The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner

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September 28, 2020

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 Clean Water State Revolving Fund (CWSRF) loan agreement with the Town of Salem (VC #177472 B001) in an amount not to exceed $75,000, to finance the Stormwater Planning – MS4 Permit Compliance 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:

	FY 2021
03-44-44-441018-2001-301-500832 Dept. Environmental Services, CWSRF Loan Repayments, Loans	$75,000

EXPLANATION

The purpose of the requested action is to authorize the Town of Salem to borrow up to $75,000 from the CWSRF to finance the Stormwater Planning – MS4 Permit Compliance project. The project includes dry weather outfall screening and sampling, as well as investigations to locate sources of illicit discharges in catchment tributaries to receiving waters impaired for bacteria.

The Supplemental (final) loan amount will be based upon the total CWSRF funds disbursed, and may be less than $75,000. Under federal capitalization grant requirements, this loan includes principal forgiveness of up to $75,000.

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

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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 September 24, 2020	$62,969,225
Loan Agreement(s) This Request:	
Town of Salem	$75,000
Other Requested Action(s)	
City of Dover	$1,185,000
City of Franklin	$75,000
Town of Sunapee	$30,000
Town of Salem	$30,000
Net Change	$1,395,000
Balance Available after G & C Approval	$61,574,225

STATE OF NEW HAMPSHIRE

WATER POLLUTION CONTROL REVOLVING LOAN FUND PROGRAM
TOWN OF SALEM, NEW HAMPSHIRE
(Project No. CS-330193-06)

ORIGINAL LOAN AGREEMENT

I. This Agreement is between the State of New Hampshire Water Pollution Control Revolving Loan Fund Program (State) and the **Town of Salem, 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 **Stormwater Planning – MS4 Permit Compliance** (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 Thousand and 00/100 Dollars ($75,000)** (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 and/or other allowances, 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 **Seventy-Five Thousand and 00/100 Dollars ($75,000)** or up to **100%** of the total of Disbursements, whichever is less, if the planning evaluation meets the State's guidelines for planning evaluation projects as determined by the State at the completion of the project. 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 Water Pollution Control Revolving Loan Fund Program (CFDA #66.458) may comprise all or a portion of the Principal Sum. Any Disbursement or other payment from the State to the Loan Recipient is contingent upon the availability of funds.

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

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

V. The interest rate applicable to the Note will be **2.0000%**, as determined in accordance with RSA 486:14 and Env-Wq 500 et seq.

VI. The Loan Recipient hereby authorizes the State to compute the payments of principal and interest on the Note. The principal shall be paid in full within **5 years** from the date of the Note. Note payments shall commence within one year of the Substantial Completion date of the Project or the Scheduled Completion date of the project, whichever is earlier. The Scheduled Completion date is hereby determined to be **September 2, 2021;** however, should the project experience an excusable delay, an extension may be granted by the Commissioner of the Department of Environmental Services upon request in writing by the Loan Recipient. In no event shall Note payments commence later than ten years from the effective date of this Agreement.

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

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

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

X. The Loan Recipient agrees to comply, and to require all of its contractors to comply, with all applicable state and federal requirements contained in the Rules and applicable state and federal laws, including those specific requirements outlined in Exhibit C.

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

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

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

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

1 STATE OF NEW HAMPSHIRE

2 By: _____ 9/30/20
Robert R. Scott Date
Commissioner,
Department of Environmental Services

SALEM, NEW HAMPSHIRE

By: _____ 9/14/2020
Town Manager Date

3 By: _____ 9/9/2020
Finance Director Date

4 This Agreement was approved by Governor and Executive Council on

5 _____, 2020 as Item No. ___.

EXHIBIT A

STATE OF NEW HAMPSHIRE

WATER POLLUTION CONTROL REVOLVING LOAN FUND PROGRAM

PROJECT DESCRIPTION

The **Town of Salem, New Hampshire** has applied for a Loan for the **Stormwater Planning – MS4 Permit Compliance** Project. The project goals are to comply with the town's permit, which regulates stormwater discharges from the small municipal separate storm sewer system, while also targeting portions of the drainage system tributaries to identify potential contributing factors to receiving waters with water quality impairments. The project includes dry weather outfall screening and sampling, as well as investigations to locate sources of illicit discharges in catchment tributaries to receiving waters impaired for bacteria.

EXHIBIT B

STATE OF NEW HAMPSHIRE

WATER POLLUTION CONTROL REVOLVING LOAN FUND PROGRAM

PROMISSORY NOTE AND REPAYMENT SCHEDULE

The **Town of Salem, New Hampshire** (Loan Recipient) promises to pay to the Treasurer of the State of New Hampshire the principal sum of **Seventy-Five Thousand and 00/100 Dollars ($75,000)** in installments on **September 1** in each year as set forth below, with interest on the entire unpaid balance payable on the first principal payment date and annually, thereafter, at the rate of 2.0000% per annum, computed on the basis of 30-day months and 360-day years, in the respective years set forth below. A total of **Seventy-Five Thousand and 00/100 Dollars ($75,000)** of principal will be forgiven and will be granted as reflected in the repayment schedule shown below.

SAMPLE

REPAYMENT SCHEDULE

Payment Date	Principal Payment	Principal Forgiveness	Interest Payment	Total Payment
2022				
2023				
2024				
2025				
2026				

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 State of New Hampshire Water Pollution Control Revolving Loan Fund Program, and is issued for the

purpose of financing the cost of the **Stormwater Planning – MS4 Permit Compliance** (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.

IN WITNESS whereof the Loan Recipient has caused this Note to be signed by its _____, on the date(s) below.

SALEM, NEW HAMPSHIRE by:

Name/Title _____

Authorized Representative _____ Date

(Town Seal)

SAMPLE

EXHIBIT C

STATE OF NEW HAMPSHIRE
WATER POLLUTION CONTROL REVOLVING LOAN FUND PROGRAM

FEDERAL REQUIREMENTS

DUNS NUMBER: The Loan Recipient must obtain a Data Universal Numbering System (DUNS) number. The federal government has adopted the use of DUNS numbers to track how federal grant money is allocated. DUNS numbers identify your organization. A DUNS number may be obtained by visiting http://fedgov.dnb.com/webform/.

SIGNAGE: The Loan Recipient must communicate to the public that EPA funds are contributing to the project.

WAGE RATE REQUIREMENTS (DAVIS-BACON): The recipient agrees to include in all agreements to provide assistance for the construction of treatment works carried out in whole or in part with such assistance made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.), or with such assistance made available under section 205(m) of that Act (33 U.S.C. 1285(m)), or both, a term and condition requiring compliance with the requirements of section 513 of that Act (33 U.S.C. 1372) in all procurement contracts and sub-grants, and require that Loan Recipients, procurement contractors and sub-grantees include such a term and condition in subcontracts and other lower tiered transactions. All contracts and subcontracts for the construction of treatment works carried out in whole or in part with assistance made available as stated herein shall insert in full in any contract in excess of $2,000 the contract clauses as attached hereto entitled "Wage Rate Requirements Under The Clean Water Act, Section 513 and the Safe Drinking Water Act, Section 1450(e)." This term and condition applies to all agreements to provide assistance under the authorities referenced herein, whether in the form of a loan, bond purchase, grant, or

any other vehicle to provide financing for a project, where such agreements are executed on or after October 30, 2009.

AMERICAN IRON AND STEEL (AIS): P.L. 113-76, Consolidated Appropriations Act, 2014 (Act), includes an "American Iron and Steel (AIS) requirement in section 436 that Clean Water State Revolving Loan Fund (CWSRF) Loan Recipients to use iron and steel products that are produced in the United States for projects for construction, alteration, maintenance or repair of a public water system or treatment works if the project is funded through an assistance agreement executed beginning January 17, 2014 (enactment of the Act).

On June 10, 2014, the Water Resources Reform and Development Act amended the Clean Water Act to include permanent requirements for the use of AIS products in CWSRF assistance agreements. Section 608 of the CWA now contains requirements for AIS that repeat those of the Consolidated Appropriations Act, 2014. All CWSRF assistance agreements must comply with Section 608 of the CWA for implementation of the permanent AIS requirement.

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

FISCAL SUSTAINABILITY PLAN: On June 10, 2014, the Water Resources Reform and Development Act of 2014 amended the Clean Water Act to include permanent requirements for Loan Recipients to develop and implement a fiscal sustainability plan for the repair, replacement, or expansion of treatment works, or certify that such a plan has been developed and implemented. The fiscal sustainability plan shall include:

- An inventory of the critical assets that are part of the treatment works,
- An evaluation of the conditions and performance of inventoried assets or asset groupings,
- A certification that the Loan Recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan, and
- A plan for maintaining, repairing, and, as necessary, replacing the treatment works and a plan for funding such activities.

As part of the CWSRF Application Process, the Loan Recipient has certified that they have or will have a Fiscal Sustainability Plan prior to the date of Scheduled Completion or Final Disbursement, whichever date is later.

COST AND EFFECTIVENESS: On June 10, 2014, the Water Resources Reform and Development Act of 2014 amended the Clean Water Act to include permanent requirements for Loan Recipients to conduct a cost and effectiveness analysis for the funded asset that includes at a minimum:

- The study and evaluation of the cost and effectiveness of the processes, materials techniques and technologies for carrying out the proposed project or activity.
- The selection, to the maximum extent practicable, of a project or activity that maximizes the potential for efficient water use, reuse, recapture, and conservation and energy conservation taking into account:
    - The cost of constructing the project or activity,
    - The cost of operation and maintaining the project or activity over the life of the project or activity, and
    - The cost of replacing the project or activity.

NH Code of Administrative Rules Env-Wq 700, Standards of Design and Construction for Sewerage and Wastewater Treatment Facilities, include minimum technical standards and requirements for the planning, design, and construction of sewerage and wastewater treatment facilities that meet the requirements listed above.

The Loan Recipient must certify that it has completed the required cost and effectiveness analysis and that it has selected, to the maximum extent practicable, a project or activity that maximizes the potential for water and energy conservation, as appropriate. This certification should be included with, and will be processed as part of, the design submittal.

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

EXCLUDED PARTIES: The Loan Recipient shall not knowingly award a construction contract to a contractor that has been debarred or suspended by the federal government. The Loan Recipient or its agent shall compare the names of contractors who have bid on the project against the searchable list in the "The System for Award Management" (SAM) database, which can be found at https://www.sam.gov/SAM/pages/public/index.jsf

SUPER CROSS-CUTTERS:

-Title VI of the Civil Rights Act

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

-Section 504 of the Rehabilitation Act of 1973

-The Age Discrimination Act of 1975

-Equal Employment Opportunity requirements (Executive Order 11246)