



DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

February 17, 2015

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 a loan agreement with the Pennichuck East Utility, Inc. (PEU), (VC#225852), Merrimack, NH by increasing the loan amount by \$510,000 from \$550,000 to \$1,060,000 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. The original loan agreement was approved on May 23, 2014, Item #60. 100% Drinking Water State Revolving Loan Fund (DWSRF) Repayment Funds.

Funding is available in the accounts as follows:

03-44-44-441018-4791-301-500833 FY 2015 \$510,000
Dept Environmental Services, DWSRF Loan Repayments, Loans

EXPLANATION

The purpose of this amendment is to authorize the PEU to modify their original loan agreement approved by Governor and Council on May 23, 2014 as Item #60. The PEU had originally requested \$550,000 from the Drinking Water State Revolving Fund Program (DWSRF) to finance a project which includes Phase I of water main replacement at the W&E water system in Windham. The additional funds are necessary in order to complete Phase II under the existing contract. DES has sufficient funds at this time to meet the PEU's request. This project will improve water quality and increase water service reliability.

The Repayment Account has an uncommitted balance of \$16,357,189 as of February 13, 2015 that has accumulated from repayment of loans to public water systems. New loans are made with these funds. Attached is a tabulation of the Repayment Account showing the effect of this loan on the funds available.

We respectfully request your approval.

for Vicki S. Quira
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 2/13/15)	<u>\$27,378,314</u>
Total Funds Authorized/Available	<u>\$27,378,314</u>
Less Loans Previously Approved	<u>\$11,021,125</u>
Funds Available for Loans	<u>\$16,357,189</u>
 Amendment Being Requested	
Pennichuck East Utility, Inc. / W&E (Project#: 2542030)	(510,000)
 Net Change to Loan(s)	<u>(510,000)</u>
 Balance Available After G & C Approval	<u><u>\$15,847,189</u></u>

CLOSING AGENDA

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

RE: AMENDMENT OF LOAN TO PENNICHUCK EAST UTILITY, INC.
FOR W&E COMMUNITY WATER SYSTEM
WINDHAM, NEW HAMPSHIRE
Project # 2542030

DATE: _____, 2015

- | | | |
|----|---|-------|
| 1. | State of New Hampshire | “SNH” |
| 2. | Pennichuck East Utility, Inc. | “B” |
| 3. | Borrower’s Counsel: Rath Young Pignatelli | “BC” |
| 4. | State’s Counsel: David Howe | “DMH” |

No.	Item:	Responsible Party:
1.	Certified Copy of Articles of Incorporation of Borrower	B
2.	Certified Copy of Articles of Pennichuck Corporation	B
3.	Certified Bylaws of Borrower	B
4.	Certified Bylaws of Pennichuck Corporation	B
5.	Certificate of Existence of Borrower	B
6.	Certificate of Existence of Pennichuck Corporation	B
7.	Certificate of Corporate Resolution of Borrower	B
8.	Certificate of Resolutions of Pennichuck Corporation (Board of Directors and City of Nashua)	B
9.	Amended Schedule of Costs (Budget) (Exhibit B)	B
10.	First Amendment to Loan Agreement and Guaranty	SNH
11.	First Allonge to Promissory Note	SNH
12.	Opinion of Borrower’s Counsel	BC
13.	Public Utilities Commission Order	B
14.	Governor and Council approval	SNH

FIRST AMENDMENT TO LOAN AGREEMENT AND GUARANTY

This First Amendment to Loan Agreement and Guaranty is made this ____ day of _____, 2015 between Pennichuck East Utility, Inc., a New Hampshire corporation with an address of 25 Manchester Street, P.O. Box 1947, Merrimack, New Hampshire 03054-1947 (sometimes hereinafter called the “Borrower”), Pennichuck Corporation with a mailing address of 25 Manchester Street, P.O. Box 1947, Merrimack, New Hampshire 03054-1947 (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 \$550,000 (the “Loan”) to the Borrower as evidenced by a Promissory Note of the Borrower dated May 22, 2014 in the original principal amount of \$550,000 (the “Note”) pursuant to a Loan Agreement dated May 22, 2014 between the Borrower and the Lender (the “Loan Agreement”) to finance the replacement of approximately 8,500 linear feet of water main to the Borrower’s water system for W&E in Windham, New Hampshire;

B. The Loan is guaranteed by the Guarantor pursuant to a Guaranty dated May 22, 2014 (the “Guaranty”);

D. The parties desire to increase the amount of the Loan to \$1,060,000 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 Guaranty 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 last sentence of Recital Paragraph B on the first page of the Loan Agreement is hereby amended by replacing “\$550,000” with “\$1,060,000”:

(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 May 22, 2014 in the original principal amount of \$550,000 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 _____, 2015 between the Borrower and the Lender.”

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

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

WHEREAS, contemporaneously herewith, subject to certain terms and conditions, State has agreed to loan to Pennichuck East Utility, Inc. (“Borrower”), the principal sum of One Million Sixty Thousand Dollars (\$1,060,000), which is to be repaid with interest in accordance with the terms of a promissory note dated May 22, 2014 of Borrower to State in the original principal amount of \$550,000, as amended by a First Allonge to Promissory Note dated _____, 2015 between Borrower and State increasing the principal amount of the Note to \$1,060,000 (as amended, the “Note”).

4. 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.

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

EXECUTED on the day and year first above written.

BORROWER:

PENNICHUCK EAST UTILITY, INC.

Witness

By: _____
Donald L. Ware
Chief Operating Officer
Duly Authorized

**PENNICHUCK CORPORATION
GUARANTOR:**

Witness

Donald L. Ware
Chief Operating Officer

LENDER:

THE STATE OF NEW HAMPSHIRE

Witness

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

FIRST ALLONGE TO PROMISSORY NOTE

Allonge made this ____ day of _____, 2015 between Pennichuck East Utility, Inc., a New Hampshire corporation with an address of 25 Manchester Street, P.O. Box 1947, Merrimack, New Hampshire 03054-1947 (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 May 22, 2014 between the Maker and the Payee (the “Loan Agreement”), the Payee agreed to provide a loan to the Maker of up to \$550,000, which is evidenced by the Promissory Note dated May 22, 2014 of the Maker in the principal amount of up to \$550,000 (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 of even date among the Maker, the Payee and Pennichuck Corporation (the “Amendment Agreement”); and

C. The parties desire to increase the amount of such loan evidenced by the Note to up to \$1,060,000 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 \$550,000 to \$1,060,000.

(b) The amount of “Five Hundred Fifty Thousand Dollars (\$550,000)” in the fifth and sixth lines of the first paragraph of the Note is hereby replaced with “One Million Sixty Thousand Dollars (\$1,060,000)”.

(c) The first paragraph of the Note is hereby amended by replacing “August 1, 2015” in Clause (ii) with “August 30, 2015”.

(d) Paragraph 1(b) of the Note is hereby amended by replacing “\$550,000” in the eleventh and twelfth lines with “\$1,060,000”.

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

Executed as of the day and year first above written.

PENNICHUCK EAST UTILITY, INC.

Witness

By: _____
Donald L. Ware
Chief Operating Officer
Duly Authorized

THE STATE OF NEW HAMPSHIRE

Witness

By: _____
Thomas S. Burack
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 _____, 2015.

PENNICHUCK CORPORATION

Witness

By: _____
Donald L. Ware
Chief Operating Officer



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

John McKenna



Thomas S. Burack, Commissioner

April 28, 2014

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

APPROVED G & C
DATE 5/23/14
ITEM # 60

REQUESTED ACTION

Authorize the Department of Environmental Services to approve three loan agreements with Pennichuck East Utility, Inc. (PEU), (VC#225852) Merrimack, NH in the amount not to exceed \$1,522,000 to finance water system improvements subject to conditions as outlined in documents substantially in the form presented, 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.

Public Water System #	Water System Project	Town	Loan Amount
0142010	PEU/Locke Lake	Barnstead	\$400,000
2542030	PEU/W & E	Windham	\$550,000
2542060	PEU/Hardwood	Windham	\$572,000
Total			\$1,522,000

Funding is available in the account as follows:

03-44-44-441018-4791-301-500833
Dept Environmental Services, DWSRF Loan Repayments, Loans

FY 2014
\$1,522,000

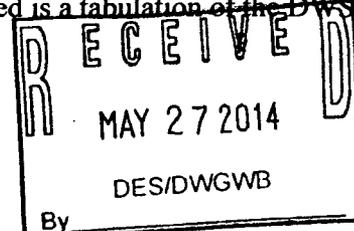
EXPLANATION

The purpose of these loan agreements is to authorize Pennichuck East Utility, Inc. to borrow up to \$1,522,000 from the DWSRF to finance water system improvement projects at three of their water systems. These improvements include replacement of water mains in the Winwood and Monroe area of the Locke Lake water system in Barnstead; replacement of water mains at the W&E water system in Windham; and replacement of the existing pumping and treatment station at the Harwood water system in Windham. These projects will improve the quality and efficiency of each water system.

The final loan amount will be based on the total DWSRF funds disbursed, and may be less than \$1,522,000. 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 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 has provided approximately \$110,031,988 to capitalize the DWSRF and the State has provided \$29,934,060 in required matching funds. There is currently a balance of \$25,350,201 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
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 4/18/14)		\$29,842,201
Total Funds Authorized/Available		<u>\$29,842,201</u>
Less Loans Previously Approved		<u>\$0</u>
Funds Available for Loans		\$29,842,201
New Loan(s) Being Requested		
Pennichuck Water Works-Main Core (Project#: 1621010-04)	(2,640,000)	
Pennichuck Water Works-Timberline (Project#: 1621010-05)	<u>(330,000)</u>	
		(2,970,000)
Pennichuck East Utility-Locke Lake (Project#: 0142010-04)	(400,000)	
Pennichuck East Utility-W&E (Project#: 2542030)	(550,000)	
Pennichuck East Utility-Hardwood (Project#: 2542060)	<u>(572,000)</u>	
		(1,522,000)
Net Change to Loan(s)		<u>(4,492,000)</u>
Balance Available After G & C Approval		<u><u>\$25,350,201</u></u>

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
DRINKING WATER STATE REVOLVING LOAN FUND**

**Loan Agreement
(PEU-W&E 2542030)**

THIS LOAN AGREEMENT (the "Agreement"), dated _____, 2014, has two parties:

- (1) the State of New Hampshire (the "State"), whose address is c/o Department of Environmental Services, 29 Hazen Drive, P.O. Box 95, Concord, New Hampshire 03302-0095, and
- (2) the following person which is borrowing funds from the State:

Pennichuck East Utility, Inc.
25 Manchester Street
P.O. Box 1947
Merrimack NH 03054-1947
(the "Borrower")

FUNDAMENTAL PREMISES FOR THIS AGREEMENT

A. Pursuant to New Hampshire Revised Statutes Annotated ("RSA") 486:14 the State has established a revolving loan fund for financing water pollution control and drinking water improvement projects within the State. 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.

B. The Borrower is a New Hampshire corporation and a water utility subject to regulation by the Public Utilities Commission ("PUC"). The Borrower owns and operates a community public water system which serves approximately 209 customers in the W&E development in the Town of Windham ("W&E"). The Borrower intends to borrow up to \$550,000 to finance the replacement of approximately 8,500 linear feet of water main (the "Project").

C. The State has determined that the Borrower's request for a loan financing the cost of the Project and made in accordance with this Agreement is eligible for funding from the Drinking Water State Revolving Fund in accordance with guidelines adopted pursuant to RSA 486:14.

TERMS AND CONDITIONS OF THIS AGREEMENT

The State and the Borrower agree as follows:

1. Definitions. The following terms shall have the meanings indicated:

“Construction Contract” means the agreement between the Borrower and a contractor for construction of the Improvements.

“Contractor” means the contractor who enters into the Construction Contract.

“State” means the State of New Hampshire.

“DWSRF” means the State’s Drinking Water State Revolving Fund under RSA 486:14.

“Engineer” means the engineer who enters into the Engineering Contract.

“Engineering Contract” means the agreement between the Borrower and an engineer for engineering the design of the Improvements.

“Event of Default” has the meaning provided in Section 8.

“Guarantor” means Pennichuck Corporation.

“Guaranty” means the Guaranty made by the Guarantor of even date of this Agreement.

“Hazardous Materials” has the meaning provided in Section 10.1(a).

“Improvements” means the improvements to be constructed in accordance with the Plans.

“Legal Requirements” has the meaning provided in Section 10.1(b).

“Loan Proceeds” has the meaning provided in Section 2.

“Note” means the Borrower’s Promissory Note of even date in the principal amount of \$550,000 payable to the order of the State in the form attached hereto as Exhibit C.

“Plans” mean the plans, specifications, and drawings furnished and acceptable to the State.

“Premises” means the real property and real property interests of the Borrower described in Exhibit A attached hereto on or in which the Improvements will be constructed.

“PUC” means the Public Utilities Commission of the State.

“Total Budget” means the budget for all costs of constructing and equipping the Improvements set forth in Exhibit B attached hereto.

2. The State’s Agreement to Disburse Proceeds. Provided the terms, covenants and agreements hereof shall be observed and performed, the State agrees to make disbursements to the Borrower of, and the Borrower agrees to borrow from the State, an amount not to exceed the total principal amount of the Note (such disbursements made, from time to time hereafter, being hereinafter referred to as the “Loan Proceeds”).

3. Representations of the Borrower. The Borrower represents and warrants as follows:

(a) Recitals. The Recitals set forth at the beginning of this Agreement are true and correct;

(b) Plans. The Borrower will file the Plans with all governmental authorities having jurisdiction with respect to the Improvements;

(c) Approvals and Property Rights. The Borrower will obtain all necessary approvals of the Plans and all necessary permits, licenses and approvals for the construction of the Improvements from all governmental authorities having jurisdiction over the Improvements and the Premises and all property rights in the Premises necessary or appropriate for the construction, ownership and operation of the Improvements, and the Borrower has obtained all necessary governmental approvals to borrow funds in accordance with the Agreement which approvals are in full force and effect;

(d) No Violation. Construction of the Improvements will not violate any zoning, environmental, subdivision or land use ordinance, regulation or law;

(e) Utilities. All utility services necessary for the operation of the Improvements for their intended purpose are available at the boundary of the Premises, including, without limitation, water supply, storm and sanitary sewer facilities, electric, gas (if applicable), and telephone facilities, and all necessary governmental regulatory consents to the connecting of such facilities to the Improvements (when constructed) have been obtained, and all such utilities are of sufficient capacity to adequately meet all needs and requirements necessary for the operation of the Improvements for their intended purposes;

(f) Litigation. No litigation or proceedings are pending or threatened against the Borrower or the Guarantor or affecting the Improvements or the Premises that could affect the validity or priority of the Note or the Guaranty or that could affect the Borrower’s or the Guarantor’s ability to perform its obligations under this Agreement, the Note, and the Guaranty;

(g) Financial Statements. The balance sheets and financial statements of the Borrower and the Guarantor, which were submitted in connection with the Borrower’s request for the loan contemplated herein, were prepared in accordance with generally accepted principles of accounting applied on a basis consistent with that of preceding periods and are complete and correct and fairly present the financial condition of the Borrower and the Guarantor, respectively, as of said dates.

Neither the Borrower nor the Guarantor has any contingent obligations, liabilities for taxes or unusual forward or long-term commitments except as set forth in the foregoing financial statements specifically mentioned. Since the date of such financial statements, there has been no material adverse change in the financial condition of the Borrower or the Guarantor;

(h) Due Organization and Authority. Each of the Borrower and the Guarantor is a duly organized and validly existing New Hampshire corporation in good standing under the laws of the State of New Hampshire. Each of the Borrower and the Guarantor has the power and authority to own its properties and to carry on business as now being conducted and is qualified to do business in every jurisdiction where such qualification is necessary and has the power to execute and deliver, and perform its obligations under this Agreement, the Note and the Guaranty, as the case may be;

(i) No Conflict; No Required Approvals. The execution and delivery and performance by each of the Borrower and the Guarantor of their respective obligations under this Agreement, the Note and the Guaranty, as the case may be, have been duly authorized by all requisite corporate action and will not violate any provision of law, any order of any court or other agency of government, or any indenture, agreement or other instrument to which the Borrower or the Guarantor is a party, or by which it is bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under, or, except as may be provided by this Agreement, result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower or the Guarantor pursuant to, any such indenture, agreement or instrument. Neither the Borrower nor the Guarantor is required to obtain any consent, approval or authorization from, or to file any declaration or statement with, any governmental instrumentality or other agency in connection with or as a condition to the execution, delivery or performance of this Agreement, the Note, or the Guaranty, as the case may be, except for approval and authorization from the Public Utilities Commission, which approval and authorization has been obtained;

(j) Bankruptcy. Any borrowings made by the Borrower under this Agreement do not and will not render the Borrower insolvent. Neither the Borrower nor the Guarantor is contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidating of all or a major portion of its property, and neither the Borrower nor the Guarantor has knowledge of any person contemplating the filing of any such petition against it, including the properties and assets reflected in its financial statements referred to herein;

(k) No Material Misstatement. No statement of fact made by or on behalf of the Borrower, and no statement of fact made on behalf of the Guarantor, in this Agreement or in any certificate or schedule furnished to the State pursuant thereto, contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained therein or herein not misleading. There is no fact presently known to the Borrower that has not been disclosed to the State that materially affects adversely, nor as far as the Borrower can foresee, will materially affect adversely the property, business, operations or conditions (financial or otherwise) of the Borrower or the Guarantor;

(l) Taxes. Each of the Borrower and the Guarantor has filed all federal, state and local tax returns required to be filed, except that they have filed for lawful extensions for filing returns

for the most recent tax year, and has paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments;

(m) Enforceability. This Agreement and the Note, upon execution and delivery, will be the valid and binding obligations of the Borrower, and the Guaranty, upon execution and delivery, will be the valid and binding obligations of the Guarantor, in each case enforceable in accordance with their respective terms, and will not violate any other agreements or instruments to which the Borrower or the Guarantor, as the case may be, is a party or by which the Borrower or the Guarantor, as the case may be, is bound;

(n) No Broker. The making of the loan contemplated hereunder or the State's acquisition of the Note or the Guaranty will not subject the State to any claim for a brokerage commission; and

(o) Total Budget. The Borrower covenants and represents that Exhibit B attached hereto contains a complete and full enumeration of all costs (including, without limitation, hard, soft and acquisition costs) that the Borrower anticipates will be incurred in connection with the construction, the development and equipping of the Improvements and in connection with the starting up of the operation of the Improvements.

Each of the foregoing representations and warranties shall survive the making of the loan hereunder, and the Borrower shall indemnify and hold harmless the State from and against any loss, damage or liability attributable to the breach thereof, including all fees and expenses incurred in the defense or settlement of any claim arising therefrom against the State.

4. Conditions Precedent. The State's obligation to advance any of the Loan Proceeds shall be subject to the satisfaction of the following conditions precedent:

(a) Title. The Borrower shall demonstrate to the satisfaction of the State that it holds all property rights and privileges, including without limitation with respect to the Premises, necessary and appropriate for the proper construction and operation of the Improvements;

(b) Loan Documents. The Borrower and the Guarantor shall have executed and delivered to the State the Note and the Guaranty, each of which shall be in form and substance satisfactory to the State;

(c) Construction Contract. The Borrower shall prepare public bid offers for the Construction Contract. The Borrower shall receive authorization to award contracts from the State and enter into the Construction Contract with the Contractor in accordance with the requirements of such bid. The State will not advance Loan Proceeds for "hard costs" of labor and materials of the Project for equipping and construction of the Improvements excluding land acquisition expenses, if applicable, prior to the execution and delivery of the Construction Contract, but the State may advance Loan Proceeds for "soft costs" in the Total Budget, such as engineering fees, closing expenses and publication expenses before execution and delivery of the Construction Contract;

(d) Engineering Contract. The Borrower shall prepare a request for proposals for the Engineering Contract, and the Borrower shall have entered into the Engineering Contract in accordance with the requirements of such request for proposals;

(e) Assurances. The State shall receive written assurances from the Engineer and the Contractor that the State shall have the same rights as the Borrower to the continued use of the Plans, and all services related thereto for the construction of the Improvements;

(f) Opinion. The State shall receive the written opinion of counsel for the Borrower, which opinion shall be satisfactory to the State, covering such matters as shall reasonably be requested by the State;

(g) Plans. The Borrower shall deliver a complete copy of the Plans to the State which Plans shall be satisfactory to the State in all respects;

(h) Environmental Report. The State shall have received an environmental report with respect to the Premises, which report shall be satisfactory to the State;

(i) Additional Instruments. The State shall have received such additional instruments, certificates, opinions, surveys and other documents as the State may reasonably request; and

(j) No Event of Default. No Event of Default (as defined herein) nor any event which with the giving of notice or passage of time, or both, would constitute an Event of Default shall have occurred.

5. Covenants of the Borrower. Until payment in full of all sums required to be paid by the Borrower to the State under the Note and pursuant to the provisions of this Agreement the Borrower shall:

(a) Construction. Enter into the Construction Contract, which shall be binding upon the Borrower and the Contractor and cause the Improvements and any utility facilities necessary for the operation of the Borrower's business or the occupancy of the Premises and the Improvements and not currently available to the Premises to be constructed, equipped and completed, with all reasonable dispatch, but in any event within twelve (12) months from the date hereof, in accordance with the Plans and all laws, rules, regulations and requirements of governmental authorities having jurisdiction with respect to the Improvements;

(b) Changes. Make no significant changes in or amendments to the Plans without first obtaining the written approval of the State and any governmental agency whose approval is required. Minor changes in project work that are consistent with the objectives of the project and within the scope of this agreement do not require the approval of the State;

(c) Inspection. Permit the State and its representatives to enter upon the Premises and inspect the Improvements at all reasonable times and examine all detailed plans, drawings and specifications and any books and records relating to the Premises and the Improvements;

(d) Inadequate Loan Proceeds. If for any reason the amount of undistributed Loan Proceeds shall at any time be or become insufficient to pay for the completion of the Improvements, including: (i) all items set forth in the Total Budget, (ii) all incurred cost overruns and incurred costs for items not included in the Total Budget and (iii) all cost overruns and costs not included in the Total Budget that the State deems likely to be incurred (regardless of how such condition may be caused), then prior to any further disbursement of Loan Proceeds, either (A) expend from funds other than Loan Proceeds an amount equal to such deficiency for amounts shown on the Total Budget, or (B) provide the State with an unconditional and irrevocable letter of credit in an amount equal to such deficiency from a bank and in form and substance satisfactory to the State;

(e) Sign. Erect a sign in accordance with the State specifications on the Premises at such location as the State in its reasonable discretion may determine, indicating that the Improvements are being financed by the State;

(f) Insurance. Maintain or cause to be maintained liability, casualty and/or builder's risk insurance on the Improvements and any material or equipment used or to be used to construct the Improvements or to be installed as or become part of the Improvements, and worker's compensation insurance with such companies, in such amounts and covering such risks as shall be satisfactory to the State and furnish such insurance policies to the State (premiums prepaid or, after failure by the Borrower to prepay the premiums or to procure such insurance policies, the State may procure any such insurance policies that it deems satisfactory at the expense of the Borrower), insuring the interests of the Borrower and the State, as their respective interests may appear and, upon request, certificates evidencing such insurance coverage shall be promptly delivered to the State;

(g) Casualty. If the Improvements shall be damaged or destroyed by fire or any other casualty, proceed with the restoration thereof and diligently prosecute the work of restoration to completion, provided that the Loan Proceeds shall not be advanced to pay any part of the cost of such restoration;

(h) [Intentionally left blank]

(i) Expenses. Pay, as may be demanded by the State, (i) the State's extraordinary, reasonable expenses (including attorneys' fees) that the State incurs in the approval, making and administration of the loan hereunder and (ii) the State's reasonable expenses that incurs in enforcement of this Agreement, the Note, the Guaranty and related documentation;

(j) Cooperation. Cooperate fully with the State with respect to any proceedings before any court, board or governmental agency that may in any way affect the rights of the State hereunder or any rights obtained by the State and, in connection therewith, permit the State, at its election, to participate in any such proceedings;

(k) Preserve Licenses. Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises and comply with all laws and regulations applicable to it and in particular, as soon as practical following

execution of this Agreement by the State, provide evidence to the State that it has filed executed copies of this Agreement, the Note and the Guaranty with the PUC;

(l) Taxes. Pay and discharge or cause to be paid and discharged all taxes, assessments and governmental charges or levies imposed upon it or upon its respective income and profits or upon any of its property, real, personal or mixed, or upon any part thereof, before the same shall become in default; provided that the Borrower shall not be required to pay and discharge or cause to be paid and discharged any such tax, assessment, charge, levy or claim so long as the validity thereof shall be contested in good faith by appropriate proceedings and it shall have set aside on its books adequate reserves with respect to any such tax, assessment, charge, levy or claim, so contested; and provided, further, that payment with respect to any such tax, assessment, charge, levy or claim shall be made before any of its property shall be seized or sold in satisfaction thereof;

(m) Notice of Proceedings. Give prompt written notice to the State of any proceedings instituted against it by or in any federal or state court or before any commission or other regulatory body, whether federal, state or local, which, if adversely determined, would have an adverse effect upon its business, operations, properties, assets, or condition, financial or otherwise;

(n) Financial Statements. If requested by the State, furnish to the State such information regarding operation, assets, business affairs and financial conditions, as the State may reasonably request and in particular shall furnish to the State (i) within ninety (90) days of the close of each fiscal year during the term of the loan, annual financial statements of each of the Borrower and the Guarantor, in each case prepared in accordance with generally accepted accounting principles and certified by the Borrower and the Guarantor, respectively, as being correct in all material respects, accompanied by an audit report of the Guarantor's respective independent certified public accountants and otherwise in form and content reasonably acceptable to the State and (ii) within forty-five (45) days of the close of each fiscal quarter during the term of the loan, quarterly financial statements of each of the Borrower and the Guarantor, in each case prepared in accordance with generally accepted accounting principles, subject to year end adjustments and certified by the Borrower and the Guarantor, respectively, as fairly presenting the financial condition of such entity;

(o) [Intentionally left blank]

(p) Construction Loan Notice. Within five (5) business days after execution of this Agreement post a notice provided by the State in a conspicuous place on the Premises and provide the State with written certification that the Borrower has complied with this paragraph;

(q) Two Party Check Requirements. If any contract between the Borrower or its agent and any person furnishing services, material, supplies or other things shall provide that the disbursement of construction funds to pay such persons shall be by two-party check, the Borrower shall provide, or cause its agent to provide, the State with a copy of such contract; and

(r) Negative Pledge. Not incur, create, or grant or permit to exist any security interest in or lien on its real or personal property, other than the security interest of RBS Citizens, N.A. and liens for real property taxes or water or sewer charges similar assessments not yet due or contested

in good faith, unless (i) prior written notice is provided by the Borrower to the State describing (x) the grant of security interest or lien, (y) the real or personal property in which a security interest or lien is intended to be granted and (z) any underlying transaction pursuant to which such grant is intended to be made and (ii) the Borrower receives from the State written consent permitting such grant of security interest in or lien on such real or personal property.

(s). DUNS Number. Shall obtain a Data Universal Numbering System (DUNS) number by visiting <http://fedgov.dnb.com/webform/>.

(t) Access to Records. Permit the Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), or an authorized representative of either of the foregoing officials, or of the State of New Hampshire to have access to and the right to:

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

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

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

(u) Prevailing Wage Requirement. Shall comply with the Wage Rate Requirements. Additionally, in accordance with 2 C.F.R. §176.190, the standard Davis-Bacon contract clause as specified by 29 CFR §5.5(a) shall be included in the bid package for the Improvements.

(v) Debarment. Shall not knowingly award a construction contract to a contractor which has been debarred or suspended by the federal government. The Borrower or its agent shall compare the names of contractors who have bid on the project against the searchable list in the federal "Excluded Parties List System" (EPLS) database, which can be found at <https://www.epls.gov>; and

(w) Utilization of Small, Minority and Women's Business Enterprises. Pursuant to 40 CFR, Section 33.301, make good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained.

(x) American Iron and Steel. The Loanee agrees to comply with Section 436 of the Consolidated Appropriations Act, 2014 (P.L. 113-76), which requires that all of the iron and steel products used in the Project are to be produced in the United States ("American Iron and Steel Requirement") unless (i) the Loanee has requested and obtained a waiver from the Environmental Protection Agency pertaining to the Project or (ii) the State has otherwise advised the Participant in writing that the American Iron and Steel Requirement is not applicable to the Project. The Loanee

further agrees to maintain records documenting compliance with the American Iron and Steel Requirement, and to provide records and certifications to the State upon request.

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

6. Loan Disbursements.

6.1 Written Applications. Upon compliance with, and subject to, the provisions of this Agreement, and provided there shall exist no Event of Default under this Agreement and no condition or event which with the giving of notice or lapse of time would constitute such an Event of Default, the State shall, upon written application by the Borrower (made not less than fourteen (14) business days prior to the date of the requested disbursement under this Section 6 and made not more often than once every month), make disbursements to the Borrower from the Loan Proceeds in the amounts hereinafter specified, but not in any event to exceed, when considered in the aggregate with amounts previously advanced by the State pursuant to this Agreement, the amount of the Loan Proceeds.

6.2 Amount of Disbursement. Each such disbursement for costs incurred by the Borrower shall be disbursed by the State from the Loan Proceeds. The amount of each disbursement shall represent the total costs incurred by the Borrower and approved by the State in conformance with the Total Budget as of the date of the disbursement request form, in excess of funds required to be provided and expended by the Borrower under the terms hereof as of the date of said disbursement request form, less any amounts previously advanced by the State from the Loan Proceeds.

6.3 Application Documents. Each application for disbursement of the Loan Proceeds, must be accompanied by the following unless waived by the State in writing:

- (a) Invoices from Engineer for services in accordance with the Engineering Contract;
- (b) A completed disbursement request form signed by the authorized representative of the Borrower with the Contractor's payment estimate and invoices, in form approved by the State and with such backup information as the State may reasonably request;
- (c) A certificate of the inspecting engineer or construction supervisor as may be selected by or otherwise be satisfactory to the State, that all work performed at the site of construction as of the date of such disbursement request form has been performed in good and workmanlike manner, that all materials and fixtures usually furnished and installed at that time have been furnished and

installed, all in accordance with the Plans, and that sufficient Loan Proceeds remain undisbursed to complete the Improvements in accordance with the Plans and the Total Budget;

(d) [Intentionally left blank]

(e) [Intentionally left blank]

(f) [Intentionally left blank]

(g) Any other documents that the State shall reasonably request the Borrower to provide to protect its interests, including without limitation, lien waivers of the Contractor or subcontractors.

6.4 Lien Releases or Waivers. In connection with any disbursement of Loan Proceeds, the State may require lien releases or affidavits from, or the submission of other appropriate forms by, the Borrower, the Contractor, subcontractors or materialmen as may be required by the State.

6.5 Quality of Work. No disbursement shall be made unless all work usually done at the stage of construction when the disbursement is requested is done in a good and workmanlike manner and without defects, and all materials and fixtures usually furnished and installed at that time are furnished and installed, but the State may disburse all or part of any installments before the same shall become due and payable if the State believes it advisable to do so, and all such disbursements or payments shall be deemed to have been made pursuant to this Agreement.

6.6 No Acceptance. The making of any disbursement or any part of a disbursement shall not be deemed an approval or acceptance by the State of the work theretofore done or of materials theretofore furnished.

6.7 Two Party Checks. Disbursements may be made, at the election of the State, by checks payable to the Borrower and the Contractor jointly and delivered, at the State's election, either to the Borrower or the Contractor or each subcontractor or vendor; provided, however, that disbursement shall be by check payable to the Borrower and the Contractor or any subcontractor for which the Borrower or its agent has supplied the State with a copy of a contract as provided in Section 5(q).

6.8 Limited Duty. The Borrower agrees that the State shall assume no duty with respect to disbursement of the Loan Proceeds except to disburse upon the conditions as set forth in this Agreement.

6.9 Deemed Disbursements. Any sum which, in accordance with any provision of this Agreement shall be payable by the Borrower to the State shall, at the election of the State, be deemed a disbursement by the State to the Borrower pursuant to the provisions of this Agreement, and shall be charged against the Loan Proceeds.

7. Completion of Improvements. Upon completion in full of the Improvements, the Borrower shall promptly deliver to the State:

(a) Engineer's Certificate. A written certificate of the inspecting engineer or construction supervisor that the construction of the Improvements has been fully completed in a good and workmanlike manner in accordance with the Plans;

(b) [Intentionally left blank]

(c) Project Costs. A certificate by the Borrower, in form and substance satisfactory to the State, listing all categories of project costs and expenses in connection with the construction and completion of the Improvements and the amount paid by the Borrower with respect to each; and

(d) Permits. A copy of the applicable certificates, licenses, consents and approvals issued by governmental authorities with respect to the Improvements.

8. Events of Default. The occurrence of any of the following events shall constitute an Event of Default under this Agreement:

(a) [Intentionally left blank]

(b) Assignment. The Borrower attempts to assign its rights under this Agreement or any advance made or to be made hereunder or any interest therein, or if the Premises are conveyed or encumbered in any way except as permitted by this Agreement, in each case without the written consent of the State;

(c) Encroachment or Violation. Any survey, report or examination discloses that the Improvements or any portion thereof encroach upon or project over a street or upon or over adjoining property or violate any setback or other restriction, however created, or any zoning regulations or any building restriction of any governmental authority having jurisdiction with respect to the Improvements;

(d) Casualty. The Improvements or the Premises are materially damaged or destroyed by fire or other casualty or cause and the insurance proceeds therefrom are inadequate to rebuild or restore the Improvements or the Premises to their condition immediately prior to such casualty;

(e) Failure to Construct. The Borrower or the Contractor does not construct the Improvements in accordance with the Plans;

(f) Misrepresentation. Any representation or warranty made herein or in any report, certificate, financial statement or other instrument furnished in connection with this Agreement or any advances made hereunder, by or in behalf of the Borrower, shall prove to be false or misleading in any material respect;

(g) Mechanics' Liens. Any mechanics', laborers', materialmen's or similar statutory liens, or any notice thereof, shall be filed against the Premises and/or the Improvements in an amount in excess of \$200,000 and shall not be discharged within forty-five (45) days of such filing;

(h) Other Defaults. The Borrower shall default in the due observance or performance of any covenant, condition or agreement to be observed or performed by the Borrower under this Agreement provided that in the case of failure to comply with sections 5(d), (e), (g) or (i) the same remains unremedied for a period of thirty (30) days after the date of notice thereof to the Borrower by the State not otherwise specifically referred to in this Section 8;

(i) Other Loan Documents. Any event of default as defined in the Note or the Guaranty, or any event which with the giving of notice or passage of time, or both, would become an event of default under such instruments shall occur;

(j) Cessation of Work. Any substantial cessation occurs at any time in construction of the Improvements except for strikes, riots, or other causes beyond the Borrower's control, or if any substantial change is made in the schedule for the construction of the Improvements from that provided in the Plans or this Agreement without the approval of the State;

(k) Voluntary Bankruptcy. The Borrower or the Guarantor shall (i) apply for or consent to the appointment of a receiver, trustee or liquidator of it or any of its property, (ii) admit in writing its inability to pay its debts as they mature, (iii) make a general assignment for the benefit of creditors, (iv) be adjudicated as bankrupt or insolvent or (v) file a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors or to take advantage of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law or statute, or an answer admitting the material allegations of a petition filed against it in any proceeding under any such law;

(l) Involuntary Bankruptcy. A petition, order, judgment or decree shall be entered, without the application, approval or consent of the Borrower or the Guarantor by any court of competent jurisdiction, approving a petition seeking reorganization or approving the appointment of a receiver, trustee or liquidator of the Borrower or the Guarantor of all or a substantial part of its assets, and such order, judgment or decree shall continue unstayed and in effect for any period of sixty (60) days;

(m) Dissolution, Etc. The death, dissolution, termination of existence, merger or consolidation (as applicable) of the Borrower or the Guarantor, a change of control of the Borrower or the Guarantor, or a sale of assets of the Borrower or the Guarantor out of the ordinary course of business without the prior written consent of the State;

(n) Other Obligations to the State. Default by the Borrower or the Guarantor in the payment or performance of any other obligations of the Borrower or the Guarantor owed to the State, whether created prior to, concurrent with, or subsequent to the obligations arising out of this Agreement, the Note or the Guaranty, as the case may be, provided such default continues after any applicable notice and expiration of any applicable grace period;

(o) Other Obligations. Default by the Borrower or the Guarantor in any other obligation for borrowed money in excess of One Hundred Thousand Dollars (\$100,000.00); and

(p) **Judgment.** Final judgment for the payment of money of more than Two Hundred Thousand Dollars (\$200,000.00) in excess of any insurance proceeds shall be rendered against the Borrower or the Guarantor and shall remain undischarged for a period of thirty (30) days during which execution shall not be effectively stayed.

9. **State's Rights and Remedies Upon Default.**

9.1 **General State Rights.** Upon the occurrence of any Event of Default, all obligations on the part of the State to make disbursements under this Agreement shall, if the State so elects, cease, and, at the option of the State (but subject to the terms and conditions set forth in the Note and the Guaranty), the Note shall become immediately due and payable, and the State shall thereupon be authorized and empowered to exercise any rights of foreclosure; but the State may make any disbursements or portions of disbursements, after the occurrence of any such Event of Default, without thereby waiving its right to demand payment of the Borrower's indebtedness evidenced by the Note and guaranteed by the Guaranty and without becoming liable to make any other or further advances as hereinabove contemplated by this Agreement.

9.2 [Intentionally left blank]

9.3 [Intentionally left blank]

9.4 **Costs.** The Borrower shall be liable to the State for all costs paid or incurred for the construction, completion and/or equipping of the Improvements, and all payments made or liabilities incurred by the State hereunder of any kind whatsoever shall be paid by the Borrower to the State on demand, with interest at the rate specified in the Note to the date of payment. The Borrower shall also reimburse the State for any expenses incurred in collection efforts and in enforcing its remedies, including, without limitation, reasonable attorney's fees.

9.5 **Cumulative Rights.** Upon the occurrence of any Event of Default, the rights, powers, privileges and other remedies available to the State under this Agreement or at law or in equity may be exercised by the State at any time and from time to time, whether or not the indebtedness evidenced by the Note and guaranteed by the Guaranty shall be due and payable, and whether or not the State shall have instituted any foreclosure proceedings or other action for the enforcement of its rights under the Note.

9.6 **Right of Set-Off.** Any deposits or other sums at any time credited by or due from the State to the Borrower and any securities or other property of the Borrower at any time in possession of the State may at all times be held or treated as collateral security for the payment of the loan, any and all liabilities of the Borrower or the Guarantor to the State. Upon an Event of Default the State may apply or set-off such deposits or other sums or property against such liabilities.

9.7 **Power of Attorney.** For the purpose of carrying out the provisions and exercising the rights, powers and privileges granted by this Agreement, the Borrower hereby irrevocably constitutes and appoints the State its true and lawful attorney-in-fact, with full power of substitution, to execute, acknowledge and deliver any instruments and do and perform any acts that

are referred to herein in the name and behalf of the Borrower. The power vested in said attorney-in-fact is, and shall be deemed to be, coupled with an interest and cannot be revoked.

10. Hazardous Materials Indemnification.

10.1 Definitions.

(a) The term "Hazardous Materials" shall mean and include asbestos, polychlorinated biphenyls ("PCB's"), other carcinogens, oil and other petroleum products, and any other hazardous or toxic materials, wastes and substances which are defined, determined or identified as such under RSA Chapters 146-A, 146-C, 147-A and 147-B, CERCLA, or any other applicable federal, state or local laws, rules, codes or regulations or any judicial or administrative interpretation thereof; and

(b) The term "Legal Requirements" shall mean all federal, state or local laws, rules, codes or regulations, or any judicial or administrative interpretation thereof, including, without limitation, all orders, decrees, judgments and rulings imposed through any public or private enforcement proceedings, relating to Hazardous Materials or the existence, use, discharge, release, containment, transportation or disposal thereof.

10.2 Indemnification. At all times, both before and after any conveyance or foreclosure of the Improvements, each of the Borrower and the Guarantor shall at its sole cost and expense indemnify, exonerate, protect and save the State harmless against and from any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgment, suits, proceedings, costs, disbursements or expenses of any kind or nature whatsoever, including without implied limitation, attorneys' and experts' fees and disbursements, which may at any time be imposed upon, incurred by or asserted or awarded against the State and arising from or out of:

(a) Any Hazardous Materials on, in, under or affecting all or any portion of the Improvements or any areas surrounding the same before the Borrower is divested of title to the Improvements by conveyance or foreclosure or divested of possession of the Improvements following an Event of Default;

(b) The violation by either the Borrower or the Guarantor of any Legal Requirements with respect to the Improvements; or

(c) The enforcement of this Section 10 of the Agreement or the assertion by either the Borrower or the Guarantor of any defense to the obligations of the Borrower or Guarantor under this Section 10, whether any of such matters arise before or after any taking of title to or possession of all or any portion of the Improvements by the State, and specifically including therein, without limitation, the following to the extent they are a result of the matters described in clauses (a) or (b) above:

(i) costs of removal of any and all Hazardous Materials from all or any portion of the Improvements or the Premises or any areas surrounding the same;

(ii) additional costs required to take necessary precautions to protect against the release of Hazardous Materials (x) on, in, under, or affecting, the Improvements or (y) into the air, any body of water or wetland, any other public domain, or any areas surrounding the Improvements or the Premises;

(iii) costs incurred to avoid the imposition of, or to discharge, any lien on the Improvements or the Premises arising from any failure to comply with Legal Requirements;

(iv) costs incurred to comply with all Legal Requirements relating to the Improvements or any collateral for the loan evidenced by the Note, including, without limitation, fines, penalties or other charges imposed by any lawful authority; and

(v) costs and expenses incurred in ascertaining the existence or extent of any asserted violation of any Legal Requirements relating to the Improvements or the Premises and any remedial action taken on account thereof including, without limitation, the costs, fees and expenses of engineers, geologists, chemists, other scientists, attorneys, surveyors and other professionals, and testing and analyses performed in connection therewith. The foregoing shall not apply to precautionary testing which is not in response to a specific identified potential release at the Premises.

11. Assignments. The State may assign, negotiate or pledge all or any portion of its rights under this Agreement or any of its rights with respect to the Note and the Guaranty, and, in case of such assignment, the Borrower shall accord full recognition thereto. The Borrower hereby consents to the State's delivery of any and all financial or other information concerning the Borrower or the Guarantor to any assignee or participating lender. The Borrower shall not assign or attempt to assign, directly or indirectly, any of its rights under this Agreement or under any instrument referred to herein without the prior written consent of the State.

12. [Intentionally left blank]

13. General Provisions.

13.1 Captions. The captions in this instrument are for convenience and reference only and do not define, limit or describe the scope of the provisions hereof.

13.2 Number and Gender. Whenever the context so requires, reference herein to the neuter gender shall include the masculine and/or feminine gender, and the singular number shall include the plural.

13.3 Binding Effect. The terms, covenants, agreements and conditions contained herein shall extend to, include, and inure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns of the Borrower, as the case may be, and the successors and assigns of the State.

13.4 Notices. Any notice, demand, request or other communication given hereunder or in connection herewith shall be in writing and sent by certified mail, postage prepaid, return receipt

requested, addressed to the party to receive the same at its address set forth above or at such other address as such party may hereafter designate by notice given in like fashion. Any such notice, demand, request or other communication shall be deemed given when mailed as aforesaid.

13.5 Governing Law. This Agreement has been made in the State of New Hampshire, and the provisions thereof shall be governed by and construed in accordance with the law of the State of New Hampshire (excluding the laws applicable to conflicts or choice of laws).

13.6 Entire Agreement. This Agreement, together with any and all schedules and exhibits hereto and the Note, contains the full, final and exclusive statement of the agreement of the parties with respect to the subject matter hereof and supersedes all prior understandings, representations or agreements, whether written or oral, with respect to such subject matter.

13.7 Amendment and Waiver. No amendment, modification, termination or waiver of any provision of this Agreement or the Note shall be effective unless it is in a writing executed by the State and, in the case of an amendment, modification or termination, by the Borrower.

13.8 Consent to Jurisdiction. The Borrower hereby consents to the jurisdiction of all state and local courts of the State of New Hampshire and the United States District Court of the District of New Hampshire in connection with any suit to enforce any right of the State under the Note or this Agreement.

13.9 Joint and Several. If the Borrower consists of more than one person or entity, such persons and entities shall have joint and several liability hereunder.

13.10 Severability. If any provision or condition of this Agreement is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of this Agreement.

13.11 Sovereign Immunity. Nothing contained in this Agreement, the Note or the Security Instruments shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State.

IN WITNESS WHEREOF, the State and the Borrower have each duly caused this Agreement to be executed, by their respective officers, thereunto duly authorized, as of the day and year indicated above.

THE STATE OF NEW HAMPSHIRE

Witness

By: _____
Thomas S. Burack, Commissioner
Department of Environmental Services

PENNICHUCK EAST UTILITY, INC.

Witness

By: _____
Donald L. Ware
Chief Operating Officer
Duly Authorized

JOINDER OF GUARANTOR

The undersigned, being the person named as the Guarantor in the foregoing Loan Agreement, hereby joins therein and agrees to be legally and equitably bound by all of the terms, covenants, warranties, representations, conditions and thereof, this ___ day of _____, 2014.

PENNICHUCK CORPORATION

Witness

By: _____
Donald L. Ware
Chief Operating Officer

LIST OF EXHIBITS

EXHIBIT A THE PREMISES

EXHIBIT B THE TOTAL BUDGET

EXHIBIT C PROMISSORY NOTE

EXHIBIT C
PROMISSORY NOTE

\$550,000
(W&E)

Concord, New Hampshire
_____, 2014

FOR VALUE RECEIVED, Pennichuck East Utility, Inc., a New Hampshire corporation with a principal place of business at 25 Manchester Street, P.O. Box 1947, Merrimack, New Hampshire 03054-1947 (the "Maker"), promises to pay to 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, or its order (the "Payee"), the sum of Five Hundred Fifty Thousand Dollars (\$550,000) or such lesser amount as shall be disbursed to the Maker by the Payee pursuant to a Loan Agreement of near or even date by and between the Maker and the Payee (the "Loan Agreement"), in lawful money of the United States, together with interest thereon at the annual rate of one percent (1%) until the earlier of (i) the date of substantial completion of the Improvements (as defined in the Loan Agreement) as determined by the Payee or (ii) December 31, 2014 (such earlier date being the "Interest Rate Change Date") and commencing on the Interest Rate Change Date at the lower of (A) the annual rate of Two and Seventy-Two hundredths percent (2.72%) or (B) eighty percent (80%) of the established 11 General Obligations Bond Index published during the first week of the month of October before the Interest Rate Change Date (the interest rate at any given time, the "Applicable Interest Rate"). Capitalized terms used but not defined herein have the meaning given to them in the Loan Agreement.

1. Payments. The interest and principal of this Note shall be paid as follows:

(a) Commencing on the first day of the seventh month after the Interest Rate Change Date, interest only shall be paid in six (6) consecutive monthly installments on the first day of each month.

(b) Commencing with the first day of the thirteenth month after the Interest Rate Change Date, the principal and interest of the Note shall be paid in Two hundred and Forty (240) consecutive equal monthly installments of principal and interest on the first day of each month with the installment amount calculated to amortize the principal balance of the Note over the 240 month period at the Applicable Interest Rate; provided, however, that the Maker shall have the option to elect prior to the first installment payment under paragraph 1(a) to have the interest accruing prior to the Interest Rate Change Date be capitalized and added to the principal amount of the Note rather than paid in the first installment of interest to be paid pursuant to paragraph 1(a); so long as the sum of the principal balance of the Note plus interest accruing prior to the Interest Rate Change Date (such sum being the "Capitalized Amortization Amount") shall not exceed \$550,000, and if the sum of unpaid principal plus interest accruing prior to the Interest Rate Change Date exceeds \$550,000, such excess amount of interest shall be due and payable with the first payment of interest pursuant to paragraph 1(a) above. If the Maker elects to have such interest capitalized, then the Capitalized Amortization Amount shall be paid in Two Hundred Forty (240) consecutive equal monthly installments of principal on the first day of each month, commencing with the first day of the thirteenth month after the Interest Rate Change

Date, with interest with the installments calculated to amortize the Capitalized Amortization Amount over such 240 month Period at the Applicable Interest Rate.

2. Prepayment. The Maker shall have the right to prepay any or all sums due under this Note without penalty. Prepayments shall be applied first to accrued interest and then to principal. Partial prepayments of principal shall be applied against the outstanding principal balance; provided, however, that the Maker shall continue to make principal payments in the amounts specified above and on the dates specified above, with interest on the outstanding principal balance recomputed accordingly, until the Maker's obligations under this Note are satisfied in full.

3. Due Date; Late Payment. All payments of principal and interest shall be due on or before the due date specified above; provided, however, that the Maker shall not be deemed in default hereunder if payment is received by the Payee on or before 4:00 p.m. of the seventh day following the due date. The Maker agrees to pay a late charge of five percent (5%) of the amount of any payment due under this Note that is not paid within seven (7) days of its due date.

4. Applicable Interest. The Maker expressly agrees that the Applicable Interest Rate specified in this Note shall be the applicable interest rate due (i) on amounts outstanding during the term hereof and (ii) with respect to any amount outstanding on and after the maturity date hereof.

5. Default; Acceleration. The Maker shall be in default of this Note, and all principal and accrued interest thereon shall immediately become due and payable, without notice or demand, upon the occurrence of any of the following events: (a) failure to make prompt payment of any principal or interest installment due hereunder (or within such grace period as may be provided herein), (b) the failure of the Maker to observe or perform any of the other obligations to the Payee under this Note, and the same remains unremedied for a period of thirty (30) days after the date of notice thereof to the Maker by the Payee, (c) the occurrence of an Event of Default under the Loan Agreement or a default under the Guaranty of even date of Pennichuck Corporation (the "Guaranty") or (d) a default in any other obligation of the Maker to the Payee, whether now existing or hereinafter incurred.

If the Maker shall file a petition under any section of the Bankruptcy Code, shall make an assignment for the benefit of creditors, shall have a receiver appointed over its affairs who shall not be discharged within sixty (60) days from the date of appointment, or shall have filed against it a petition under a section of the Bankruptcy Code, or any debtor-creditor act, which petition shall not be dismissed within sixty (60) days of the date of filing of the same, then the balance of principal and interest remaining unpaid on this Note shall become due and payable forthwith without demand or notice.

6. Costs of Collection. If this Note is not paid in full when it becomes due, or if any payment required hereunder shall not be paid when due, or within such grace period as may be

expressly provided herein, the Maker agrees to pay all costs and expenses of collection, including attorneys' fees, regardless of whether legal proceedings have been formally commenced.

7. Waiver of Presentment. The Maker hereby waives presentment, demand for payment, notice of dishonor, and all other notices or demands in connection with the delivery, acceptance, performance, default, or endorsement of this Note.

8. Non-Forfeiture of Rights. It is agreed and understood that the waiver by the Payee of any particular default in the terms of this Note shall not constitute waiver of any further default and that acceptance of any payment after it is due shall not be deemed a waiver of the right to require prompt payment when due on all other sums and that acceptance of any payment after default shall not cure said default or operate as a waiver of any rights of the Payee hereunder unless otherwise agreed in writing.

9. Payments, Notices. All payments due under this Note, and any notice required to be made hereunder shall be directed to the Payee or to the Maker, as the case may be, at the addresses above specified, or such other address as the Payee and the Maker may hereafter direct, in writing.

10. Binding on Successors, Etc. The obligation of this Note shall be binding upon the heirs, successors and assigns of the Maker herein and shall inure to the benefit of the successors or assigns of the Payee herein or any holder hereof. Notwithstanding the preceding sentence, the Maker shall not assign this Note without the prior written consent of the Payee.

11. Gender. Whenever the content so requires, reference herein to the neuter gender shall include the masculine and/or feminine gender, and the singular number shall include the plural.

12. References. All references herein to the Loan Agreement and the Guaranty shall be construed to refer to such instruments as they may be amended from time to time.

13. Governing Law. The Note has been made in the State of New Hampshire, and the provisions hereof shall be governed by and construed in accordance with the laws of the State of New Hampshire (excluding the laws applicable to conflicts or choice of laws).

14. Jurisdiction. The Maker hereby consents to the jurisdiction of all state and local courts of the State of New Hampshire and the United States District Court of the District of New Hampshire in connection with any suit to enforce any rights of the Payee under this Note.

15. Guaranty. The Maker's obligations hereunder are guaranteed pursuant to the Guaranty.

16. Sovereign Immunity. Nothing contained in this Note, the Loan Agreement, or any guaranty guarantying this Note shall be deemed to constitute a waiver of the sovereign immunity of the Payee, which immunity is hereby reserved to the Payee.

EXECUTED as of the day and year first above written.

PENNICHUCK EAST UTILITY, INC.

Witness

By: _____
Donald L. Ware
Chief Operating Officer

GUARANTY
(W&E 2542030)

THIS GUARANTY is made this _____ day of _____, 2014 by Pennichuck Corporation, a New Hampshire corporation with an address of 25 Manchester Street, P.O. Box 1947, Merrimack New Hampshire 03054-1947 ("Guarantor"), to and with 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 ("State").

WHEREAS, contemporaneously herewith, subject to certain terms and conditions, State has agreed to loan to Pennichuck East Utility, Inc. a New Hampshire corporation ("Borrower"), the principal sum of Five Hundred Fifty Thousand Dollars (\$550,000), which is to be repaid with interest in accordance with the terms of a certain promissory note of even date issued by Borrower to State (the "Note") in said principal amount;

WHEREAS, Guarantor is the parent company of the Borrower owning 100% of Borrower's issued and outstanding common stock;

WHEREAS, State has advised Guarantor that it will not engage in the aforesaid transactions unless, among other things, Guarantor guarantees all obligations of Borrower under the Note, including but not limited to the punctual payment of both principal and interest due and payable, as hereinafter set forth;

WHEREAS, Guarantor is willing and has agreed to guarantee the payment of the aforesaid obligations as hereinafter provided;

WHEREAS, Guarantor will benefit from the loan evidenced by the Note;

NOW THEREFORE, in order to induce State to engage in the aforesaid loan transaction and to make said loan to Borrower and in consideration of the premises stated above and for other good and valuable consideration, the receipt of which is hereby acknowledged, Guarantor agrees as follows:

1. Guarantor hereby unconditionally and irrevocably, guarantees: (i) the due and punctual payment in full (and not merely the collectability) of the principal of the Note and the interest thereon, when due and payable, according to the terms of the Note and the Loan Agreement of even date between State and Borrower (the "Loan Agreement"); (ii) the due and punctual payment in full (and not merely the collectability) of all other sums and charges which may at any time be due and payable in accordance with, or under the terms of the Note; (iii) the accuracy of the representations and warranties made by Borrower in the Loan Agreement, and certain affidavits and certificates delivered by Borrower to State on or about the date hereof and (iv) the due and punctual performance and observance of all of the other terms, covenants and conditions contained in the Note or the Loan Agreement (collectively, the "Guaranteed Obligations").

2. Guarantor expressly agrees that State may, in its sole and absolute discretion, without notice to or further assent of Guarantor, and without in any way releasing, affecting or impairing the obligations and liabilities of Guarantor, hereunder: (i) waive compliance with, or any default under, or grant any other indulgences with respect to, the Note or the Loan Agreement; (ii) modify, amend or change any provisions of the Note (other than to increase the principal amount due under the Note); (iii) grant extensions or renewals of or with respect to the Note, and/or effect any release, compromise or settlement in connection therewith; (iv) make advances for the purpose of performing any term or covenant contained in the Note with respect to which Borrower shall be in default; (v) assign or otherwise transfer the Note, the Loan Agreement, or this Guaranty, or any interest therein; and (vi) deal in all respects with Borrower as if this Guaranty were not in effect. The obligations of Guarantor under this Guaranty shall be unconditional, irrespective of the genuineness, validity, regularity or enforceability of the Note or any security given therefor or in connection therewith or any other circumstances that might otherwise constitute a legal or equitable discharge of a surety or guarantor.

3. The liability of Guarantor under this Guaranty shall be primary, direct and immediate and not conditional or contingent upon pursuit by State of any remedies it may have against Borrower or any other party with respect to the Note, whether pursuant to the terms thereof or otherwise. No exercise or nonexercise by State of any right given to it under this Guaranty, the Note or the Loan Agreement, and no change, impairment or suspension of any right or remedy of State shall in any way affect any of Guarantor's obligations hereunder or give Guarantor any recourse against State. Without limiting the generality of the foregoing, State shall not be required to make any demand on Borrower and/or any other party, or otherwise pursue to exhaustion its remedies against Borrower or any other party, before, simultaneously with or after, enforcing its rights and remedies hereunder against Guarantor. Any one or more successive and/or concurrent actions may be brought hereon against Guarantor, either in the same action, if any, brought against Borrower and/or any other party, or in separate actions, as often as State, in its sole discretion, may deem advisable.

4. Guarantor hereby expressly waives: (i) presentment and demand for payment and protest of nonpayment; (ii) notice of acceptance of this Guaranty and of presentment, demand and protest; (iii) notice of any default hereunder or under the Note, this Guaranty and the Loan Agreement and of all indulgences; (iv) demand for observance or performance of, and enforcement of, any terms or provisions of this Guaranty, the Note, and the Loan Agreement; and (v) all other notices and demands otherwise required by law that Guarantor may lawfully waive.

5. Any claim against the Borrower or any guarantor to which Guarantor may be or become entitled (including, without limitation, claims by subrogation or otherwise by reason of any payment or performance by Guarantor in satisfaction and discharge, in whole or in part, of his obligations under this Guaranty) shall be and hereby is made subject and subordinate to the prior payment or performance in full of the Guaranteed Obligations. Nothing herein contained shall be construed to give Guarantor any right of subrogation in and to the rights of State under the Note or any instrument or agreement securing the Note until all amounts owing to State under the Note have been paid in full.

In addition to any other security given by Guarantor to State, State is hereby authorized and empowered, at its option, to appropriate and apply to the payment and extinguishment of the Guaranteed Obligations, at any time after such liability becomes payable, any and all moneys or other property of Guarantor and any proceeds thereof (including proceeds of sales provided for below) now or hereafter in the possession of State for any purpose, including safekeeping or pledge for this or any other liability of Guarantor, and including any balance on deposit or otherwise for the account of, to the credit of, or belonging to Guarantor.

6. Any notice, demand, request or other communication given hereunder or in connection herewith (hereinafter "Notices") shall be deemed sufficient if in writing and sent by certified mail, postage prepaid, return receipt requested, addressed to the party to receive such Notice at its address first above set forth or at such other address as such party may hereafter designate by Notice given in like fashion. Notices shall be deemed given when mailed.

7. Any payments made by Guarantor under the provisions of this Guaranty shall, if made to State, be made at its address first set forth above, unless some other address is hereafter designated by State.

8. All rights and remedies afforded to State by reason of this Guaranty, the Note and the Loan Agreement, are separate and cumulative and the exercise of one shall not in any way limit or prejudice the exercise of any other such rights or remedies. No delay or omission by State in exercising any such right or remedy shall operate as a waiver thereof. No waiver of any rights and remedies hereunder, and no modification or amendment hereof, shall be deemed made by State unless in writing and duly executed. Any such written waiver shall apply only to the particular instance specified therein and shall not impair the further exercise of such right or remedy or of any other right or remedy of State, and no single or partial exercise of any right or remedy hereunder shall preclude further exercise of any other right or remedy.

9. The obligations of Guarantor to make payment in accordance with the terms of this Guaranty shall not be impaired, modified, changed, released, or limited in any manner whatsoever by any impairment, modification, change, release or limitation of the liability of Borrower or its estate in bankruptcy or reorganization resulting from the operation of any present or future provision of federal bankruptcy laws or other statute or from the decision of any court.

10. Guarantor hereby covenants and agrees that, if requested by State, Guarantor will, at Guarantor's expense, annually deliver to State within ninety (90) days of the end of each fiscal year audited financial statements of the Guarantor for such fiscal year in form and content satisfactory to State.

11. Guarantor agrees that if this Guaranty shall be enforced by suit or otherwise, or if State shall exercise or endeavor to exercise any of its remedies under the Note, the Guarantor will reimburse State, upon demand, for all expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees.

12. This Guaranty has been made in the State of New Hampshire, and the provisions hereof shall be governed by and construed in accordance with the laws of the State of New Hampshire (excluding the laws applicable to conflicts or choice of laws).

13. The terms, covenants, agreements and conditions contained herein shall extend to, include, and inure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns of Guarantor, as the case may be, and the successors and assigns of State. Notwithstanding the preceding sentence, Guarantor shall not be permitted to assign its rights and obligations hereunder without the prior written consent of State.

14. Whenever the context so requires, reference herein to the neuter gender shall include the masculine and /or feminine gender, and the singular number shall include the plural.

15. If more than one person executes this Guaranty or if the Guarantor consists of more than one person or entity, all such persons and entities shall have joint and several liability.

16. Guarantor hereby consents to the jurisdiction of all state and local courts of the State of New Hampshire and the United States District Court of the District of New Hampshire in connection with any suit to enforce any rights of the State under this Guaranty.

17. All references herein to the Loan Agreement, the Note and this Guaranty shall be deemed to include such instruments as they may be amended from time to time.

18. If any provision or condition of this Guaranty is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of this Guaranty.

19. Nothing contained in this Guaranty, the Loan Agreement or, the Note shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the day and year first above written.

PENNICHUCK CORPORATION

Witness

By: _____
Name: Donald L. Ware
Title: Chief Operating Officer

CLOSING AGENDA

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

**RE: LOAN TO PENNICHUCK EAST UTILITY, INC.
FOR W&E COMMUNITY WATER SYSTEM
WINDHAM, NEW HAMPSHIRE
Project # 2542030**

DATE: _____, 2014

- | | | |
|----|-------------------------------|-------|
| 1. | State of New Hampshire | "SNH" |
| 2. | Pennichuck East Utility, Inc. | "B" |
| 3. | Borrower's Counsel | "BC" |
| 4. | State's Counsel: David Howe | "DMH" |

No.	Item:	Responsible Party:
1.	Certified Copy of Articles of Incorporation of Borrower	B
2.	Certified Copy of Articles of Pennichuck Corporation	B
3.	Certified Bylaws of Borrower	B
4.	Certified Bylaws of Pennichuck Corporation	B
5.	Certificate of Existence of Borrower	B
6.	Certificate of Existence of Pennichuck Corporation	B
7.	Certificate of Corporate Resolution of Borrower	B
8.	Certificate of Resolutions of Pennichuck Corporation (Board of Directors and City of Nashua)	B
9.	Description of Premises (Exhibit A)	B
10.	Schedule of Costs (Budget) (Exhibit B)	B
11.	Loan Agreement	SNH
12.	Promissory Note (Exhibit C)	SNH
13.	Guaranty of Pennichuck Corporation	SNH
14.	Opinion of Counsel to Borrower and Pennichuck Corporation	B
15.	Public Utilities Commission Order	B
16.	Certificate of Insurance	B
17.	Governor and Council approval	SNH
18.	399-B Disclosure	SNH

DISCLOSURE OF FINANCE CHARGES
STATE DRINKING WATER REVOLVING LOAN FUND

Pursuant to New Hampshire RSA Chapter 399-B:2

TO: PENNICHUCK EAST UTILITY, INC

DATE: _____, 2014

Amount of Loan: \$550,000 (2542030, W&E Distribution Main Replacement)

Payable: 6 monthly installments of interest only followed by 240 monthly installments of interest and principal as further provided in the Promissory Note of even date of the Borrower (the "Note")

Finance Charges: 1% until the Interest Rate Change Date (as defined in the Note) then lower of (A) 2.72% or (B) 80 percent of the established 11 General Obligations Bond Index published during the first week of October before the Interest Rate change Date (including a 2% administrative fee)

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

Above interest is based on the number of days elapsed over a 360 day year, as the case may be.

Recording and filing fees:	\$ 0
Title search fee:	\$ 0
Environmental Site Assessment:	\$ 0
Appraisal:	\$ 0

Acknowledged.

PENNICHUCK EAST UTILITY, INC.
Borrower

By: _____
Donald L. Ware
Chief Operating Officer

PENNICHUCK CORPORATION
Guarantor

By: _____
Donald L. Ware
Chief Operating Officer