

SPECIAL CONTRACT – WATER  
CONTRACT NO. NHPUC 2018-\_\_  
PENNICHUCK EAST UTILITY, INC.

WITH  
PILLSBURY REALTY DEVELOPMENT, LLC  
FOR  
WOODMONT COMMONS

Date of Execution: \_\_\_\_\_

Effective Date: \_\_\_\_\_

Date of Termination: \_\_\_\_\_

Authorized in Docket No. DW \_\_\_\_\_

NHPUC Order No. \_\_\_\_\_

Dated: \_\_\_\_\_

SPECIAL CONTRACT FOR WATER SUPPLY SERVICE

This special contract for water supply service (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019 by and between Pennichuck East Utility, Inc. (“PEU”), a regulated public utility pursuant to RSA 362:2, with an address of 25 Manchester Street, Merrimack, New Hampshire 03054, and Pillsbury Realty Development, LLC (“Pillsbury”), a registered New Hampshire business and principal developer of the Woodmont Commons Planned Unit Development (“Woodmont Commons”) (together, “Parties”).

RECITALS

WHEREAS, PEU was authorized by the N.H. Public Utilities Commission (“NHPUC”) to provide water service in portions of the Town of Londonderry. See, Docket No. DE 86-230, Order No. 18,691, *Southern New Hampshire Water Company, Inc.*, (May 29, 1987) (approving transfer of franchise to Pennichuck Corporation), Docket No. DE 86-230, Order No. 18,760, *Southern New Hampshire Water Company, Inc.*, (July 14, 1987) (approving Southern’s request to provide service to undisputed area of Londonderry and conditionally approving franchise to disputed area), and Docket No. DE 86-230, Order No. 18,807, *Southern New Hampshire Water Company, Inc.*, (Sept. 1, 1987) (rescinding awarding disputed franchise area and ordering that disputed area is not awarded to either Southern or Manchester Water Works).

WHEREAS, Pillsbury has received approval from the Town of Londonderry to construct the Woodmont Commons on approximately 603 acres of land near Rt. 102 and Interstate 93 at Exit 4 and proposed Exit 4A. The \$1 billion development is being constructed over the course of several phases and will include new mixed-use buildings, homes, offices, a hotel, retail space, medical and professional offices, and agricultural areas.

WHEREAS, the Woodmont Commons development is located within PEU’s authorized franchise area in the Town of Londonderry.

WHEREAS, to meet the future water service needs of PEU and the commercial and residential customers within Woodmont Commons, and, in particular, the Woodmont Commons’ fire protection needs, and to satisfy the requirements of the New Hampshire Department of Environmental Services (“NHDES”), PEU is upgrading its system and is constructing an elevated composite-style (concrete pedestal and steel tank) water storage tank (“Water Storage Tank”) with a capacity of 1.1 million gallons on PEU-owned land adjacent to Woodmont Commons. The construction budget for the Water Storage Tank is approximately \$2.835 million dollars.

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

## CAPITAL CONTRIBUTIONS

1. Pillsbury agrees to provide a proportionate capital contribution (“Capital Contribution”) to defray the cost of PEU’s construction of the Water Storage Tank.
2. In consideration of Pillsbury’s Capital Contribution, PEU agrees to accelerate its construction of the Water Storage Tank and to enlarge the tank size to provide water and fire protection service with sufficient capacity to supply water to the entirety of Woodmont Commons.
3. Construction of the Water Storage Tank is planned to provide an in-service date of October 1, 2020 (“Operational Date”) that is anticipated to coincide with the water and fire protection service needs of the Woodmont Commons Development and otherwise supplement existing capacity available to Woodmont Commons and others within the service area.
4. PEU and Pillsbury agree that Pillsbury’s payment of the Capital Contribution will be periodic and that the payments will be based on the bid price of the successful bidder selected by PEU through its competitive bidding process.
  - a. Pillsbury agrees to make the periodic payments according to Schedule A, Anticipated Project Phases and Fee Schedule. PEU and Pillsbury acknowledge that time is of the essence with respect to PEU’s construction of the Water Storage Tank and Pillsbury’s payments to PEU.
  - b. Pursuant to Schedule A, Pillsbury agrees to pay PEU fifty-one (51%) percent of the estimated fees associated with the design, permitting, bidding, construction, and construction administration of the Water Storage Tank project. Pillsbury agrees to pay PEU the Pillsbury share within ten (10) days from the date PEU notifies Pillsbury that PEU intends to commence each Anticipated Project Phase.
  - c. Pursuant to Schedule A, Pillsbury agrees to pay PEU fifty-one (51%) percent of the gross-up tax liability for Pillsbury’s Contributions in Aid of Construction (“CIAC”) triggered by the Water Storage Tank project based upon the following formula:

$$\text{Tax Cost} = ((\text{CIAC} - [\text{CIAC} * (\text{1/Tax Life}) * .5]) / (1 - \text{Current Effective Tax Rate})) - \text{CIAC}$$

With a Current Effective Rate of 27.08% (comprised of 21% Federal and 6.08% net State rate, after consideration for Federal deductibility for State taxes), the gross-up percentage is 34.39386%.

Pillsbury agrees to pay PEU the Pillsbury share of the CIAC tax within ten (10) days from the date PEU demands payment of such tax.

- d. Pursuant to PEU’s tariff Section 33 (Main Pipe Extensions), PEU and Pillsbury agree to enter a separate cost sharing agreement (“Water Main Special Contract”) for the construction of a 16-inch diameter water main (“Water Main”) from the Water Storage Tank

through the area of Woodmont Commons north of Pillsbury Road (or an alternate route as may be mutually agreeable) to PEU's existing water main at the intersection of Pillsbury Road and Michels Way.

e. Pillsbury agrees to pay PEU the gross-up tax liability for Pillsbury's CIAC triggered by the Water Main project, based upon the same formula used for the Water Storage Tank referenced in paragraph 4(c) above and at the same allocation percentage as the cost allocation to be determined in the Water Main Special Contract, referenced in paragraph 4(d) above.

f. The Parties acknowledge that Pillsbury's payment of the CIAC taxes in this Agreement apply solely to the Water Storage Tank and Water Main projects. All other projects that trigger a CIAC tax liability shall be governed by PEU's approved tariff in force and effect as of the time of such future CIAC conveyance.

g. In the event the estimated fees or taxes depicted on Schedule A differ from the actual fees or taxes, PEU agrees to inform Pillsbury of the updated fee or tax at least thirty (30) days prior to Pillsbury's payment of the Pillsbury share to PEU.

5. Notwithstanding the Operational Date set forth above, the terms of this Agreement shall not take effect or bind either party until any necessary approvals of the NHDES and the New Hampshire Public Utilities Commission ("NHPUC"), as well as the Company's Board of Directors and Shareholder, have been obtained. The final order of the NHPUC approving the Agreement shall constitute the approval date ("Approval Date") of the Agreement.

#### WATER SERVICE

6. PEU agrees to operate the Water Storage Tank to the benefit of Woodmont Commons and PEU's other customers in accordance with all applicable laws and regulations.

7. Pillsbury and PEU agree that service provided by PEU to customers within the Woodmont Commons development shall be according to the rates, fares, charges, and terms of service applied to other customers and as contained in PEU's approved tariff, as amended from time to time, on file with the NHPUC and according to all applicable laws and regulations, including, NHPUC Chapter Puc 600, *Rules for Water Service* and Chapter Puc 1200, *Uniform Administration of Utility Customer Relations*.

#### REFUNDS

8. In the event that the Water Storage Tank project costs come in lower than the total of the Anticipated Project Phases estimates such that there is an overpayment by Pillsbury, PEU shall refund Pillsbury the appropriate percentage of unused funds no later than forty-five (45) days after the Operational Date.

9. PEU shall maintain financial and operating records of the construction and use of the Water Storage Tank and these records shall be available for inspection by Pillsbury or its agent at the office of PEU during regular business hours.

## CONSTRUCTION OF TANK

10. PEU agrees to apply for and obtain all required permits and government approvals, including but not limited to, those required by the NHPUC and the NHDES, in addition to required State and local permits.
11. PEU agrees to prepare all plans, specifications, and other design documents necessary for the tank project, and to make such documents available to Pillsbury for review and comment.
12. PEU agrees to issue an invitation to bidders for the tank project to pre-qualified contractors acceptable to PEU, to secure bids for the required construction services through a competitive bidding method, and to award the contract(s) for construction to the lowest, responsible and responsive bidder.
13. PEU agrees to supervise, administer, coordinate, and oversee construction of the tank project.

## LAWS AND REGULATORY APPROVAL

### 14. GOVERNING LAW AND VENUE

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 to this Agreement expressly agrees to submit to such jurisdiction and venue as required by the NHPUC or its successor.

## ADDITIONAL PROVISIONS

### 15. AMENDMENT

No waiver or modification of this Agreement or of any covenant, condition, or limitation contained herein shall be valid unless it is in writing and of a subsequent date, duly signed 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 signed by the Parties.

### 16. WAIVER

Failure of either party to exercise any right under this Agreement shall not be deemed a waiver of such party to exercise at some future time said rights or another right it may have hereunder.

### 17. DURATION AND TERMINATION

This Agreement shall be exclusive and binding on the Parties from the Approval Date until the Operational Date. Once it is signed and in effect, this Agreement shall supersede and replace all prior agreements between the Parties with respect to the subject matter hereof. The

Parties may terminate this Agreement by mutual agreement or as otherwise provided in this Agreement.

18. BINDING EFFECT

The terms and provisions of this Agreement, and the benefits and burdens associated therewith, shall inure to the Parties to this Agreement and their assigns, grantees, and successors in interest 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 the approval of the NHPUC.

19. NOTICES AND PAYMENTS

All notices, requests, demands, and other communications given pursuant to the Agreement shall be in writing and shall be deemed to have been given if they are delivered by hand or by a nationally recognized overnight courier or mailed by certified or registered mail with postage prepaid to either party 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 Pennichuck East Utility, Inc. shall be delivered to the following address:

Donald L. Ware, Chief Operating Officer  
Pennichuck East Utility, Inc.  
25 Manchester Street  
Merrimack, NH 03054

Notices to Pillsbury Realty Development, LLC shall be delivered to the following address:

Michael L. Kettenbach, Member  
Pillsbury Realty Development, LLC  
100 Ferry Street  
Hudson, NH 03051

With a copy to:

Ari B. Pollack, Esq.  
Gallagher, Callahan & Gartrell, P.C.  
214 North Main Street  
Concord, NH 03301

All payments for Capital Contributions required by this Agreement shall be made by cashier's check and be made payable to "Pennichuck East Utility, Inc."

20. COOPERATION TO COMPLETE TRANSACTION

PEU and Pillsbury each covenant and agree to execute and deliver all such other documents and 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 herein, and otherwise to carry out the intent of the Parties herein.

21. HEADINGS

The headings in each section of this Agreement are for the 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.

22. COMPLIANCE WITH THE LAW

Each party hereto agrees that it is responsible at its own expense for compliance with all laws and agrees to 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.

23. COUNTERPARTS

This Agreement may be signed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

24. SEVERABILITY

If any term or provision herein shall be judicially determined to be void or of no effect, such determination shall not affect the validity of the remaining terms and provisions.

25. AUTHORITY

Each party represents that it has undertaken all actions necessary for corporate approval of this Agreement, and that the person signing the Agreement has the authority to bind the respective party.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their authorized representatives:

PILLSBURY REALTY DEVELOPMENT, LLC

\_\_\_\_\_  
Witness

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

PENNICHUCK EAST UTILITY, INC.

\_\_\_\_\_  
Witness

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Schedule A: Anticipated Project Phases and Fee Schedule

Phase	Date Range		Estimated Cost	Pillsbury Share (51% of Estimated Cost)
Design	May 2018	August 2018	\$60,000	\$30,506.00
Permitting (Town)	August 2018	October 2018	\$25,000	\$12,711.00
Bidding	November 2018	January 2019	\$5,000	\$2,542.00
Construction	March 2019	September 2020	\$2,700,000.00	\$1,372,783.00
Construction Admin.	March 2019	September 2020	\$45,000	\$22,880.00
(Rounded) Total:			\$2,835,000.00	\$1,441,422.00

			Estimated Cost <sup>1</sup>	Pillsbury's Estimated Share (51% of Estimated Cost)
CIAC Tax Liability			\$495,760	\$252,838

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<sup>1</sup> The CIAC tax in this Schedule is an estimate. The final CIAC tax liability, and proportionate shares of the tax liability, will be calculated based on the actual cost of the CIAC asset.