

SPECIAL CONTRACT – WATER

CONTRACT NO. NHPUC 1

PENNICHUCK WATER WORKS, INC.

WITH

PENNICHUCK EAST UTILITY, INC.

Date of Execution: **October 10, 2018**

Effective Date: **October 10, 2018**

Date of Termination: **Twenty Years After the Execution Date or Until Terminated Pursuant to the Terms Contained Herein**

Authorized by NHPUC Order No. 26,049, in Docket No. DW 17-071, Dated August 23, 2017.

WHOLESALE WATER SUPPLY CONTRACT
Between
PENNICHUCK WATER WORKS, INC.
AND
PENNICHUCK EAST UTILITY, INC.

WHEREAS, Pennichuck East Utility, Inc (“PEU”) is desirous of attaining a source of supply for its Litchfield customers as well as some of its customers in Londonderry, Pelham, and Windham; and

WHEREAS, Pennichuck Water Works, Inc. (“PWW”) currently provides water indirectly to PEU seasonally through the Town of Hudson’s (“Town”) distribution system between PWW and PEU through an interconnection between PWW and the Town via a Wholesale Water Supply contract dated July 12, 2005; and

WHEREAS, PEU desires to purchase water directly from PWW via an interconnection to PWW’s existing 24” water main in Merrimack along the D.W. Highway; and

WHEREAS, PWW is the franchise holder for supplying water to portions of Merrimack, New Hampshire, under the laws of the State of New Hampshire, and the rules and regulations of the New Hampshire Public Utilities Commission (“NHPUC”); and

WHEREAS, PEU is duly authorized under the law of the State of New Hampshire to supply water to all or a portion of the Town of Litchfield as well as to the portions of Londonderry, Pelham and Windham currently provide water from the Town; and

WHEREAS, PWW and PEU (together, “Parties” or individually, “Party”) now desire to enter into this Wholesale Water Supply Contract (“Agreement”) to set forth the terms, conditions, and rates with respect to PWW’s supply of water to PEU for the purpose of supplying PEU’s Litchfield, Londonderry, Pelham, and Windham customers.

NOW, THEREFORE, in consideration of the mutual agreements and promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Term

This Agreement shall be binding upon the Parties as of the Execution Date and in accordance with the NHPUC Order 26,049 as issued by the NHPUC on August 23, 2017 (the “Approval Date”). The initial term of this Agreement shall commence on the Execution Date hereof and shall continue for a period of Twenty (20) years (the “Initial Term”). Upon completion of the Initial Term, this Agreement shall automatically renew for two (2) additional successive terms of five (5) years each (each a “Renewal Term”) (the Initial Term and any Renewal Term being referred to herein collectively as the “Term”), unless written notice not to renew this Agreement is delivered by PEU to PWW no later than six (6) months prior to the conclusion of the then existing Term. The second additional term shall automatically renew for the last successive term unless either Party hereto delivers written notice to the other Party hereto of its intent not to renew this Agreement. Such notice must be delivered

no later than six (6) months prior to the conclusion of the then existing Term. This Agreement shall continue during the Term until nonrenewal or termination in accordance with the provisions of this Agreement.

2. Delivery Point and Metering

The water to be sold by PWW to PEU under this Agreement shall be delivered by PWW to PEU at the point of interconnection (“Interconnection Point”) between PEU’s water system and the PWW’s water system as shown on the attached plan, which is made a part hereof as Attachment A. PEU owns the pipes and other facilities from the point ten feet outside of the receiving side of the PEU Merrimack River Booster Station (“Booster Station”) in Merrimack, continuing through the Booster Station and under the Merrimack River to the point of PEU’s interconnection with the Litchfield water distribution system on Route 3A. PWW will retain ownership of the water main from its connection on the D.W. Highway in Merrimack to the point of interconnection located ten feet outside the PEU Booster Station as described above.

PEU shall purchase and install a meter in the PEU Merrimack River Booster Station according to PWW’s specifications and shall contribute the meter to PWW. PWW will be responsible for maintaining and testing the metering equipment (“Meter”) within the PEU Booster Station, which shall be used to measure the quantity of water taken by PEU on a monthly basis. PEU shall maintain the Booster Station to ensure that the station remains warm (in excess of 45°F), dry, and accessible year-round. PEU shall provide PWW with a station key and PWW shall be allowed to access the Meter as reasonably necessary to read, operate, and maintain the Meter.

- (a) The Meter shall be inspected and calibrated by PWW in accordance with the applicable regulations of the NHPUC. A copy of any inspection and calibration reports shall be available at PWW’s principal office for examination by PEU during normal business hours on reasonable prior written notice from PEU.
- (b) PEU may have the accuracy of the Meter tested by an independent third party at PEU’s expense at any time, but not more frequently than once each month, provided that PEU gives PWW at least seven (7) days advance written notice of its desire to test the Meter for each test. PWW shall have the right to be present during any such test and shall be provided a written copy of all test results (whether or not PWW was present). If the Meter reads within the specifications established by the NHPUC, then the cost of such test shall be borne by PEU. If the Meter does not meet the specifications established by the NHPUC, then PWW shall have the option to re-test the Meter using an independent third party inspector at its sole cost within seven (7) days of receiving the results from PEU. If there is a discrepancy between the tests, then PWW’s independent inspector’s test results shall control. If PWW accepts the results provided by PEU or if PWW’s independent results also reflect that the Meter does not meet the specifications established by the NHPUC, then PWW shall adjust its next bill to PEU accordingly. If the Meter test reflects that there was a deficiency of more than five percent (5%) from

the specifications established by the NHPUC, then the cost of the PEU test shall be paid by PWW.

- (c) In the case of missing or inaccurate flow records due to a faulty Meter or other malfunctioning-related circumstances, PWW shall calculate the payments due from PEU using a reasonable estimate of the flow based on past records and other relevant data for a comparable period. The estimate based on past records shall be provided to PEU and shall be binding on the Parties.

3. Quantity of Water

- (a) Maximum Daily Demand Subject to the provisions of Section 3(b), PEU shall have the right to take up to, but not in excess of, seven hundred thousand gallons of water per day (700,000 gallons per day (“GPD”)) at the Interconnection Point (provided, however, that water taken for non-training firefighting purposes and other declared emergencies shall not be counted toward such maximum quantity).
- (b) Maximum Peak Demand At all times, PEU’s peak draw at the Interconnection Point shall be limited to six hundred twenty five (625) gallons per minute (or 900,000 GPD maximum peak demand hour (provided, however, that water taken for non-training firefighting purposes and other declared emergencies shall not be counted toward such allowable draw). If PWW, in its sole discretion, determines: (i) that its water supply is inadequate to serve the needs of PEU; or (ii) that, due to circumstances beyond PWW’s reasonable control, its water supply is impaired, PWW may, upon twenty-four (24) hours’ notice to PEU, reduce the maximum volume that may be taken by PEU. PWW will promptly notify PEU when such circumstances cease to exist, and, thereupon, the rights of PEU to take water as set forth in this Section 3(a) shall be restored. In exercising its discretion concerning a reduction in the amount of water thereafter to be taken by PEU, PWW shall afford at least as favorable treatment to PEU as to its other wholesale water supply customers, except insofar as its special contracts, existing on the Effective Date, with such customers or the rules of the NHPUC require a different standard to be applied with respect to such customers. PWW will promptly employ its commercially reasonable efforts to cure such inadequacy or impairment. PEU shall not be entitled to compel PWW to supply it with any specific quantity of water nor shall it be entitled to any damages as a result of PWW’s determination that its supply is inadequate or impaired.

4. Increase in Quantity of Water

If PEU wishes to increase the maximum quantity of water that it is permitted to purchase under Section 3, it shall provide PWW with written notice sufficient for PWW to evaluate the capacity of its facilities to produce water to meet such increased demand in light of existing and reasonably anticipated additions to demand on PWW’s own system. Such notice shall be given at least one (1) year in advance of the desired implementation date of the increase. PWW shall respond to such a request within ninety (90) days, indicating whether it agrees to provide the additional supply. If PWW agrees to increase the maximum quantity of water that may be taken by PEU, PWW and PEU shall negotiate in good faith to determine the price of any such increase based on the cost of the incremental capacity. If, despite such

good faith negotiations, the parties are unable to agree on the cost of the incremental capacity, PWW shall not be required to increase the maximum quantity provided for in Section 3. Any increase in the maximum quantity of water to be purchased under this Agreement shall be reflected in a written amendment to this Agreement, signed by the Parties. Such amendment shall become effective upon approval of the NHPUC.

5. Fees and Construction Expenses

PEU shall pay PWW the following amounts for the water supplied or to be supplied by PWW under this Agreement:

- (a) The Base Monthly Fixed Fee (“BMFF”) will be \$10,101. PWW may only adjust the BMFF in the event a new cost of service allocation study (“Cost of Service Study”) is obtained by PWW and approved by the NHPUC in direct response to a regulatory change by the United States Environmental Protection Agency or the New Hampshire Department of Environmental Services which requires a material investment in, or upgrade to, the material water supply facilities that serve PEU including, for example, improvements to PWW’s Nashua water treatment plant, its raw water source of supply facilities, the dams along Pennichuck Brook and any distribution facilities necessary to serve PEU. The BMFF shall only be adjusted to the extent that the material upgrade required by the regulatory change as adjudicated by the NHPUC is directly attributable to PEU’s cost of service.
- (b) PEU shall pay a fixed annual fee of \$121,213.
- (c) The initial volumetric rate for purposes of calculating the monthly volumetric charge will be \$1.2635 per one hundred cubic feet (“CCF”) for 300,000 GPD even if PEU uses less than 300,000 GPD. For volumes over 300,000 GPD, PEU will pay a volumetric rate of \$1.2635 per CCF. This rate is subject to final approval of the volumetric rate by the NHPUC (the “Volumetric Rate”) as part of the proceeding to approve this Agreement. Thereafter, the Volumetric Rate may only be adjusted by the same percentage and at the same time as any future change in the volumetric rates for general metered service, as adjudicated by the NHPUC, which PWW charges to its core system customers in the City of Nashua.
- (d) The monthly fixed meter charge (“MFMC”) shall be set at \$38.75 per month and reflects the cost to read and bill PEU on a monthly basis in addition to the cost to test the PEU wholesale meter on an annual basis. Thereafter, the MFMC may only be adjusted by the same percentage and at the same time as any future change in the volumetric rates for general metered service, as adjudicated by the NHPUC, which PWW charges to its core system customers in the City of Nashua.
- (e) Minimum Annual Purchase Volume – PEU agrees to purchase a minimum of 146,390 CCF (or 300,000 GPD) per calendar year January 1 through December 31st from PWW. If at the end of any calendar year PEU has not

purchased its minimum guaranteed amount of 146,390 CCF from PWW, then PEU will be obligated to pay PWW for the difference between the 146,390 CCF and the volume of water purchased by PEU during that calendar year at the wholesale water rate in effect between PWW and PEU as of June 30th of that year.

(f) Invoices, Payments, and Disconnection of Service

(i) PWW shall bill PEU in arrears on a monthly basis for water taken by PEU pursuant to this Agreement. Payment shall be due on delivery of each invoice and amounts unpaid after thirty (30) days shall be subject to one (1%) percent interest per month on the unpaid balance from the date of such invoice. The procedures set forth in NHPUC rule Puc 1203.11 shall govern disconnection of service for non-payment.

(ii) With respect to payments relating to the minimum guaranteed purchase of 146,390 CCF, in the event that PEU does not use the allotted base volume of 300,000 GPD or 109,500,000 gallons per year (146,390 CCF per year) over the course of the contract year, then PEU will be required to make a payment within forty-five (45) days of the end of the contract year for the shortage in usage between the minimum required usage of 146,690 CCF and the actual usage for that contract year.

(g) Construction and Regulatory Expenses

(i) PEU will pay for all the costs associated with the interconnection. These costs are estimated at about \$2,700,000 and include 50% of the cost to replace about 650 lineal feet of 8" AC water main on Mast Road that will continue to be owned and operated by PWW.

(ii) PEU will buy the existing, unused MRI chlorination station from PWW for \$15,000 (estimated net book value for this PWW asset). PEU will use this building for the pumping station required for the interconnection. PEU will own, operate, and maintain this building.

(iii) PEU will buy a six-inch turbine meter and contribute it to PWW.

(iv) PEU will pay 100% of the costs of the COSS which was required to develop the special contract, estimated at \$5,000.

(v) PEU will pay 100% of the legal costs associated with obtaining regulatory approval of the Wholesale Water Supply Contract, estimated at \$7,500.

6. Assignment and Sale

This Agreement and all of the provisions hereof shall be binding upon, and shall inure to the benefit of, the Parties and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests, or obligations hereunder shall be assigned by

either Party hereto without the prior written consent of the other Party and approval of the NHPUC. For the avoidance of doubt, PEU agrees and acknowledges that any water provided to it by PWW shall be used only to provide service to customers within the Towns of Litchfield, Londonderry, Pelham, and Windham who are served by PEU's water system. No water shall be sold by PEU, either directly or indirectly, to any private or investor owned water utility, municipality, village district, or individual doing business or residing outside of PEU for any purpose without PWW's prior written consent.

7. **Termination**

- (a) Subject to the provisions of Section 7(b) of this Agreement, either Party may terminate this Agreement at any time in the event of any material breach of this Agreement by the other Party which is not cured, if curable, within the applicable cure period, or in the event that any covenant, warranty, or representation made herein by a Party is untrue or inaccurate in any material respect (any of the foregoing events, a "Material Breach").
- (b) In the event either Party wishes to terminate this Agreement by reason of a Material Breach by the other Party per Section 7(a), the Party wishing to terminate shall provide prior written notice of breach to the other Party ("Notice of Breach"). The Notice of Breach shall contain details of the alleged Material Breach and shall provide a thirty (30) day period from the date of the Notice of Breach in which to cure same, or such longer time period as the Party giving notice, at its sole and absolute discretion, may wish to provide (the "Cure Period"). The Party giving the Notice of Breach may terminate this Agreement pursuant to Section 7(a) above by written notice to the other Party in the event that the other Party fails to cure the Material Breach within the Cure Period, provided, however, that any such termination shall not be effective until six (6) months from the date of the Notice of Breach. Accordingly, in no event may this Agreement be terminated on less than six (6) months prior written notice, except as may be determined by a final order of the NHPUC.

8. **Severability**

If any provision contained in this Agreement shall for any reason be held invalid, illegal or unenforceable by a court of competent jurisdiction and venue in any respect, then such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein, unless the invalidity of any such provision substantially deprives either party of the practical benefits intended to be conferred by this Agreement. Notwithstanding the foregoing, any provision of this Agreement held invalid, illegal, or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable, and the determination that any provision of this Agreement is invalid, illegal, or unenforceable as applied to particular circumstances shall not affect the application of such provision to circumstances other than those as to which it is held invalid, illegal, or unenforceable.

9. Amendment and Modification

No waiver or modification of this Agreement or of any covenant, condition, or limitation contained herein shall be valid unless in a writing of subsequent date hereto referencing this Section 9, duly executed by the Parties hereto and subject to any required approval of the NHPUC. No evidence of any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation between the Parties hereto arising out of or affecting this Agreement, or the rights or obligations of the parties hereunder, unless such waiver or modification is in writing and duly executed as aforesaid.

10. Governing Law

This Agreement shall be governed, construed and interpreted by, and in accordance with, the laws of the State of New Hampshire. Any actions concerning enforcement of this Agreement or in any way relating to the subject matter of this Agreement shall be adjudicated by the NHPUC, or its successor for resolution of the dispute. Each Party hereto expressly agrees to submit to such jurisdiction and venue as required by the NHPUC or its successor.

11. Notices

All notices, requests, demands, and other communications given pursuant to this Agreement shall be in writing and shall be deemed to have been given if they are delivered by hand or by nationally recognized overnight courier or mailed by certified or registered mail with postage prepaid to PEU or PWW, as the case may be, at the following address or to such other address as the receiving party may have given written notice to the other Party:

Notices to PWW should be delivered as follows:

Pennichuck Water Works, Inc.
25 Manchester Street
Merrimack, NH 03054
Attn: Mr. Donald L. Ware, COO

Notices to PEU should be delivered as follows:

Pennichuck East Utility, Inc.
25 Manchester Street
Merrimack, NH 03054
Attn: Mr. Larry D. Goodhue, CEO

12. Action Necessary to Complete Transaction

PEU and PWW each covenant and agree to execute and deliver all such other documents or instruments and take any action that may be reasonably necessary or advisable to evidence or effectuate the consummation of the transactions contemplated hereby, assist and facilitate the provision of the services to be provided hereunder, and otherwise to carry out the intent of the Parties hereunder.

13. **Headings**

The headings in each section of this Agreement are for convenience of reference only, and do not form a part hereof and in no way modify or shall be used to interpret or construe the meaning of this Agreement.

14. **Compliance with the Law**

Each Party hereto agrees that it is responsible at its own expense for compliance with all laws, and shall indemnify, defend and save harmless the other Party from any claim by a third Party arising out of or related to non-compliance with law.

15. **Integration**

This Agreement constitutes the entire agreement and understanding between the Parties regarding the subject matter hereof, and supersedes all prior or contemporaneous understandings, agreements, statements, and representation, whether written or oral, between or made by the Parties.


16. **Counterparts**

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed on signature pages exchanged by facsimile, in which event each party shall promptly deliver to the others such number of original executed copies as the others may reasonably request.

IN WITNESS WHEREOF, the parties have caused this Wholesale Water Supply Contract to be executed by their authorized representatives as of the Execution Date.

PENNICHUCK WATER WORKS, INC.


Witness

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

PENNICHUCK EAST UTILITY, INC.


Witness

By: 
Name: Larry D. Goodhue
Title: Chief Executive Officer