Shaun Mulholland
City Manger
City of Lebanon

Date

(Seal)

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1 **EXHIBIT C**

2 **STATE OF NEW HAMPSHIRE**
3 **DRINKING WATER AND GROUNDWATER TRUST FUND**

4 **REQUIREMENTS**

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6 **SIGNAGE REQUIREMENT:** The Loan Recipient must communicate to the public that state funds are
7 contributing to the project with signage. The type and location of the sign shall be mutually agreed upon
8 between the Loan Recipient and NHDES. The Loan Recipient shall maintain the sign throughout the
9 duration of the project.

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

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

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

5
6 **GENERALLY ACCEPTED ACCOUNTING PROCEDURES:** The Loan Recipient shall maintain
7 project accounts in accordance with the Generally Accepted Accounting Principles (GAAP), including
8 standards relating to the reporting of infrastructure assets as issued by the Governmental Accounting
9 Standards Board (GASB). The full text of Governmental Accounting Reporting Standards is available
10 through the GASB website at: <http://www.gasb.org>

11
12 **DISADVANTAGED BUSINESS ENTERPRISE (DBE):** Pursuant to 40 CFR, Section 33.301, the
13 Loan Recipient shall make good faith efforts to utilize small, minority and women's business enterprises
14 whenever procuring construction, equipment, services and supplies under this agreement, and shall
15 require that prime contractors also comply. Records documenting compliance with the six good faith
16 efforts shall be retained.

17
18 **EXCLUDED PARTIES LIST SYSTEMS (EPLS):** The Loan Recipient shall not knowingly award a
19 construction contract to a contractor which has been debarred or suspended by the federal government.
20 The Loan Recipient or its agent shall compare the names of contractors who have bid on the project
21 against the searchable list in the federal "Excluded Parties List System" (EPLS) database, which can be
22 found at <https://www.sam.gov/portal/SAM/#1>.