

AGREEMENT FOR WATER SERVICE BETWEEN  
MERRIMACK VILLAGE WATER DISTRICT  
and  
PENNICHUCK WATER WORKS, INC.

This foregoing Agreement (Agreement) is made this \_\_\_ day of \_\_\_\_\_ 2021 by and between Merrimack Village Water District (MVD), a water utility operating in Merrimack, New Hampshire and having a mailing address of 2 Greens Pond Road, Merrimack, New Hampshire 03054, and Pennichuck Water Works, Inc. (PWW) a New Hampshire Corporation with its principal place of business at 25 Walnut Street, Nashua, New Hampshire 03060.

WHEREAS, PWW is engaged in business as a public utility headquartered in the City of Nashua, and doing business in Nashua, a limited area in the Town of Merrimack, among other municipalities in New Hampshire, in gathering and distributing water to the public. PWW purchases water from MVD for two of its community water systems: the Greenfield Farms/Cabot Preserve/Parker Ridge water system in Bedford and the Souhegan Woods community water system in Amherst. The Greenfield Farms water system serves 383 residential customers. The Souhegan Woods water system serves 76 residential customers.

WHEREAS, MVD is a village district established and is regulated in accordance with the provisions of RSA 38 and 52. MVD manages over 7,500 service connections that include residential, municipal, commercial and industrial properties. MVD's service area covers more than 87% of the Town of Merrimack. MVD owns, services, and maintains approximately 930,800 feet (or roughly 176 miles) of water mains, 930 fire hydrants, six wells (Wells 2, 3, 4, 5, 7, and 8, three water storage tanks, an Iron & Manganese treatment plant, three booster stations and a Per- and Polyfluoroalkyl Substances (PFAS) Treatment Plant.

WHEREAS, on September 23, 2021, MVD received a Notice of Violation (NOV) from the NH Department of Environmental Services (NHDES). The NOV was due to MVD's well water exceeding the State's PFAS standard. One type of PFAS, called Perfluorooctanoic Acid (PFOA), now has a Maximum Contaminant Level (MCL) of 12 ng/L<sup>1</sup>. MVD exceeded that standard at Wells 2 (13 ng/L), 3 (20 ng/L), 7 & 8 (together, 25 ng/L). Two wells (Wells 4 & 5)<sup>2</sup> have treatment for

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<sup>1</sup> Nanogram per liter (ng/L) is equal to 1 part per trillion (ppt).

<sup>2</sup> MVD cannot meet its' base winter demand of about 1.6 to 1.7 MGD solely with its treated wells, Wells 4 and 5. Wells 4 and 5 can produce about 0.60 MGD on a year-round basis. Production from Wells 7

PFAS and the finished water quality from these wells is fully compliant with the State's PFAS standards. The remaining active wells do not yet have PFAS treatment. MVD has active construction underway to add PFAS treatment to Wells 7 & 8, however, those treatment facilities are not expected to be online until March 2022.<sup>3</sup>

WHEREAS, MVD and PWW agree that a health based emergency exists necessitating MVD obtaining water that meets State and Federal standards.

WHEREAS, MVD desires that PWW provide water service to MVD and PWW desires to provide service to MVD upon the terms and conditions set forth below.

NOW, THEREFORE, MVD and PWW for and in consideration of the mutual covenants and agreements hereinafter set forth do hereby agree as follows:

1. Supply of Water. PWW agrees to provide MVD with up to 1.0 MGD (million gallons per day) through an existing and operational interconnection point between MVD and PWW.
2. Pressure. PWW will make every effort to maintain normal pressures at all times on the distribution system but shall not be held liable for the failure of either the supply or distribution division of its system to adequately furnish its normal quantity of water when such failure is due to the elements, natural causes, breaks, leaks, unusual or concurrent droughts, or waste or unlawful use of water.
3. Term, Rate, and Reconciliation. The term of this Agreement shall cover water service taken from PWW from October 20, 2021, which was the initial response to the emergency, until after PFOA treatment is constructed and in service for the referenced wells in the NOV. The in-service date is expected to be no later than \_\_\_\_\_.

The rate for this water service shall be the actual variable cost to produce the water as follows:

The total cost of electricity, chemicals, and consumed carbon capacity divided by the total gallons of raw water delivered to PWW's water treatment plant, treated at the water treatment plant, and then

and 8, which are expected to be online in March 2022, can provide about 1.15 MGD and thereby, in combination with wells 4 and 5, can meet MVD's expected non-summer demand.

<sup>3</sup> For completeness, MVD expects treatment for its last two wells (Wells 2 and 9) to be online in early fall of 2022. Well 9 is a new well which will replace Well 3, which is being taken offline.

delivered into PWW's distribution system for consumption. The rate, based on 2020 costs is \$0.67 per 100 hundred cubic feet (Initial Rate). After the termination of the emergency, a final rate (Actual Rate) will be determined for the time period MVD took emergency temporary service by taking the total variable expenses incurred during that time frame (power, chemicals and carbon) and dividing that total by the millions of gallons produced during that time frame, in order to determine the actual incurred variable cost of producing water during the emergency rate period. The net between the Initial Rate and Actual Rate will then be billed (if the Initial Rate was less than the Actual Rate) or will be refunded (if the Initial Rate was higher than the Actual Rate) to MVD.

Bills under this rate are net; will be rendered monthly and are due and payable at the office of the Company on the due date as stated on water bill.

All other aspects of PWW's terms and conditions of service not superseded by the above term shall apply.

4. Non-Appropriation: If sufficient funds are not appropriated to make contracted payments for longer than one year, the Agreement shall terminate and MVD shall not be obligated to make contracted payments under the Agreement beyond the then-current fiscal year for which funds have been appropriated. Upon such event, MVD shall, no later than the end of the current fiscal year for which contracted payments have been appropriated, pay out that year's agreed amount. MVD shall notify the PWW in writing if there was a failure to appropriate funds sufficient for payment beyond year one.

5. MVD Indemnification. MVD agrees to indemnify, defend and hold PWW harmless from and against any and all claims, injuries, judgments, damages, liabilities, losses, costs and expenses, including, without limitation, reasonable attorneys' fees, and court costs (including those incurred at the trial and appellate levels) (hereinafter "claims") to the extent such claims arise solely out of MVD's negligence or willful misconduct.

6. PWW Indemnification. PWW agrees to indemnify, defend and hold MVD harmless from and against any and all claims, injuries, judgments, damages, liabilities, losses, costs and expenses, including, without limitation, reasonable attorneys' fees, and court costs (including those incurred at the trial and appellate

levels) (hereinafter “claims”) to the extent such claims arise solely out of PWW’s negligence or willful misconduct.

7. Books and Records. During the Term hereof and for a period of at least two years thereafter, PWW shall maintain such books and records (collectively, “Records”) as are necessary to substantiate that PWW is in compliance with this Agreement, including that (i) all representations and warranties made by PWW in this Agreement are true and correct in all respects, and (ii) all invoices and other charges submitted to MVD for payment were valid and proper. (As used herein, “payments” shall include money, property, services, and all other forms of consideration.) All Records that are accounting records shall be maintained in accordance with generally accepted accounting principles consistently applied. MVD and its representatives shall have the right at any time during normal business hours, and upon reasonable notice, to examine the Records, make copies and take extracts therefrom and discuss the Records with PWW’s officers, employees and independent public accountants as MVD deems reasonably necessary.

8. Notices. Except as otherwise provided herein, all notices hereunder shall be in writing and shall be deemed to have been duly given for all purposes (i) when delivered in person, or (ii) three days after the date on which deposited in the United States mail, by registered or certified mail, return receipt requested, postage prepaid, or (iii) one day after the same is delivered to an express courier service guaranteeing overnight delivery, or (iv) when sent by telecopy transmission if receipt is confirmed and a copy is sent by regular first class mail, postage prepaid, in each case directed to the party to receive the same (which, in the case of PWW, is the Chief Executive Officer and in the case of MVD is its Commissioners) at its address stated above or at such other address as may be substituted by notice given as herein provided.

9. Amendment. This Agreement may be amended only by written agreement by and between MVD and PWW and, if required by applicable law or regulation, only if approved by the Commission.

10. Applicable Law. The parties agree that this Agreement shall be governed by the laws of the State of New Hampshire, without regard to its conflict of laws and provisions.

11. Headings. The headings in each paragraph 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.

IN WITNESS WHEREOF the parties have caused their corporate names to be subscribed by a duly authorized representative.

**Pennichuck Water Works, Inc.**

**Merrimack Village District**

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Name:  
Title:

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Name:  
Title: Commissioner

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