



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

Thomas S. Burack, Commissioner



July 11, 2013

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 amend an original loan agreement with The Hampstead Area Water Co. Inc. (VC #156646) by increasing the amount by \$75,000 from \$180,000 to \$255,000 to finance water system improvements subject to conditions as outlined in documents substantially in the form presented, under the provision of RSA 486:14 and N.H. Code of Administrative Rules Env-Dw 1100 et seq. effective upon Governor & Council approval. The original loan agreement was approved by Governor and Council on January 25, 2012, Item #51. 79% Federal Funds and 21% Capital (General) Funds.

Funding is available in the accounts as follows.

| | |
|---|----------------|
| | <u>FY 2014</u> |
| 03-44-44-441018-4789-301-500833 | \$59,250 |
| Dept Environmental Services, DWSRF Loans, Loans | |
| 03-44-44-441030-0956-034-500161 | \$15,750 |
| Dept Environmental Services, 07264:1 VII, DWSRF Match | |

EXPLANATION

The purpose of this amendment is to authorize The Hampstead Area Water Company to increase the loan amount from \$180,000 to \$255,000 from the Drinking Water State Revolving Fund Program (DWSRF) to finance water system improvements. The Hampstead Area Water Co. Inc. owns and operates a public water system which serves over twenty six hundred customers in Atkinson. The proposed project is to replace approximately 100 water service lines in the Walnut Ridge water system in Atkinson. The increase is needed in order to continue service line repairs that are proving to reduce substantial water leaks.

The DWSRF is authorized by RSA 486:14 and N.H. Code of Administrative Rules Env-Dw 1100 et seq. The U. S. Environmental Protection Agency (EPA) has provided approximately \$104,221,498 to capitalize the DWSRF and the State has provided \$28,249,860 in required matching funds. There is currently a balance of \$539,209 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

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>DWSRF</u> |
|---|------------------------|
| Federal Funds | \$104,221,498 |
| Plus 20% State Match | <u>\$28,249,860</u> |
| Total Funds Authorized/Available | \$132,471,358 |
| Less Loans Previously Approved | <u>\$131,932,149</u> |
| Funds Available for Loans | \$539,209 |
| | |
| New Loan(s) Being Requested | |
| Pennichuck East Utility (Project#: Locke Lake-0142010-03) | (400,000) |
| | |
| Amended Loan Agreement(s) | |
| Hampstead Area Water Co. Inc. (Project#: 0112080) | (75,000) |
| | |
| Net Change to Loan(s) | <u>(\$475,000)</u> |
| | |
| Balance Available After G & C Approval | <u><u>\$64,209</u></u> |

NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES
Drinking Water State Revolving Loan Program

| <u>DWSRF Fund Available For Loans</u> | <u>Amount</u> |
|---|-----------------------|
| 1997 - 2006 Capitalization Grants | \$84,740,500 |
| Plus State Match | \$16,952,100 |
| Less Setasides | <u>(\$18,990,542)</u> |
| Total 1997-2006 Funds Available for Loans | \$82,702,058 |
| | |
| 2007 Capitalization Grant | \$8,229,000 |
| Plus State Match | \$1,646,160 |
| Less Setasides | <u>(\$2,550,990)</u> |
| Total 2007 Funds Available for Loans | \$7,324,170 |
| | |
| 2008 Capitalization Grant | \$8,146,000 |
| Plus State Match | \$1,629,200 |
| Less Setasides | <u>(\$2,525,260)</u> |
| Total 2008 Funds Available for Loans | \$7,249,940 |
| | |
| 2009 Capitalization Grant | \$8,146,000 |
| Plus State Match | \$1,629,200 |
| Less Setasides | <u>(\$2,525,260)</u> |
| Total 2009 Funds Available for Loans | \$7,249,940 |
| | |
| 2010 Capitalization Grant | \$13,573,000 |
| Plus State Match | \$2,714,600 |
| Less Setasides | <u>(\$4,712,120)</u> |
| Total 2010 Funds Available for Loans | \$11,575,480 |
| | |
| 2011 Capitalization Grant | \$9,418,000 |
| Plus State Match | \$1,883,600 |
| Less Setasides | <u>(\$2,919,580)</u> |
| Total 2011 Funds Available for Loans | \$8,382,020 |
| | |
| 2012 Capitalization Grant | \$8,975,000 |
| Plus State Match | \$1,795,000 |
| Less Setasides | <u>(\$2,782,250)</u> |
| Total 2012 Funds Available for Loans | \$7,987,750 |
| | |
| Total 1997-2012 Funds Available for Loans | \$132,471,358 |

**FIRST AMENDMENT TO LOAN AGREEMENT, GUARANTY
AND SECURITY INSTRUMENTS**

This First Amendment to Loan Agreement and Security Instruments is made this ___ day of _____, 2013 between The Hampstead Area Water Company, Inc., a New Hampshire corporation with an address of 54 Sawyer Avenue, Atkinson, New Hampshire 03811 (sometimes hereinafter called the "Borrower"), Christine Lewis Morse with a mailing address of _____, New Hampshire _____ (the "Guarantor") and the State of New Hampshire with an address of c/o Department of Environmental Services, 29 Hazen Drive, P.O. Box 95, Concord, New Hampshire 03302-0095 (hereinafter the "Lender") for themselves and their successors and assigns.

RECITALS

A. The Lender has provided a loan of up to \$180,000 (the "Loan") to the Borrower as evidenced by a Promissory Note of the Borrower dated April 20, 2012 in the original principal amount of \$180,000 (the "Note") pursuant to a Loan Agreement dated April 20, 2012 between the Borrower and the Lender (the "Loan Agreement") to finance the construction and equipping of certain improvements to the Borrower's water system for Walnut Ridge in Atkinson, New Hampshire;

B. The Loan is secured by certain Security Instruments (as defined in the Loan Agreement), including, without limitation, a Security Agreement dated April 20, 2012 between the Borrower and the Lender (the "Security Agreement"), a Collateral Assignment of Contracts, Plans and Permits dated April 20, 2012 between the Borrower and the Lender (the "Collateral Assignment of Contracts, Plans and Permits") and a Leasehold and Fee Interest Mortgage and Security Agreement dated April 20, 2012;

C. The Loan is guaranteed by the Guarantor pursuant to a Guaranty dated April 20, 2012 (the "Guaranty");

D. The parties desire to increase the amount of the Loan to \$255,000 and are amending the Note pursuant to a First Allonge to Promissory Note of even date to increase its principal amount and amend other terms (the "Allonge"); and

E. The parties desire to amend the Loan Agreement and certain Security Instruments in accordance with this agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties agree as follows:

1. Defined Terms. All capitalized terms used in this agreement shall have the meaning assigned to them in the Loan Agreement unless otherwise defined herein.

2. Amendment of the Loan Agreement.

(a) The second sentence of Recital Paragraph B on the first page of the Loan Agreement is hereby amended by replacing "\$180,000" with "\$255,000":

(b) Section 1 of the Loan Agreement is hereby amended by replacing the definition of "Note" with the following:

"Note" means the Borrower's Promissory Note dated April 20, 2012 in the original principal amount of \$180,000 payable to the order of the State in the form attached hereto as Exhibit C, as amended by a First Allonge to Promissory Note dated _____, 2013 between the Borrower and the Lender."

(c) Section 5(a) of the Loan Agreement is hereby amended by replacing "Twelve(12) months" in the fifth line with "___ months".

(d) Exhibit B to the Loan Agreement is hereby amended by replacing it with Exhibit B attached hereto.

3. Amendment of Security Instruments.

(a) Recital Paragraph B of the Security Agreement is hereby amended by replacing it with the following:

(b) The Secured Party has agreed to extend credit to the Borrower in the amount not to exceed Two Hundred Fifty Five Thousand Dollars (\$255,000) in exchange for the Borrower's Promissory Note dated April 20, 2012, as amended by a First Allonge Promissory Note dated _____, 2013 between the Borrower and the Lender (as amended thereby and from time to time hereafter, the "Note").

(c) Section 1 of the Collateral Assignment, Plans and Permits is hereby amended by replacing it with the following:

1. Security. This Assignment is made as additional security for the performance of all the Assignor's obligations under the Loan Agreement, Assignor's Promissory Note in the original amount of \$180,000 as amended by a First Allonge to Promissory Note dated _____, 2013 increasing the principal amount thereof to \$255,000 and certain security instruments as described in the Loan Agreement (the "Security Instruments"), each dated as of even date and delivered to or to be delivered to Assignee.

4. Amendment of Guaranty. The first recital paragraph of the Guaranty is hereby replaced with the following:

WHEREAS, subject to certain terms and conditions, State has agreed to loan to The Hampstead Area Water Company, Inc. ("Borrower"), the principal sum of Two Hundred Fifty-Five Thousand Dollars (\$255,000), which is to be repaid with interest in accordance with the terms of a promissory note dated April 20, 2012 of Borrower to State in the original principal amount of \$180,000, as amended by a First Allonge to Promissory Note dated _____, 2013 between Borrower and State increasing the principal amount of the Note to \$255,000 (as amended, the "Note").

5. Representations. The Borrower represents and warrants that the representation and warranties set forth in Section 2 of the Loan Agreement are true and correct as of the date hereof.

6. Ratification. The Borrower and the Guarantor ratify and confirm all of the terms, conditions, covenants and provisions of the Loan Agreement, the Guaranty and the Security Instruments, as amended hereby, the Note as amended by the Allonge, which shall remain in full force and effect.

7. Consent. The Guarantor hereby consents to the First Amendment of Leasehold and Fee Interest Mortgage and Security Agreement of even date between the Borrower and the Lender.

8. Expenses. The Borrower shall pay for the endorsements to the Lender's title insurance policy insuring the Mortgage that the Lender reasonably requires.

EXECUTED on the day and year first above written.

BORROWER:

**THE HAMPSTEAD AREA WATER
COMPANY, INC.**

Witness

By: _____
Name:
Title:
Duly Authorized

GUARANTOR:

Witness

Christine Lewis Morse

LENDER:

THE STATE OF NEW HAMPSHIRE

Witness

By: _____
Name: Thomas Burack
Title: Commissioner, Department of
Environmental Services
Duly Authorized

**FIRST AMENDMENT
TO
LEASEHOLD AND FEE INTEREST MORTGAGE AND SECURITY AGREEMENT**

Amendment made this ____ day of _____, 2013 between The Hampstead Area Water Company, Inc., a New Hampshire corporation with an address of 54 Sawyer Avenue, Atkinson, New Hampshire 03811 (the "Mortgagor"), and the State of New Hampshire with an address c/o the Department of Environmental Services, 29 Hazen Drive, P.O. Box 95, Concord, New Hampshire 03302-0095 (the "Mortgagee").

RECITALS

1. On April 20, 2012 the Mortgagee agreed to lend to the Mortgagor up to \$180,000 pursuant to a Loan Agreement dated April 20, 2012 (the "Loan Agreement"), which loan is evidenced by the Promissory Note of the Mortgagor dated April 20, 2012 in the principal amount of \$180,000 (the "Note") and secured by certain security instruments (as defined in the Loan Agreement, the "Security Instruments"), including, without limitation, a Leasehold and Fee Interest Mortgage and Security Agreement dated April 20, 2012 between the Mortgagor and the Mortgagee, recorded at Rockingham County Registry of Deeds at Book 5310, Page 1818, pursuant to which the Mortgagor granted a mortgage of certain real property of the Mortgagor situated in Hampstead, Atkinson, Sandown, Freemont, Nottingham, Danville, Kingston and East Kingston, Rockingham County, New Hampshire (the "Mortgage"); and

2. The Mortgagee is willing to increase the amount of the loan evidenced by the Note to \$255,000; provided that the Note, the Loan Agreement and the Security Instruments are amended pursuant to a First Allonge to Promissory Note of even date between the Mortgagor and the Mortgagee and an Amendment to Loan Agreement, Guaranty and Security Instruments of even date among the Mortgagor, Christine Lewis Morse and the Mortgagee to reflect the increased amount of the loan, to provide for certain other amendments and to provide for the security of the increased amount of the loan and provided that the Mortgage is amended pursuant to this Amendment to provide that the increased amount of the loan is secured by the Mortgage.

NOW THEREFORE, for consideration received, the Mortgagor and the Mortgagee agree as follows:

1. Amendment of Mortgage. (a) Clause (i) of the first paragraph on page 1 of the Mortgage is hereby amended by replacing "One Hundred Eighty Thousand Dollars (\$180,000.00)" with "Two Hundred Fifty-Five Thousand Dollars (\$255,000.00)" and by replacing "Promissory Note of the Mortgagor, in such principal amount of near or even date" with "Promissory Note dated April 20, 2012, as amended, in such principal amount".

(b) Clause (ii) of the first paragraph on page 1 of the Mortgage is amended by replacing "Leasehold Mortgage and Loan Agreement" with "Leasehold and Fee Interest Mortgage and Security Agreement".

2. Full Force. The Mortgage, as amended hereby, shall remain in full force and effect, and for consideration paid, the Mortgagor regrants with mortgage covenants the mortgage of the Premises as defined in the Mortgage as the Mortgage is amended hereby.

Executed on the day and year first above written.

THE HAMPSTEAD AREA WATER
COMPANY, INC.

By: _____
Name:
Title:

STATE OF NEW HAMPSHIRE

By: _____
Thomas Burack
Commissioner, New Hampshire Department of
Environmental Services

STATE OF NEW HAMPSHIRE
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2013 by _____, the _____ of The Hampstead Area Water Company, Inc., a New Hampshire corporation, on behalf of the corporation.

Notary Public/Justice of the Peace
Name:
My commission expires:
[seal]

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by Thomas Burack as Commissioner, New Hampshire Department of Environmental Services on behalf of the State of New Hampshire.

Notary Public/Justice of the Peace
Name: _____
My commission expires:
[seal]

FIRST ALLONGE TO PROMISSORY NOTE

Allonge made this ____ day of _____, 2013 between The Hampstead Area Water Company, Inc., a New Hampshire corporation with an address of 54 Sawyer Avenue, Atkinson, New Hampshire 03811 (the "Maker"), and the State of New Hampshire with an address of c/o Department of Environmental Services, 29 Hazen Drive, P.O. Box 95, Concord, New Hampshire 03302-0095 (the "Payee") for themselves and their successors and assigns.

RECITALS

A. Pursuant to a Loan Agreement dated April 20, 2012 between the Maker and the Payee (the "Loan Agreement"), the Payee agreed to provide a loan to the Maker of up to \$180,000, which is evidenced by the Promissory Note dated April 20, 2013 of the Maker in the principal amount of up to \$180,000 (the "Note");

B. The parties have amended the Loan Agreement and certain Security Instruments (as defined in the Loan Agreement) pursuant to a First Amendment to Loan Agreement, Guaranty and Security Instruments of even date among the Maker, the Payee and Christine Lewis Morse (the "Amendment Agreement") and a First Amendment of Mortgage and Collateral Assignment of even date between the Maker and the Payee (the "Mortgage Amendment"); and

C. The parties desire to increase the amount of such loan evidenced by the Note to up to \$255,000 and to modify the terms of repayment of the Note pursuant to the terms of this Allonge.

NOW THEREFORE, the parties agree as follows:

1. The Note is hereby amended as follows:

(a) The face amount of the Note as expressed in the top left corner of the first page of the Note is hereby increased from \$180,000 to \$255,000.

(b) The amount of "ONE HUNDRED EIGHTY THOUSAND DOLLARS (\$180,000)" in the fifth line of the first paragraph of the Note is hereby replaced with "TWO HUNDRED FIFTY-FIVE THOUSAND DOLLARS (\$255,000)".

(c) The first paragraph of the Note is hereby amended by replacing "June 1, 2013" in Clause (ii) with "_____, 2013".

(d) Paragraph 1(b) of the Note is hereby amended by replacing "\$180,000" in the eleventh and twelfth lines with "\$255,000".

2. The Note, as amended hereby, and the Loan Agreement and the Security Instruments, as amended by the Amendment Agreement and the Mortgage Amendment are hereby ratified and confirmed and shall remain in full force and effect.

Executed as of the day and year first above written.

**THE HAMPSTEAD AREA WATER
COMPANY, INC.**

Witness

By: _____
Name:
Title:
Duly Authorized

THE STATE OF NEW HAMPSHIRE

Witness

By: _____
Name: Thomas S. Burack
Title: Commissioner, Department of
Environmental Services
Duly Authorized

The undersigned, who has guaranteed the Promissory Note amended by the foregoing Allonge, hereby consents to the foregoing Allonge this ___ day of _____, 2013.

Witness

Christine Lewis Morse

AMENDMENT OF SUBORDINATION AGREEMENT

Amendment to Subordination Agreement made this ____ day of _____, 2013 by Lewis Builders, Inc., a New Hampshire corporation with a principal place of business at 54 Sawyer Avenue, Atkinson,, New Hampshire 03811 (hereinafter called the "Subordinated Creditor"), and the State of New Hampshire with an address c/o the Department of Environmental Services, 29 Hazen Drive, P. O. Box 95, Concord, New Hampshire 03302-0095 (hereinafter called the "State").

RECITALS

- A. The parties entered into a Subordination Agreement dated April 20, 2012 (the "Agreement"); and
- B. The parties desire to amend the Agreement pursuant to this Amendment.

Now therefore, the parties agree as follows:

- 1. Recital paragraph B of the Agreement is amended by replacing it with the following:

The State is extending a loan to the Borrower pursuant to a Loan Agreement dated April 20, 2012 between the State and the Borrower, as amended, and as evidenced by the Promissory Note of the Borrower dated April 20, 2012 in the original principal amount of \$180,000, as increased to \$255,000 pursuant to a First Allonge to Promissory Note dated _____, 2013 between the Borrower and the State.

- 2. The parties ratify the Agreement as amended hereby.

Executed on the day and year first above written.

LEWIS BUILDERS, INC.

By: _____
Name:
Title:

STATE OF NEW HAMPSHIRE

By: _____
Thomas Burack, Commissioner
Department of Environmental
Services

**DISCLOSURE OF FINANCE CHARGES
STATE DRINKING WATER REVOLVING LOAN FUND**

Pursuant to New Hampshire RSA Chapter 399-B:2

TO: THE HAMPSTEAD AREA WATER COMPANY, INC. ("Borrower")

DATE: _____, 2013

Amount of Loan: \$255,000

Finance Charges: 1% per annum until the Interest Rate Change Date (as defined in Borrower's Promissory Note dated April 20, 2012 in the principal amount of \$180,000, as amended by a First Allonge to Promissory Note increasing the principal amount to \$255,000 (the "Note")), and thereafter at the lower of (A) 3.1040% per annum or (B) 80 percent of the established 11 General Obligations Bond Index published during the first week of the month of October before the Interest Rate Change Date.

Late fee: 5% of a payment will be assessed if not paid within 7 days of its due date.

Payable: As provided in the Note.

Recording and filing fees: \$

Title search fee: \$

Lender's title insurance policy: \$

**Borrower: THE HAMPSTEAD AREA WATER
COMPANY, INC.**

By: _____

Name:

Title:

Guarantor:

Christine Lewis Morse