

**WATER SUPPLY AGREEMENT  
BETWEEN  
TOWN OF SALEM, NEW HAMPSHIRE  
AND  
PENNICHUCK EAST UTILITY, INC.**

WHEREAS, the Town of Salem (“Salem”) and Pennichuck East Utility, Inc. (“PEU”), as well as the Towns of Derry, Plaistow, and Windham, Manchester Water Works (“MWW”), and Hampstead Area Water Company, Inc. have entered into an “Agreement Regarding the Southern New Hampshire Regional Water Interconnection Project” (“Regional Agreement”); and

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WHEREAS, pursuant to the Regional Agreement Salem will provide water to portions of the Town of Windham via an interconnection with the Town of Derry and through water mains installed by Salem in Route 28 from the Derry/Windham Town line to the Windham/Salem Town and along Route 111 from Route 28 to the intersection of Route 111 and Range Road; and

WHEREAS, the New Hampshire Public Utilities Commission (“PUC”) by Order No. 26,545, issued November 9, 2021, approved the transfer to Salem of that portion of PEU’s W&E Community Water System (“W&E”) franchise along Range Road westerly from its terminus at the intersection of Route 111 and Range Road to a point along the PEU Range Road water main about 150 feet westerly of the intersection of Range Road and Edgewood Road; and

WHEREAS, PEU will retain the franchise for supplying water to W&E customers along Range Road just to the west of its intersection with Route 111, where the Route 111 water main will terminate; and

WHEREAS, PEU experiences seasonal water supply shortages for its W&E customers in the Town of Windham and needs additional water supply to supplement and back-up the existing groundwater wells that provide water to W&E; and

WHEREAS, PEU desires to purchase water directly from Salem by interconnecting to the 12” water main that Salem is installing along Route 111, and which Salem will own and operate pursuant to the Regional Agreement; and

WHEREAS, Salem and PEU (together, “Parties” or individually, “Party”) now desire to enter into this Water Supply Agreement (“Agreement”) to set forth the terms, conditions, and rates with respect to Salem’s supply of water to PEU for the purpose of supplying PEU’s W&E customers in Windham.

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 in effect, beginning thirty (30) days following approval by the Salem Board of Selectmen and ending on a date which is fifteen (15) years following commencement, or at such time the Regional Agreement terminates, whichever is earlier. In the twelve months preceding the termination of this Agreement, either party may initiate negotiations for a new agreement for a new term.

2. **Definitions**

- (a) “Excess Water Use” is water use in excess of 30,000 gallons per day (“GPD”) in any monthly metering period as set forth in Section 5 (c).
- (b) “Interconnection Point” is the point of interconnection between the Salem and PEU water systems as described in Section 3 and depicted in Attachment A.
- (c) “MDD” is the Maximum Daily Demand as defined in Section 5 (a).
- (d) “MPD” is the Maximum Peak Demand as defined in Section 5 (b).
- (e) “MSDC” is the Merrimack Source Development Charge as set forth in the Regional Agreement, which is a capital charge assessed by the Manchester Water Works in accordance with its rules and regulations for the purpose of constructing, acquiring, improving, enlarging and/or operating the Manchester Water Works system.
- (f) “Regional Agreement” is the Agreement Regarding the Southern New Hampshire Regional Water Interconnection Project among the Town of Derry, Manchester Water Works, the Town of Plaistow, the Town of Windham, the Town of Salem, Hampstead Area Water Works, Inc., and Pennichuck East Utility, Inc., fully executed April 17, 2019.
- (g) “Vault” is the underground structure that will be constructed and maintained by PEU to house the meter/pressure reduction valve as described in Sections 3 and 4.

3. **Delivery Point**

The water to be sold by Salem to PEU under this Agreement shall be delivered by Salem to PEU at the Interconnection Point between the Salem and PEU water systems as shown on the attached plan, which is made a part hereof as Attachment A. PEU owns the pipes and other facilities from, but not including the first 6” gate valve located on the inlet side of the meter/pressure reduction valve located in the Vault in Windham, continuing through the Vault to the existing W&E CWS distribution system on Range Road. Salem will retain ownership of the water main up to and including the 6” gate valve referenced above, said 6” gate valve being the Interconnection Point.

4. **Metering**

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

The Meter shall be inspected and calibrated by Salem in accordance with the applicable regulations of Salem. A copy of any inspection and calibration reports shall be available at Salem's principal office for examination by PEU during normal business hours on reasonable prior written notice from PEU.

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 Salem at least seven (7) days advance written notice of its desire to test the Meter for each test. PEU 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 PEU was present).

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If the Meter reads within the specifications established by Salem, then the cost of such test shall be borne by PEU. If the Meter does not meet the specifications established by Salem, then Salem 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 Salem's independent inspector's test results shall control. If PEU accepts the results provided by Salem or if Salem's independent results also reflect that the Meter does not meet the specifications established by Salem, then Salem shall adjust its next bill to PEU accordingly.

When the percentage error of registration exceeds 103% of the correct amount, Salem shall refund an amount equal to the charge for the excess billed for the shorter of the following:

- (1) The previous 12 months;
- (2) A period equal to 1/2 the time elapsed since the last test; or
- (3) The period of occupancy by the customer.

When the percentage error of registration is below 97% of the correct amount, Salem shall charge PEU for the unbilled amount for the shorter of:

- (1) The previous 12 months;
- (2) A period equal to 1/2 the time elapsed since the last test; or
- (3) The period of occupancy by the customer

## **5. Quantity of Water**

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Water to be made available under this Agreement shall be strictly limited to the quantity of MSDC credits purchased by PEU from the Town of Windham's allotment as set forth in the Regional Agreement. As of the date of this Agreement, PEU has purchased MSDC credits for 30,000 gallons. See Attachment B.

### **(a) Maximum Daily Demand**

Subject to the provisions of Section 5 (b), PEU shall have the right to take up to, but not in excess of, thirty thousand (30,000) 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). The MDD shall be calculated by taking the total water used during the month and dividing it by the number of days between the meter reading dates for that month.

(b) Maximum Peak Demand

At all times, PEU's peak draw at the Interconnection Point shall be limited to two hundred and twenty-five (225) gallons per minute (or 324,000 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 Salem, 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 Salem's reasonable control, its water supply is impaired, Salem may, upon twenty-four (24) hours' notice to PEU, reduce the maximum volume that may be taken by PEU. Salem will promptly notify PEU when such circumstances cease to exist, and, thereupon, the rights of PEU to take water as set forth in Section 5 (a) shall be restored.

In exercising its discretion concerning a reduction in the amount of water thereafter to be taken by PEU, Salem shall afford at least as favorable treatment to PEU as to other wholesale water supply customers, if any. Salem will promptly employ commercially reasonable efforts to cure such inadequacy or impairment. PEU shall not be entitled to compel Salem to supply it with any specific quantity of water nor shall it be entitled to any damages as a result of Salem's determination that its supply is inadequate or impaired. Under no circumstances will Salem be obligated to supply water other than that from the MWW source.

(c) Excess Water Use

Should PEU use water supplied by Salem in excess of the MDD of 30,000 GPD during any monthly metering period, PEU shall pay, in addition to the wholesale usage rate set forth in Section 7 (a), an excess water use charge to Salem calculated in a manner similar to that set forth in the Regional Agreement, Exhibit A, section 17.19. The excess water use charge under this Agreement shall be equal to the wholesale rate set forth in section 7 (a) multiplied by GPD in excess of 30,000. Should Excess Water Use during any 12-month period exceed 3,000 GPD, Salem may terminate this Agreement as a Material Breach pursuant to Section 9 of this Agreement.

**6. Increase in Quantity of Water**

If PEU wishes to increase the maximum quantity of water that it is permitted to purchase under Section 5, it shall provide Salem with written notice sufficient for Salem 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 Salem's own system. Such notice shall be given at least one (1) year in advance of the desired implementation date of the increase.

Salem shall respond to such a request within ninety (90) days, indicating whether it agrees to provide the additional supply. If, in its sole discretion, Salem agrees to increase the maximum quantity of water that may be taken by PEU, Salem and PEU shall negotiate in good faith to determine the price of any such increase based on the cost of the incremental capacity.

If the parties are unable to agree on the cost of the incremental capacity, Salem shall not be required to increase the maximum quantity provided for in Section 5. 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.

## 7. Rates, Fees and Expenses

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

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- (a) Water Usage Rate  
PEU shall pay the wholesale water usage rate set forth in the Regional Agreement, which is currently \$0.50 more per CCF than the combined rates charged by MWW and Derry for water usage. This rate will only be adjusted when the combined rate charged by MWW and Derry changes.
- (b) Customer Charge  
PEU shall pay a monthly customer charge equivalent to what PEU charges its customers in the Town of Windham. Currently, the monthly charge for a 3-inch compound meter is \$427.09. The monthly fixed charge will increase consistent with any PUC approved change in PEU's customer charge.
- (c) Invoices, Payments, and Disconnection of Service  
Salem 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 the Town of Salem's rules and regulations shall govern disconnection of service to PEU for non-payment.
- (d) Construction and Regulatory Expenses  
(i) PEU will pay for all the costs associated with the construction of the Meter/PRV vault interconnection;  
(ii) PEU will purchase 30,000 gallons of MSDC credits from the existing MSDC credits acquired by the Town of Windham via the Regional Agreement; and  
(iii) PEU will buy a three-inch compound meter and associated meter radio reader, meeting Salem's specifications and contribute it to Salem.
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## 8. 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.

For the avoidance of doubt, PEU agrees and acknowledges that any water provided to it by Salem shall be used only to provide service to customers within the Town of Windham who

are connected to W&E. 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 Salem's prior written consent.

**9. Termination**

- (a) Subject to the provisions of Section 9 (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 that is not cured, if curable, within the applicable cure period. A Material Breach shall include, but not be limited to, any covenant, warranty, or representation made herein by a Party that is untrue or inaccurate in any material respect.
- (b) In the event either Party wishes to terminate this Agreement by reason of a Material Breach by the other Party pursuant to this Section 9, 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 9 (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.

**10. 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.

**11. 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 11, duly executed by the Parties hereto. 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.

**12. Governing Law**

This Agreement shall be governed, construed and interpreted by, and in accordance with, the laws of the State of New Hampshire.

**13. 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 Salem, 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 Salem should be delivered as follows:

Town of Salem  
Salem Municipal Services  
21 Cross Street  
Salem, NH 03079  
Attn: Director, Roy E. Sorenson

Notices to PEU should be delivered as follows:

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

**14. Action Necessary to Complete Transaction**

PEU and Salem each covenant and agree to execute and deliver all 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.

**15. 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.

**16. 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.

17. 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.

18. 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 Agreement to be executed by their authorized representatives.

**PENNICHUCK EAST UTILITY, INC.**

Stacie Osslin  
Witness 2/7/2022

By: Donald L. Ware  
Name: Donald L. Ware  
Title: Chief Operating Officer  
Date: 2/07/2022

**TOWN OF SALEM, NH**

Maureen Witley  
Witness

By: Christopher Dillon  
Name: Christopher Dillon  
Title: Town Manager  
Date: 2/23/2022