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STATE OF NEW HAMPSHIRE

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GOVERNOR'S OFFICE
for
EMERGENCY RELIEF AND RECOVERY

December 28, 2022

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

REQUESTED ACTION

Authorize the Governor's Office for Emergency Relief and Recovery (GOFERR) to enter into an agreement with Carroll County Nursing Home, (VC #177369), 93 Water Village Road, Ossipee, NH, in the amount of $855,801 in American Rescue Plan Act (ARPA) State Fiscal Recovery Funds (SFRF) as part of the County Nursing Home Infrastructure Program, which provides funds for capital investments to help mitigate and prevent the spread of future COVID-19 outbreaks in county nursing facilities, ensure facilities are safe for residents and their families, and help fund facility improvements, effective upon approval by Governor and Executive Council through September 30, 2024. This is an allowable use of ARPA SFRF funds under Section 602 (c)(1)(A) to respond to the public health emergency or its negative economic impacts. **100% Federal Funds.**

Funds are available as follows:

01-02-002-020210-Governor's Office for Emergency Relief and Recovery,
24690000 - ARP Grants and Disbursements

	FY2023
072 – 500574 Grants Federal	$855,801

EXPLANATION

$50,075,000 was approved by Governor and Council on June 15, 2022 (Item 80B) to fund a County Nursing Home Infrastructure Program, which provides funds for capital investments designed to help mitigate and prevent the spread of future COVID-19 outbreaks in county nursing home facilities, ensure facilities are safe for residents and their families, and help fund facility improvements, where the county is able to provide the majority of funding for an identified project.

GOFERR facilitated two funding application rounds, the first of which was competitive and resulted in two awards, which were approved by Governor and Council. Not all eligible applications in Round 1 received funding, but eligible applications not funded in Round 1 were automatically considered for funding in Round 2, which was designed to be noncompetitive and result in the pro rata distribution of funds, subject to a cap, if eligible applications and projects exceeded remaining funds for the program. Approximately $19.6 million in funding was available in Round 2.

1 Eagle Square, Concord, New Hampshire 03301
Website: http://www.goferr.nh.gov/ • Email: info@goferrnh.gov
TDD Access: Relay NH 1-800-735-2964

In both rounds of the program, the resulting awards are 0% interest forgivable loans. Counties must contribute at least 60% of eligible project costs, with GOFERR providing ARPA SFRF to cover up to the remaining 40%. This program was open to all 10 counties in New Hampshire. All awards are presented for review and approval by the Governor and Council, and projects must comply with requirements established by ARPA SFRF guidance.

As with Round 1, multiple Counties applied in Round 2, and if all awards are authorized by Governor and Council, every eligible applicant will have received funding toward their projects. Requested funds exceeded available funds and has resulted in the need to equitably distribute those funds across eligible applicants and projects.

This project is one of several Round 2 awards on this meeting's agenda for consideration. If authorized, up to $855,801 would be provided to the Carroll County Nursing Home to support a variety of projects, including improvements focused on air quality, updates to infrastructure, and compliance standards. Renovations include improvement to an annex building to increase air quality and PPE COVID-19 related equipment storage, updates and maintenance to the sprinkler system, security improvements, as well as replacement of a Therapy Tub and O2 concentrators.

This request is an allowable use of ARPA SFRF funds under Section 602 (c)(1)(A) to respond to the public health emergency or its negative economic impacts and may meet criteria under other defined ARPA SFRF eligibility categories as well.

In the event that Federal Funds become no longer available, General Funds will not be requested to support this program.

Respectfully submitted,

Chase Hagaman,
Deputy Director, GOFERR

COUNTY NURSING HOME INFRASTRUCTURE PROGRAM (CNHIP)
LOAN AGREEMENT
FOR STATE FISCAL RECOVERY FUNDS

1. THE PARTIES

Carroll County (the "Borrower"), represented by its authorized agent, Terry McCarthy (the "Borrower's Agent"), hereby enters this Loan Agreement for State Fiscal Recovery Funds (this "Agreement") with the State of New Hampshire, Governor's Office for Emergency Relief and Recovery (the "Lender"), as of the effective date of this Agreement. Borrower and Lender shall collectively be known herein as "the Parties".

2. PURPOSE OF AGREEMENT

Entering into this Agreement results in the Lender agreeing to use American Recovery Plan Act (ARPA), State Fiscal Recovery Fund (SFRF) funds to award the Borrower a loan in an amount equal to or less than 40% of the eligible expenses on approved capital improvement project (the Project) to improve the Mountain View Community. This award is subject to Carroll County assuming liability for the remaining amount of the cost of the capital improvement project, which shall be an amount no less than 60% of the total amount of the capital improvement project(s). The Project(s) shall have been reviewed and approved by the Lender.

Should the eligible costs of the Borrower's project result in the value of this Agreement exceeding 40% of eligible project costs, the value shall be reduced to an amount not to exceed 40% of eligible Project costs to align with the maximum award permitted in the terms of the program and application that resulted in this award.

A. The Lender agrees to:

The Lender agrees to loan the Borrower an amount up to the sum of $855,801 (the Loan Amount) for approved capital expenditures used to address the needs of the residents at the Mountain View Community. The Loan Amount will be subject to an interest rate of 0%, and the Loan Amount will be forgiven upon completion of the project on or before September 30, 2024, or an otherwise set date as determined below.

B. The Borrower agrees to:

The Borrower agrees to construct and undertake the approved Project in accordance with their Approved Application, which is incorporated by reference herein and a copy maintained at the State. Furthermore, the Borrower agrees to comply with all Federal, State and local laws, rules and regulations, which are now, or in the future may become, applicable to the Project.

The Borrower agrees to submit to all requested inspections and audits by State officials which relate to the services and payments under this Agreement. On-site inspections shall be made at least twice annually, and upon project completion, to ensure compliance

with the terms of this loan. The Lender reserves the right for more frequent on-site inspections.

Any audits shall include, but not be limited to: a review of all invoices and payments made on this project, a review of all contracts for goods and services, proof of goods received after payment, a review of Borrower's policies and procedures for management of federal funds, a review of the project plan to monitor project progress, and a review of payroll and timesheet records.

By entering into this Agreement, the Borrower accepts liability for the ARPA Loan Amount with repayment to begin on October 15, 2024, or earlier, if breach of the terms of the Agreement occurs.

The Project must be completed by September 30, 2024. Limited extension may be possible, with written consent by the Lender and approval of Governor and Council. \

Upon completion and satisfaction of the terms of the Agreement on or before September 30, 2024, (or later if an extension is approved by the Lender) the Borrower's Loan Amount will be deemed satisfied and paid in full.

If the Project is not successfully completed and/or the Agreement is not fulfilled or substantively breached, then the Borrower shall begin repaying the Loan Amount to the Lender beginning on October 15, 2024, pursuant to the terms and conditions outlined in section 5 of this Agreement.

This Agreement is NOT a negotiable instrument.

3. DISBURSEMENT

The maximum Loan Amount available to be disbursed to the Borrower pursuant to this Agreement shall be $855,801. The Parties agree that the Borrower shall only be reimbursed for actual costs incurred, and that the Lender's determinations of eligible and approved costs shall be final in all cases.

The Borrower must pay 100% of the cost of an approved capital expenditure before submitting a request for reimbursement of eligible costs. The Borrower shall submit monthly invoices for the acceptable reimbursable capital expenditures incurred up to the end of each month by the 15th of the following month. All invoices must be accompanied by proof of payment, such as receipts, other payment confirmations, cancelled checks (front & back), and/or electronic record of payment, as well as evidence of the good(s) being received or services rendered. Monthly invoices shall be submitted electronically to:

Emily Larson at GOFERR
Emily.A.Larson-G@goferr.nh.gov

*Or other GOFERR/State employee as designated by the Lender and communicated to the Borrower.

The Borrower agrees to provide Lender with a quarterly report detailing the status of the capital improvement project at Mountain View Community, including project and financial data required by U.S. Treasury for reporting purposes. Such reports are due within 15 days of the close of each calendar year quarter. The Borrower shall provide the Lender with the construction project plan with the first quarterly report.

Examples of information required as part of quarterly reporting include an accounting of the status of the overall project, expenditures incurred and paid by the Borrower as part of its obligation under this Agreement, details on contracts entered into by the Borrower, information concerning labor practices applicable to the project, an estimated date of completion for the entire capital expenditure project, and more.

If any changes are made to the construction project plan, Borrower shall provide those changes in the quarterly report. The quarterly reports shall be due on the 15th day following the last month of the quarter, with the first report due by January 15, 2023.

Quarterly reporting shall include an assessment of the project completion status by the Lender to help determine whether an extension may be necessary or whether repayment of loaned funds will be likely. In the event that the Lender deems a quarterly report reveals evidence of noncompliance, the Lender reserves the right to require more frequent reporting for monitoring purposes.

4. PROMISE TO PAY

For value received, the Borrower promises to pay $855,801 (the "Loan"), this being the amount of the ARPA SFRF award applied for by the Lender, which represents up to 40% of the Project costs, as identified in Section 2 "PURPOSE OF AGREEMENT." As indicated in Section 2, should value of the Loan exceed 40% of eligible Project costs, the value shall be reduced to an amount not to exceed 40% of eligible Project costs.

5. PAYMENTS

As indicated in Section 2, "PURPOSE OF AGREEMENT," if the Project is not successfully completed and/or the Agreement is not fulfilled or substantively breached, then the Borrower shall begin repaying the Loan Amount to the Lender beginning on October 15, 2024, pursuant to the following terms.

The Borrower will repay the Loan at a rate of $35,658.37 per month, which is the equivalent of the Loan balance being distributed equally across 24 monthly payments. The first payment will be due on or before **October 15, 2024**. All subsequent payments

will be due on or before the **15th** day of each month, with payment due the first business day following a weekend or federal or State holiday if the 15th occurs on such a weekend or holiday. Payments will be made by check or money order, marked payable to the "*State of New Hampshire*," and mailed to the following address: *1 Eagle Square, Concord, NH 03301*. The Loan will be fully paid on or before September 15, 2026 which will be the 24th and final payment period.

6. INTEREST

The Loan will accrue interest at a rate of **0%** per annum for the life of the Loan.

7. DEFAULT AND ACCELERATION

If the Borrower fails to make payments as detailed in Section 5, "PAYMENTS," of this Agreement, the Borrower will be in default. The Lender will notify the Borrower it is in default and the Borrower will have fifteen (15) days from the date of the notice to remedy the deficiency. If the Borrower remedies the deficiency within fifteen (15) days of the date on the default notice, the Lender will notify the Borrower that it is no longer in default.

If the Borrower fails to remedy the deficiency within sixty (60) days from the date of the notice to remedy the deficiency, the Lender, at its option, may declare all outstanding sums owed pursuant to this Agreement immediately due and payable, and the Lender may initiate litigation and collection actions to recover the Loan in full or to compel compliance with this Agreement.

8. PREPAYMENT

If the Borrower does not complete the entire project by September 30, 2024, and the Loan payments have started, the Borrower may prepay the Loan without penalty. If the Borrower prepays the Loan in part, such partial prepayment will not alleviate the Borrower's obligation to meet payment deadlines for subsequent periods until the Loan is fully repaid.

For example, Prepayment in pay period 1, for the equivalent of pay periods 1, 2, and 3, does not remove the Borrower's obligation to timely make its next payment in period 2 and all subsequent periods until the Loan balance is satisfied.

9. SEVERABILITY

In the event any provision herein is determined to be void or unenforceable for any reason, such determination shall not affect the validity or enforceability of any other provision, all of which shall remain in full force and effect.

10. CONFLICTING TERMS

The terms of this Agreement shall have authority and precedence over any other conflicting terms in any referenced agreement or document.

11. CHANGES OR ALTERATIONS

This Agreement may be amended, waived, or discharged only by an instrument in writing signed by the Parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State, unless no such approval is required under the circumstances pursuant to State law, rule, or policy.

12. ASSIGNMENT

The Borrower shall not assign, or otherwise transfer, any interest in this Agreement without the prior written consent of the Lender.

13. INDEMNIFICATION

The Borrower shall defend, indemnify and hold harmless the Lender, its officers and employees, from and against any and all losses suffered by the Lender, its officers and employees, and any and all claims, liabilities, or penalties asserted against the Lender, its officers and employees, by or on behalf of any person, on account of, based on, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Borrower or subcontractor, or subgrantee or other agent of the Borrower. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the Lender, which immunity is hereby reserved to the Lender. This covenant shall survive the termination of this Agreement.

14. NOTICE

Any notices required or permitted to be given pursuant to this Agreement shall be given in writing and shall be delivered (a) in person; (b) by certified mail, postage prepaid, return receipt requested; or (c) by electronic mail sent to a previously confirmed electronic mail address.

The Borrower must notify the Lender of bankruptcy or transfer or dissolution of the Borrower's business within 15 days of the qualifying event.

The Borrower must also notify the Lender of any change of primary address and contact information for the Borrower within 15 days of such a change.

15. GOVERNING LAW AND LITIGATION OF DISPUTES

This Agreement is entered in the State of New Hampshire and shall be governed under the laws of the State of New Hampshire, as well as any applicable federal regulations and guidance relative to ARPA SFRF.

The source of funding and eligibility for the County Nursing Home Infrastructure Program and distribution of funds subject to this Agreement is ARPA SFRF Section 602 (c)(1)(A) to respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID–19) or its negative economic impacts, (H.R. 1319, Section 9901 of ARPA, which amended Title VI of the Social Security Act to add Section 602), Expenditure Category 1.4 Prevention in Congregate Settings, as determined by U.S. Treasury and in accordance with any applicable federal guidance or requirements.

The Lender, at its discretion and in compliance with federal guidance may change and/or report on this project in a different Expenditure Category, if appropriate.

Any litigation regarding this Agreement will occur in a court of competent jurisdiction in the county where the Lender's principal place of business is located. Failure to enter into and follow through on this Agreement, or otherwise remit payment of recoupment owed, will result in the Lender referring the matter to the New Hampshire Department of Justice for collection.

16. REPORTING

The Borrower shall comply with any applicable federal reporting requirements established by U.S. Treasury relative to these loaned funds, as determined by U.S. Treasury and when notified of such requirements by the Lender.

17. RECORD RETENTION

Between the effective date and the date five (5) years after the completion date of this Agreement, at any time during the Borrower's normal business hours, and as often as the Lender, the U.S. Department of Treasury or United States Office of Management and Budget (OMB) shall demand, the Borrower shall make available to the Lender, the U.S. Department of Treasury or OMB all records pertaining to matters covered by this Agreement. The Borrower shall permit the Lender, the U.S. Department of Treasury or OMB to audit, examine, and reproduce such records, and to make audits of all contracts, invoices, materials, payrolls, personnel records, data, and other information relating to all matters covered by this Agreement. As used in this agreement, "Borrower" includes all persons, natural or fictional, affiliated with, controlled by, or under common ownership with, the entity identified as the Borrower in Section 1, "The Parties."

18. NON-WAIVER

No failure by the Lender in exercising Lender's rights under this Agreement shall be considered a waiver of such rights.

No express waiver of any Event of Default shall be deemed a waiver of any provisions hereof. No such failure of waiver shall be deemed a waiver of the right of the Lender to enforce each and all of the provisions hereof upon any further or other default on the part of the Borrower.

19. CONFLICT OF INTEREST

No representative, officer, or employee of the Lender or of the authorizing bodies of this Agreement, who exercises any functions or responsibilities in the review or approval of this Agreement and the exercise of its terms, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested, nor shall he or she have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

20. CONDITIONAL NATURE OF AGREEMENT

This Agreement is contingent upon approval by the Governor and Executive Council.

Notwithstanding anything in this Agreement to the contrary, all obligations of the Lender hereunder are contingent upon the availability or continued appropriation of funds, and in no event shall the Lender be liable for any payments hereunder in excess of such available or appropriated funds. In the event of a reduction or termination of those funds, the Lender shall have the right to withhold disbursement or payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Borrower notice of such termination.

21. INTEGRATION

There are no verbal or other agreements that modify or affect the terms of this Agreement, except as indicated in Sections 2 and 11 of this Agreement.

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 hereto, except for any such subsequent modifications or revisions pursuant to the Sections outlined above.

22. EFFECTIVE DATE

Notwithstanding any provisions of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement and all obligations of the Parties hereunder shall become effective on the date the Governor and Executive Council approve this Agreement, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the Lender.

ACCEPTANCE AND ACKNOWLEDGEMENT

With the signature below, I, the Borrower's Agent, duly authorized and acting on behalf of the Borrower, affirm that I have read and understood this Agreement, and execute it with the intent that the Borrower be bound by its terms.

Borrower's Name and Mailing Address:
Carroll County
95 Water Village Rd Box 1
Ossipee NH 03864

Borrower's Vendor Number:
177369

Borrower's E-mail Address:
mseamans@carrollcountynh.net

Borrower's Agent's Signature: Terry McCarthy Date: 1/5/23

Borrower's Agent's Name and Title:
Terry McCarthy Chairman

Borrower's Business Name (if different from above):

Borrower's Business Address (if different from above):

State of New Hampshire, GOFERR

Date: 01/11/2023

Approval of the New Hampshire Department of Justice

Shari Phillips Date: 1/13/2023

Approval by the Governor and Executive Council (if applicable):

G&C Item number: _____ G&C Meeting Date: _____

COUNTY OF CARROLL

OFFICE OF THE COMMISSIONERS

Administration Building
95 Water Village Road Box #1
Ossipee, New Hampshire 03864
Phone 603-539-2428 Fax 603-539-4287

I, Kimberly J Tessari, **hereby certify** that I am duly elected of County of Carroll. I certify the following is a true copy of a vote taken at a meeting of the Board of Commissioners, duly called and held on January 5, 2023 at which a quorum of the Commissioners was present and voting.

VOTED: That Carroll County Commission Chairman Terry McCarthy is duly authorized to enter into contracts or agreements on behalf of County of Carroll with the State of New Hampshire and any of its agencies or departments and further is authorized to execute any documents which may in his/her judgment be desirable or necessary to effect the purpose of this vote.

I hereby certify that said vote has not been amended or repealed and remains in full force and effect as of the date of the contract to which this certificate is attached. This authority **remains valid for thirty (30)** days from the date of this Corporate Resolution. I further certify that it is understood that the State of New Hampshire will rely on this certificate as evidence that the person(s) listed above currently occupy the position(s) indicated and that they have full authority to bind the corporation. To the extent that there are any limits on the authority of any listed individual to bind the corporation in contracts with the State of New Hampshire, all such limitations are expressly stated herein.

DATED: January 5, 2023

ATTEST: _____ Kimberly J. Tessari
(Name & Title) Clerk of Carroll County Board of Commissioners

Primex³
NH Public Risk Management Exchange

CERTIFICATE OF COVERAGE

The New Hampshire Public Risk Management Exchange (Primex³) is organized under the New Hampshire Revised Statutes Annotated, Chapter 5-B, Pooled Risk Management Programs. In accordance with those statutes, its Trust Agreement and bylaws, Primex³ is authorized to provide pooled risk management programs established for the benefit of political subdivisions in the State of New Hampshire.

Each member of Primex³ is entitled to the categories of coverage set forth below. In addition, Primex³ may extend the same coverage to non-members. However, any coverage extended to a non-member is subject to all of the terms, conditions, exclusions, amendments, rules, policies and procedures that are applicable to the members of Primex³, including but not limited to the final and binding resolution of all claims and coverage disputes before the Primex³ Board of Trustees. The Additional Covered Party's per occurrence limit shall be deemed included in the Member's per occurrence limit, and therefore shall reduce the Member's limit of liability as set forth by the Coverage Documents and Declarations. The limit shown may have been reduced by claims paid on behalf of the member. General Liability coverage is limited to Coverage A (Personal Injury Liability) and Coverage B (Property Damage Liability) only, Coverage's C (Public Officials Errors and Omissions), D (Unfair Employment Practices), E (Employee Benefit Liability) and F (Educator's Legal Liability Claims-Made Coverage) are excluded from this provision of coverage.

The below named entity is a member in good standing of the New Hampshire Public Risk Management Exchange. The coverage provided may, however, be revised at any time by the actions of Primex³. As of the date this certificate is issued, the information set out below accurately reflects the categories of coverage established for the current coverage year.

This Certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend, or alter the coverage afforded by the coverage categories listed below.

Participating Member:	*Member Number:*	*Company Affording Coverage:*
Carroll County 95 Water Village Road Ossipee, NH 03864	600	NH Public Risk Management Exchange - Primex³ Bow Brook Place 46 Donovan Street Concord, NH 03301-2624

Type of Coverage	Effective Date (mm/dd/yyyy)	Expiration Date (mm/dd/yyyy)	Limits - NH Statutory Limits May Apply, If Not	
X **General Liability (Occurrence Form)** X **Professional Liability (describe)** ☐ Claims Made X Occurrence	1/1/2023	1/1/2024	Each Occurrence	$ 5,000,000
			General Aggregate	$ 5,000,000
			Fire Damage (Any one fire)	
			Med Exp (Any one person)	
X **Automobile Liability** Deductible Comp and Coll: $1,000 ☐ Any auto	1/1/2023	1/1/2024	Combined Single Limit (Each Accident)	$5,000,000
			Aggregate	$5,000,000
X **Workers' Compensation & Employers' Liability**	1/1/2023	1/1/2024	X Statutory	
			Each Accident	$2,000,000
			Disease – Each Employee	$2,000,000
			Disease – Policy Limit	
X **Property (Special Risk Includes Fire and Theft)**	1/1/2023	1/1/2024	Blanket Limit, Replacement Cost (unless otherwise stated)	Deductible: $1,000

Description: Proof of Primex Member coverage only.

CERTIFICATE HOLDER:	☐ Additional Covered Party	☐ Loss Payee	Primex³ – NH Public Risk Management Exchange
			By: *Mary Beth Purcell*
Carroll County 95 Water Village Road Ossipee, NH 03864			Date: 12/29/2022 mpurcell@nhprimex.org Please direct inquires to: **Primex³ Claims/Coverage Services** **603-225-2841 phone** **603-228-3833 fax**