

STATE OF NEW HAMPSHIRE
Inter-Department Communication

DATE: April 22, 2019

FROM: K. Allen Brooks *KAB* **AT (OFFICE)** Department of Justice
Senior Assistant Attorney General Environmental Protection Bureau

SUBJECT: Southern Interconnect Agreement Approval Pursuant to RSA ch. 53-A

TO: Erin L. Holmes, Administrator III
Waste Management Division
Department of Environmental Services

The attached agreement has been approved by the Office of the Attorney General as meeting the applicable requirements of RSA ch. 53-A. I note that there appears to be unintentional underlining on pages 3 and 5. In addition, the page numbering indicates 26 pages; however, three of those pages are attachment cover pages which are non-sequential.

/cmc
Enclosure

AGREEMENT
REGARDING
THE SOUTHERN NEW HAMPSHIRE REGIONAL WATER
INTERCONNECTION PROJECT

This Agreement regarding the Southern New Hampshire Regional Water Interconnection Project (“Agreement”) is entered into by and among the following parties: The Town of Derry, New Hampshire (“Derry”); Manchester Water Works (“MWW”); the Town of Plaistow, New Hampshire (“Plaistow”); the Town of Windham, New Hampshire (“Windham”); the Town of Salem, New Hampshire (“Salem”); Hampstead Area Water Company, Inc. (“HAWC”); and Pennichuck East Utility, Inc. (“PEU”), individually “a Party”, and collectively, “the Parties”.

RECITALS

WHEREAS, MWW is a duly established municipal water works entity that develops new water sources and owns and operates a public water system in the City of Manchester, New Hampshire and whereas MWW also supplies water to Derry under a wholesale water agreement dated March 26, 2013.

WHEREAS, Derry is a municipality duly established and existing under N.H. RSA 31 that owns and operates a public water system providing water service in Derry and that purchases water for said water system from MWW pursuant to a wholesale water agreement dated March 26, 2013.

WHEREAS, PEU is a privately-owned water utility authorized by the New Hampshire Public Utilities Commission to provide water service within Windham.

WHEREAS, Windham is a municipality duly established and existing under N.H. RSA 31 that is interested in procuring, either on its own or through another entity, new water sources to replace existing contaminated water sources in Windham and to serve new customers in certain areas within Windham.

WHEREAS, Salem is a municipality duly established and existing under N.H. RSA 31 that owns and operates a public water system providing water service in Salem.

WHEREAS, HAWC is a privately-owned water utility authorized by the New Hampshire Public Utilities Commission to provide water service in portions of the towns of Atkinson and Hampstead, New Hampshire.

WHEREAS, Plaistow is a municipality duly established and existing under N.H. RSA 31 that does not currently own, operate or provide water service to residents of Plaistow but that, by warrant article P-18-25 voted on by Town Meeting on March 13, 2018, has approved conversion of its current fire suppression water system to a potable water and fire suppression system and to establish a municipal water system pursuant to RSA 38:4.

WHEREAS, RSA 53-A authorizes political subdivisions of the State of New Hampshire, quasi-municipal corporations, and privately owned water utilities to enter into agreements for joint public works programs such as those relating to the provision of water services.

WHEREAS, water issues exist within Windham, Salem, Plaistow and within HAWC's service territory all of which require resolution, and whereas these include: properties in Windham that have private wells contaminated by MtBE, including but not limited to properties associated with Klemm's Mobil on the Run (NHDES Site #199008001); Windham's potential need for additional water capacity; the contamination and abandonment of Turner/Campbell production wells in Salem; HAWC's requirement for additional water capacity; private wells in Plaistow that are contaminated by MtBE and other contaminants; and Plaistow's lack of a water supply source.

WHEREAS, pursuant to a Memorandum of Understanding between and among the Parties and the New Hampshire Department of Environmental Services ("NHDES"), the Parties and NHDES have expressed their intent to work collaboratively to facilitate the development, construction and operation of infrastructure that interconnects the water systems of MWW, Derry, Salem, HAWC (in Atkinson and Hampstead) and Plaistow to enable potable water to flow from the MWW source through the aforementioned entities' water systems or service territories ("the Project").

WHEREAS, the Project's goal is to ensure that a flow of safe and reliable drinking water is supplied from MWW and delivered to the water systems of Salem, HAWC (in Atkinson and Hampstead), and Plaistow, and to potential new customers in Windham, in quantities described herein.

WHEREAS, the New Hampshire Drinking Water and Groundwater Trust Fund Advisory Commission ("the Commission") voted on April 18, 2018 to provide \$19.6 million for Phase 1 of the Project from the New Hampshire Drinking Water and Groundwater Trust Fund established pursuant to RSA 6-D:1 and for disbursement of \$11,174,100 for the Merrimack Source Development Charge ("MSDC") associated with the Project and later amended this vote on August 30, 2018 to allow NHDES to use the funds either to pay the MSDC directly or otherwise secure the MSDC capacity needed for the Project, and further to negotiate the terms of the expenditure, resale of MSDC capacity and any recoupment or refund of these funds.

WHEREAS, N.H. RSA 485-F:3, VII (a) requires that all loans or grants provided by the New Hampshire Drinking Water and Groundwater Trust Fund be approved by the Governor and Executive Council.

WHEREAS, on March 21, 2019, NHDES requested approval to fund \$7.3 million of the Project using MtBE settlement funds, and the New Hampshire Department of Justice ("NHDOJ") approved this request on March 22, 2019, such approval being pursuant to a Memorandum of Understanding between NHDES and NHDOJ approved by the Joint Legislative Fiscal Committee on November 22, 2013, and approved by Governor and Executive Council on December 4, 2013.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and agreements set forth below, the Parties hereby agree as follows:

ARTICLE I. Definitions and Abbreviations

"Agreement" means this agreement including all attachments to it.

“Average Daily Flow” or “ADF” means the total volume of water measured in gallons or cubic feet at a Project metering station or stations during the two highest consecutive monthly MWW billing periods divided by the actual number of days in the applicable billing periods.

“Basis of Design Memo” means the Regional Basis of Design Memorandum prepared by Weston & Sampson on behalf of NHDES dated January 4, 2019 and attached to this Agreement as Attachment A.

“Capacity” means the ability to provide a specified volume of water.

“Ccf” means 100 cubic feet.

“Commission” means the New Hampshire Drinking Water and Groundwater Trust Fund Advisory Commission.

“Disinfection Report” means the Disinfection Study Report prepared by Weston & Sampson on behalf of NHDES dated January 7, 2019 and attached to this Agreement as Attachment B.

“Fire Flow” means water withdrawn from a water system for the express purpose of extinguishing a fire and is not considered typical daily consumption.

“In-town rate” means the rate charged by MWW to retail franchise customers within the geographic boundary of the City of Manchester.

“Maximum Daily Flow” or “MDF” means the highest total volume of water measured in gallons or cubic feet at a Project metering station over any consecutive twenty-four (24) hour period.

“Merrimack Source Development Charge” or “MSDC” means a capital charge assessed by MWW in accordance with Manchester Water Works Rules and Regulations, RSA 38:27 and RSA 38:28 for the purpose of constructing, acquiring, improving, enlarging and/or operating the Manchester Water Works' system. Specifically, all funds collected from the MSDC will be utilized to develop the Merrimack River as an additional source of water supply for MWW.

“MSDC Agreement” means a grant agreement between MWW and NHDES which is attached hereto and made part of this Agreement as Attachment C.

“MSDC Capacity” means capacity reserved for a specific Water Recipient who has paid the associated MSDC.

“MGD” means million gallons of water per day.

“NHDES” means the New Hampshire Department of Environmental Services.

“NHPUC” means the New Hampshire Public Utilities Commission.

“Out-of-Town rate” means the rate charged by MWW to retail franchise customers outside the geographic boundary of the City of Manchester.

“Phase 1” means the time period beginning on December 31, 2020¹ and ending at the beginning of Phase 2 unless the parties hereto agree to an earlier date.

“Phase 2” means the time period beginning on December 31, 2023, and ending at the termination of this Agreement unless the parties hereto agree to an earlier date.

“Project” means the Southern New Hampshire Regional Water Interconnection Project described herein and initially described in the Memorandum of Understanding signed by NHDES on October 5, 2018, and also signed by MWW, Derry, Salem, Windham, PEU, HAWC and Plaistow.

“Trust Fund” means the New Hampshire Drinking Water and Groundwater Trust Fund.

“Water” means potable water unless used in the context of fire suppression in which case it shall mean all water.

“Water Provider” means MWW and Derry, whose role in the Project is to provide water to the Water Recipients consistent with this Agreement.

“Water Recipients” means Salem, Windham, HAWC, and Plaistow.

“Water System” means facilities for collection, storage, supply, distribution, treatment, pumping, metering or transmission of water.

ARTICLE II. – Parties’ Rights and Obligations

A. INDIVIDUAL PARTIES

MWW

Infrastructure:

- Prior to Phase 1, MWW shall increase the intake pipe diameter of the existing Cohas Avenue pump station, located on Cohas Avenue, Manchester, New Hampshire, from 20 inches to 24 inches to increase future throughput of the pump station to meet the Project’s long-term water demand of 3.13 MGD ADF and 4.07 MGD MDF.
- MWW shall apply to the Trust Fund for the funds related to Phase 2 at a time and in a manner necessary to meet its Phase 2 obligations.
- If the Trust Fund approves funding for MWW’s Phase 2 obligations, MWW shall complete capital improvements to its water system necessary to enable a total of up to 3.13 MGD ADF and up to 4.07 MGD MDF of water to be provided to the Water Recipients, including but not limited to possible upgrades to the Cohas Avenue pump station and an increase of one or more water mains.
- MWW will not be financially responsible for capital improvements necessitated by and solely related to Phase 2 of the Project.

¹ Although the firm deadline for Phase 1 is December 31, 2020, all parties must make all reasonable efforts to complete Phase I improvements by May 1, 2020 as indicated in Article II. B. 2 of this Agreement.

Operation:

- Throughout Phase 1, MWW shall supply a total of up to 1.0 MGD ADF and up to 1.3 MGD MDF of water to the Water Recipients, consistent with and subject to the provisions of the MSDC Agreement attached as Attachment C.
- Throughout Phase 2, MWW shall supply a total of up to 3.13 MGD average daily flow and up to 4.07 MGD maximum daily flow of water to the Water Recipients, consistent with and subject to the provisions of the MSDC Agreement attached as Attachment C.
- MWW shall be responsible for all of its operation and maintenance costs, including rehabilitation and replacement of infrastructure, whether or not such costs are associated with the Project.

Rates:

- The rates charged by MWW per cubic foot or gallon used by Water Recipients shall be in accordance with the MSDC Agreement attached as Attachment C.

Other:

MWW shall read the meter at the Londonderry-Derry town line and at the Derry-Windham town line to determine the amount of Project water flowing through the Derry water system and received by Salem at the Derry-Windham town line. MWW shall then bill Salem directly for the amount of water received by Salem. Said billings shall reflect the rates to be paid by Salem to MWW as described herein and in the MSDC Agreement attached as Attachment C, and to Derry as described below. Upon receipt of payment, MWW shall remit to Derry the amount that Derry is due under this Agreement. MWW shall invoice Salem on a monthly basis in arrears. Payments on such invoices shall be made within thirty (30) days.

TOWN OF DERRY

Infrastructure:

Prior to Phase 1, and consistent with the Basis of Design Memo and Disinfection Study, Derry shall design, construct, own, operate, and maintain:

- A new meter station including pumps near the Londonderry-Derry town line on Manchester Road (Route 28);
- Upgrades to the existing Rockingham Road (Route 28) pump station;
- Approximately 7,400 linear feet of 16-inch water main in Rockingham Road (Route 28) from the terminus of the existing Derry water system to the intersection of Route 28 and Goodhue Road south of the Derry-Windham town line; and
- A pressure reducing valve (PRV), in Derry near the Derry-Windham town line consistent with the Basis of Design Memo.
- Derry's capital costs for Phase 1 shall be paid in accordance with the approval by the Commission dated April 18, 2018.

All of the above-described infrastructure is for the purpose of conveying 1 MGD ADF and/or 1 MGD MDF to the Water Recipients through the end of Phase 1 and up to 3.13 MGD ADF and/or 3.13 MGD MDF throughout Phase 2.

Prior to Phase 2, Derry shall:

- Complete capital improvements to its water system necessary to convey a total of up to 3.13 MGD ADF and/or up to 3.13 MGD MDF of water as applicable to the Water Recipients possibly including but not limited to upgrading the pump station at the Londonderry-Derry town line, upgrades to the water main on Manchester Road, upgrades to the water main between Manchester Road and the Tsienneto Road Tank, upgrades to the water main on Rockingham Road, upgrades to the Rockingham Road pump station, and potential localized water main improvements.
- Apply, in a timely manner, to the Commission for the funds necessary to complete all other capital improvements to Derry's water system necessary to convey a total of up to 3.13 MGD ADF and/or 3.13 MGD MDF of water as applicable to downstream Water Recipients.
- If funding is approved, Derry shall design, construct, own, operate, and maintain all other infrastructure necessary to convey a total of up to 3.13 MGD ADF and/or 3.13 MGD MDF of water to Salem, Windham, HAWC, and Plaistow.
- Derry will not be responsible for the cost of capital improvements necessitated by and solely related to the Project.

Operation:

- Throughout Phase 1, Derry shall convey a total of up to 1.0 MGD ADF and/or up to 1.0 MGD MDF of water as applicable to the meter station near the Derry-Windham town line that will measure water provided to Salem at that location.
- Throughout Phase 2, Derry shall convey a total of up to 3.13 MGD ADF and/or up to 3.13 MGD MDF of water as applicable to a meter station or stations to be identified by Windham, Salem and HAWC prior to Phase 2.
- Derry shall own, operate and maintain the meter to be located in the new Rockingham Road (Route 28) station in Windham near the Derry-Windham town line to be constructed by Salem for the purpose of billing Salem.
- Derry shall be responsible for all of its operation and maintenance costs, including rehabilitation and replacement of infrastructure, whether or not such costs are associated with the Project.

Rates:

- Derry shall charge Salem \$1.00 per Ccf for Project-related water until the year 2035, and such charge shall be billed and collected by MWW. After 2035, any party other

than MWW and PEU may seek a change to the rate charged by Derry. If Derry and the Water Recipients agree to a new rate, this Agreement shall be amended to reflect the new rate. If Derry and the Water Recipients cannot reach agreement, they may engage in dispute resolution as set forth in paragraph 32 of this Agreement. Unless and until a new rate is set, the rate described above shall remain in effect, and Derry shall not charge Salem any other fees or costs.

Other:

- All Water Recipients shall be responsible for maintaining their own fire flows and Derry will not be liable for any damages resulting from inadequate fire flows as a result of this Agreement.
- Derry shall not divert or otherwise use any portion of the MWW water delivered to Derry under this Agreement which is intended for use by the Water Recipients.
- Derry and MWW are parties to a wholesale water agreement which requires Derry to participate financially in MWW capital improvements undertaken to maintain/improve MWW service to Derry. Derry's capital improvement financial obligations to MWW under the aforementioned wholesale water agreement will not be triggered by Derry's obligations under this Agreement. In addition, nothing in this Agreement shall impair Derry's or MWW's rights under the aforementioned wholesale water agreement.

TOWN OF SALEM

Infrastructure Related to Service to Salem and HAWC:

Prior to Phase 1, and consistent with the Basis of Design Memo and Disinfection Report, Salem shall design, construct, own, operate, and maintain:

- Approximately 14,000 linear feet of 20-inch transmission water main along Rockingham Road (Route 28) from the intersection of Route 28 and Goodhue Road south of the Derry-Windham town line to the intersection of Rockingham Road (Route 28) and Route 111 in Windham;
- Approximately 2,200 linear feet of 16-inch water main in Rockingham Road (Route 28) from the intersection with Route 111 in Windham to the Windham-Salem town line;
- A meter station including pressure reducing valve ("PRV") and chemical feed system on Rockingham Road (Route 28) in Windham near the intersection of Goodhue Road and Route 28, with the meter located in the station to be owned, operated and maintained by Derry;
- A meter station on Route 111 in Windham near the intersection of Rockingham Road (Route 28) and Route 111;
- A meter station including pressure reducing valve ("PRV") and chemical feed system on Rockingham Road (Route 28) near the Windham-Salem town line; and

- Approximately 650 linear feet of 16-inch water main in Rockingham Road (Route 28) from the Windham-Salem town line to the existing Salem water system.

All of the above-described infrastructure is for the purpose of conveying 1 MGD ADF and/or 1 MGD MDF to the Water Recipients through the end of Phase 1 and up to 3.13 MGD ADF and/or 3.13 MGD MDF throughout Phase 2.

Also prior to Phase 1, and consistent with the Basis of Design Memo and Disinfection Report, Salem shall design, construct, own, operate, and maintain:

- Approximately 1,100 linear feet of 12-inch water main in Shannon Road and Westside Drive from the terminus of the existing Salem water system in Salem to a new meter station to be constructed by HAWC near the Salem-Atkinson town line in Atkinson.

All of the above-described infrastructure is for the purpose of conveying up to 500,000 gallons per day ADF and/or 500,000 gallons per day MDF as applicable through the end of Phase 1 and up to 1.32 MGD ADF and/or 1.32 MGD MDF as applicable throughout Phase 2 from Salem's existing water system into HAWC's water system.

In addition, Salem shall design and construct the following infrastructure and deliver it to HAWC and shall further give HAWC permission to own and maintain said infrastructure within the Town of Salem right-of-way:

- Approximately 2,500 linear feet of 12-inch water main from the new meter station on Westside Drive in Atkinson along Westside Drive in Atkinson and Salem, Shannon Road in Salem, and Providence Hill Road in Salem and Atkinson, to the existing HAWC water system in Providence Hill Road near Atkinson Farm Road in Atkinson.

The full cost of all Phase 1 capital improvements shall be paid by a combination of the MTBE Settlement Fund and the Trust Fund. The capital costs associated with Salem for Phase 1 were approved by the Commission on April 18, 2018.

Infrastructure Related to Service to Windham:

Prior to Phase I, and consistent with the Basis of Design Memo and Disinfection Report, Salem shall design, construct, own, operate, and maintain:

- Approximately 4,500 linear feet of 12-inch water transmission main to be located along Route 111 from the meter located at the intersection of Rockingham Road (Route 28) to the west side of the intersection of Route 111 (Indian Rock Road) and Route 111A (Range Road) in Windham.

All of the above-described infrastructure is for the purpose of conveying approximately 200,000 gallons per day ADF and/or 200,000 gallons per day MDF as applicable through the end of Phase 1 and up to 310,000 gallons per day ADF and/or 310,000 gallons per day MDF as applicable throughout Phase 2. Salem shall place this transmission main in service as soon as possible but no later than six (6) months after construction of the transmission main is completed. To protect water quality, Salem shall ensure at least 20,000 gallons of flow each day prior to placing this water main in service. Salem may serve retail customers from this 12-inch

main and from the transmission main to be located along Route 28 in Windham, including customers in Windham, provided it obtains any necessary NHPUC approval. Salem shall only be required to fulfill its obligations under this paragraph if all of the costs of capital improvements associated with the 12-inch main leading to the area in the vicinity of Klemm's Mobil Gas Station ("Klemm's") are paid for by the MtBE Settlement Fund and/or the Trust Fund. These requirements, however, are not contingent on the Trust Fund paying for any additional costs for the purpose of serving retail customers in Windham, including the cost of connections, water main construction, operation and maintenance, or capital costs.²

Prior to Phase 2, and consistent with the Basis of Design Memo and Disinfection Report, Salem shall construct, own, operate, and maintain capital improvements necessary to convey a total of up to 310,000 gallons per day ADF and/or 310,000 gallons per day MDF of water as applicable for use within the Town of Windham and a total of up to 1.32 MGD ADF and/or 1.32 MGD MDF of water as applicable to HAWC.

Operation:

- Salem shall own, operate and maintain the meter to be located in the new Route 111 station in Windham to be constructed by Salem.
- Throughout Phase 1, Salem shall convey a total of up to 200,000 gallons per day ADF and 200,000 gallons per day MDF for use within Windham.
- Also throughout Phase 1, Salem shall convey a total of up to 500,000 gallons per day ADF and 500,000 gallons per day MDF to HAWC.
- Throughout Phase 2, Salem shall convey a total of up to 310,000 gallons per day ADF and 310,000 gallons per day MDF for use within the Town of Windham.
- Also throughout Phase 2, Salem shall convey a total of up to 1.32 MGD ADF and 1.32 MGD MDF to HAWC.
- Salem shall own, operate and maintain the meter to be located in the new Westside Drive station in Atkinson near the Salem-Atkinson town line to be constructed by HAWC.
- Salem shall be responsible for all of its operation and maintenance costs, including rehabilitation and replacement of infrastructure, whether or not such costs are associated with the Project.
- Salem shall own and operate the 12-inch water transmission main leading to the area in the vicinity of Klemm's upon such terms and conditions as shall be agreed upon by Salem and Windham and consistent with the Agreement.
- Nothing herein shall prohibit Salem from selling water to other municipalities that are parties to this Agreement or from selling water directly to the residents and businesses located within those municipalities.

² To the extent Salem or Windham requests a grant or loan from the Trust Fund for any other capital costs, such as further water transmission main on Route 111, it is anticipated that such a request will be reviewed by the Commission in the normal course.

Rates:

- Pursuant to RSA 362:4, III-a(a)(1), Salem will charge retail customers in Windham a rate agreed to by Salem and Windham which may be no higher than 15% above the rate charged by Salem to its in-town retail customers.
- Salem will charge wholesale customers in Windham, if any, 50 cents more per Ccf than the combined rates charged to Salem by MWW and Derry for water usage.
- Salem will charge HAWC 50 cents more per Ccf than the combined rates charged to Salem by MWW and Derry for water usage.
- Wholesale rates shall be valid until the year 2035. After 2035, any Water Recipient may seek a change to the rate charged by Salem. If the Water Recipients agree to a new rate, this Agreement shall be amended to reflect the new rate. If the Water Recipients cannot reach agreement, they may engage in dispute resolution as set forth in paragraph 32 of this Agreement. Unless and until a new rate is set, the wholesale rates described above shall remain in effect.

Other:

- All Water Recipients shall be responsible for maintaining their own fire flows and Salem will not be liable for any damages resulting from inadequate fire flows as a result of this Agreement.
- For general Project purposes, Salem shall ensure a 250,000 gallons per day minimum usage of Project water calculated as the six (6) month average within the period of January 1 to June 30, and within the six (6) month period of July 1 and December 31, throughout Phase 1 and continuing for the term of the Agreement. For water quality purposes, Salem shall ensure a flow of at least 100,000 gallons each day. Water conveyed by Salem that is used within Windham and Salem shall count toward Salem's minimum usage.

PEU

To the extent that NHPUC approvals may be required for Salem to operate a wholesale water system in Windham and/or to serve retail water customers in Windham, and/or for Windham to establish a municipal water system to serve customers in Windham, PEU will not object to such approvals, including but not limited to surrender of its franchise rights in those areas of Windham that PEU, Salem and/or Windham as applicable have agreed upon, and shall cooperate with Salem and/or Windham in making required filings with the NHPUC.

TOWN OF WINDHAM

Windham agrees to allow all of the activities described in this Agreement to occur. Windham may assume the responsibilities in this Agreement occurring within Windham currently attributable to Salem, and may thereafter assign such responsibilities to another entity, provided that Windham,

Salem, and NHDES agree in writing and subject to necessary regulatory approvals. Windham and Salem shall cooperate to the fullest extent necessary for Salem to design, construct, own, operate and maintain infrastructure in Windham consistent with the Basis of Design Memo and this Agreement.

HAWC

Infrastructure:

Prior to Phase 1, and consistent with the Basis of Design Memo and Disinfection Report, HAWC shall design, construct, own, operate, and maintain:

- A new meter station including pumps and chemical feed along Westside Drive near the Salem-Atkinson town line in Atkinson;
- Approximately 600 linear feet of 12-inch water main in Westside Drive in Atkinson from the new meter station to the existing HAWC water system;
- Upgrades to the existing pressure reducing valve ("PRV") along Main Street in Atkinson;
- Chemical feed upgrades to existing pumping and treatment stations as necessitated by and solely related to the Project;
- A 1 million gallon water storage tank near Winslow Drive in Atkinson.

In addition, HAWC shall own, operate and maintain the following infrastructure to be designed and constructed by Salem:

- Approximately 2,500 linear feet of 12-inch water main from the new meter station on Westside Drive in Atkinson along Westside Drive in Atkinson and Salem, Shannon Road in Salem, and Providence Hill Road in Salem and Atkinson, to the existing HAWC water system in Providence Hill Road near Atkinson Farm Road in Atkinson.

All of the above-described infrastructure is for the purpose of conveying 500,000 gallons per day ADF and/or 500,000 gallons per day MDF as applicable through the end of Phase 1 and up to 1.32 MGD ADF and/or 1.32 MGD MDF as applicable throughout Phase 2 from the Salem-Atkinson town line.

The Parties recognize that certain costs of the above-described infrastructure were approved by the Commission on April 18, 2018.

Prior to Phase 2, and consistent with the Basis of Design Memo and Disinfection Report, and for the purpose of conveying 500,000 gallons per day ADF and/or 500,000 gallons per day MDF as applicable through the end of Phase 1 and up to 1.32 MGD ADF and/or 1.32 MGD MDF as applicable throughout Phase 2 from the Salem-Atkinson town line, HAWC shall design, construct, own, operate, and maintain all other capital improvements necessary for the Project possibly including, but not limited to, an upgrade of water main in Westside Drive and Village Drive in Atkinson.

Operation:

- Throughout Phase 1, HAWC shall convey a total of up to 250,000 gallons per day ADF and 250,000 gallons MDF to Plaistow.
- Throughout Phase 2, HAWC shall convey a total of up to 570,000 gallons per day ADF and 570,000 gallons MDF to Plaistow.
- HAWC shall own, operate and maintain and read the meter to be located in the new meter station near the Atkinson-Plaistow town line to be constructed by Plaistow to determine the amount of Project water flowing to Plaistow. HAWC shall then bill Plaistow directly for the amount of water received by Plaistow.
- HAWC shall be responsible for all of its operation and maintenance costs, including rehabilitation and replacement of infrastructure, whether or not such costs are associated with the Project.

Rates:

- HAWC shall charge Plaistow 54 cents more per Ccf than HAWC is being charged by Salem. This rate shall be valid until the year 2035. After 2035, Plaistow or HAWC may seek a change to the rate charged by HAWC. If Plaistow and HAWC agree to a new rate, this Agreement shall be amended to reflect the new rate. If Plaistow and HAWC cannot reach agreement, they may engage in dispute resolution as set forth in paragraph 32 of this Agreement. Unless and until a new rate is set, the rate described above shall remain in effect.

Other:

- HAWC shall cooperate with Plaistow to enable Plaistow to construct approximately 1,500 linear feet of 12-inch water transmission main from the terminus of the existing HAWC system in Bryant Woods Road to the Atkinson-Plaistow town line. Such cooperation may include Plaistow leasing or transferring title to HAWC of the main located in Atkinson downstream of the pumping station after it is constructed by Plaistow. It is Plaistow's intent to transfer ownership of the upstream portion (suction side of the pump/meter) of the line to HAWC.
- HAWC will not be responsible for maintaining fire flows to Plaistow; however, HAWC shall make 50% of the storage capacity associated with the Atkinson water storage tank available to Plaistow for fire protection. HAWC will not be liable for any damages resulting from inadequate fire flows in Plaistow.
- HAWC shall ensure a 250,000 gallons per day minimum use of Project water calculated as the six (6) month average within the period of January 1 to June 30, and within the six (6) month period of July 1 and December 31, throughout Phase 1 and continuing for the term of the Agreement.
- HAWC will be responsible for maintaining its own fire flows.

TOWN OF PLAISTOW

Infrastructure:

Prior to receiving Project water, and no later than June 1, 2025 consistent with the Basis of Design Memo and Disinfection Report, Plaistow shall design, construct, own, operate, and maintain:

- A meter station including pumps and chemical feed on East Road or Bryant Woods Road near the Atkinson-Plaistow town line;
- Approximately 1,500 linear feet of 12-inch water transmission main from the terminus of the existing HAWC system in Bryant Woods Road to the Atkinson-Plaistow town line.³ After constructing this main, Plaistow will cooperate with HAWC to enable HAWC to serve customers from this main. Such cooperation may include Plaistow leasing or transferring title to HAWC of the main located in Atkinson downstream of the pumping station after it is constructed by Plaistow. It is Plaistow's intent to transfer ownership of the upstream portion (suction side of the pump/meter) of the line to HAWC.
- Approximately 2,900 linear feet of 12-inch water main in East Road from the Atkinson-Plaistow town line to the existing Plaistow fire suppression system ("FSS");
- A 400,000-gallon water storage tank on Sweet Hill Road;
- Approximately 5,300 linear feet of 12-inch water main in Sweet Hill Road from the existing Plaistow FSS via Palmer Avenue or Hale Spring Road to the site of the water storage tank;
- Approximately 1,000 linear feet of 8-inch water main in Wentworth Avenue from the terminus of the existing FSS to serve MtBE-impacted properties;
- Approximately 2,300 linear feet of 8-inch water main in Westville Road from Plaistow Road easterly to serve MtBE-impacted properties; and,
- Service connections including individual service meters to a minimum of 56 MtBE-impacted properties.

Funding sources for these capital improvements, to the extent they are necessitated solely by the Project, shall be a combination of the MTBE Settlement Fund and the Trust Fund. The capital costs associated with Phase 1 of the Project were approved by the Commission on April 18, 2018.

Operation:

- Plaistow shall be responsible for all of its operation and maintenance costs, including rehabilitation and replacement of infrastructure, whether or not such costs are associated with the Project.

Rates:

- The rate charged by Plaistow to its customers is not subject to this agreement.

³ This water main must be constructed to convey 570,000 gallons per day.

Other:

- Plaistow shall be responsible for fire protection and fire flows within Plaistow utilizing the Project water and the storage capacity associated with 50% of the Atkinson water storage tank and 100% of the Sweet Hill water storage tank. It is also recognized that Project water is the only water source available for Plaistow and, as such, it is the source for fire flow needs. As a result, emergency fire-related conditions may result in a maximum daily usage above the amount identified above.
- No later than June 1, 2025, Plaistow shall ensure a minimum flow necessary to protect water quality which shall be at least 40,000 gallons each day.

B. ALL PARTIES

1. Obligations Contingent Upon Award of Funds from Trust Fund. No Party shall be responsible for any obligation under this Agreement identified as being funded by the Trust Fund or MtBE settlement funds unless and until the Party has been awarded funds for infrastructure identified herein as being paid for by the Trust Fund or MtBE settlement funds.
2. Connections and Project Construction. Any and all connections of one Party's water system infrastructure to another Party's water system infrastructure necessary to effectuate this Agreement shall be of good design and constructed in a workmanlike manner. Before any Party begins Project-related construction, all design plans and specifications for such construction must be approved by NHDES and all Parties except PEU. Such approval shall not be unreasonably withheld. Project design shall be consistent with the Basis of Design Memo, any agreed upon regional design changes presented in writing to NHDES and approved by NHDES, and specifications provided by others and approved by NHDES. Meters incorporated into the construction for the purposes of monitoring and conveying water usage information shall be in accordance with the design specifications set forth by MWW. All parties must make reasonable efforts to complete their Phase 1 improvements by May 1, 2020 and must complete all of their Phase 1 improvements no later than December 31, 2020.
3. Easements/real property acquisitions. Each Party shall be responsible for acquiring any and all easements and/or other interests in real property needed for the construction and installation of those Project facilities or portions thereof which the Party is responsible for constructing. Such Party may seek reimbursement from the Trust Fund for expenses associated with obtaining easements or other property interests needed for and solely related to the Project.
4. Infrastructure Ownership. Each Party's ownership of any infrastructure and any easement and other property rights acquired as part of the Project shall survive the termination of this Agreement.
5. Operation and Maintenance of Facilities. Parties shall operate and maintain Project facilities and their respective water systems or portions thereof used for the Project in accordance with customary engineering and water industry standards. No Party assumes any responsibility for

operating or maintaining any portion of the water system of any other Party unless otherwise specified. Parties shall take steps to control leaks and minimize wasteful water use within their respective service areas.

6. Maintenance and Testing of Metering Devices.

6.1 Any and all metering devices installed pursuant to this Agreement shall be inspected and calibrated by the Party owning the metering device in the manner specified by regulations of the NHPUC. The cost for inspection and calibration will be the responsibility of the Party owning the meter. Each Party conducting such inspection and calibration shall cause a copy of its inspection and calibration reports to be filed at MWW's offices. Said reports shall be available for examination by any Water Recipient, Derry or NHDES at the offices of MWW during normal business hours.

6.2 MWW may request any Water Recipient or Town of Derry to test and certify as to the accuracy of any metering device owned by the Party at any time. MWW must submit such requests in writing to the Party. If the metering device reads within specifications accepted by the NHPUC, the cost of such tests shall be borne by MWW. If the average error over different test rates is greater than that allowed by the NHPUC, the cost of the tests shall be paid by the relevant Party.

6.3 In the case of missing or inaccurate flow records, due to faulty metering device operation or other circumstances, an estimate of flow shall be made by MWW based on past records for a comparable period. The estimates shall be used by MWW to calculate the amount of payments due from Salem.

6.4 Other Parties conducting meter readings for billing or other purposes may use methods comparable to those used by MWW.

7. Measurement of Water Flows. Each Party performing meter readings in connection with this Agreement shall provide other Parties except PEU with access to such meter readings. The measurement of water delivered to all Parties under this Agreement shall be made available by MWW to all Parties for the purpose of determining MSDC capacity, ADF and MDF. These flow measurements will be used in determining flow usage pursuant to the quantities of water outlined in Article II.A. Such flow measurements shall be made by one or more metering devices placed at locations selected by the Parties.
8. Quality of Water. Water Providers and Water Recipients shall operate and maintain their water systems so as to supply water meeting the drinking water quality criteria established from time to time by the United States Environmental Protection Agency and the State of New Hampshire, NHDES.
9. Supply impairment. Water Providers and Water Recipients shall take all reasonable steps to prevent impairment, interruption and reduction of supply of water to the Water Recipients under this Agreement. In the event that such water supply is impaired or otherwise interrupted or reduced by a Water Provider or Water Recipient, the Water Recipients shall, to the extent

possible, adjust their usage of the water supplied in amounts proportional to the water capacity made available to them under this Agreement.

10. Operation and Maintenance Costs. As stated in Article II.A, each Party shall be responsible for all of its operation and maintenance costs and no Party may seek reimbursement from the Trust Fund for such costs associated with Project facilities.
11. Record keeping/documentation requirements. Each Party shall maintain records of its financial and other transactions conducted pursuant to this Agreement, and these records shall be available for inspection by any NHDES and/or any other Party except PEU at each Party's business office during normal business hours.
12. Administration by Joint Board. No separate legal entity is created by this Agreement. Notwithstanding the foregoing, in accordance with RSA 53-A:3, III (a), a Joint Board comprised of a representative of Derry, MWW, Plaistow, Windham, Salem and HAWC will administer the joint cooperative undertaking described in this Agreement. Responsibilities of the Joint Board shall be limited to coordination of the responsibilities arising under the Agreement and no Party, through this Agreement, cedes to the Joint Board any authority over its water system. Said Joint Board shall meet at such times and places as are necessary and convenient to discuss issues of concern to two or more parties.
13. MSDC Purchase and Sale/Water Use. The purchase and sale of the water capacity is described in the MSDC Agreement attached hereto and made part of this Agreement as Attachment C. Among other things, NHDES is providing MWW \$11,174,100 from the Trust Fund to ensure that MWW makes MSDC capacity of up to 3.13 MGD ADF available for purchase by the Water Recipients in the manner and at the prices specified within the MSDC Agreement attached as Attachment C. Subject to the MSDC Agreement:
 - 13.01 MWW shall make water capacity available for purchase by the Water Recipients for use throughout Phase 1 in the manner described below in sections 13.02 through 13.05. To the extent that any Party does not purchase the portion of the Phase 1 MSDC capacity allotted to it by May 1, 2022, MWW shall make the unsold portion available to all of the Parties on a first-come, first-served basis.
 - 13.02 MSDC capacity in the amount of 300,000 gallons per day shall be made available by MWW for purchase by the Town of Salem.
 - 13.03 MSDC capacity in the amount of 200,000 gallons per day shall be made available for purchase directly by Windham, or by Salem if authorized by Windham's Board of Selectmen, for use within the geographical boundaries of Windham in accordance with this Agreement.
 - 13.04 MSDC capacity in the amount of 250,000 gallons per day shall be made available for purchase by HAWC.
 - 13.05 MSDC capacity in the amount of 250,000 gallons per day shall be made available for purchase by Plaistow.

13.06 MWW shall make MSDC capacity available for purchase by the Water Recipients for use throughout Phase 2 in the manner described below in sections 13.07 through 13.10. To the extent that any Water Recipient does not purchase the portion of the Phase 2 MSDC capacity allotted to it by May 1, 2025, MWW shall make the unsold portion available to all of the Water Recipients on a first-come, first-served basis.

13.07 MSDC capacity in the amount of 1.2 MGD shall be made available for purchase by the Town of Salem. This amount is in addition to the Phase 1 capacity allotted to Salem.

13.08 MSDC capacity in the amount of 110,000 gallons per day shall be made available for purchase directly by Windham, or by Salem if authorized by Windham's Board of Selectmen, for use within the geographical boundaries of Windham in accordance with this Agreement. This amount is in addition to the Phase 1 capacity allotted for use within Windham.

13.09 MSDC capacity in the amount of 500,000 gallons per day shall be made available for purchase by HAWC. This amount is in addition to the Phase 1 capacity allotted to HAWC.

13.10 MSDC capacity in the amount of 320,000 gallons per day shall be made available for purchase by Plaistow. This amount is in addition to the Phase 1 capacity allotted to Plaistow.

13.11 In the event of any conflict between any provision of this Agreement and the provisions of the MSDC Agreement attached as Attachment C, the MSDC Agreement shall control.

13.12 Water Use. Use of Project water by a Party shall not exceed that Party's capacity unless otherwise specified in this Agreement.

14. Fluoride. MWW currently fluoridates its water. Therefore, pursuant to RSA 485:14, if the registered voters of a municipality being supplied by this Agreement have not already voted to approve the use of fluoridated water, the public water system serving water users within that municipality must provide written information to such water users that includes the following:

- a. A statement, approved by the NHDES, that the water contains fluoride for the purpose of improving community oral health and, in the event the fluoride levels are diluted from other sources of water or degraded, that the fluoride levels may be too low to effectively prevent tooth decay;
- b. An identification of the source of the fluoridated water; and
- c. The most recent compliance sample result for fluoride that the supplier of water that fluoridated the water has submitted to NHDES.

ARTICLE III. – General Provisions

15. Term and Termination. This Agreement shall be effective as of the date when MWW, Derry, Salem, and HAWC have all signed the Agreement, and shall terminate December 31, 2058, unless terminated sooner or extended by the Parties in writing. This Agreement may be terminated in its entirety by the consent of all Parties.

16. Approvals, Permitting and Other Agreements. This Agreement shall be subject to the receipt of all necessary additional State, local or other approvals. Each Party shall expeditiously seek all approvals needed by it to implement this Agreement so as to ensure completion of Phase 1 by December 31, 2020. Each Party shall provide a copy of the Agreement executed by it to NHDES. Pursuant to RSA 53-A, after NHDES reviews the Agreement, it is anticipated that NHDES will submit the Agreement to the Office of the Attorney General for review. Once approval is obtained from the Office of the Attorney General, it is anticipated that NHDES will file the agreement with the N.H. Secretary of State. Each Party shall file a copy of the agreement with the clerk of the municipality in which that Party is located.
17. Compliance with Laws and Regulations. Each Party shall comply with all applicable State and Federal laws and regulations at its own expense.
18. Assignment. The permanent or temporary assignment or transfer of water capacity and concomitant water use is permitted among Water Recipients only; however, no Party shall assign its rights under this Agreement, including, but not limited to the right to receive the quantities of water specified under this Agreement, or any portion of said quantities, to another Party or person without the express written consent of the affected Parties and NHDES, except that any town may assign its rights to an entity providing water within its town boundary without such consent. The Parties may only use or distribute water purchased from MWW pursuant to this agreement within the geographical boundaries of the towns of Derry, Salem, Windham, Atkinson, Hampstead, and Plaistow.
19. Transferees, Successors, and Assigns. This Agreement in its entirety applies to, inures to the benefit of, and is binding upon and enforceable against the Parties, their lawful successors, and permitted assigns.
20. Limitation of Liability for Certain Events. No Party shall be liable in damages or otherwise for failure to perform any obligation under this Agreement, which failure is occasioned by or in consequence of any act of God, act of public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earth quakes, drought, fires, storms, floods, winter freeze, washouts, vandalism, arrests and restraints of rulers and peoples, civil disturbances, labor strikes, power failures, explosions, breakage or accident to machinery or lines of pipe, failure or want of water supply, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated or otherwise, not within the control of such party and which act, omission of circumstance such party is unable to prevent or overcome by the exercise of reasonable care.
21. Liability for Negligent and Intentional Acts. No Party shall be relieved of liability for loss resulting from its negligence, intentional actions, or its failure to act or for its failure to use due diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting performance relieve any Party from its obligations to make payments of amounts then due with respect to water theretofore supplied.

- For the Town of Derry: Derry Department of Public Works
 Attention: Director
 14 Manning Street
 Derry, NH 03038

For MWW: Manchester Water Works
Attention: Director
281 Lincoln Street
Manchester, NH 03103

For the Town of Plaistow: Plaistow Town Offices
Attention: Board of Selectmen
145 Main Street
Plaistow, NH 03865

For the Town of Windham: Windham Town Offices
Attention: Town Administrator
3 N Lowell Road
Windham, NH 03087

For the Town of Salem: Town of Salem Municipal Services Department
Attention: Director
33 Geremonty Drive
Salem, NH 03079

For HAWC: Hampstead Area Water Company, Inc.
Attention: President
54 Sawyer Avenue
Atkinson, NH 03811

For PEU: Pennichuck Corporation
Attention: Chief Operating Officer
25 Manchester Street
Merrimack, NH 03054

32. Dispute Resolution. The Parties shall first attempt to resolve any dispute with regard to the terms of this Agreement between or among themselves informally by negotiation. If the Parties are unable to resolve a dispute informally, then any Party may initiate non-binding mediation by giving the other Party or Parties written notice of the need to mediate and providing a list of no more than 3 names and qualifications of persons who the initiating Party believes would be qualified to mediate the dispute. Within 15 days after the delivery of the mediation notice, the receiving Party or Parties shall provide notice to the initiating Party designating a mediator from among the 3 persons listed by the initiating Party. If the initiating Party receives no response to the mediation notice within the time specified above, the initiating Party may select the mediator from the 3 persons listed in the mediation notice. The initiating Party shall expeditiously notify the mediator of his/her selection. The mediator shall schedule the mediation session within 2 weeks of being notified of his/her selection. The Parties to the mediation shall make themselves available to attend the mediation session as scheduled by the mediator. The mediation shall be conducted according to the procedures determined by the mediator. All disclosures, discussions, and any determinations or proposals made pursuant to the mediation process shall remain confidential and be treated as compromise and settlement negotiations, and shall not be offered or admissible as evidence in any other proceeding. The expenses of the mediation shall be shared equally by the Parties participating in the mediation.

Disputes regarding rates charged by Parties other than MWW shall be governed by the provisions in this section. With respect to rates only, beginning in the year 2035, any party may, after using the process above, submit a dispute to binding arbitration. The purpose of arbitration will be to determine a reasonable rate. Arbitration shall include all affected Parties and shall be conducted in accordance with procedures promulgated by the American Arbitration Association. The arbitration shall take place before a panel of three arbitrators in Rockingham County unless otherwise agreed to by the Parties involved. The arbitration award shall conform to all applicable rules and laws. This provision shall not apply to the rate charged by MWW.

33. Authority to execute Agreement. MWW, Derry, Windham, Salem and Plaistow represent that they have obtained authority to execute this Agreement through appropriate action by municipal ordinance, resolution or action pursuant to law of their governing bodies. HAWC and PEU represent that they have obtained authority to execute this Agreement through appropriate action in accordance with their corporate by-laws.

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed as of the dates written below.

TOWN OF DERRY, NEW HAMPSHIRE

By: [Signature]

David Caron, Town Administrator

Date: 4/17/19

[Signature]

Witness

MANCHESTER WATER WORKS

By: _____

William R. Trombly, Jr.

President, Board of Water Commissioners

Date: _____

Witness

TOWN OF SALEM, NEW HAMPSHIRE

Christopher Dillon, Town Manager

Date: _____

Witness

TOWN OF WINDHAM, NEW HAMPSHIRE

David Sullivan, Town Administrator

Date: _____

Witness

HAMPSTEAD AREA WATER COMPANY, INC.

By: _____

Name: _____

Title: _____

Date: _____

Witness

TOWN OF DERRY, NEW HAMPSHIRE

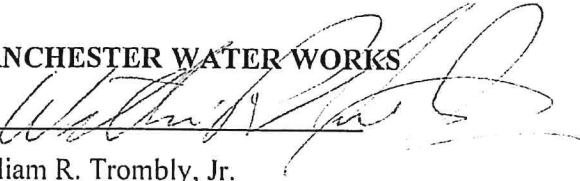
By: _____

David Caron, Town Administrator

Witness

Date: _____

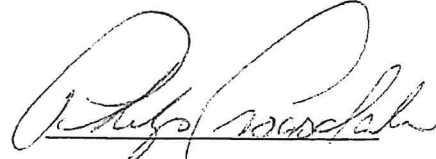
MANCHESTER WATER WORKS

By: 

William R. Trombly, Jr.

President, Board of Water Commissioners

Date: 4-11-2019



Witness

TOWN OF SALEM, NEW HAMPSHIRE

Christopher Dillon, Town Manager

Date: _____

Witness

TOWN OF WINDHAM, NEW HAMPSHIRE

David Sullivan, Town Administrator

Date: _____

Witness

HAMPSTEAD AREA WATER COMPANY, INC.

By: _____

Name: _____

Title: _____

Date: _____

Witness

TOWN OF DERRY, NEW HAMPSHIRE

By: _____

David Caron, Town Administrator

Witness

Date: _____

MANCHESTER WATER WORKS

By: _____

William R. Trombly, Jr.

President, Board of Water Commissioners

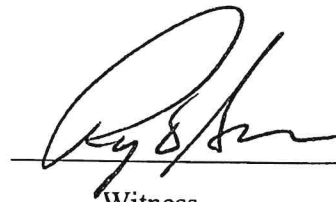
Witness

Date: _____

TOWN OF SALEM, NEW HAMPSHIRE

 _____

Christopher Dillon, Town Manager

 _____

Witness

Date: 4/16/19 _____

TOWN OF WINDHAM, NEW HAMPSHIRE

David Sullivan, Town Administrator

Witness

Date: _____

HAMPSTEAD AREA WATER COMPANY, INC.

By: _____

Name: _____

Title: _____

Date: _____

Witness

TOWN OF DERRY, NEW HAMPSHIRE

By: _____

David Caron, Town Administrator

Witness

Date: _____

MANCHESTER WATER WORKS

By: _____

William R. Trombly, Jr.

President, Board of Water Commissioners

Witness

Date: _____

TOWN OF SALEM, NEW HAMPSHIRE

Christopher Dillon, Town Manager

Witness

Date: _____

TOWN OF WINDHAM, NEW HAMPSHIRE



David Sullivan, Town Administrator

Date: 4/16/19



Witness

HAMPSTEAD AREA WATER COMPANY, INC.

By: _____

Name: _____

Title: _____

Date: _____

Witness

TOWN OF DERRY, NEW HAMPSHIRE

By: _____

David Caron, Town Administrator

Witness

Date: _____

MANCHESTER WATER WORKS

By: _____

William R. Trombly, Jr.

President, Board of Water Commissioners

Witness

Date: _____

TOWN OF SALEM, NEW HAMPSHIRE

Christopher Dillon, Town Manager

Witness

Date: _____

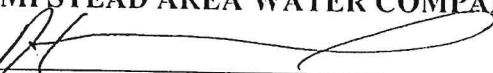
TOWN OF WINDHAM, NEW HAMPSHIRE

David Sullivan, Town Administrator

Witness

Date: _____

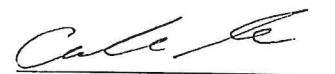
HAMPSTEAD AREA WATER COMPANY, INC.

By: 

Name: Harold J Morse

Title: President

Date: 04/10/2019



Witness

PENNICHUCK EAST UTILITY, INC.

By: 

Name: CEO, LARRY D. GOODHUE

Title: CEO/CFO/TREASURER

Date: 4/15/19



Witness

TOWN OF PLAISTOW, NEW HAMPSHIRE

Mark A. Pearson, Town Manager

Date: _____

Witness

PENNICHUCK EAST UTILITY, INC.

By: _____

Name: _____

Title: _____

Date: _____

Witness

TOWN OF PLAISTOW, NEW HAMPSHIRE

Mark A. Pearson

Mark A. Pearson, Town Manager

Date: April 15, 2019

[Signature]
Witness

ATTACHMENT A

Regional Basis of Design Memorandum, dated January 4, 2019