

SPECIAL CONTRACT – WATER

CONTRACT NO. NHPUC 2015-1

PENNICHUCK WATER WORKS, INC.

WITH

TYNGSBOROUGH WATER DISTRICT

Date of Execution:

April 24, 2015

Effective Date:

Date of Final Order

Date of Termination:

Initial Term of Three Years

Two Renewal Terms of Three Years

Authorized by Docket No. DW 15-_____

NHPUC Order No. _____

Dated _____

WHOLESALE WATER SUPPLY CONTRACT

THIS WHOLESALE WATER SUPPLY CONTRACT (the "Agreement") is made effective as of the 24th day of April, 2015 (the "Effective Date"), by and between Pennichuck Water Works, Inc., a New Hampshire corporation, with an address of 25 Manchester Street, Merrimack, New Hampshire 03054 (the "Company"), and the Tyngsborough Water District, acting by and through its Board of Trustees, with a principal place of business at 87 Progress Avenue, Unit #2, Tyngsborough, Massachusetts 01879 ("TWD"). The Company and TWD are sometimes hereinafter referred to separately as a "Party" and collectively as the "Parties".

WHEREAS, the Company and TWD are parties to a Water Supply Contract dated April 13, 1999 ("First Agreement"), which the Parties desire to terminate and replace with this Agreement; and

WHEREAS, the Company is the franchise holder for supplying water to the City of Nashua, New Hampshire (including the portion of Nashua occupied by the Pheasant Lane Mall), under the laws of the State of New Hampshire, and the rules and regulations of the New Hampshire Public Utilities Commission ("NHPUC"); and

WHEREAS, TWD is duly authorized under the law of the Commonwealth of Massachusetts to supply water to all or a portion of the Town of Tyngsborough, including the portions of Tyngsborough occupied by a portion of the Pheasant Lane Mall and the Middlesex Road in the vicinity of the Pheasant Lane Mall, all as controlled by TWD; and

WHEREAS, the Company and TWD now desire to enter into this Agreement to set forth the terms and conditions with respect to the Company's supply of water to TWD for purchase at a wholesale rate.

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 Effective Date, provided, however, the terms of this Agreement shall not take effect until any necessary approval of the NHPUC has been obtained, as set forth in a final order issued by the NHPUC (the "Approval Date"). The initial term of this Agreement shall commence on the Approval Date hereof and shall continue for a period of three (3) years (the "Initial Term"). Upon completion of the Initial Term, this Agreement shall be automatically renewed for two (2) additional successive terms of three (3) 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 TWD to the Company 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 the Company to TWD under this Agreement shall be delivered by the Company to TWD at the point of interconnection between TWD's water system and the Company's water system as shown on the attached plan, which is made a part hereof. TWD owns the pipes and other facilities of the Pheasant Lane Mall in the Town of Tyngsborough, up to the points of interconnection with PWW, and has the responsibility for maintaining and repairing said pipes and facilities. PWW shall have the right and power to repair and maintain said pipes and facilities, if PWW determines that maintenance and repair is necessary or advisable to assure the safety, quality, and quantity of water for PWW's customers in New Hampshire.

The Company shall, at its own cost, install and maintain metering equipment ("Meter") within the TWD Booster Station, which shall be used to measure the quantity of water taken by TWD on a monthly basis. TWD shall maintain the Booster Station to ensure that the station remains warm (in excess of 45°F), dry and accessible year round. TWD shall provide the Company with a station key and the Company shall be allowed to access its Meter as reasonably necessary to read, operate and maintain the Meter.

- (a) 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 TWD during normal business hours on reasonable prior written notice from TWD.
- (b) TWD may have the accuracy of the Meter tested by an independent third party at TWD's expense at any time, but not more frequently than once each month, provided that TWD gives the Company at least seven (7) days advance written notice of its desire to test the Meter for each test. The Company 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 the Company was present). If the Meter reads within the specifications established by the NHPUC, then the cost of such test shall be borne by TWD. If the Meter does not meet the specifications established by the NHPUC, then the Company 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 TWD. If there is a discrepancy between the tests, then the Company's independent inspector's test results shall control. If the Company accepts the results provided by TWD or if the Company's independent results also reflect that the Meter does not meet the specifications established by the

NHPUC, then the Company shall adjust its next bill to TWD 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 TWD test shall be paid by the Company.

- (c) In the case of missing or inaccurate flow records due to a faulty Meter or other malfunctioning related circumstances, the Company shall calculate the payments due from TWD 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 TWD and shall be binding on the Parties.

3. TWD's Right to Further Connections to Expand Service

TWD shall have the right, at its sole expense, to construct and connect transmission mains, main pipe extensions, hydrant branches and service connections located within Tyngsborough to the Interconnection Point, in accordance with all applicable industry engineering standards and practices, to supplement its current service and provide additional service within TWD, but is precluded from providing water service outside of TWD's service area

4. Quantity of Water

- (a) Maximum Daily Demand. Subject to the provisions of Section 4(b) and Section 5, TWD shall have the right to take up to, but not in excess of, four hundred fifty thousand gallons of water per day (0.45 MGD) 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, TWD's peak draw at the Interconnection Point shall be limited to four hundred (400) gallons per minute (provided, however, that water taken for non-training firefighting purposes and other declared emergencies shall not be counted toward such allowable rate). If the Company, in its sole discretion, determines: (i) that its water supply is inadequate to serve the needs of TWD or (ii) that, due to circumstances beyond the Company's reasonable control, its water supply is impaired, the Company may, upon twenty-four (24) hours' notice to TWD, reduce the maximum volume that may be taken by TWD. The Company will promptly notify TWD when such circumstances cease to exist, and, thereupon, the rights of TWD to take water as set forth in this Section 4(a) shall be restored. In exercising its discretion concerning a reduction in the amount of water thereafter to be taken by TWD, the Company shall afford at least as favorable treatment to TWD as to its other wholesale bulk 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. The Company will promptly employ its commercially reasonable efforts to cure such

inadequacy or impairment. TWD shall not be entitled to compel the Company to supply it with any specific quantity of water nor shall it be entitled to any damages as a result of the Company's determination that its supply is inadequate and/or impaired.

5. Increase in Quantity of Water

If TWD 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 (1) 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 TWD, the Company and TWD 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 a written amendment to this Agreement, signed by the Parties. Such amendment shall become effective upon approval of the NHPUC.

6. Fees

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

- (a) Within fifteen (15) days of the Effective Date, TWD shall make a deposit in the amount of \$30,000 to cover: (i) the cost of the Company completing the Cost of Service Study required for this Agreement, estimated at \$7,500, (ii) the legal cost to file the Wholesale Water Supply Contract petition with the NHPUC, estimated at \$7,500, and (iii) the cost to replace the existing 6" Fireline Meter with a new 6" Fireline Meter, estimated at \$15,000. Upon completing items (i), (ii) and (iii), the Company shall provide TWD with a statement of the actual costs for each item and if the statement reflects an underpayment by TWD from the \$30,000, TWD shall provide the balance owed to the Company within fifteen (15) days of receiving the statement. If the statement reflects an overpayment by TWD, then the Company shall provide TWD the balance owed to TWD within fifteen (15) days of determining the actual costs for items (i), (ii) and (iii).
- (b) The Base Monthly Fixed Fee will be \$21,287.60 ("BMFF"). The BMFF shall incorporate a daily base usage of 250,000 gallons per day (equal to 334.2 hundred cubic feet ("CCF") per day). The BMFF shall be adjusted

from time to time by the same percentage and effective as of the same dates as any adjustment in the rates paid by residential customers in Nashua pursuant to the Company's tariff on file with the NHPUC. In the event that the daily usage of the TWD is less than an average of 334.2 CCF/day over any monthly billing period, the TWD will pay no Volumetric Rate for that month and the TWD will carryover a usage credit into the next month in the amount of the difference between the 334.2 CCF/day allowed in the BMFF and the actual CCF/day usage. Credits will carry over month to month during each calendar year. There will be no carryover credit from year to year during the Term (i.e., from December to January). If any carryover BMFF volumetric credit exists at the end of December, then that credit will be zeroed out going into January of the next calendar year.

- (c) The initial Volumetric Rate for purposes of calculating the Monthly Volumetric Charge will be \$2.094 per 100 cubic feet, subject to the determination 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 the Company charges to its core system customers in the City of Nashua. The Volumetric Rate shall apply to all volumes used in excess of 250,000 gallons per day in any monthly billing period subject to the existence of any credit as defined in Section 6(b) above.

The Monthly Volumetric Charge shall be calculated by multiplying the Volumetric Rate, then in effect, by TWD's actual monthly water usage, in increments of 100 cubic feet, in excess of the 334.2 CCF daily usage allotted for in the BMFF.

- (d) The Monthly Fixed Meter Charge shall be set at \$38.75 per month and reflects the cost to read and bill the TWD on a monthly basis in addition to the cost to test the TWD wholesale meter on an annual basis. Thereafter, the monthly fixed 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.
- (e) Invoices, Payments, and Disconnection of Service. The Company shall bill TWD in arrears on a monthly basis for water taken by TWD 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.

7. 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, TWD agrees and acknowledges that any water provided to it by the Company shall be used only to provide service to customers within the Town of Tyngsborough who are served by TWD's water system. No water shall be sold by TWD, either directly or indirectly, to any private or investor owned water utility, municipality, village district or individual doing business or residing outside of TWD for any purpose without the Company's prior written consent.

8. Termination

- (a) Subject to the provisions of Section 8(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 8(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 8(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.

9. 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.

10. 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 10, 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.

11. 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.

12. 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 TWD or the Company, 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 the Company should be delivered as follows:

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

Notices to TWD should be delivered as follows:

Tyngsborough Water District
87 Progress Avenue, Unit #2,
Tyngsborough, Massachusetts 01879
Attn: Dale Thompson, Superintendent

13. Action Necessary to Complete Transaction

TWD and the Company 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.

14. 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.

15. 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.

16. 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 including, without limitation, the First Agreement. Upon the Effective Date, this Agreement shall automatically supersede and terminate the First Agreement in its entirety.

17. 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.

[Intentionally Blank – Signature Page Follows]

Wholesale Water Supply Contract
(Pennichuck Water Works, Inc. and Tyngsborough Water District)

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

PENNICHUCK WATER WORKS, INC.

Carol Ann Howe
Witness

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

**TYNGSBOROUGH WATER DISTRICT
By Its Board of Water Commissioners**

[Signature]
Witness

By: [Signature]
Water Commissioner

[Signature]
Witness

By: [Signature]
Water Commissioner

[Signature]
Witness

By: [Signature]
Water Commissioner

Witness

By: _____
Water Commissioner

Witness

By: _____
Water Commissioner

