

The State of New Hampshire
Department of Environmental Services



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Robert R. Scott, Commissioner

January 31, 2024

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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 Drinking Water State Revolving Fund (DWSRF) loan agreement with the Town of Newmarket, Newmarket, NH (VC#177449-B003) in the amount not to exceed \$1,446,000 to finance water system improvements under the provisions of RSA 486:14 and N.H. Code of Administrative Rules Env-Dw 1100 et seq. effective upon Governor & Council approval. 87.34% Drinking Water State Revolving Loan Fund (DWSRF) BIL Funds, 12.66% General Funds

Funding is available in the following account:

	<u>FY 2024</u>
03-44-44-441018-5563-301-500833 Dept Environmental Services, DWSRF BIL Loans, Loans	\$1,262,936
03-44-44-441018-1407-301-500833 Department of Environmental Services, SRF State Match, Loans	\$183,064

EXPLANATION

The purpose of this loan agreement is to authorize the Town of Newmarket to borrow up to \$1,446,000 from the DWSRF to finance water system improvements. The improvements include upgrades to the Bennett Well pump station. The project will improve water reliability and resiliency.

The final loan amount will be based on the total DWSRF funds disbursed and may be less than \$1,446,000. The loan interest rate may be adjusted downward if the DWSRF loan rate in effect upon project completion is less than the current rate of 2.8% for 20 years. The Town is eligible for principal forgiveness under the 2023 DWSRF Intended Use Plan. The final amount of principal forgiveness will be determined when the aggregate principal amount is established, and the project is complete.

The DWSRF is authorized by RSA 486:14 and N.H. Code of Administrative Rules Env-Dw 1100 et seq. There is currently a balance of \$40,041,065 in the DWSRF available for new loans.

We respectfully request your approval of this item.

Robert R. Scott
Commissioner

STATE OF NEW HAMPSHIRE

DRINKING WATER STATE REVOLVING LOAN FUND PROGRAM

TOWN OF NEWMARKET, NEW HAMPSHIRE
(Project No. 1731010-03)

ORIGINAL LOAN AGREEMENT

I. This Agreement is between the State of New Hampshire Drinking Water State Revolving Loan Fund Program (State) and the **Town of Newmarket, New Hampshire** (Loan Recipient) in accordance with RSA 486:14 and New Hampshire Code of Administrative Rules Env-Dw 1100 (Rules) for the purpose of financing, to the extent of the aggregate amount of funds transferred (Disbursements) to the Loan Recipient made hereunder, the **Bennett Pump Station 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 **One Million Four Hundred and Forty-Six Thousand (\$1,446,000)** (Principal Sum) or such lesser amount as shall equal the aggregate of Disbursements made hereunder by the State to the Loan Recipient. In addition to the principal sum, the Loan Recipient agrees to pay the applicable interest accrued as described in Paragraphs IV, VI, and VIII. Federal financial assistance provided through the Drinking Water State Revolving Loan Fund Program (CFDA #66.468) 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. The Loan Recipient is eligible for the Disadvantaged System Program as outlined in Section 5 of the 2023 State of New Hampshire Drinking Water State Revolving Loan Fund Intended Use Plan. The amount

1 of principal forgiveness will be determined when the aggregate principal loan amount is established and
2 the project is complete and will be applied to the loan upon the initial repayment.

3

4 IV. Disbursements shall be made on a periodic basis, as requested by the Loan Recipient, but not more
5 frequently than monthly, subject to the approval of the amount of each Disbursement by the State. The
6 State shall approve the amount requested if it determines that the costs covered by the request are
7 eligible under Env-Dw 1104.01, as applicable. Interest on each Disbursement shall accrue on the
8 outstanding principal balance from the date of the Disbursement at the rate of 1% per annum computed
9 on the basis of 30-day months and 360-day years until the date of Substantial Completion of the Project
10 or the date of Scheduled Completion, whichever is earlier. At the option of the Loan Recipient, such
11 interest may be paid (1) prior to the commencement of Loan repayment, (2) at the time of the first Loan
12 repayment, or (3) by adding the charges to the outstanding principal Loan balance so long as the Loan
13 Recipient's authority to borrow is not exceeded.

14

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

19

20 VI. The interest rate applicable to the Note will be 2.8%, as determined in accordance with RSA 486:14
21 and Env-Dw 1100 et seq.

22

23 VII. The Loan Recipient hereby authorizes the State to compute the payments of principal and interest on
24 the Note. The principal shall be paid in full within **twenty (20)** years from the date of the Note. Note
25 payments shall commence within one year of the Substantial Completion date of the Project or the

1 Scheduled Completion date of the project, whichever is earlier. The Scheduled Completion date is hereby
2 determined to be **January 1, 2026**; however, should the project experience an excusable delay, an
3 extension may be granted by the Commissioner of the Department of Environmental Services upon
4 request in writing by the Loan Recipient. In no event shall Note payments commence later than ten years
5 from the effective date of this Agreement.

6
7 VIII. The Loan Recipient reserves the right to prepay, at any time and without penalty, all or any part of
8 the outstanding principal or interest of the Note.

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

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

19
20 XI. The Loan Recipient agrees to comply, and to require all of its contractors to comply, with all
21 applicable state and federal requirements contained in the Rules and applicable state and federal laws,
22 including those specific requirements outlined in Exhibit C.

23
24 XIII. The Loan Recipient is required to develop an asset maintenance and renewal plan for the assets(s)
25 being funded under the loan or incorporate the funded asset(s) into an existing asset management plan.

1 At a minimum the plan must include a commitment to asset management, financing and
2 implementation strategy and an inventory of the funded asset(s).

3
4 XIV. The Loan Recipient agrees to permit the Comptroller General of the United States, an appropriate
5 Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.),
6 or an authorized representative of either of the foregoing officials, or of the State of New Hampshire to
7 have access to and the right to:

8
9 (i) Examine any of the Loan Recipient's, the contractor's or any subcontractor's records
10 that pertain to and involve transactions relating to this Agreement, the Construction Contract,
11 the Engineering Contract or a subcontract thereunder; and

12
13 (ii) Interview any officer or employee regarding such transactions.

14
15 The Loan Recipient shall insert subparagraphs (i). and (ii). in the Construction Contract and require the
16 Contractor to insert subparagraphs (i). and (ii). in all subcontracts thereunder.

17
18 XV. The effective date of this Agreement shall be the date of its approval by the Governor and Executive
19 Council. This Agreement may be amended, waived, or discharged only by a written instrument signed by
20 the parties hereto and only after approval of such amendment, waiver, or discharge by the Governor and
21 Executive Council.

22
23 XVI. This Agreement shall be construed in accordance with the laws of the State of New Hampshire and
24 is binding upon and inures to the benefit of the parties and their respective successors. The parties

1 hereto do not intend to benefit any third parties and, consequently, the Agreement shall not be
2 construed to confer any such benefit.

3
4 XII. The Loan Recipient acknowledges that by accepting the Loan it will be a sub-recipient of federal
5 financial assistance and, as such, subject to requirements of the federal Single Audit Act and subsequent
6 amendments (SAA). The Loan Recipient further acknowledges that, if the Loan Recipient expends more
7 than the required threshold in federal financial assistance from all sources in any fiscal year, it must
8 perform an SAA audit in accordance with the requirements of Office of Management and Budget
9 Circular A-133. In that event, the Loan Recipient shall provide the State with a copy of the SAA audit
10 report within nine months of the end of the audit period.

11
12 XVII. This Agreement, which may be executed in a number of counterparts, each of which shall be
13 deemed an original, constitutes the entire agreement and understanding between the parties and
14 supersedes all prior agreements and understandings relating thereto. Nothing herein shall be construed
15 as a waiver of sovereign immunity, such immunity being hereby specifically reserved.

16
17 STATE OF NEW HAMPSHIRE by:

18  2/2/24
19 Robert R. Scott Date
20 Commissioner
21 Department of Environmental Services

TOWN OF NEWMARKET, NEW HAMPSHIRE by:

22  1-18-24
23 Steve Fournier Date
24 Town Manager
25 Town of Newmarket

26
27 This Agreement was approved by Governor and Executive Council on _____
28 _____ as Item No. _____

EXHIBIT A

**STATE OF NEW HAMPSHIRE
DRINKING WATER STATE REVOLVING LOAN FUND PROGRAM**

PROJECT DESCRIPTION

The Town of Newmarket has applied for a loan to be used for water system improvements including the replacement of the Bennett Well Pump Station. The Pump Station upgrades include, but are not limited to, demolition of the existing building, construction of a new pump station building to house a new well pump, new electrical equipment, chemical feed systems, new variable frequency drive(s), heat pumps and SCADA system improvements.

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EXHIBIT B

**STATE OF NEW HAMPSHIRE
DRINKING WATER STATE REVOLVING LOAN FUND PROGRAM**

PROMISSORY NOTE AND REPAYMENT SCHEDULE

The Town of Newmarket, New Hampshire (Loan Recipient) promises to pay to the Treasurer of the State of New Hampshire the principal sum of _____ Dollars (_____) in installments on (Month, Day) 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 ____% per annum, computed on the basis of 30-day months and 360-day years, in the respective years set forth below. A total of _____ Dollars (\$_____) of principal will be forgiven and will be granted as reflected in the repayment schedule shown below.

REPAYMENT SCHEDULE

Payment Date Principal Payment Principal Forgiveness Interest Payment Total Payment

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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 Drinking Water State Revolving Loan Fund Program and is issued for the purpose of financing the cost of the 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.

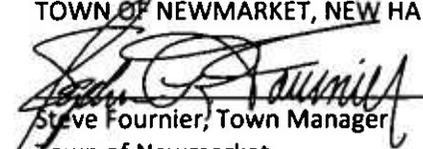
It is hereby certified and recited that all acts, conditions, and things required to be done precedent to and in the issuing of this Note have been done, have happened, and have been performed in regular and due form and, for the payment hereof when due, the full faith and credit of the Loan Recipient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

1 IN WITNESS whereof the Loan Recipient has caused this Note to be signed by its Town Manager,
2 on the date below.

3

4 TOWN OF NEWMARKET, NEW HAMPSHIRE by:

5


Steve Fournier, Town Manager
Town of Newmarket

6

_____ Date

(Seal)

7

8

9

SAMPLE

1 EXHIBIT C

2 STATE OF NEW HAMPSHIRE
3 DRINKING WATER STATE REVOLVING LOAN FUND PROGRAM

4 FEDERAL REQUIREMENTS

5 **UNIQUE ENTITY IDENTIFIER (UEI):** The Loan Recipient must obtain a Unique Entity Identifier (Unique
6 Entity ID). The federal government has adopted the use of a Unique Entity ID to track how federal grant
7 money is allocated. The Unique Entity ID identifies your organization. A Unique Entity ID may be
8 obtained by visiting <http://sam.gov>.

9
10 **SIGNAGE REQUIREMENT:** The Loan Recipient must communicate to the public that EPA funds are
11 contributing to the project by constructing a sign in accordance with the Bipartisan Infrastructure Law
12 Signage requirements. The type and location of the sign shall be mutually agreed upon between the
13 Loan Recipient and NHDES. The Loan Recipient shall maintain the sign throughout the duration of the
14 project.

15
16 **WAGE RATE REQUIREMENTS (DAVIS-BACON):** Davis-Bacon (DB) prevailing wage requirements apply to
17 the Project in accordance with the federal fiscal year (FY) 2014 Consolidated Appropriations Act (P.L.
18 113-76). The Loan Recipient shall insert in full in any contract in excess of \$2,000 which is entered into
19 for Project construction the standard Davis-Bacon contract clause as specified by 29 CFR §5.5(a). The
20 Loan Recipient shall obtain the wage determination for the locality in which a covered activity subject to
21 DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting
22 contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into
23 solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that
24 subcontractors follow the wage determination incorporated into the prime contract.

25

1 **AMERICAN IRON AND STEEL (AIS):** The Loan Recipient agrees to comply with Section 436 of the
2 Consolidated Appropriations Act, 2014 (P.L. 113-76), which requires that all of the iron and steel
3 products used in the Project are to be produced in the United States (“American Iron and Steel
4 Requirement”) unless (i) the Loan Recipient has requested and obtained a waiver from the
5 Environmental Protection Agency pertaining to the Project or (ii) the State has otherwise advised the
6 Participant in writing that the American Iron and Steel Requirement is not applicable to the Project. The
7 Loan Recipient further agrees to maintain records documenting compliance with the American Iron and
8 Steel Requirement, and to provide records and certifications to the State upon request.

9

10 **BUILD AMERICA, BUY AMERICA (BABA) ACT:** Comply with all federal requirements applicable to the
11 assistance received (including those imposed by the Infrastructure Investment and Jobs Act (“IIJA”),
12 Public Law No. 117-58) which the Participant understands includes, but is not limited to, the following
13 requirements: that all of the iron and steel, manufactured products, and construction materials used in
14 the Project are to be produced in the United States (“Build America, Buy America Requirements”) unless
15 (i) the Participant has requested and obtained a waiver from the cognizant Agency pertaining to the
16 Project or the Project is otherwise covered by a general applicability waiver; or (ii) all of the contributing
17 Agencies have otherwise advised the Participant in writing that the Build America, Buy America
18 Requirements are not applicable to the Project.

19 Comply with all record keeping and reporting requirements under all applicable legal authorities,
20 including any reports required by the funding authority (such as EPA and/or a state), such as
21 performance indicators of program deliverables, information on costs and project progress. The
22 Participant understands that (i) each contract and subcontract related to the Project is subject to audit
23 by appropriate federal and state entities and (ii) failure to comply with the applicable legal requirements
24 and this Agreement may result in a default hereunder that results in a repayment of the assistance

1 agreement in advance of the maturity of the Bonds, termination and/or repayment of grants,
2 cooperative agreements, direct assistance or other types of financial assistance, and/or other remedial
3 actions.

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

9
10 **DISADVANTAGED BUSINESS ENTERPRISE (DBE):** Pursuant to 40 CFR, Section 33.301, the Loan Recipient
11 shall make good faith efforts to utilize small, minority and women's business enterprises whenever
12 procuring construction, equipment, services and supplies under an EPA financial assistance agreement,
13 and shall require that prime contractors also comply. Records documenting compliance with the six
14 good faith efforts shall be retained.

15
16 **SUSPENSION AND DEBARMENT:** The Loan Recipient shall fully comply with Subpart C of 2 C.F.R. Part
17 180 entitled, "Responsibilities of Participants Regarding Transactions Doing Business With Other
18 Persons," as implemented and supplemented by 2 C.F.R. Part 1532. Recipient is responsible for ensuring
19 that any lower tier covered transaction, as described in Subpart B of 2 C.F.R. Part 180, entitled "Covered
20 Transactions," and 2 C.F.R. § 1532.220, includes a term or condition requiring compliance with 2 C.F.R.
21 Part 180, Subpart C. Recipient is responsible for further requiring the inclusion of a similar term and
22 condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to
23 disclose the information required under 2 C.F.R. § 180.335 to the EPA office that is entering into the
24 transaction with the recipient may result in the delay or negation of this assistance agreement, or
25 pursuance of administrative remedies, including suspension and debarment. Recipients may access the

1 System for Award Management (SAM) exclusion list at <https://sam.gov/SAM/> to determine whether an
2 entity or individual is presently excluded or disqualified.

3

4 By entering into this agreement, the Loan Recipient certifies that the Loan Recipient is not debarred or
5 suspended. Furthermore, the Loan Recipient certifies that no part of this contract will be subcontracted
6 to a debarred or suspended person or firm.

7

8 **PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR**
9 **EQUIPMENT**

10 This term and condition implements 2 CFR 200.216 and is effective for obligations and expenditures of
11 EPA financial assistance funding on or after 8/13/2020. As required by 2 CFR 200.216, EPA recipients and
12 subrecipients, including borrowers under EPA funded revolving loan fund programs, are prohibited from
13 obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure
14 or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment,
15 services, or systems that use covered telecommunications equipment or services as a substantial or
16 essential component of any system, or as critical technology as part of any system. As described in
17 Public Law 115-232, section 889, covered telecommunications equipment is telecommunications
18 equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate
19 of such entities). Recipients, subrecipients, and borrowers also may not use EPA funds to purchase: a.
20 For the purpose of public safety, security of government facilities, physical security surveillance of
21 critical Page 4 of 29 infrastructure, and other national security purposes, video surveillance and
22 telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision
23 Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such
24 entities). b. Telecommunications or video surveillance services provided by such entities or using such
25 equipment. c. Telecommunications or video surveillance equipment or services produced or provided by

1 an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or
2 the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or
3 controlled by, or otherwise connected to, the government of a covered foreign country. Consistent with
4 2 CFR 200.471, costs incurred for telecommunications and video surveillance services or equipment such
5 as phones, internet, video surveillance, and cloud servers are allowable except for the following
6 circumstances: a. Obligating or expending EPA funds for covered telecommunications and video
7 surveillance services or equipment or services as described in 2 CFR 200.216 to: (1) Procure or obtain,
8 extend or renew a contract to procure or obtain; (2) Enter into a contract (or extend or renew a
9 contract) to procure; or (3) Obtain the equipment, services, or systems. Certain prohibited equipment,
10 systems, or services, including equipment, systems, or services produced or provided by entities
11 identified in section 889, are recorded in the System for Award Management exclusion list.

12

13 **SUPER CROSS-CUTTERS:**

14 -Title VI of the Civil Rights Act

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

16 -Section 504 of the Rehabilitation Act of 1973

17 -The Age Discrimination Act of 1975

18 -Equal Employment Opportunity requirements (Executive Order 11246)

19