

Town of Newmarket
Town Council Resolution #2021/2022-33
Resolution Authorizing the Issuance of Refunding Bond

May 4, 2022 – First reading
June 1, 2022 – Public Hearing
June 1, 2022 – Second Reading

Whereas, the Town of Newmarket (the “Town”) is completing installation of well treatment upgrades to meet drinking water quality standards at the MacIntosh and Tucker wells (the “Project”), which Project has been approved for funding through the State’s Drinking Water and Groundwater Trust Fund Loan Program (the “DWGT Program”);

Whereas, effective June 5, 2019, the Town entered into a Loan Agreement with the DWGT Program to borrow up to \$2,825,000 to fund the Project (the “Loan Agreement”) with interest on loan disbursements accruing at an interest rate of 1.0% per annum until substantial completion of the Project, at which time interest on the aggregate of all loan disbursements accrues at an interest rate of 3.38%;

Whereas, effective June 5, 2019, the State Department of Environmental Services (“DES”) awarded a Drinking Water and Groundwater Trust Fund grant for the Project in an amount not to exceed \$975,000 (the “Grant”);

Whereas, effective May 6, 2020, the Loan Agreement was amended to increase the loan by \$1,075,000 to an amount not to exceed \$3,900,000 and to extend the Project completion date from October 1, 2021 to June 1, 2022 (the “Amended Loan Agreement”);

Whereas, effective May 6, 2020, DES amended the Grant to increase the Grant amount by \$882,000 to \$1,857,000 and to extend the Project completion date from October 1, 2021 to June 1, 2022 (the “Amended Grant”);

Whereas, upon processing of the final disbursement under the Loan Agreement, the Town and the DWGT Program shall execute a Supplemental Loan Agreement in a principal amount equal to the aggregate of all disbursements under the Loan Agreement plus, at the option of the Town, capitalized interest accrued under the Loan Agreement (the “Supplemental Loan Agreement”), which Supplemental Loan Agreement shall be evidenced by a Promissory Note (the “Note”);

Whereas, Northway Bank has offered to refinance the Note at an interest rate more favorable to the Town than the Note; and

Whereas, prior to the second reading of this Resolution, the Town Council of the Town has held a public hearing on issuing a general obligation bond to fully refund the Note pursuant to RSA 33:3-d;

Now therefore, the Town Council of the Town of Newmarket hereby RESOLVES, as follows:

1. That pursuant to the Municipal Finance Act, RSA Chapter 33, including RSA 33:3-d, and all other applicable law, the Treasurer of the Town and the Director of Finance & Administration, acting singly, are authorized to arrange for tax-exempt general obligation financing of the Town with Northway Bank or such other lending institution that either may select in the best interest of the Town (the "Bank") in a principal amount not to exceed the principal amount of the Note (up to \$3,900,000 plus capitalized accrued interest, if any) (the "Principal Amount") to fully refund the Note on a current basis, and any such prior action is ratified and confirmed;
2. That pursuant to the terms of said Loan Agreement and this Resolution, the Town is authorized to borrow from the Bank a sum not to exceed the Principal Amount and to evidence such indebtedness, the Treasurer and a majority of the Town Council are authorized to issue a general obligation bond of the Town in a principal amount of up to the Principal Amount (the "Refunding Bond") and to pledge the full faith and credit of the Town in payment of the Refunding Bond;
3. That the Refunding Bond shall be signed by a majority of the Town Council and countersigned by the Treasurer under the official seal of the Town, if any, and bear interest at such rate as the signatories of the Refunding Bond may approve; and shall be in such form as such signatories may approve; said approvals to be conclusively evidenced by the execution and delivery thereof;
4. That the Treasurer and other proper officials of the Town, acting singly, are authorized to execute and deliver on behalf of the Town such other documents and certificates, including such documents and certificates as may be required by bond counsel or the Bank, and to do or cause to be done all such other acts and things as may be necessary or desirable in order to affect the transactions hereinbefore authorized, and any such prior action by them is hereby ratified and confirmed;
5. That (i) no part of the proceeds of the Refunding Bond shall be used, directly or indirectly, to acquire any securities and obligations, the acquisition of which would cause the Refunding Bond to be an "arbitrage bond" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, (the "Code"), and (ii) the proceeds of the Refunding Bond and the Project shall not be used in a manner that would cause the Refunding Bond to be a "private activity bond" within the meaning of Section 141 of the Code;
6. That in connection with the Refunding Bond, the Treasurer is authorized to execute and deliver on behalf of the Town an Arbitrage and Use of Proceeds Certificate in form approved by the Town's bond counsel, and to covenant on behalf of the Town to file any information report and pay any rebate due to the United States in connection with the issuance of the Refunding Bond, and to take all other lawful actions necessary to ensure that the interest on the Refunding Bond will be excludable from the gross income of the owners thereof for purposes of federal income taxation and to refrain from taking any action which would cause interest on the Refunding Bond to become includable in the gross income of the owners thereof;

7. That the Treasurer and other proper officials of the Town, acting singly, are authorized in consultation with Bond Counsel to implement written procedures with respect to the Refunding Bond for the purpose of: (i) ensuring timely “remedial action” for any portion of the Refunding Bond that may become “non-qualified bonds,” as those terms are defined in the Code and regulations thereunder; and (ii) monitoring the Town’s compliance following the issuance of the Refunding Bond with the arbitrage, yield restriction and rebate requirements of the Code and regulations thereunder;

9. That if the Treasurer or Chair of the Town Council for any reason are unavailable to, as applicable, approve, execute, or attest the Refunding Bond or any related financing documents, the person or persons then acting in any such capacity, whether as assistant, deputy, vice-chair, or otherwise, is authorized to act for such unavailable official with the same force and effect as if such official had himself/herself performed such act; and

10. That the Town Clerk include an attested copy of this Resolution with the minutes of this meeting.

A true copy as adopted by a majority of the Town Council, attest:

Terri J. Littlefield
Town Clerk

Toni Weinstein

Megan Brabec

Scott Blackstone

Katanna Conley

Brian Ward

Joe Lamattina

Colin D. White, Sr.

A majority of the Town Council