

DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF DRINKING WATER

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(Date)

(Contact Person for Entity, Title)

(Name of Entity)

(Address of Entity)

(City), Utah (Zip Code)

(Salutation):

Subject: State Loan Authorization and Procedures for Committal of Funds

On (Month & Day), (Year), the Drinking Water Board (hereinafter called the "Board") authorized a construction grant of \$(Board Authorized Amount),000.00 and a loan of \$(Board Authorized Amount),000.00 to (Name of Entity) (hereinafter called the "Sponsor") for the construction of drinking water system improvements (hereinafter called the "Project"). The loan from the Board will be secured by General Obligation bond(s), Non-voted Water Revenue bond(s), or a combination thereof issued by the Sponsor (hereinafter referred to as the "Bonds"). The Board has determined the retirement period for the Bonds is to be no more than 20 annual installments beginning January 1, 200? with interest payable on the unpaid principal balance from the date of issuance at an annual rate of (?.??)%. The Board will require annual payments on the Bonds in the amount of approximately \$(Estimated P&I Payment) (proposed bond repayment schedule is attached). Interest only payments calculated from the date of closing through January 1, 200?, will be due on the first day of January in 200?. If a revenue bond is used, a reserve fund of \$(Estimated P&I Payment) must be established by no more than 10 equal annual deposits.

The construction grant portion will be available for deposit in the escrow account mentioned in item 2 along with other funds after completion and signing of the enclosed construction grant agreement and completion of bonding requirements for the loan.

As a condition of this loan, the Board will require the sponsor to conduct a review of the charges for service with the assistance of the Division of Drinking Water and establish a rate structure that will conserve water and provide funds for debt service. As an additional condition, the Board will require the sponsor to establish a capital facilities replacement reserve account. Annual payments/Deposits to this fund should be 5% of the Sponsor's drinking water system's annual operating budget including debt service and depreciation, and must continue until the Bond is redeemed. This capital facilities replacement reserve fund shall not serve as security for the payment of principal or interest on the loan. The Sponsor shall adopt such resolutions as necessary to limit the use of the fund to construct capital facilities for its water system and to notify the Board prior to making any disbursements from the fund so the Board can confirm that any expenditure is for an acceptable purpose, the Sponsor will not need the consent of the Board prior to making any expenditure from the fund.

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The Bonds may be prepaid, in whole or in part, at any time in minimum amounts of \$1,000 or any integral multiple thereof, with the prepayments applied against the Bond principal in inverse order of maturities. In addition, if any Bond proceeds remain after the Project is completed, those remaining proceeds shall be used to redeem Bond principal in inverse order of maturities. The Bond documents must contain the following provisions:

- i] The Bonds will be issued initially in the form of a single, fully-registered bond in the amount of **\$??,000.00**. However, provisions should be made which would allow the Bonds to be exchanged for separate serial bonds in minimum denominations of \$1,000.
- ii] If a revenue bond is used the Bonds must be secured by a pledge by the Sponsor of 100% of the net revenue produced by the Sponsor's water system, and the Sponsor will be required to warrant and demonstrate that those net revenues equal or exceed 125% of the total annual debt service requirements on the Bonds and any other obligations secured by a pledge of those revenues.
- iii] If interest is payable on the Bonds, that interest must be tax-exempt, and delivery of the Bonds must be accompanied by an opinion of recognized bond counsel that the interest is not subject to state or federal income taxes.
- iv] If a revenue bond is used, and if the Sponsor has previously issued bonds or other obligations secured by a pledge of water system revenues, the Bonds to be purchased by the Board should be issued on a parity with those prior bonds or obligations with respect to the revenue. If it is not possible for the Bonds to be issued on a parity basis, the Sponsor should contact Mr. Michael Georgeson immediately at 536-4197.

Based on the information presented to the Board, the following sources of funding will be available for the construction of the Project:

<u>Agency</u>	<u>Cost Sharing</u>	<u>Share</u>	<u>% of Total</u>
Sponsor		\$??,000	?..??%
Private Sector Bonds (Applicant Obtained)		\$??,000	?..??%
Rural Development (Grant)		\$??,000	?..??%
Rural Development (Loan)		\$??,000	?..??%
Permanent Community Impact Board (Grant)		\$??,000	?..??%
Permanent Community Impact Board (Loan)		\$??,000	?..??%
Community Development Block Grant		\$??,000	?..??%
Drinking Water Board (Grant)		\$??,000	?..??%
Drinking Water Board (Loan)		\$??,000	?..??%
Total Project Cost		<u>\$???,000</u>	<u>100.00%</u>

As a condition to the purchase of the Bonds by the Board, the Sponsor must make arrangement for all loan proceeds and all other Project funds to be available for deposit into the escrow account

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described below at the time the Board delivers funds unless other acceptable arrangements have been previously made.

The Financial assistance approval process consists of two steps - authorization and committal. The first step, authorization has just been completed. Because of the demand on the Board's Loan Program, this loan was authorized subject to the availability of funds. After the Project's construction bids have been opened and the below listed requirements have been met, the Sponsor must arrange to meet with the Board again, at which time the committal of funds will be considered subject to funds available at that time.

As Sponsor of this project, you will need to complete the following items before the Board will purchase your Bonds:

1. The State of Utah has assigned Special Assistant Attorney General William L. Prater Esq. the responsibility of reviewing all proceedings and documents relating to the sale of bonds to the Board. His address is 6925 Union Park Center, Suite 265, Midvale, Utah 84047; telephone number (801) 566-8882 or mail to P.O. Box 71368, Salt Lake City, Utah 84171. The Sponsor's bond counsel should submit the following items to his office at the times indicated below:
 - a. No later than one week prior to the meeting at which the Sponsor intends to adopt its Resolution for the issuance of the Bonds, a complete copy of the Resolution shall be submitted for review.
 - b. No later than two weeks after the adoption of the Resolution, the following items shall be submitted:
 - i] A true and complete photocopy of the Resolution as adopted, showing signatures of the appropriate officials of the Sponsor on the Resolution and on the Notice of Meeting, Acknowledgment of Notice and Consent, Certificate of Publication, Open Meeting Certificate, and other similar documents relating to the Resolution.
 - ii] A true and complete photocopy of the minutes, notices, resolutions, and other documents relating to the Bonds, showing signatures of the appropriate officials.
 - iii] A complete copy of the proposed documents to be signed at Closing, including (but not necessarily limited to) General Certificate, Signature Identification and Non-Litigation Certificate, Receipt, Arbitrage Certificate (if required), Sponsor Attorney's Non-Litigation Certificate, Certificate of Clerk (or Recorder) as to contents of Bond Transcript File, Escrow Agreement, and the Bond Attorney's Opinion.

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- iv] A copy of the water rate structure described in paragraph 3 below of this letter.
- v] A copy of the proposed opinion letter of the Sponsor's attorney described in paragraph 7 of this letter. The procedures for bond approval will be substantially the same as required by the Utah Municipal Bond Act as it applies to cities and towns. The opinion of the bond attorney must accompany delivery of the Bonds to the Board before proceeds of the loan will be released.

At or after the Closing, the Sponsor will be billed by the Special Assistant Attorney General, and those legal fees must be paid by the Sponsor. This is an eligible project expenditure. If the Sponsor fails to close the loan after this authorization, it will nonetheless be billed for the actions taken by the Special Assistant Attorney General prior to loan cancellation.

2. Consistent with requirements of the law and the covenants of applicable bond resolutions, the actual payment of funds by the Board to the Sponsor will not take place until the Board has assurance the funds will be used for Project costs and the Project will actually be completed. To assure this, all monies to be expended on the Project, including the Sponsor's share, shall be placed in an escrow account supervised by the Sponsor and the Board. A Copy of the proposed escrow agreement shall be submitted to the Board and the Special Assistant Attorney General for Review.
3. At the time of the adoption of the bond resolution, the Sponsor shall have passed an ordinance or resolution establishing reasonable water use rates and collection enforcement remedies, taking into account many factors including the need to have sufficient revenue income for all outstanding water system debts, operation and maintenance costs, and any reserve funds. It will then be necessary to implement effective collection procedures. A copy of the rate ordinance and collection enforcement procedures shall be submitted to the Board and the Special Assistant Attorney General for review.
4. The Sponsor's contract with its engineer should include the cost of developing the plans and specifications and the construction inspection of the Project. The contract should be submitted to the Division of Drinking Water for review. (This requirement is to assure the Board that adequate and appropriate arrangements are made for completing and inspecting the project within the guidelines set by the Board.)
5. The project engineer shall submit plans and specifications, bidding documents, and general conditions to the Division of Drinking Water for review prior to soliciting bids on the Project. The engineer should contact Michael Georgeson, Manager, Engineering Section, Division of Drinking Water to arrange for the expeditious review of the plans and specifications. This loan cannot be closed until after the bid opening to assure that sufficient funds are available to complete the project.

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6. Rights-of-way and easements for construction, and operation and maintenance of the Project shall be acquired. The Sponsor, through its engineer, shall furnish its attorney a right-of-way map showing the location of all sources, buildings, structures, pipelines, and other pertinent facilities not only in the Project but for the entire water system. This map will be signed by the engineer and presiding officer of the Sponsor and a copy provided to the sponsor's attorney as a basis for the certification described below.
7. The Sponsor's attorney shall certify the following items in writing to the Board:
 - a. The Sponsor is a legal entity.
 - b. The Sponsor has valid legal title to the rights-of-way both for the project to be constructed and the remainder of the existing water system.
 - c. The Sponsor has established the ownership of water rights to any and all water used in the system and such rights are summarized with associated water right numbers.
 - d. The contract documents for the construction of the Project have the proper and legal format and are in compliance with the Utah Code Annotated 1953 (including, but not limited to Title 34, Chapter 30).
 - e. After the completed and executed construction contract, along with the performance and payment bonds and evidence of necessary insurance, has been reviewed by the Sponsor's attorney, the Sponsor's attorney shall furnish to the Board his legal opinion that all of such items are legal and binding and in compliance with the Utah Code.

As indicated earlier a draft of this letter is to be submitted to the Board and Special Assistant Attorney General two weeks after the adoption of the resolution.

8. The Bonds must be accompanied by a legal opinion of recognized municipal bond counsel that interest on the bond obligations is exempt from federal income taxation. Unless otherwise covered, the opinion must also include a statement that the project to be constructed with the Bond proceeds is not for private activity and that the Sponsor has complied with all the covenants of the Board with respect to the State of Utah Revolving Fund Recapitalization Program.
9. The Sponsor must obtain and maintain continuously throughout the loan repayment period, a fidelity bond on the positions handling the Sponsor's funds, in an amount at least equal to the total amount of funds that will be on hand at any one time, exclusive of loan funds. This amount should be at least **??,000.00** This fidelity bond must be obtained and furnished to the Board prior to the loan preclosing date. The name of the insured on the position fidelity bond will be "(Name of Entity) and the State of Utah acting through the Drinking Water Board."

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10. As a condition of a non-voted revenue bond, either:
 - a. The Sponsor must provide to the Board a legal petition signed by a majority of the users of the Sponsor's service area approving the issuance of a non-voted revenue bond to the Board: or
 - b. The Sponsor must mail notices to each water user in the Sponsor's service area informing them of a public hearing. In addition to time and location of the public hearing the notice shall inform water users of the Sponsor's intent to issue a non-voted revenue bond to the Board, shall describe the face amount of the bond, the rate of interest, the repayment schedule and shall describe the impact of the project. User charge rates and connection fees should be noted in the notice. The notice shall state that water users may respond to the Sponsor in writing or in the public hearing within ten days after the date of the notice. A copy of all written responses and a certified record of a public hearing shall be forwarded to the Division of Drinking Water. If the Board feels there is significant opposition to the proposed Project, it may require the Sponsor to hold a bond election before the Board's funds will be made available.

11. As a condition of this loan, the Board will require the sponsor to complete the attached *Water Management and Conservation Plan* form, submit it for review by the Division of Drinking Water, and adopt the approved plan (completing the *Certification of Adoption*) prior the bond closing or, if the sponsor has already completed such a form for the Department of Natural Resources, submit a copy of same along with a completed Certification of Adoption.

In order to facilitate the timely completion of the financial assistance requirements outlined in this letter, the Sponsor and its attorney and engineer should submit to the Division of Drinking Water all of the items listed in numbered paragraphs 2 through 11 above prior to seeking committal of funds from the Board and no later than 30 days before the bond closing, and the Sponsor's bond attorney should submit to the Special Assistant Attorney General the items listed in subsection "b" of paragraph 1 on or before this date. As much as possible, this information should apply to the Project in general to allow a single review.

The Division of Drinking Water must be reimbursed for its expenses in preparing this loan and for those expenses in administering the construction contract. The loan preparation expenses will be billed to the Sponsor shortly after the loan closing. The contract administration costs will be billed to the Sponsor periodically through the life of the construction contract. These costs are eligible project expenses. If the Sponsor fails to close the loan after its authorization, the Sponsor will also be billed for the Division's expenses.

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These requirements will probably not cover all the matters pertaining to the Project. We anticipate that specific questions on matters relating to your Project will arise, and we are confident that a joint cooperative effort can resolve the issues.

If you have any questions concerning these requirements, please contact myself or William B. Birkes of the Division of Drinking Water.

Sincerely,

DRINKING WATER BOARD

Michael B. Georgeson
Assistant Executive Secretary

WBB

Enclosures

cc: William Prater, Esq., William L. Prater, LLC, P.O. Box 71368, S.L.C., UT 84171

Bond Counsel for Applicant, Address, City, UT 84???

Applicant's Engineer, Address, City, UT 84???

Shirl D. Clarke, adm., P.C.I.B. Fund, Div. Comm. Dev., 324 So. State St. Suite 500 S.L.C., UT 84111

Richard E. Walker, adm., CDBG, Div. Comm. Dev., 324 So. State St. Suite 500 S.L.C., UT 84111

Steven L. Wilde, Cities Loan Admin., Div. Water Resources, P.O. Box 146201, S.L.C., UT 84114-6201

Bonnie Carrig, USDA, Rural Development, P.O. Box 11350, Room 4431, S.L.C., UT 84147