



The State of New Hampshire **NOV 04 '20 AM 9:52 RCVD**
Department of Environmental Services



Robert R. Scott, Commissioner

October 20, 2020

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

REQUESTED ACTIONS

1. Authorize the Department of Environmental Services to award a loan to the Rye Water District (VC# 160018-8001), Rye, NH in the amount not to exceed \$800,000 to finance the Garland Road Pump Station Rehabilitation Project under provisions of RSA 485:F and N.H. Code of Administrative Rules Env-Dw 1300 et seq., effective upon Governor & Council approval through December 1, 2021. 100% Drinking Water and Groundwater Trust Fund.

Funding is available in the following account:

03-44-44-442010-3904-301-504059	<u>FY 2021</u>
Dept. Environmental Services, Drinking Water and Groundwater Trust, Loans	\$800,000

2. Authorize the Department of Environmental Services to award a loan to the Rye Water District (VC# 160018-8001), Rye, NH in the amount not to exceed \$315,000 to finance the Wallis Road Water Main Replacement Project under provisions of RSA 485:F and N.H. Code of Administrative Rules Env-Dw 1300 et seq., effective upon Governor & Council approval through June 1, 2022. 100% Drinking Water and Groundwater Trust Fund.

Funding is available in the following account:

03-44-44-442010-3904-301-504059	<u>FY 2021</u>
Dept. Environmental Services, Drinking Water and Groundwater Trust, Loans	\$315,000

EXPLANATION

The Drinking Water and Groundwater 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 December 9, 2019, the Advisory Commission voted to authorize a total of \$1,115,000 in loan funds to the Rye Water District for payment for capital improvements at their Garland Road Pump Station and water main in the area of Wallis Road. The pump station project includes modifications to the existing structure including electrical, mechanical, and architectural as required and site work. The improvements will bring the facility up to current

code compliance. The water main distribution piping along Wallis Road spans Route 1A to Odiorne Drive, crossing under a tidal marsh stream. Soil conditions have significantly deteriorated the pipe resulting in corrosion and numerous leaks. The project will replace the existing main with approximately 1,200 linear feet of corrosion resistant water main and install new connections and valves at intersections to abutting roads as needed. Both of these projects will significantly improve the reliability of Rye's water system. In the event that loan funds become no longer available, General Funds will not be requested to support this program.

We respectfully request your approval.

A handwritten signature in black ink, appearing to read "Robert R. Scott", is written over a horizontal line. The signature is fluid and cursive.

Robert R. Scott
Commissioner

1 request are eligible under the Rules, as applicable, and consistent with the purposes of RSA485-F
2 and with the project application as approved by the N.H. Drinking Water and Groundwater
3 Advisory Commission. Such approval shall be within the sole discretion of the State but shall not
4 be unreasonably withheld. The total reimbursement shall not exceed the loan amount of \$800,000.
5 Interest on each Disbursement shall accrue on the outstanding principal balance from the date of
6 the Disbursement at the rate of 1% per annum computed on the basis of 30-day months and 360-
7 day years until the date of Substantial Completion of the Project or the date of Scheduled
8 Completion as noted in Paragraph VI, whichever is earlier. At the option of the Loan Recipient,
9 such interest may be paid (1) prior to the commencement of Loan repayment, (2) at the time of the
10 first Loan repayment, or (3) by adding the charges to the outstanding principal Loan balance so
11 long as the Loan Recipient's authority to borrow is not exceeded.

12

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

18

19 V. The interest rate applicable to the Note will be 1.55%.

20

21 VI. The Loan Recipient hereby authorizes the State to compute the payments of principal and
22 interest on the Note. The principal shall be paid in full within twenty (20) years from the date of
23 the Note. Note payments shall commence within one year of the Substantial Completion date of
24 the Project or the Scheduled Completion date of the project, whichever is earlier. The Scheduled
25 Completion date is hereby determined to be December 1, 2021; however, should the project

1 experience an excusable delay, an extension may be granted by the Commissioner of the
2 Department of Environmental Services upon request in writing by the Loan Recipient.

3
4 VII. The Loan Recipient reserves the right to prepay, at any time and without penalty, all or any
5 part of the outstanding principal or interest of the Note.

6
7 VIII. In the event of a default in the full and timely remittance of any Note payment, any State
8 Grant funds payable to the Loan Recipient under RSA 486-A may be offset against and applied to
9 the payment of any obligations that are due hereunder. The Loan Recipient agrees to be liable for
10 all costs of collection, legal expenses, and attorney's fees incurred or paid by the State in enforcing
11 this Agreement or in collecting any delinquent payments due hereunder.

12
13 IX. No delay or omission on the part of the State in exercising any right hereunder shall operate
14 as a waiver of such right or of any other right under this Agreement. A waiver on any one occasion
15 shall not be construed as a bar to any right and/or remedy on any future occasion.

16
17 X. The Loan Recipient agrees to comply, and to require all of its contractors to comply, with all
18 applicable state requirements contained in the Rules and applicable state and federal laws.

19
20 XI. The Loan Recipient is required to develop an asset maintenance and renewal plan for the
21 assets(s) being funded under the loan or incorporate the funded asset(s) into an existing asset
22 management plan. At a minimum the plan must include a commitment to asset management,
23 financing and implementation strategy and an inventory of the funded asset(s).

1 XII. The Loan Recipient agrees to permit an authorized representative of the State of New
2 Hampshire to have access to and the right to:

3
4 (i) Examine any of the Loan Recipient's, the contractor's or any subcontractor's
5 records that pertain to and involve transactions relating to this Agreement, the
6 Construction Contract, the Engineering Contract or a subcontract thereunder; and
7

8 (ii) Interview any officer or employee regarding such transactions.
9

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

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

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

23 XVI. 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.
3
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6 STATE OF NEW HAMPSHIRE by:

RYE WATER DISTRICT,

7 NEW HAMPSHIRE by:

8  10/27/20
Robert R. Scott Date

 9/30/2020
Arthur Ditto Date

9 Commissioner
10 Department of Environmental Services

Commissioner
Rye Water District

11
12
13
14
15 This Agreement was approved by Governor and Executive Council on _____
16 as Item No. _____
17
18

EXHIBIT A

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

PROJECT DESCRIPTION

The **RYE WATER DISTRICT** has applied for a Loan to be used for capital improvements necessary to upgrade the existing Garland Road Pump Station. The capital improvements include modifications to the existing facility including electrical, mechanical, architectural and instrumentation systems and site work to bring the facility up to current code compliance.

1 **EXHIBIT B**

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

4 **PROMISSORY NOTE AND REPAYMENT SCHEDULE**

5
6 The **RYE WATER DISTRICT**, New Hampshire (Loan Recipient) promises to pay to
7 the 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 principal
10 payment date and annually, thereafter, at the rate of _____ % per annum, computed on the basis of
11 30-day months and 360-day years, in the respective years set forth below.

12
13 REPAYMENT SCHEDULE

14 Payment Date Principal Payment Interest Payment Total Payment

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

15
16 The Loan Recipient reserves the right to prepay, at any time and without penalty, all or
17 any part of the outstanding principal or interest on this Note.

18
19 The terms and provisions of the Agreement are hereby incorporated in and made a part of
20 this Note to the same extent as if said terms and provisions were set forth in full herein.

21
22 It is hereby certified and recited that all acts, conditions, and things required to be done
23 precedent to and in the issuing of this Note have been done, have happened, and have been
24 performed in regular and due form and, for the payment hereof when due, the full faith and credit
25 of the Loan Recipient are hereby irrevocably pledged.

1 IN WITNESS whereof the Loan Recipient has caused this Note to be signed by the Rye
2 Water District Commissioner, on the date below.

3
4 RYE WATER DISTRICT, NEW HAMPSHIRE by:

5
6
7 _____
8 Arthur Ditto. Date
9 Commissioner
10 Rye Water District
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SAMPLE

1 request are eligible under the Rules, as applicable, and consistent with the purposes of RSA485-F
2 and with the project application as approved by the N.H. Drinking Water and Groundwater
3 Advisory Commission. Such approval shall be within the sole discretion of the State but shall not
4 be unreasonably withheld. The total reimbursement shall not exceed the loan amount of \$315,000.
5 Interest on each Disbursement shall accrue on the outstanding principal balance from the date of
6 the Disbursement at the rate of 1% per annum computed on the basis of 30-day months and 360-
7 day years until the date of Substantial Completion of the Project or the date of Scheduled
8 Completion as noted in Paragraph VI, whichever is earlier. At the option of the Loan Recipient,
9 such interest may be paid (1) prior to the commencement of Loan repayment, (2) at the time of the
10 first Loan repayment, or (3) by adding the charges to the outstanding principal Loan balance so
11 long as the Loan Recipient's authority to borrow is not exceeded.

12

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

18

19 V. The interest rate applicable to the Note will be 1.55%.

20

21 VI. The Loan Recipient hereby authorizes the State to compute the payments of principal and
22 interest on the Note. The principal shall be paid in full within ten (10) years from the date of the
23 Note. Note payments shall commence within one year of the Substantial Completion date of the
24 Project or the Scheduled Completion date of the project, whichever is earlier. The Scheduled
25 Completion date is hereby determined to be June 1, 2022; however, should the project experience

1 an excusable delay, an extension may be granted by the Commissioner of the Department of
2 Environmental Services upon request in writing by the Loan Recipient.

3
4 VII. The Loan Recipient reserves the right to prepay, at any time and without penalty, all or any
5 part of the outstanding principal or interest of the Note.

6
7 VIII. In the event of a default in the full and timely remittance of any Note payment, any State
8 Grant funds payable to the Loan Recipient under RSA 486-A may be offset against and applied to
9 the payment of any obligations that are due hereunder. The Loan Recipient agrees to be liable for
10 all costs of collection, legal expenses, and attorney's fees incurred or paid by the State in enforcing
11 this Agreement or in collecting any delinquent payments due hereunder.

12
13 IX. No delay or omission on the part of the State in exercising any right hereunder shall operate
14 as a waiver of such right or of any other right under this Agreement. A waiver on any one occasion
15 shall not be construed as a bar to any right and/or remedy on any future occasion.

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18 applicable state requirements contained in the Rules and applicable state and federal laws.

19
20 XI. The Loan Recipient is required to develop an asset maintenance and renewal plan for the
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22 management plan. At a minimum the plan must include a commitment to asset management,
23 financing and implementation strategy and an inventory of the funded asset(s).

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2 Hampshire to have access to and the right to:

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

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

9

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

12

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

17

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

22

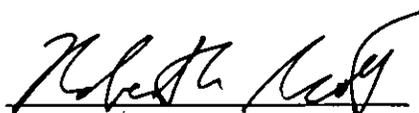
23 XVI. This Agreement, which may be executed in a number of counterparts, each of which shall
24 be deemed an original, constitutes the entire agreement and understanding between the parties

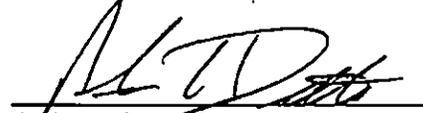
1 and supersedes all prior agreements and understandings relating thereto. Nothing herein shall be
2 construed as a waiver of sovereign immunity, such immunity being hereby specifically reserved.
3
4
5

6 STATE OF NEW HAMPSHIRE by:

RYE WATER DISTRICT,

NEW HAMPSHIRE by:

8  10/23/20
Robert R. Scott Date
9 Commissioner
Department of Environmental Services

 9/30/2020
Arthur Ditte Date
Commissioner
Rye Water District

10
11
12
13
14
15 This Agreement was approved by Governor and Executive Council on _____
16 as Item No. _____
17
18

EXHIBIT A

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

PROJECT DESCRIPTION

The **RYE WATER DISTRICT** has applied for a Loan to be used for capital improvements necessary to replace approximately 1,200 linear feet of water main along Wallis Road in Rye, NH. The capital improvements include installation of new water main and new connection valves at intersections along the route.

1 EXHIBIT B

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

4 PROMISSORY NOTE AND REPAYMENT SCHEDULE

5
6 The RYE WATER DISTRICT, New Hampshire (Loan Recipient) promises to pay to
7 the 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 principal
10 payment date and annually, thereafter, at the rate of ____% per annum, computed on the basis of
11 30-day months and 360-day years, in the respective years set forth below.

12
13 REPAYMENT SCHEDULE

14 Payment Date Principal Payment Interest Payment Total Payment

15 1
16 2
17 3
18 4
19 5
20 6
21 7
22 8
23 9
24 10
25 11

1 12
2 13
3 14
4 15
5 16
6 17
7 18
8 19
9 20

10
11 This Promissory Note (Note) is issued under and by virtue of the New Hampshire
12 Municipal Finance Act, an agreement duly entered into by the Loan Recipient and the Drinking
13 Water and Groundwater Trust Fund, and is issued for the purpose of financing the cost of the
14 Project as described in Exhibit A of the Supplemental Loan Agreement (Agreement).

15
16 The Loan Recipient reserves the right to prepay, at any time and without penalty, all or
17 any part of the outstanding principal or interest on this Note.

18
19 The terms and provisions of the Agreement are hereby incorporated in and made a part of
20 this Note to the same extent as if said terms and provisions were set forth in full herein.

21
22 It is hereby certified and recited that all acts, conditions, and things required to be done
23 precedent to and in the issuing of this Note have been done, have happened, and have been
24 performed in regular and due form and, for the payment hereof when due, the full faith and credit
25 of the Loan Recipient are hereby irrevocably pledged.

1 IN WITNESS whereof the Loan Recipient has caused this Note to be signed by the Rye
2 Water District Commissioner, on the date below.

3
4 RYE WATER DISTRICT, NEW HAMPSHIRE by:

5
6
7 _____
8 Arthur Ditto
9 Commissioner
10 Rye Water District

Date

SAMPLE