



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

August 8, 2016

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 Newport (VC# 177450), Newport, NH in the amount not to exceed \$83,500 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:

03-44-44-441018-4791-301-500833	<u>FY 2017</u>
Dept Environmental Services, DWSRF Loan Repayments, Loans	\$83,500

EXPLANATION

The purpose of this loan agreement is to authorize the Town of Newport to borrow up to \$83,500 from the Drinking Water State Revolving Loan Fund (DWSRF) to finance water system improvements. The improvements include the design and engineering for water main replacement within the First, Second, Third and Fourth Streets in Newport. The project will improve water quality and reliability.

The final loan amount will be based on the total DWSRF funds disbursed, and may be less than \$83,500. 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 0.6125%. The Town of Newport is eligible for principal forgiveness under the 2015 DWSRF Intended Use Plan. The 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 \$28,964,579 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 8/6/16)	<u>\$29,514,579</u>
Less Loans Previously Approved	<u>\$550,000</u>
Funds Available for Loans	\$28,964,579
 New Loan Being Requested	
Town of Newport (Project #: 1741010-02)	(83,500)
 Net Change to Loan(s)	<u>(83,500)</u>
 Balance Available After G & C Approval	<u><u>\$28,881,079</u></u>

STATE OF NEW HAMPSHIRE

DRINKING WATER STATE REVOLVING FUND PROGRAM

TOWN OF NEWPORT
(Project No. 1741010-02)

ORIGINAL LOAN AGREEMENT

I. This AGREEMENT is made this 22nd day of August, 2016, between the State of New Hampshire, Drinking Water State Revolving Loan Fund Program (the "State") and the **Town of Newport** (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, **First, Second, Third and Fourth Streets Infrastructure 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 **Eighty Three Thousand Five Hundred Dollars (\$83,500)** ("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 V, VII, and IX. 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.

1 III. The Loan Recipient is eligible for the Disadvantaged System Program as outlined in Section
2 8 of the 2015 State of New Hampshire Drinking Water State Revolving Fund Intended Use Plan.
3 The amount of principal forgiveness will be determined when the aggregate principal loan
4 amount is established and the project is complete.

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

17

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

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1 VI. The interest rate applicable to the Note will be determined in accordance with RSA 486:14
2 and Env-Dw 1100 et seq. Such interest rate will be the lesser of **0.6125%** and the adjusted
3 market rate as determined by Env-Dw 1106 in effect on the date of the Note.

4
5 VII. The Loan Recipient hereby authorizes the State to compute the payments of principal and
6 interest on the Note. The principal shall be paid in full within **five (5)** years from the date of the
7 Note. Note payments shall commence on the first day of the month following the first
8 anniversary of the Substantial Completion date of the Project or the first anniversary of the
9 Scheduled Completion date of the project, whichever is earlier. The Scheduled Completion date
10 is hereby determined to be **February 1, 2017**; however, should the project experience excusable
11 delay beyond this date, an extension may be granted by the Commissioner upon request in
12 writing by the Loan Recipient. In no event shall Note payments commence later than ten years
13 from the effective date of this agreement.

14
15 VIII. The Loan Recipient reserves the right to prepay, at any time and without penalty, all or any
16 part of the outstanding principal or interest of the Note.

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

1 X. No delay or omission on the part of the State in exercising any right hereunder shall operate
2 as a waiver of such right or of any other right under this agreement. A waiver on any one
3 occasion shall not be construed as bar to any right and/or remedy on any future occasion.
4

5 XI. The Loan Recipient agrees to comply, and to require all of its contractors to comply, with all
6 applicable state and federal requirements contained in the Rules and applicable federal law.
7 Exhibit C contains specific federal requirements applicable to this agreement for the loan
8 recipient.
9

10 XII. The Loan Recipient acknowledges that by accepting the Loan it will be a sub-recipient of
11 federal financial assistance and, as such, subject to requirements of the federal Single Audit Act
12 of 1984, as amended by the Single Audit Act Amendments of 1996 (the "SAA"). The Loan
13 Recipient further acknowledges that, if the Loan Recipient expends more than \$750,000 in
14 federal financial assistance from all sources in any fiscal year, it must perform an SAA audit in
15 accordance with the requirements of Office of Management and Budget Circular A-133. In that
16 event, the Loan Recipient shall provide the State with a copy of the SAA audit report within nine
17 months of the end of the audit period.
18

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

24 XIV. The Loan Recipient agrees to permit the Comptroller General of the United States, an
25 appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of

1 1978 (5 U.S.C. App.), or an authorized representative of either of the foregoing officials, or of
2 the State of New Hampshire to have access to and the right to:

3

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

7

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

9

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

12

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

17

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

22

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

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

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STATE OF NEW HAMPSHIRE by:

TOWN OF NEWPORT by:

Thomas S. Burack 8/22/2016
Thomas S. Burack Date
Commissioner
Department of Environmental Services

Shane O'Keefe 8/4/2016
Shane O'Keefe Date
Town Manager
Town of Newport

EXHIBIT A

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

PROJECT DESCRIPTION

The Town of Newport has applied for a Loan to be used for water system improvements including the design and engineering for water main replacement within the First, Second, Third and Fourth Streets in Newport.

1 **EXHIBIT B**

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

4 **PROMISSORY NOTE AND REPAYMENT SCHEDULE**

5 The **Town of Newport** (“Loan Recipient”) promises to pay to the Treasurer of the State
6 of New Hampshire the sum of _____ Dollars (_____) in
7 installments on the anniversary date of this Promissory Note (“Note”) in each year as set forth
8 below, commencing on the first principal payment date and annually thereafter on each principal
9 payment date, including interest at the rate of _____% per annum, computed on the basis of
10 30-day months and 360-day years, in the respective years set forth below. A sum of _____%
11 of, \$ _____ will be forgiven at the first payment.
12

13 REPAYMENT SCHEDULE

14

<u>Year</u>	<u>Principal</u>	<u>Interest</u>	<u>Total P&I</u>	<u>Payment Due</u>
15 1				
16 2				
17 3				
18 4				
19 5				

20 This Note is issued under and by virtue of the New Hampshire Municipal Finance Act, an
21 agreement duly entered into by the Loan Recipient and the Drinking Water State Revolving Loan
22 Fund Program (“Agreement”), a vote of the Loan Recipient at its _____ Meeting on
23 _____, _____, and a duly-adopted resolution of the Governing Body of the Loan
24 Recipient and is issued for the purpose of financing the cost of the Project as described in said
25 Resolution and Agreement.

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

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

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

9 IN WITNESS whereof the Loan Recipient has caused this Note to be signed by its
10 _____, and the seal of the Loan Recipient to be affixed hereto, as of the
11 ____ day of _____, 20__.

12

13 TOWN OF NEWPORT by:

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15 _____
16 Shane O'Keefe
Town Manager
Town of Newport

(Seal)

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1 **EXHIBIT C**

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

4 **FEDERAL REQUIREMENTS**

5 **DUNS Number:** The Loan Recipient must obtain a Data Universal Numbering System (DUNS) number.
6 The federal government has adopted the use of DUNS numbers to track how federal grant money is
7 allocated. DUNS numbers identify your organization. A DUNS number may be obtained by visiting
8 <http://fedgov.dnb.com/webform/>.
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10 **WAGE RATE REQUIREMENTS (DAVIS-BACON):** Davis-Bacon (DB) prevailing wage
11 requirements apply to the Project in accordance with the federal fiscal year (FY) 2014 Consolidated
12 Appropriations Act (P.L. 113-76). The Loan Recipient shall insert in full in any contract in excess of
13 \$2,000 which is entered into for Project construction the standard Davis-Bacon contract clause as
14 specified by 29 CFR §5.5(a). The Loan Recipient shall obtain the wage determination for the locality in
15 which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes
16 or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage
17 determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts
18 must contain a provision requiring that subcontractors follow the wage determination incorporated into
19 the prime contract.
20

21 **AMERICAN IRON AND STEEL (AIS):** The Loan Recipient agrees to comply with Section 436 of the
22 Consolidated Appropriations Act, 2014 (P.L. 113-76), which requires that all of the iron and steel
23 products used in the Project are to be produced in the United States (“American Iron and Steel
24 Requirement”) unless (i) the Loan Recipient has requested and obtained a waiver from the Environmental
25 Protection Agency pertaining to the Project or (ii) the State has otherwise advised the Participant in

1 writing that the American Iron and Steel Requirement is not applicable to the Project. The Loan
2 Recipient further agrees to maintain records documenting compliance with the American Iron and Steel
3 Requirement, and to provide records and certifications to the State upon request.

4
5 **GENERALLY ACCEPTED ACCOUNTING PROCEDURES:** The Loan Recipient shall maintain
6 project accounts in accordance with the Generally Accepted Accounting Principles (GAAP), including
7 standards relating to the reporting of infrastructure assets as issued by the Governmental Accounting
8 Standards Board (GASB). The most recent applicable standard is GASB Statement No. 34 (GASB 34)
9 issued in June 1999, which details governmental reporting requirements including standards for reporting
10 of infrastructure assets. The full text of GASB 34 is available through the GASB website at:

11 http://www.gasb.org/jsp/GASB/Document_C/GASBDocumentPage?cid=1176160029121&acceptedDiscl
12 [aimer=true](http://www.gasb.org/jsp/GASB/Document_C/GASBDocumentPage?cid=1176160029121&acceptedDiscl)

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

19
20 **EXCLUDED PARTIES LIST SYSTEMS (EPLS):** The Loan Recipient shall not knowingly award a
21 construction contract to a contractor which has been debarred or suspended by the federal government.
22 The Loan Recipient or its agent shall compare the names of contractors who have bid on the project
23 against the searchable list in the federal “Excluded Parties List System” (EPLS) database, which can be
24 found at <https://www.epls.gov>.

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