

**SPECIAL CONTRACT - WATER
CONTRACT NO. NHPUC 2023-4**

**PENNICHUCK WATER WORKS, INC.
WITH
PENNICHUCK EAST UTILITY, INC.**

Date of Signature: June 14, 2023

Effective Date of Agreement: June 1, 2023

Date of Termination: Initial Term expires August 31, 2026. The contract contains three automatically renewing terms of one year (September 1 through August 31) unless the contract is terminated pursuant to Section 2 or 7 below.

Authorized by NHPUC Order No. 26,848, in Docket No. DW 22-085, Dated June 14, 2023 and Effective July 13, 2023.

2023 Wholesale Water Supply Contract

This 2023 Wholesale Water Supply Contract (“Agreement”) is effective the 1st day of June, 2023 by and between Pennichuck Water Works, Inc., a New Hampshire corporation with an address of 25 Walnut Street, Nashua, New Hampshire 03060 (“Company” or “PWW”) and the Merrimack Village District, acting by and through its Board of Commissioners, with a principal place of business at 2 Greens Pond Road, Merrimack, New Hampshire, 03054 (“MVD”).

WHEREAS, the Company and MVD wish to enter into an agreement under which the Company would make water available to MVD for purchase at a wholesale rate.

NOW, THEREFORE, in consideration of the foregoing and the terms and conditions set forth below, the parties agree to the following deviations from the Company’s otherwise applicable terms and conditions of service:

1. Term. This Agreement shall be binding upon the parties upon the signing of the Agreement by both MVD and PWW, but the terms hereof shall not take effect until any necessary approval of the New Hampshire Public Utilities Commission (“NHPUC”) has been obtained. This Agreement shall remain in effect for an initial period of three (3) years beginning on September 1, 2023 (“Initial Term”), subject to extension of the term pursuant to Section 2 or termination pursuant to Section 2 or Section 7. A Contract Year shall be from September 1 through August 31 of the following year. If the Agreement is approved and signed prior to September 1, 2023, the period of time from the approval and signing of the Agreement until through August 31, 2023 shall be considered a Stub Year that shall be included as part of the first Contract Year of the Contract, thereby enlarging the three-year Initial Term. PWW and MVD are desirous of having the Agreement approved by the NHPUC before the end of May 2023 with an effective date of June 1, 2023, therefore creating a Stub Year before the first Contract Year.
2. Renewal Terms. The term of this Agreement shall be automatically extended for three additional terms of one (1) year each (each a “Renewal Term”) unless either party gives written notice to the other, at least six (6) months prior to the date on which the Initial Term or any Renewal Term expires, of its intention to terminate the Agreement at the expiration of the Initial Term or the then-current Renewal Term, as the case may be.
3. Delivery Point and Metering.
 - (a) The water to be sold by the Company to MVD under this Agreement shall be delivered by the Company to MVD at the point of interconnection between MVD's water system and the Company's water system at MVD’s existing water booster station located along Route 101A (“Route 101A Booster Station”) in the vicinity of the Merrimack Home Depot Bridge (“Interconnection Point”).

(b) The Company shall, at its own cost, install and maintain metering equipment (“Meter”) in MVD’s Route 101 Booster Station which shall be used to measure the quantity of water taken by MVD on a monthly basis.

(c) The Meter shall be inspected and calibrated by the Company in accordance with the applicable regulations of the NHPUC. A copy of any inspection and calibration reports shall be available at the Company's principal office for examination by MVD during normal business hours upon reasonable notice from MVD.

(d) MVD may have the accuracy of the Meter tested by an independent third party at MVD's expense at any time, but not more frequently than once each month, provided that MVD gives the Company at least seven (7) days advance written notice of its desire to test the Meter. The Company shall have the right to be present during any such test. If the Meter reads within the specifications established by the NHPUC, the cost of such test shall be borne by MVD. If the Meter does not meet the specifications established by the NHPUC, the cost of the tests shall be paid by the Company, and the Company shall adjust its next bill to MVD accordingly.

(e) In the case of missing or inaccurate flow records due to a faulty Meter or other circumstances, the Company shall calculate the payments due from MVD using a reasonable estimate of the flow based on past records and other relevant data for a comparable period.

4. Quantity of Water.

(a) Maximum Daily Demand. Subject to the provisions of Section 4(b) and Section 5, MVD shall have the right to take up to, but not in excess of, five hundred thousand (500,000) gallons of water per day (“GPD”) at the Interconnection Point; provided, however, that water taken for non-training firefighting purposes shall not be counted toward such maximum quantity. If MVD elects to have the Company wheel water from PWV through MVD’s distribution system from the Interconnection Point to PWV’s Bedford customers in Cabot Preserve, Greenfield Farms, and Parker Ridge subdivisions in accordance with the May 17, 2004 Modified Agreement for Water Supply Between Pennichuck Water works, Inc and Merrimack Village District (See Attachment A for a copy of this Agreement) than the amount of water wheeled through the MVD distribution system to meet the needs of the Company’s Bedford water system that provided water to Cabot Preserve, Greenfield Farms, and Parker Ridge subdivisions shall not be included in the 500,000 GPD Maximum Daily Demand.

(b) Maximum Peak Demand. At all times, MVD’s peak draw at the Interconnection Point shall be limited to 347 gallons per minute; provided, however, that water taken for non-training firefighting purposes shall not be counted toward such allowable draw. If PWV, in its sole discretion, determines that, due to circumstances beyond PWV’s reasonable control, its water supply is impaired, PWV may, upon twenty-four (24) hours’ notice to MVD reduce the maximum volume that may be taken by MVD. PWV will promptly notify MVD when such circumstances cease to exist, and, thereupon, the

rights of MVD to take water as set forth in this Section shall be restored. In exercising its discretion concerning a reduction in the amount of water thereafter to be taken by MVD, PWW shall afford at least as favorable treatment to MVD as to its other wholesale water supply and retail 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. MVD 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. In the event PWW imposes water use restrictions on its customers pursuant to NHPUC rule Puc 604.07 and during the term(s) of this Agreement, such water use restrictions shall also apply to MVD customers.

5. Increase in Quantity of Water. If MVD wishes to increase the maximum quantity of water that it is permitted to purchase under Section 4, it shall provide the Company with written notice sufficient for the Company 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 the Company's own system. Such notice shall be given at least one year in advance of the desired implementation date of the increase. The Company shall respond to such a request within ninety (90) days, indicating whether it agrees to provide the additional supply. If the Company agrees to increase the maximum quantity of water that may be taken by MVD, the Company and MVD 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, the Company shall not be required to increase the maximum quantity provided for in Section 4. Any increase in the maximum quantity of water to be purchased under this Agreement shall be reflected in an amendment to this Agreement, signed by the parties. Such amendment shall become effective upon execution and will require additional approval of the NHPUC and is subject to a Cost of Service Study based on the revised capacities.
6. Fees. MVD shall pay the Company the following amounts for the water supplied or to be supplied by the Company under this Agreement:
 - (a) Demand Charge. MVD shall pay the Company an annual demand charge of \$181,718 (the "Annual Demand Charge") payable to the Company in equal monthly installments of \$15,143.13 per month. The Demand Charge is subject to determination by the NHPUC as part of the proceeding to approve this Agreement. The Demand Charge shall be due and payable without regard to the amount of water actually taken by MVD or any volumetric charges for such purchases. If there is a period of time, one week or longer in continuous duration, where the Company cannot deliver the 0.25 million gallons per day ("MGD") requested by MVD the Demand Charge in that year will be reduced by the number of days where 0.25 MGD is not available to the Town divided by 365 multiplied by the annual Demand Charge. The Company may only adjust the Demand Charge in the event a new cost of service allocation study is obtained by PWW (a "Cost of Service Study") and approved by the NHPUC and where the adjustment to

the Demand Charge is in direct response to the need to comply with regulations of the United States Environmental Protection Agency or the New Hampshire Department of Environmental Services and where such compliance involves the need to make material investment in or upgrades to the material water supply facilities that serve MVD. Such material investments or upgrades include those made to, for example, PWW's Nashua water treatment plant, the Pennichuck Brook Dams, the Merrimack River Raw Water Pumping Station, and the Fifield Tanks. The Demand Charge shall only be adjusted to the extent that the material upgrade is necessary to comply with the regulations and is required to serve the Town, and where the Demand Charge has been approved by the NHPUC.

(b) Volumetric Charge. The Volumetric Charge will be \$0.9403 per 100 cubic feet, with a guaranteed minimum yearly usage of 121,992 CCF per Contract Year. The Volumetric Charge is subject to the determination of the NHPUC as part of the proceeding to approve this Agreement.

The Volumetric Charge will be assessed, and the guaranteed minimum yearly usage enforced, as follows: MVD will be billed each month at the Volumetric Charge rate for the *greater* of either: (A) MVD's actual usage; or (B) a Minimum Monthly Usage of 10,166 CCF, except that the Minimum Monthly Usage will be reduced by 334.2 CCF for each day that the Company cannot deliver at least 0.25 MGD to MVD in that month.

If MVD's actual usage for the month is less than the Minimum Monthly Usage, the difference between the billed Minimum Monthly Usage and MVD's actual consumption shall be carried as a credit into the following month's bill. The credit will reduce the next month's billable consumption if MVD's actual consumption exceeds the Minimum Monthly Usage. MVD will carry any credits from month-to-month up to the end of each Contract Year. If at the end of a Contract Year, MVD has a consumption credit that credit will be reset to zero for the start of the next Contract Year.

Notwithstanding the foregoing, MVD will be subject to the guaranteed minimum usage requirements during the Stub Year, and consumption credits earned during the Stub Year will be carried through into the first Contract Year of the Agreement beginning on September 1, 2023.

The Volumetric Charge 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 the Company charges to its core system customers in the City of Nashua. The Volumetric Charge includes modifications made from time to time by adjustments to the Qualified Capital Adjustment Charge, as approved by the NHPUC. Source: *Pennichuck Water Works, Inc.*, Docket No. DW 19-091, Order No. 26,429 (December 2, 2020).

(c) Meter Charge. The Monthly Meter Charge shall be set at \$78.33 per month (based on a 6" meter) and reflects the cost to read and bill MVD on a monthly basis in addition to the cost to test MVD wholesale meter on an annual basis. The Monthly Meter

Charge subject to the determination of the Monthly Meter Charge by the NHPUC as part of the proceeding to approve this Agreement. Thereafter, the monthly meter charge 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 the Company charges to its core system customers in the City of Nashua.

(d) Invoices. The Company shall bill MVD on a monthly basis for water taken by MVD under this Agreement. Payment shall be due on presentation of each invoice and amounts unpaid after thirty (30) days shall be subject to one and one-half (1-1/2%) percent interest per month on the unpaid balance from the date of such invoice.

7. Termination. In the event of a material breach of this Agreement by either party, this Agreement may be terminated by giving the breaching party written notice of termination, which notice shall set forth with specificity the nature of the claimed breach by the other party. The breaching party shall have 30 days to cure the material breach, during which time the parties shall make a good faith effort to resolve the dispute informally. Any such termination shall not be effective until three (3) months from the date of such notice. In no event may this Agreement be terminated on less than three (3) months prior written notice, except as may be determined by order of the NHPUC.

If the Agreement is terminated pursuant to this section, the Company shall issue a final bill to MVD for any outstanding usage through the termination date. If the termination date does not coincide with the end of a month, all charges, including any Minimum Monthly Usage charges, shall be pro-rated on a daily basis based on the number of days in that month. If, after calculating all charges, MVD possesses volumetric charge credits pursuant to Section 6(b), the value of those credits shall be refunded to MVD.

If the Agreement is terminated under this section by the Company due to a material breach of this Agreement by MVD, then any volumetric charge credits will be retained by the Company and will not be refunded to MVD.

8. Miscellaneous.

(a) Dispute Resolution. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, that the parties are unable, after a good faith effort, to settle informally may be submitted to the NHPUC, or its successor, for resolution.

(b) Severability. If any term or condition of this Agreement is found to be unenforceable, the remaining terms and conditions shall remain binding upon the parties as though said unenforceable provision were not contained herein.

(c) Amendments, Assignment, Governing Law. This Agreement may be amended upon the mutual agreement of the parties, subject to any required approval of the NHPUC. This Agreement may be assigned by the Company to a wholly owned subsidiary or an affiliate under common control with the Company without the prior consent of MVD. This Agreement shall be binding upon and inure to the benefit of the respective

successors and legal representatives of the parties. This Agreement shall be governed by and construed under the laws of the State of New Hampshire.

- (d) 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 MVD or the Company, as the case may be, at the address first noted above or to such other address as the receiving party may have given written notice to the other party.
- (e) Action Necessary to Complete Transaction. MVD and the Company agree to execute and deliver all such other documents or instruments and take any action that may be reasonably required to effectuate the transactions contemplated by this Agreement.
- (f) 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.
- (g) Integration. This Agreement constitutes the entire agreement and understanding between the parties regarding the subject matter hereof, and supersedes all prior understandings, agreements, statements and representation, whether written or oral, between or made by the parties.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties have caused their corporate names to be subscribed by an officer duly authorized to sign.

PENNICHUCK WATER WORKS, INC.

Donald G. Ware
Witness

By: [Signature]
Name: Larry D. Goodhue
Title: Chief Executive Officer

MERRIMACK VILLAGE DISTRICT

[Signature]
Witness

By: [Signature]
Name: Ronald Miner, Jr.
Title: Superintendent