

COUNCIL ORDINANCE

AN ORDINANCE AUTHORIZING THE ISSUANCE OF A NON-REVOLVING MASTER LINE OF CREDIT FACILITY AND RELATED DOCUMENTS BY THE CITY OF NORWICH DEPARTMENT OF PUBLIC UTILITIES IN AN AMOUNT NOT TO EXCEED \$10,000,000 TO FINANCE CAPITAL IMPROVEMENTS RELATED TO ITS GAS AND ELECTRIC INFRASTRUCTURE

WHEREAS, the City of Norwich Department of Public Utilities (“NPU”), a department of the City of Norwich, Connecticut (the “City”), desires to enter into a non-revolving ten-year Master Line of Credit Facility (the “Line of Credit”) with Dime Bank (the “Bank”) for the financing of future capital improvements for utility infrastructure related to its gas and electric divisions (the “Improvements”); and

WHEREAS, the NPU proposes to enter into the Line of Credit with the Bank consistent with the terms and conditions set forth in the Bank’s Line of Credit commitment attached hereto as **Exhibit A** (the “Commitment”); and

WHEREAS, the Bank, as a condition of entering into the Line of Credit with NPU, requires, among other things, that (i) the Line of Credit be secured by a pledge of NPU’s revenues generated by its gas and electric divisions, (ii) NPU establish and maintain at the Bank a checking account with a minimum balance of \$250,000, and (iii) NPU establish and maintain at the Bank an interest-bearing depository account with a minimum balance of \$1,000,000 or pay an annual unused line fee of \$15,000; and

WHEREAS, on September 27, 2022, the NPU Board approved a resolution authorizing NPU to enter into the Line of Credit (the “Resolution”); and

WHEREAS, in addition to approval by the NPU Board, the Line of Credit must be subsequently approved by a 2/3 vote of the Norwich City Council; and

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NORWICH:

Section 1. That a majority of the City Manager and the Comptroller - acting on behalf of the City herein - and the General Manager of NPU - acting on behalf of NPU herein - (collectively, the “Issuer Officials”) are authorized to enter into the Line of Credit, consistent with the terms and conditions set forth in the Commitment, and such Issuer Officials are further authorized to negotiate and execute any other agreements, documents, amendments, supplements, certificates or writings, including, but not limited to, any security or intercreditor agreements, and the General Manager, or its authorized designee, is authorized to make any draws under the Line of Credit that the General Manager or its designee, in its discretion, believes are necessary and appropriate to carry out the intent of the Resolution and this Ordinance.

Section 2. That the term of the Line of Credit shall not exceed ten (10) years and the total principal payments to be made by NPU under the Line of Credit shall not exceed \$10,000,000.

Section 3. That the Line of Credit shall be secured solely by NPU's electric and gas division revenues; and as security for its obligations evidenced by the Line of Credit and that NPU is authorized to pledge its revenues generated by the electric and gas divisions of NPU. The Line of Credit shall not constitute a pledge of the full faith and credit of the City of Norwich, Connecticut.

Section 4. That NPU is authorized to expend any such proceeds from the Line of Credit to acquire, construct, equip and install the Improvements, including all related administration, legal, and financing costs related thereto, as the General Manager deems necessary or appropriate. The estimated useful life of the Improvements financed by the Letter of Credit shall not be less than ten years and the aggregate cost of the Improvements financed by the Letter of Credit shall not exceed \$10,000,000.

Section 5. The issuance of the Letter of Credit and of all other bonds or notes of the City heretofore authorized but not yet issued, as of the effective date of this Ordinance, would not cause the indebtedness of the City to exceed any debt limit calculated in accordance with law.

Section 6. That it is hereby found and determined that it is in the public interest that interest on the Line of Credit be includable in gross income of the holder thereof for purposes of federal income taxation.

Section 7. This Ordinance shall be effective upon adoption by the City Council.

Dime Bank

September 8, 2022

Mr. Christopher LaRose
General Manager
Norwich Public Utilities
16 South Golden Street
Norwich CT 06360

Dear Mr. LaRose

Based on the information you have submitted, Dime Bank ("Dime") is pleased to approve your loan request ("Loan") of the following amount, on the terms and conditions set forth in this commitment letter ("Commitment").

Borrower. City of Norwich, Connecticut on behalf of the Norwich Public Utilities ("NPU"), (NPU is a department of the City of Norwich. The City of Norwich is an incorporated municipality within the State of Connecticut).

Amount. Up to Ten Million and 00/100 Dollars (\$10,000,000.00). Amounts to be advanced via individual loans as per the terms outlined in this Master Line of Credit Facility ("Facility"). This will be a non-revolving Facility with each individual advance/loan permanently reducing the availability.

Term. Up to ten-year Draw Period (120 months) with a maximum term of 16 years pending timing of draws

Draw Period: At the end of the 4th year and 8th year anniversary of the Facility, Borrower or Dime may elect to terminate any future advance availability under the Loan. For all individual advances/loans taken within any of the respective four-year draw periods the individual loans would remain in place for the remaining repayment term of each respective individual advance/loan.

Loan Proceeds. The Loan proceeds will be used to support capital investments in utility infrastructure related to Borrower's Gas and Electric divisions. Advances designated by Borrower as Electric Division draws will be repaid and secured by the revenue generated by the Borrower's Electric Division. Advances designated by Borrower as Gas Division draws will be repaid and secured by the revenue generated by the Borrower's Gas Division. Advances are limited to a minimum of \$500,000.00 per advance. Advances will not be cross collateralized. Borrower to provide brief written summary of each advance request prior to funding. The due date of the monthly payments on the individual advances/loans will be the first day of the month.

Interest Rate. Initial interest rates quoted will be held for a period of 60 days from the date of this Commitment. If the Loan does not close within this period of time, then the initial interest rate on the Loan will be set ten days prior to closing at Dime's discretion. Interest expense will be calculated on actual number of days elapsed in the month based on a 360-day year.

Variable interest rate: 4.375% will be the initial interest rate for the first four years of the Loan. The "Adjustment Date" shall be on the first (1st) day of the month following the 4th and 8th year anniversary of the date of the Note. The rate at which the Note shall bear interest shall be increased or decreased based on an Index. The "Index" is the Wall Street Journal Prime Rate. In calculating the interest rate, Dime shall employ the most recent Index figure in effect as of the first day of the month of each Adjustment Date. On each Adjustment Date, the interest shall be adjusted to the Index minus 1.00%. There will be a minimum floor of 3.00% at the time of any adjustment of the rate. At any Adjustment Date, NPU or Dime may terminate availability under the Line of Credit. Such termination will not affect any previously advance/loans which are in the 6-year amortization period.

Revised 1-12-22

Page 1 of 6

Type of Loan. Borrower's obligation shall be a Master Line of Credit Facility. Said Facility will be non-revolving for a period of up to ten years unless terminated by Borrower or Dime on the 4th or 8th year anniversary of the Facility. The individual advances/loans provided under this Facility will be documented as individual Commercial Term loans. Each individual advance/loan will have an initial minimum balance of \$500,000.00, to be repaid through amortization over a 6-year period from the individual advance/loan date inclusive of a Borrower optional initial 2-year interest only period. The interest rate on all individual advances/loans will be fixed for the 6-year amortization period at the time of each individual advance/loan.

Loan Assignability. Neither party may assign the Loan without the prior consent of the other party. If Dime is acquired, the Loan may be assigned or merged to a successor bank without Borrower's consent.

Commitment Fee. Waived.

Collateral. This Loan will be secured by:

1. A Security Agreement and UCC-1 filing creating a lien on the revenues generated by the Borrower's Electric Division.
2. A Security Agreement and UCC-1 filing creating a lien on the revenues generated by the Borrower's Gas Division.

Dime may exercise any of its rights created herein or in the Loan documents, separately or together, without regard to the value of any or all of the collateral and without notice (except as required by law), in Dime's sole discretion. Advances will not be cross collateralized.

Late Charge. There will be a late charge of five percent (5%) of any installment not received within ten (10) days of its due date.

Default Rate. In the event of any default that is not waived by Dime, the interest rate will increase by two percentage points (2%), during the term of the default.

Insurance. Borrower will be required to provide Dime with a copy of an insurance policy or policies at least seven (7) days prior to closing verifying that the insurance coverage listed below is in full force and effect:

- (A.) Public liability insurance in an amount not less than \$5,000,000 and worker's compensation insurance (if applicable).

Dime's obligations under this Commitment shall be conditioned upon Dime's receipt and satisfactory review of said policies at closing, together with evidence of last semi-annual premium payment.

Commercial Loan Agreement. These terms and conditions shall be incorporated into a commercial loan agreement, together with other terms and conditions, as Dime normally has in such an agreement for this size and type of Facility. To the extent that any of the terms of the final Loan documents contradict those of the other documents, the terms of the final Loan documents shall control.

Conditions Precedent. At least seven (7) days prior to the closing of the Loan and subject to Dime satisfactory review, Borrower shall furnish Dime the following, at Borrower's expense, which shall constitute conditions precedent to closing the Loan, in addition to any other documents required herein:

- (A) Dime to be provided with a certified resolution which specifically approves the terms and conditions of this Loan, especially the Loan amount and security to be granted by the City of Norwich for the Loan. It should also state who is authorized to sign all of the Loan related documents on behalf of the City of Norwich.
- (B) Receipt and satisfactory review of any pending, material lawsuits, (material is defined as greater than a \$2,000,000 potential uninsured exposure to NPU as determined by management), involving NPU that may have occurred since the last issued financial audit report dated June 30, 2021 up to the date of the loan closing.

Affirmative Covenants.

- (A) A minimum required net worth for the Gas Division of \$10,000,000. Net worth defined as Total Assets less Total Liabilities of the Gas Division calculated based on annual audited financial statements.
- (B) A minimum required net worth for the Electric Division of \$15,000,000. Net worth defined as Total Assets less Total Liabilities of the Electric Division calculated based on annual audited financial statements.
- (C) Minimum Debt Service Coverage Ratio (“DSCR”) for the Gas Division of 1.00:1.00. DSCR will be defined as: a) the sum of annual net operating income before interest expense and taxes, plus depreciation and amortization expense divided by b) annual debt payments (principal and interest) calculated based on annual audited financial statements.
- (D) Minimum Debt Service Coverage Ratio (“DSCR”) for the Electric Division of 1.00:1.00. DSCR will be defined as: a) the sum of annual net operating income before interest expense and taxes, plus depreciation and amortization expense divided by b) annual debt payments (principal and interest) calculated based on annual audited financial statements.
- (E) Borrower will pay to Dime Bank a fee of \$2,500.00 for each Loan Covenant Default Waiver requested by NPU.
- (F) Receipt of annual audited financial statements for Borrower on a combining basis within 240 days of Borrower’s 6-30 FYE.
- (G) Receipt of company prepared (unaudited) Borrower financial statements within 45 days after the end of each fiscal quarter.

(H) **Depository requirement options:**

- o **Option 1:**
- o Borrower to establish and maintain at Dime a checking account for the life of the Loan with a minimum balance of \$250,000.00 and,
- o Borrower to establish and maintain at Dime any type of interest-bearing depository account (any combination of Money Market or Certificate of Deposit (CD) for the life of the Loan with a minimum balance of \$1,000,000.00.
- o Current Deposit Rates as of the date of this Commitment are as follows. Rates will be held for 30 days from the date of this Commitment.

Money Market: .75% APY

Certificates of Deposit:

14 Month Flex CD	1.20% APY
22 Month CD	1.70% APY
30 Month CD	2.00% APY

If Option 1 is chosen an Unused Line Fee will not be required.

- o **Option 2:**
- o Borrower to establish and maintain at Dime a checking account for the life of the Loan with a minimum balance of \$250,000.00 and,

Unused Line Fee: There will be an annual Unused Line Fee of \$15,000.00 that will be due and payable on any anniversary of the note date if there have been no advances under the Facility during the preceding twelve-month period.

(I) **Additional Indebtedness Test:**

- Additional Indebtedness Test only applicable to electric and gas divisions.
- Prior to incurring any Additional Indebtedness, NPU shall provide a certificate to Dime demonstrating that the Long-Term Debt Service Coverage Ratio for the Historic Test Period, assuming that the proposed debt was entered into at the beginning of the Historic Test Period and such that the proposed debt is added to the then current aggregate outstanding principal amount of is projected to be not less than 1.00.
- "Historic Test Period" means the most recent full Fiscal Year of NPU. "Long-Term Debt Service Coverage Ratio" means the ratio for the period in question of (i) annual net operating income before interest expense and taxes plus depreciation and amortization expense; divided by (ii) Maximum Annual Debt Service.
- "Maximum Annual Debt Service" means, at the time of computation, the greatest Long-Term Debt Service Requirement for the then current or any future Fiscal Year.
- "Long-Term Debt Service Requirement" means, for any period of time, the aggregate of the scheduled payments to be made in respect of principal and interest on outstanding electric or gas long-term debt of NPU during such period, after considering any unused availability on the line of credit and assuming that such unused availability is borrowed on the date of calculation and amortized, on a level debt service basis over six (6) years. All such Additional Indebtedness may be secured by NPU electric and gas revenues on a parity (Pari Passu) basis with the line of credit, and shall be subject to an intercreditor agreement acceptable to Dime in its sole discretion. If Dime does not agree, then NPU should have the option to terminate this agreement, provided any remaining balance is paid in full.

Legal Opinions. Borrower shall provide Dime at the closing with an opinion of Borrower's counsel and, if so required by Dime or its counsel, such other evidence to be satisfactory to Dime, with respect to Borrower's status, due authorization, power and authority, validity of corporate acts, existence of litigation or claims against Borrower of the Loan, validity and binding effect of Loan documents and other instruments relating to the Loan transaction and perfection of all collateral for the Loan at the time of closing.

Counsel and Documents. Dime's counsel in this matter will be Attorney Michael Sheehan of Conway Londregan, Sheehan and Monaco P.C. from New London, Connecticut. All documents and other papers in connection with the Loan shall be prepared by Dime's attorney, and shall be in conformity in form and terms with those customarily used by Dime for this size and type of transaction.

Costs: All costs in connection with the Loan shall be paid by the Borrower regardless of whether the Loan actually closes. Costs paid by Borrower would include bank's legal counsel fees in an amount not to exceed \$15,000 in representing Dime for the Loan in the preparation of all required/prepared documentation and related costs, and review of all Borrower prepared documentation by Borrower's legal counsel.

Patriot Act. To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. This means Dime will require all signers for the Borrower to provide their name, address, date of birth and other information that allows Dime to identify them. Dime may seek to verify driver's license or other identifying documents.

Gross Provisions. The captions over each section of this Commitment are for convenience only and shall not define or limit the sections or affect in any way their construction and application.

Assignability. This Commitment shall not be assignable by the Borrower or Dime without the prior written approval of the other party and the Loan shall not be assumable.

Governing Law. This Commitment and the Loan documents to be delivered pursuant hereto shall be deemed to be construed under the laws of the State of Connecticut.

Returned Payment Fee. Waived.

Termination. Dime shall have no obligation to close the Loan if any of the following occurs prior to the closing date:

- (a) The Borrower shall have been adjudicated bankrupt, insolvent, or a trustee or receiver shall have been appointed for all, or a substantial portion of its property.
- (b) The Borrower or Guarantors shall have filed a petition of bankruptcy or same has been filed against it.
- (c) There shall have been a material change in the financial condition of Borrower or Guarantors or a change in the condition or value of the Property.

Correction of Errors. In the event any of the documents evidencing and/or securing this Loan misstate or inaccurately reflect the true and correct terms and provisions of the Loan, and said misstatement or inaccuracy is due to unilateral mistake on the part of Dime, mutual mistake on the part of Dime, Borrower or clerical error, then in such event Borrower shall, upon request by Dime, and in order to correct such misstatement or inaccuracy, execute such new documents or initial such corrected original documents as Dime may deem necessary to remedy said inaccuracy or mistake. If the Borrower fails or refuses to correct any such errors, Dime shall have the right to accelerate the Loan and demand payment in full.

Electronic Signature and Counterparts. This Commitment may be executed in counterparts, and all such executed counterparts shall constitute the same commitment. It shall be necessary to account for only one such counterpart in proving this Commitment. Counterparts may be delivered via facsimile, electronic mail (including PDF or any electronic signature complying with the U.S. Federal ESIGN Act of 2000, e.g., www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

Borrower's Representations. This Commitment has been issued to Borrower on the basis of certain information and materials provided by Borrower to Dime or its agents and all representations, information, exhibits, data and other materials submitted with and in support of Borrower's Loan application. Any misinformation or withholding of material information incident thereto shall, at the option of Dime and without limitation to any other right or remedy of Dime, void Dime's entire obligation hereunder.

Intent of Parties. By the acceptance of this Commitment, Borrower agrees that the terms and conditions expressed herein shall survive the closing of the Loan and are to remain in full force until the payment in full of the principal balance of the Loan plus all accumulated interest, and other associated costs.

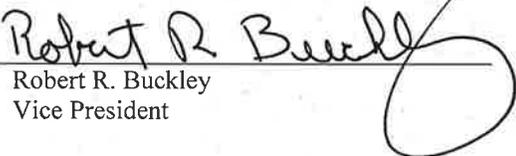
Acceptance. This Commitment requires the approval of the Borrower's Board and the 2/3 approval of the Norwich City Council and shall remain open for your acceptance until November 30, 2022 and shall be voided by Dime unless a copy of this Commitment is signed by all parties indicated below and returned to Dime by this date.

Closing. If this Loan is not closed in full compliance with the terms and conditions of this Commitment within Thirty (30) days of the date of acceptance of this Commitment, Dime may, at its option, terminate its obligations contained herein.

Very truly yours,

DIME BANK

By:


Robert R. Buckley

Its: Vice President

Accepted and agreed to this ____ day of _____ 2022.

BORROWER:

City of Norwich, Connecticut on behalf of the Norwich Public Utilities

By:

Mr. Christopher LaRose

Its: Duly Authorized General Manager

Revised 1-12-22

Page 6 of 6

**MEMBER
FDIC**

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dime-bank.com



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