



The State of New Hampshire
Department of Environmental Services

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Robert R. Scott, Commissioner

December 13, 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 amend a Clean Water State Revolving Fund (CWSRF) loan agreement (PO #9005233) with the City of Portsmouth (VC #177463 B001) to increase funding by \$3,500,000, from \$75,000,000 to \$78,500,000, under the provisions of RSA 486:14 and N.H. Code of Admin. Rules Env-Wq 500 et seq., effective upon Governor & Council approval. The original loan agreement was approved by G&C on April 20, 2016 as Item No. 46 and Amendment No. 1 was approved by Commissioner Burack on December 14, 2016. Funding is 100% CWSRF Repayment Funds.

Funding is available in the account as follows:

	<u>FY 2018</u>
03-44-44-441018-2001-301-500832	\$3,500,000
Dept. Environmental Services, CWSRF Loan Repayments, Loans	

EXPLANATION

The purpose of this Amendment is to increase the City of Portsmouth's existing CWSRF Loan by \$3,500,000 to fund ongoing construction of the Peirce Island WWTF Upgrade Project.

The final loan amount will be based on the total CWSRF funds disbursed, and may be less than \$78,500,000. Under federal capitalization grant requirements this loan includes principal forgiveness in the amount of up to \$3,925,000. The loan interest rate may be adjusted downward if the CWSRF loan rate in effect upon project completion is less than the current rate of 2.2320%.

Attached is a tabulation of the CWSRF showing the effect of this action on the funds available for loans.

We respectfully request your approval.

Robert R. Scott, Commissioner

DEPARTMENT OF ENVIRONMENTAL SERVICES
WATER DIVISION
CLEAN WATER STATE REVOLVING FUND

Supplemental information to Governor and Council request for loan agreements under RSA 486:14 and N.H. Admin. Rules Env-Wq 500 for the municipality listed below:

This request will change the balance available for loans as follows:

	CWSRF Repayment
Repayment Funds as of December 13, 2017	<u>\$75,372,887</u>
Loan Agreement(s) This Request:	
City of Portsmouth	\$3,500,000
Other Requested Action(s)	
None	
Net Change †	<u>\$3,500,000</u>
Balance Available after G & C Approval	<u>\$71,872,887</u>

† Negative numbers in this row indicate funds returned to account

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AMENDMENT No. 2
TO
STATE OF NEW HAMPSHIRE
WATER POLLUTION CONTROL REVOLVING FUND PROGRAM
CITY OF PORTSMOUTH, NEW HAMPSHIRE
ORIGINAL LOAN AGREEMENT
For Project CS-330106-16

To increase the City of Portsmouth's loan amount for the Peirce Island WWTF Upgrade Project, CWSRF Loan Number CS-330106-16 from \$75,000,000 to \$78,500,000.

Now therefore, amend the ORIGINAL LOAN AGREEMENT, as approved by Governor and Council on April 20, 2016 as Item No. 46 and amended on December 14, 2016, in the following manner:

Change only Page 1 lines 16 through 17 of the ORIGINAL LOAN AGREEMENT to read as follows:

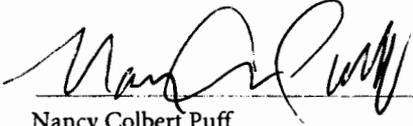
"...State, in accordance with the terms of this Agreement, the principal sum of **Seventy Eight Million, Five Hundred Thousand and 00/100 Dollars (\$78,500,000.00)** (Principal Sum) or such lesser amount as shall equal...";

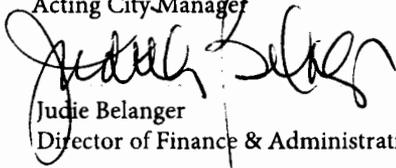
And, change only Page 1, lines 21 through 22 of the ORIGINAL LOAN AGREEMENT to read as follows:

"...principal sum, not to exceed **Three Million, Nine Hundred Twenty-Five Thousand and 00/100 Dollars (\$3,925,000)** or up to 5% of the total of Disbursements for wastewater related portions...".

Accepted by
City of Portsmouth, New Hampshire

Accepted by
State of New Hampshire


Nancy Colbert Puff
Acting City Manager
Date 01/10/17


Judie Belanger
Director of Finance & Administration
Date 10/11/17


Robert R. Scott,
Commissioner
Department of Environmental Services
Date 12/19/17



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

March 31, 2016

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Council
State House
Concord, New Hampshire 03301

APPROVED G & C
DATE 4/20/16
ITEM # 46

REQUESTED ACTION

Authorize the Department of Environmental Services to approve a Clean Water State Revolving Fund (CWSRF) loan agreement with the City of Portsmouth (VC #177463 B001) in an amount not to exceed \$75,000,000 to finance the Peirce Island Wastewater Treatment Facility Upgrade project under the provisions of RSA 486:14 and N.H. Code of Admin. Rules Env-Wq 500 et seq., effective upon Governor & Council approval. Funding is 100% CWSRF Repayment Funds.

Funding is available in the account as follows:

03-44-44-441018-2001-301-500832 FY 2016
Dept. Environmental Services, CWSRF Loan Repayments, Loans \$75,000,000

EXPLANATION

The purpose of the Original Loan Agreement is to authorize the City of Portsmouth to borrow up to \$75,000,000 from the CWSRF to finance the Peirce Island Wastewater Treatment Facility Upgrade project. The project will include demolition of several buildings and construction of new facilities to bring the facility into compliance with current rules and permits. Offsite improvements include a new water main and a new electric service from the pool to the WWTF with associated roadway repairs. Construction is anticipated to take approximately three to four years and the facility will be operational throughout the duration of construction.

The Supplemental (final) loan amount may be less than \$75,000,000. Under federal capitalization grant requirements this loan includes principal forgiveness in the amount of up to \$3,750,000. The loan interest rate may be adjusted downward if the CWSRF loan rate in effect upon project completion is less than the current rate of 2.5520%.

Attached is a tabulation of the CWSRF showing the effect of this action on the funds available for loans.

We respectfully request your approval.

Thomas S. Burack, Commissioner

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Council

Page 2 of 2

DEPARTMENT OF ENVIRONMENTAL SERVICES
WATER DIVISION
CLEAN WATER STATE REVOLVING FUND

Supplemental information to Governor and Council request for loan agreements under RSA 486:14
and N.H. Admin. Rules Env-Wq 500 for the municipality listed below:

This request will change the balance available for loans as follows:

	CWSRF
	Repayment
Repayment Funds as of March 31, 2016	\$145,042,419
Less Loans Previously Approved	\$0
Funds Available for Loans	\$145,042,419
Loan Agreement(s) This Request:	
City of Portsmouth	\$75,000,000
Other Requested Action(s)	
Town of Allenstown	\$30,000
Net Change †	\$75,030,000
Balance Available after G & C Approval	\$70,012,419

† Negative numbers in this row indicate funds returned to account

AMENDMENT No. 1
TO
STATE OF NEW HAMPSHIRE
WATER POLLUTION CONTROL REVOLVING FUND PROGRAM
CITY OF PORTSMOUTH, NEW HAMPSHIRE
ORIGINAL LOAN AGREEMENT
For Project CS-330106-16

To decrease the City of Portsmouth's interest rate for the Peirce Island WWTF Upgrade Project, CWSRF Loan Number CS-330106-16 from 2.5520% to 2.2320%, due to the re-adoption of administrative rules Env-Wq 500, effective December 1, 2015.

Now therefore, amend the ORIGINAL LOAN AGREEMENT for Project CS-330106-16, as approved by Governor and Council on April 20, 2016 in the following manner:

Change only Page 2, Line 21 of the ORIGINAL LOAN AGREEMENT to read:

"... and Env-Wq 500 et seq. Such interest rate will be the lesser of 2.2320% and the adjusted market ..."

Accepted by
City of Portsmouth, New Hampshire



City Manager 9-16-16
Date



Finance Director 9-16-16
Date

Accepted by
State of New Hampshire



Thomas S. Burack, Commissioner 12/19/2016
Date
Department of Environmental Services

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STATE OF NEW HAMPSHIRE
WATER POLLUTION CONTROL REVOLVING FUND PROGRAM
CITY OF PORTSMOUTH, NEW HAMPSHIRE
(Project No. CS-330106-16)

ORIGINAL LOAN AGREEMENT

I. This AGREEMENT is made this 20th day of April, 2016, between the State of New Hampshire Water Pollution Control Revolving Loan Fund Program (State) and the City of Portsmouth, New Hampshire (Loan Recipient) in accordance with RSA 486:14 and New Hampshire Code of Administrative Rules Env-Wq 500 (Rules) for the purpose of financing, to the extent of the aggregate amount of funds transferred (Disbursements) to the Loan Recipient made hereunder, the **Peirce Island WWTF Upgrade 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 **Seventy Five Million and 00/100 Dollars (\$75,000,000)** (Principal Sum) or such lesser amount as shall equal the aggregate of Disbursements made hereunder by the State to the Loan Recipient. Pursuant to federal capitalization grant requirements, additional financial assistance in the form of principal forgiveness will be applied to the loan upon the initial repayment as follows: A portion of the principal sum, not to exceed **Three Million, Seven Hundred Fifty Thousand and 00/100 Dollars (\$3,750,000)** or up to **5%** of the total of Disbursements for wastewater related portions, whichever is less. In addition to the principal sum, the Loan Recipient agrees to pay the applicable interest accrued as described in Paragraphs III, V, and VII. Federal financial assistance provided through the State Water Pollution Control Revolving Fund Program (CFDA

1 #66.458) may comprise a portion of the Principal Sum. Any Disbursement or other payment
2 from the State to the Loan Recipient is contingent upon the availability of funds.

3
4 III. Disbursements shall be made on a periodic basis, as requested by the Loan Recipient, but not
5 more frequently than monthly, subject to the approval of the amount of each Disbursement by
6 the State. The State shall approve the amount requested if it determines that the costs covered by
7 the request are eligible under Env-Wq 504.02 through Env-Wq 504.04, as applicable. Interest on
8 any Disbursement shall accrue from the date of the Disbursement at the rate of 1% per annum
9 computed on the basis of 30-day months and 360-day years until the date of Substantial
10 Completion of the Project. At the option of the Loan Recipient, such interest may be paid (1)
11 semi-annually, prior to the commencement of Loan repayment, (2) prior to the commencement
12 of Loan repayment, (3) at the time of the first Loan repayment, or (4) added to the principal
13 outstanding Loan balance, so long as the Loan Recipient's authority to borrow is not exceeded.

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

19
20 V. The interest rate applicable to the Note will be determined in accordance with RSA 486:14
21 and Env-Wq 500 et seq. Such interest rate will be the lesser of **2.5520%** and the adjusted market
22 rate as determined by the Rules at the time of loan closure.

23
24 VI. 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 **20 years** from the date of the

1 Note. Note payments shall commence within one year of the Substantial Completion date of the
2 Project or the Scheduled Completion date of the project, whichever is earlier. The Scheduled
3 Completion date is hereby determined to be **June 1, 2020**; however, should the project
4 experience an excusable delay beyond this date, an extension may be granted by the
5 Commissioner upon request in writing by the Loan Recipient. In no event shall Note payments
6 commence later than ten years from the effective date of this agreement.

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

10
11 VIII. In the event of a default in the full and timely remittance of any Note payment, any State
12 Aid Grant funds payable to the Loan Recipient under RSA 486:1 may be offset against and
13 applied to the payment of any obligations that are due hereunder. The Loan Recipient agrees to
14 be liable for all costs of collection, legal expenses, and attorney fees incurred or paid by the State
15 in enforcing this agreement or in collecting any delinquent payments due hereunder.

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

20
21 X. The Loan Recipient agrees to comply, and to require all of its contractors to comply, with all
22 applicable state and federal requirements contained in the Rules and applicable federal law.
23 Exhibit C contains specific federal requirements applicable to this agreement for the loan
24 recipient including obtaining a Data Universal Numbering System (DUNS) number, adhering to
25 the provisions of the Davis-Bacon Act and American Iron and Steel Requirements, certifying

1 that a Fiscal Sustainability Plan has been developed and implemented and that the project design
2 included consideration of Cost and Effectiveness.

3

4 XI. The effective date of this agreement shall be the date of its approval by the Governor and
5 Executive Council. This agreement may be amended, waived, or discharged only by a written
6 instrument signed by the parties hereto and only after approval of such amendment, waiver, or
7 discharge by the Governor and Executive Council.

8

9 XII. This agreement shall be construed in accordance with the laws of the State of New
10 Hampshire and is binding upon and inures to the benefit of the parties and their respective
11 successors. The parties hereto do not intend to benefit any third parties and, consequently, the
12 agreement shall not be construed to confer any such benefit.

13

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

22

23 XIV. 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

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.

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STATE OF NEW HAMPSHIRE

CITY OF PORTSMOUTH, NEW HAMPSHIRE

By: Thomas S. Burack 3/31/16
Thomas S. Burack Date
Commissioner,
Department of Environmental Services

By: [Signature] 3-29-16
City Manager Date
[Signature] 3-29-16
Finance Director Date

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EXHIBIT A
STATE OF NEW HAMPSHIRE
WATER POLLUTION CONTROL REVOLVING LOAN FUND PROGRAM
PROJECT DESCRIPTION

The **City of Portsmouth** has applied for a Loan to be used for the **Peirce Island WWTF Upgrade Project**. The project consists of upgrading the existing wastewater treatment facility (WWTF) on Peirce Island to bring it into compliance with the U.S. Environmental Protection agency requirements.

The project involves demolition of several buildings and construction of new facilities including a new headworks building; a new gravity thickener; replacement of the existing Administration Building with a new Solids Building; a new two-stage Biological Aerated Filter (BAF) system; demolition of the first floor of the existing Solids Processing Building and replacement with a new first floor superstructure of the Operations/Lab Building on the foundation of the former Sludge Processing Building, and associated utility and site improvements within the fenced facility. Offsite improvements include a new water main and a new electric service from the pool to the WWTF with associated roadway repairs. Construction is anticipated to take approximately three to four years and the facility will be operational throughout the duration of construction.

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EXHIBIT B
STATE OF NEW HAMPSHIRE
WATER POLLUTION CONTROL REVOLVING LOAN FUND PROGRAM
PROMISSORY NOTE AND REPAYMENT SCHEDULE

The City of Portsmouth (“Loan Recipient”) promises to pay to the Treasurer of the State of New Hampshire the principal sum of **Seventy Five Million and 00/100 Dollars (\$75,000,000)** 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

<u>Year</u>	<u>Principal</u>	<u>Interest</u>	<u>Principal Forgiveness</u>	<u>Payment Due</u>
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11 This Note is issued under and by virtue of the New Hampshire Municipal Finance Act, an
12 agreement duly entered into by the Loan Recipient and the Water Pollution Control Revolving
13 Loan Fund Program (Agreement), a vote of the Loan Recipient at its **City Council Meeting on**
14 **March 14, 2016**, and a duly-adopted resolution of the Governing Body of the Loan Recipient
15 and is issued for the purpose of financing the cost of the Project as described in said Resolution
16 and Agreement.

17

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

20

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

23

24 It is hereby certified and recited that all acts, conditions, and things required to be done
25 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
5 _____, and the seal of the Loan Recipient to be affixed hereto, as of the
6 ____ day of _____, 20__.

7

8 **CITY OF PORTSMOUTH, NEW HAMPSHIRE** by:

9 Name/Title _____

10 Authorized Representative _____ (Town Seal)