



The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**



**Thomas S. Burack, Commissioner**

July 14, 2014

Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

**REQUESTED ACTION**

Authorize the Department of Environmental Services to approve a loan agreement with the Town of Newmarket, (VC#177449), Newmarket, NH in the amount not to exceed \$1,055,000 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. 100% Drinking Water State Revolving Loan Fund (DWSRF) Repayment Funds.

Funding is available in the account as follows:

	<u>FY 2015</u>
03-44-44-441018-4791-301-500833	\$1,055,000
Dept Environmental Services, DWSRF Loan Repayments, Loans	


**EXPLANATION**

The purpose of this loan agreement is to authorize the Town of Newmarket to borrow up to \$1,055,000 from the DWSRF to finance a water system improvement project at their water system. These improvements include installing new 16-inch water main as part of a section that would complete a new feed line that extends to the downtown area along Route 108. This project will improve the reliability and quality of the water system.

The final loan amount will be based on the total DWSRF funds disbursed, and may be less than \$1,055,000. 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 2.72%. The amount of any principal forgiveness under the 2013 DWSRF Intended Use Plan 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 \$25,266,970 in the DWSRF available for new loans. Attached is a tabulation of the DWSRF showing the effect of this loan on the funds available for loans.

We respectfully request your approval.

  
Thomas S. Burack, Commissioner

Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Council

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DEPARTMENT OF ENVIRONMENTAL SERVICES  
WATER DIVISION

DRINKING WATER STATE REVOLVING FUND

Supplemental information to Governor and Council request of the loan agreement(s) under RSA 486:14 and N.H. Code of Administrative Rules Env-Dw 1100 et seq. for the public water system(s) listed below.

This request will affect the balance of the loan funds as follows.

	<u>REPAYMENT</u>
Repayment Account (Balance as of 7/10/14)	<u>\$31,862,470</u>
Total Funds Authorized/Available	\$31,862,470
Less Loans Previously Approved	<u>\$6,595,500</u>
Funds Available for Loans	\$25,266,970
 <b>New Loan(s) Being Requested</b>	
City of Lebanon (Project#: 1321010-01)	\$ (200,000.00)
Town of Newmarket (Project#: 1731010-02)	<u>(1,055,000)</u>
Net Change to Loan(s)	\$ (1,255,000.00)
 <b>Balance Available After G &amp; C Approval</b>	 <u><u>\$24,011,970</u></u>

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

**TOWN OF NEWMARKET**  
(Project No. 1731010-02)

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**ORIGINAL LOAN AGREEMENT**

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I. This AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2014, between the State of New Hampshire, Drinking Water State Revolving Loan Fund Program (the “State”) and the **Town of Newmarket** (the “Loan Recipient”) in accordance with RSA 486:14 and New Hampshire Code of Administrative Rules Env-Dw 1100 (the “Rules”) for the purpose of financing, to the extent of the aggregate amount of funds transferred (“Disbursements”) to the Loan Recipient made hereunder, **Route 108 Water Main Replacement 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 Fifty Five Thousand Dollars (\$1,055,000)** (“Principal Sum”) or such lesser amount as shall equal the aggregate of Disbursements made hereunder by the State to the Loan Recipient. Federal financial assistance provided through Capitalization Grants for Drinking Water State Revolving Funds (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. Disbursements shall be made on a periodic basis, as requested by the Loan Recipient, but not more frequently than monthly, subject to the approval of the amount of each Disbursement by the State. The State shall approve the amount requested if it determines that the costs covered by

1 the request are eligible under Env-Dw 1104.01, as applicable. Interest on any Disbursement  
2 shall accrue from the date of the Disbursement at the rate of 1% per annum computed on the  
3 basis of 30-day months and 360-day years until the date of Substantial Completion (“Substantial  
4 Completion”) of the Project. Such interest may be paid (1) semi-annually, prior to the  
5 commencement of Loan repayment, (2) prior to the commencement of Loan repayment, (3) at  
6 the time of the first Loan repayment, or (4) added to the principal outstanding Loan balance at  
7 the option of the Loan Recipient so long as the Loan Recipient’s authority to borrow is not  
8 exceeded.

9

10 IV. Upon Substantial Completion of the Project, the aggregate of the Disbursements shall be  
11 consolidated by a Promissory Note (“Note”) of the Loan Recipient issued under and in  
12 accordance with the applicable provisions of the Municipal Finance Act, RSA 33, as amended  
13 and supplemented, including the provisions of RSA 486:14. The Note shall be substantially in  
14 the form of Exhibit B.

15

16 V. The interest rate applicable to the Note will be determined in accordance with RSA 486:14  
17 and Env-Dw 1100 et seq. Such interest rate will be the lesser of **2.72 %** and the adjusted market  
18 rate as determined by the 11-GO Bond Buyer Index in effect on the date of the Note.

19

20 VI. The Loan Recipient hereby authorizes the State to compute the payments of principal and  
21 interest on the Note. The principal shall be paid in full within **twenty (20)** years from the date of  
22 the Note. Note payments shall commence on the first day of the month following the first  
23 anniversary of the Substantial Completion date of the Project or the first anniversary of the  
24 Scheduled Completion date of the project, whichever is earlier. The Scheduled Completion date  
25 is hereby determined to be **July 1, 2015**; however, should the project experience excusable delay

1 beyond this date, an extension may be granted by the Commissioner upon request in writing by  
2 the Loan Recipient. In no event shall Note payments commence later than ten years from the  
3 effective date of this agreement.

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

7  
8 VIII. In the event of a default in the full and timely remittance of any Note payment, any State  
9 Aid Grant funds payable to the Loan Recipient under RSA 486:1 may be offset against and  
10 applied to the payment of any obligations that are due hereunder. The Loan Recipient agrees to  
11 be liable for all costs of collection, legal expenses, and attorney's fees incurred or paid by the  
12 State in enforcing this agreement or in collecting any delinquent payments due hereunder.

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

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18 X. The Loan Recipient acknowledges that by accepting the Loan it will be a sub-recipient of  
19 federal financial assistance and, as such, subject to requirements of the federal Single Audit Act  
20 of 1984, as amended by the Single Audit Act Amendments of 1996 (the "SAA"). The Loan  
21 Recipient further acknowledges that, if the Loan Recipient expends more than \$500,000 in  
22 federal financial assistance from all sources in any fiscal year, it must perform an SAA audit in  
23 accordance with the requirements of Office of Management and Budget Circular A-133. In that  
24 event, the Loan Recipient shall provide the State with a copy of the SAA audit report within nine  
25 months of the end of the audit period.

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

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

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

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12 The Borrower shall insert subparagraphs (i). and (ii). in the Construction Contract and require the  
13 Contractor to insert subparagraphs (i). and (ii). in all subcontracts thereunder.

14  
15 XII. Davis-Bacon (DB) prevailing wage requirements apply to the Project in accordance with the  
16 federal fiscal year (FY) 2013 Consolidated and Further Continuing Appropriations Act (P.L.  
17 113-6). The Loan Recipient shall insert in full in any contract in excess of \$2,000 which is  
18 entered into for Project construction the standard Davis-Bacon contract clause as specified by 29  
19 CFR §5.5(a). The Loan Recipient shall obtain the wage determination for the locality in which a  
20 covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes  
21 or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage  
22 determinations shall be incorporated into solicitations and any subsequent contracts. Prime  
23 contracts must contain a provision requiring that subcontractors follow the wage determination  
24 incorporated into the prime contract.  
25

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

9  
10 XIV. The Loan Recipient shall not knowingly award a construction contract to a contractor  
11 which has been debarred or suspended by the federal government. The Loan Recipient or its  
12 agent shall compare the names of contractors who have bid on the project against the searchable  
13 list in the federal “Excluded Parties List System” (EPLS) database, which can be found at  
14 <https://www.epls.gov/>; and

15  
16 XV. Pursuant to 40 CFR, Section 33.301, the Loan Recipient shall make good faith efforts to  
17 utilize small, minority and women’s business enterprises whenever procuring construction,  
18 equipment, services and supplies under an EPA financial assistance agreement, and shall require  
19 that prime contractors also comply. Records documenting compliance with the six good faith  
20 efforts shall be retained.


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

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

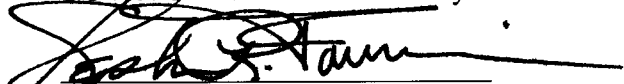
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6 XVIII. This agreement, which may be executed in a number of counterparts, each of which shall  
7 be deemed an original, constitutes the entire agreement and understanding between the parties  
8 and supersedes all prior agreements and understandings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

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STATE OF NEW HAMPSHIRE by:

  
Thomas S. Burack, Commissioner  
Department of Environmental Services

TOWN OF NEWMARKET by:

  
Stephen R. Fournier, Town Administrator



**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 installing new 16-inch water main as part of a section that would complete a new feed line that extends to the downtown area along Route 108.

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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** (“Loan Recipient”) promises to pay to the Treasurer of the State of New Hampshire the sum of \_\_\_\_\_ Dollars (\_\_\_\_\_) in installments on the anniversary date of this Promissory Note (“Note”) in each year as set forth below, commencing on the first principal payment date and annually thereafter on each principal payment date, including interest 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.

REPAYMENT SCHEDULE

<u>Year</u>	<u>Principal</u>	<u>Interest</u>	<u>Total P&amp;I</u>	<u>Payment Due</u>
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1 This Note is issued under and by virtue of the New Hampshire Municipal Finance Act, an  
2 agreement duly entered into by the Loan Recipient and the Drinking Water State Revolving Loan  
3 Fund Program (“Agreement”), a vote of the Loan Recipient at its Town Council Meeting on  
4 \_\_\_\_\_, \_\_\_\_\_, and a duly-adopted resolution of the Governing Body of the Loan  
5 Recipient and is issued for the purpose of financing the cost of the Project as described in said  
6 Resolution and Agreement.

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

10  
11 The terms and provisions of the Agreement are hereby incorporated in and made a part of  
12 this Note to the same extent as if said terms and provisions were set forth in full herein.

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

18  
19 IN WITNESS whereof the Loan Recipient has caused this Note to be signed by its Town  
20 Administrator, and the seal of the Loan Recipient to be affixed hereto, as of the \_\_\_\_ day of  
21 \_\_\_\_\_, 2014.

22  
23 TOWN OF NEWMARKET by:

24 \_\_\_\_\_  
25 Stephen R. Fournier, Town Administrator

(Seal)