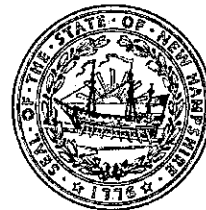




The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner



142

August 2, 2024

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 City of Portsmouth, NH (VC # 177463 B001) in an amount not to exceed \$6,000,000, to finance the Fleet Street Reconstruction Phase 2 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 following account:

03-44-44-441018-2001-301-500832

Dept. Environmental Services, CWSRF Loan Repayments, Loans

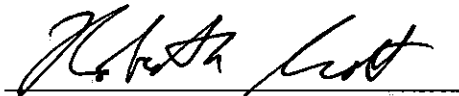
FY 2025
\$6,000,000

EXPLANATION

The purpose of the requested action is to authorize the City of Portsmouth to borrow up to \$6,000,000 from the CWSRF to finance the Fleet Street Reconstruction Phase 2 project. The project includes final design and construction of new upgraded sewer and drainage systems that will enable the separation of Vaughan Mall and Congress Street.

The Supplemental (final) loan amount will be based upon the total CWSRF funds disbursed, and may be less than \$6,000,000. Under federal capitalization grant requirements, this loan includes principal forgiveness of up to \$1,500,000. Currently, there is \$42,113,406 available to loan after this request.

We respectfully request your approval.


Robert R. Scott, Commissioner

STATE OF NEW HAMPSHIRE
WATER POLLUTION CONTROL REVOLVING LOAN FUND PROGRAM
CITY OF PORTSMOUTH, NEW HAMPSHIRE
(Project No. CS-330106-20)

ORIGINAL LOAN AGREEMENT

I. This Agreement is between the State of New Hampshire Water Pollution Control Revolving Loan Fund Program (State) and the **City of Portsmouth, 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 **Fleet Street Reconstruction Phase 2** (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 **Six Million and 00/100 Dollars (\$6,000,000)** (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 **One Million, Five Hundred Thousand and 00/100 Dollars (\$1,500,000)** or **25%** of the total of Disbursements, whichever is less, provided the project is determined to be complete by the State. 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

1 (CFDA #66.458) may comprise all or a portion of the Principal Sum. Any Disbursement or other
2 payment from the State to the Loan Recipient is contingent upon the availability of funds.

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

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

21
22 V. The interest rate applicable to the Note will be 2.8000%, as determined in accordance with
23 RSA 486:14 and Env-Wq 500 et seq.

1 VI. The Loan Recipient hereby authorizes the State to compute the payments of principal and
2 interest on the Note. The principal shall be paid in full within **30 years** from the date of the Note.
3 Note payments shall commence within one year of the Substantial Completion date of the Project
4 or the Scheduled Completion date of the project, whichever is earlier. The Scheduled Completion
5 date is hereby determined to be **January 2, 2028**; however, should the project experience an
6 excusable delay, an extension may be granted by the Commissioner of the Department of
7 Environmental Services upon request in writing by the Loan Recipient. In no event shall Note
8 payments commence later than ten years from the effective date of this Agreement.

9
10 VII. The Loan Recipient reserves the right to prepay, at any time and without penalty, all or any
11 part of the outstanding principal or interest of the Note.

12
13 VIII. In the event of a default in the full and timely remittance of any Note payment, any State
14 Aid Grant funds payable to the Loan Recipient under RSA 486:1 may be offset against and applied
15 to the payment of any obligations that are due hereunder. The Loan Recipient agrees to be liable
16 for all costs of collection, legal expenses, and attorney's fees incurred or paid by the State in
17 enforcing this Agreement or in collecting any delinquent payments due hereunder.

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

22
23 X. The Loan Recipient agrees to comply, and to require all of its contractors to comply, with all
24 applicable state and federal requirements contained in the Rules and applicable state and federal
25 laws, including those specific requirements outlined in Exhibit C.

1
2 XI. The effective date of this Agreement shall be the date of its approval by the Governor and
3 Executive Council. This Agreement may be amended, waived, or discharged only by a written
4 instrument signed by the parties hereto and only after approval of such amendment, waiver, or
5 discharge by the Governor and Executive Council.

6
7 XII. This Agreement shall be construed in accordance with the laws of the State of New
8 Hampshire and is binding upon and inures to the benefit of the parties and their respective
9 successors. The parties hereto do not intend to benefit any third parties and, consequently, the
10 Agreement shall not be construed to confer any such benefit.

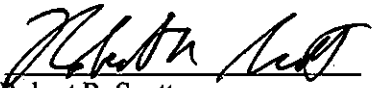
11
12 XIII. The Loan Recipient acknowledges that by accepting the Loan it will be a sub-recipient of
13 federal financial assistance and, as such, subject to requirements of the federal Single Audit Act
14 and subsequent amendments (SAA). The Loan Recipient further acknowledges that, if the Loan
15 Recipient expends more than the required threshold in federal financial assistance from all
16 sources in any fiscal year, it must perform an SAA audit in accordance with the requirements of
17 Office of Management and Budget Circular A-133. In that event, the Loan Recipient shall
18 provide the State with a copy of the SAA audit report within nine months of the end of the audit
19 period.

20
21 XIV. This Agreement, which may be executed in a number of counterparts, each of which shall
22 be deemed an original, constitutes the entire agreement and understanding between the parties
23 and supersedes all prior agreements and understandings relating thereto. Nothing herein shall be
24 construed as a waiver of sovereign immunity, such immunity being hereby specifically reserved.

1 **STATE OF NEW HAMPSHIRE**

CITY OF PORTSMOUTH,

2 **NEW HAMPSHIRE**

3 By:  8/12/24
Robert R. Scott Date
Commissioner,
Department of Environmental Services

By:  8/11/24
City Manager Date

4 This Agreement was approved by Governor and Executive Council on

5 _____, 2024 as Item No. ____.

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1 EXHIBIT B

2 STATE OF NEW HAMPSHIRE

3 WATER POLLUTION CONTROL REVOLVING LOAN FUND PROGRAM

4 PROMISSORY NOTE AND REPAYMENT SCHEDULE

5 The City of Portsmouth, New Hampshire (Loan Recipient) promises to pay to the
6 Treasurer of the State of New Hampshire the principal sum of **Six Million and 00/100 Dollars**
7 **(\$6,000,000)** in installments on **January 1** in each year as set forth below, with interest on the
8 entire unpaid balance payable on the first principal payment date and annually, thereafter, at the
9 rate of **2.8000%** per annum, computed on the basis of 30-day months and 360-day years, in the
10 respective years set forth below. A total of up to **One Million, Five Hundred Thousand and**
11 **00/100 Dollars (\$1,500,000)** of principal will be forgiven, in accordance with this agreement,
12 provided the project is determined to be complete by the State, and will be granted as reflected in
13 the repayment schedule shown below.

14
15 REPAYMENT SCHEDULE

16 <u>Payment Date</u>	<u>Principal Payment</u>	<u>Principal Forgiveness</u>	<u>Interest Payment</u>	<u>Total Payment</u>
17 2029				
18 2030				
19 2031				
20 2032				
21 2033				
22 2034				
23 2035				
24 2036				

1 2037

2 2038

3 2039

4 2040

5 2041

6 2042

7 2043

8 2044

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10 2046

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22 2058

23

24 This Promissory Note (Note) is issued under and by virtue of the New Hampshire
25 Municipal Finance Act, an agreement duly entered into by the Loan Recipient and the State of

1 New Hampshire Water Pollution Control Revolving Loan Fund Program, and is issued for the
2 purpose of financing the cost of **Fleet Street Reconstruction Phase 2 (Project)** as described in
3 Exhibit A of the Supplemental Loan Agreement (Agreement).

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

7
8 The terms and provisions of the Agreement are hereby incorporated in and made a part of
9 this Note to the same extent as if said terms and provisions were set forth in full herein.

10
11 It is hereby certified and recited that all acts, conditions, and things required to be done
12 precedent to and in the issuing of this Note have been done, have happened, and have been
13 performed in regular and due form and, for the payment hereof when due, the full faith and credit
14 of the Loan Recipient are hereby irrevocably pledged.

15
16 IN WITNESS whereof the Loan Recipient has caused this Note to be signed by its
17 _____, on the date(s) below.

18
19 **CITY OF PORTSMOUTH, NEW HAMPSHIRE** by:

20 Name/Title _____

21 Authorized Representative _____

Date _____

22 (City Seal)

EXHIBIT C
STATE OF NEW HAMPSHIRE
WATER POLLUTION CONTROL REVOLVING LOAN FUND
PROGRAM
FEDERAL REQUIREMENTS

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

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

BUILD AMERICA, BUY AMERICA (BABA) ACT: The loan recipient shall comply with all federal requirements applicable to the assistance received (including those imposed by the Infrastructure Investment and Jobs Act ("IIJA"), Public Law No. 117-58) which the Participant understands includes, but is not limited to, the following requirements: that all of the iron and steel, manufactured products, and construction materials used in the Project are to be produced in the United States ("Build America, Buy America Requirements") unless (i) the Participant has requested and obtained a waiver from the cognizant

Agency[1] pertaining to the Project or the Project is otherwise covered by a general applicability waiver; or (ii) all of the contributing Agencies have otherwise advised the Participant in writing that the Build America, Buy America Requirements are not applicable to the Project.

Comply with all record keeping and reporting requirements under all applicable legal authorities, including any reports required by the funding authority (such as EPA and/or a state), such as performance indicators of program deliverables, information on costs and project progress. The Participant understands that (i) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the applicable legal requirements and this Agreement may result in a default hereunder that results in a repayment of the assistance agreement in advance of the maturity of the Bonds, termination and/or repayment of grants, cooperative agreements, direct assistance or other types of financial assistance, and/or other remedial actions.

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.

SUSPENSION AND DEBARMENT:

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

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

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

PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT:

This term and condition implements 2 CFR 200.216 and is effective for obligations and expenditures of EPA financial assistance funding on or after 8/13/2020. As required by 2 CFR 200.216, EPA recipients and subrecipients, including borrowers under EPA funded revolving loan fund programs, are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Recipients, subrecipients, and borrowers also may not use EPA funds to purchase:

- a. For the purpose of public safety, security of government facilities, physical security surveillance of critical Page 4 of 29 infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

b. Telecommunications or video surveillance services provided by such entities or using such equipment.

c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Consistent with 2 CFR 200.471, costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, and cloud servers are allowable except for the following circumstances:

a. Obligating or expending EPA funds for covered telecommunications and video surveillance services or equipment or services as described in 2 CFR 200.216 to:

- (1) Procure or obtain, extend or renew a contract to procure or obtain;
- (2) Enter into a contract (or extend or renew a contract) to procure; or
- (3) Obtain the equipment, services, or systems. Certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the System for Award Management exclusion list 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)