

2023 Wholesale Water Supply Contract

This 2023 Wholesale Water Supply Contract ("Agreement") is made as of the 17 day of ~~JANUARY~~, 2023 by and between Pennichuck Water Works, Inc., a New Hampshire corporation with an address of 25 Walnut Street, Nashua, New Hampshire 03060 ("Company") and the Town of Hudson, acting by and through its Board of Selectmen, with a principal place of business at 12 School Street, Hudson, New Hampshire, 03051 ("Town").

WHEREAS, the Company and the Town are parties to a Wholesale Water Supply Contract dated July 12, 2005 ("2005 Contract"),

WHEREAS, the Company and the Town wish to terminate the 2005 Contract and enter into a new agreement under which the Company would continue to make water available to the Town 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 execution by both the Town and the Company, 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 two (2) years from July 1, 2021 ("Initial Term"), subject to extension of the term pursuant to Section 2 or termination pursuant to Section 2 or Section 10.
2. Renewal Terms. The term of this Agreement shall be automatically extended for three additional terms of two (2) years each (each a "Renewal Term") unless either party gives written notice to the other, at least twelve (12) 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 the Town under this Agreement shall be delivered by the Company to the Town at the point of interconnection between the Town's water system and the Company's water system on the Nashua side of the Taylor Falls Bridge ("Interconnection Point").
 - (b) The Company shall, at its own cost, install and maintain metering equipment ("Meter") on the West side of the Merrimack River in the Taylor Falls pumping station located approximately 700 feet westerly from the end of the Interconnection Point, which shall be used to measure the quantity of water taken by the Town on a monthly basis.
 - (c) In addition, the Company, which is the current owner and operator of the E Street Interconnect Station in Nashua, shall maintain it at its own cost. For any upgrades to the E Street Interconnect Station facility related to a capacity increase for the Town, the

Town shall pay a percentage of the total upgrade cost. The Town's percentage cost for the upgrade shall be calculated by dividing the Towns Total Required capacity, including the increase requested by the Town, by the sum of the Towns capacity plus the average of the last three years usage by PEU at the Sullivan Road Meter Pit. The percentage contribution by the Town shall be recalculated each time a station upgrade is required with the calculation being based on each party's usage from the year prior to the upgrade being completed.

(d) 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 the Town during normal business hours upon reasonable notice from the Town.

(e) The Town may have the accuracy of the Meter tested by an independent third party at the Town's expense at any time, but not more frequently than once each month, provided that the Town 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 the Town. 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 the Town accordingly.

(f) 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 the Town using a reasonable estimate of the flow based on past records and other relevant data for a comparable period.

4. Expansion of Service.

(a) The Town shall have the right, at its sole expense, to construct and connect transmission mains, main pipe extensions, hydrant branches and service connections located within Hudson to the Interconnection Point, in accordance with all applicable industry engineering standards and practices, to supplement its current service and provide additional service within the Town, but not to provide water service outside of the Town.

(b) For any future expansion of Company services, operations or infrastructure that may affect the Town's distribution system and or storage tanks, the Company shall provide the Town a summary of the planned expansion in writing for Town review and comment. If a Company water main expansion results in a necessary but unplanned upgrade to the Town's distribution system, then the Company shall be responsible for those upgrades.

5. Quantity of Water.

(a) Maximum Daily Demand. Subject to the provisions of Section 5(b) and Section 6, the Town shall have the right to take up to, but not in excess of, two million, one hundred thousand (2,100,000) 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.

(b) Maximum Peak Demand. At all times, the Town's peak draw at the Interconnection Point shall be limited to 1,460 gallons per minute; provided, however, that water taken for non-training firefighting purposes shall not be counted toward such allowable draw. If PWW, in its sole discretion, determines that, due to circumstances beyond PWW's reasonable control, its water supply is impaired, PWW may, upon twenty-four (24) hours' notice to the Town reduce the maximum volume that may be taken by the Town. PWW will promptly notify the Town when such circumstances cease to exist, and, thereupon, the rights of the Town to take water as set forth in this Section 3(a) shall be restored. In exercising its discretion concerning a reduction in the amount of water thereafter to be taken by the Town, PWW shall afford at least as favorable treatment to the Town as to its other wholesale water supply 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. The Town 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.

6. Increase in Quantity of Water. If the Town wishes to increase the maximum quantity of water that it is permitted to purchase under Section 5, 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 the Town, the Company and the Town 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 5. 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.

7. Fees. The Town shall pay the Company the following amounts for the water supplied or to be supplied by the Company under this Agreement:

(a) Demand Charge. The Town shall pay the Company an annual demand charge of \$457,441 (the "Annual Demand Charge") payable to the Company in equal monthly installments. The Demand Charge is subject to the determination 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 the Town 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 1.0 MGD requested by the Town the Demand Charge in that year will be reduced by the number of days where 1.0 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 the Town. 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 \$1.0093 per 100 cubic feet, for a minimum guaranteed of 487,968 CCF per year over a two-year period with the start date being the Initial Term date of July 1, 2021. The Volumetric Charge is subject to the determination of the Volumetric Rate by the NHPUC as part of the proceeding to approve this Agreement and such approval, if occurring after July 1, 2021, may require issuance of corrected bills to reflect the approved rate for usage as of July 1, 2021. In such an event, the difference in revenues between what was actually billed for service July 1, 2021 forward and what would have been billed under the new approved rates will be used to create a bill credit. This bill credit will be returned over the number of months that the credit was earned, similar to the minimum guaranteed usage credit described below.

The evaluation of minimum guaranteed usage shall be calculated in August of each year and shall look back over the Town's usage for the two preceding years from July 1 to June 30 and divided by 12 months. The Town will be billed each month for the number of days in that monthly billing cycle times 1,336.9 CCF per day times the approved volumetric charge. If the Town's actual usage for the month is less than 40,107 CCF (based on a 30-day month) the difference between the monthly billed volumetric consumption and the Town'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 the Town's actual consumption exceeds the minimum monthly consumption of 40,107 CCF. The Town will carry any credits due to offset monthly consumption for up to two years. If at the end of any two-year period the Town has a consumption credit at the end of that two year period that credit will be reset to zero for the start of the next two-year period. 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 Fixed Meter Charge shall be set at \$78.33 per month and reflects the cost to read and bill the Town on a monthly basis in addition to the cost to test the Town wholesale meters on an annual basis. The Monthly Fixed Meter Charge subject to the determination of the Monthly Fixed Meter Charge by the NHPUC as part of the proceeding to approve this Agreement. 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.

(d) Invoices. The Company shall bill the Town on a monthly basis for water taken by the Town 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.

8. Use of Mains and Boosters.

(a) The Town shall wheel water from the Company through the Town's transmission and distribution mains to limited service areas of Pennichuck East Utility, Inc. ("PEU"), an affiliate of the Company, in Litchfield, Pelham, Londonderry and Windham (limited service areas are as defined in Appendix "A" of this agreement) that are interconnected with the Town's water system, provided that the Company's right to transmit its water through the Town's distribution system shall be contingent upon such use not significantly reducing the pressure in the Town's distribution lines (more than 10% reduction in pressure). For any water wheeled by the Town through the Town's water system for the Company, the Company shall pay the Town the Volumetric Rate plus twenty percent (20%) of the Volumetric Rate set forth in Section 7. In addition, this rate shall be adjusted by the same percentage and effective as of the same dates as any adjustment in the rates paid by core system customers in the City of Nashua.

(b) The Company shall reimburse the Town every year for a percentage of the any capital improvements completed in that year related to the Route 102 Booster station, also known as Hickory Station, located in Hudson. The reimbursement percentage shall be based on water usage used by PEU in Londonderry via the West Road Meter Pit divided by the total flow through the Hickory Road Booster Station. The Company shall reimburse the Town for any Capital improvements completed over the past 12 months from the date of this contract approval in accordance with the formula defined in this paragraph.

9. Assignment and Sale. The Town agrees that any water provided to it by the Company shall be used only to provide service to customers within the Town who are served by the Town's water system. No water shall be sold by the Town, either directly or indirectly, to any private or investor owned water utility, municipality, village district or individual doing business or residing outside of the Town for any purpose without the Company's prior written consent.
10. 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.
11. 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 the Town. 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 the Town 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. The Town 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. Upon taking effect, this Agreement shall supersede and terminate the 2005 Contract in its entirety.

[Signature Page to Follow]

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

PENNICHUCK WATER WORKS, INC.

Donald K. Ware
Witness

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

**TOWN OF HUDSON,
By Its Board of Selectmen**

[Signature]
Witness

By: [Signature]
Selectman

[Signature]
Witness

By: [Signature]
Selectman

[Signature]
Witness

By: [Signature]
Selectman

Witness

By: _____
Selectman

Witness

By: _____
Selectman

Jill A. Laffin
Notary Public, State of New Hampshire
My Commission Expires June 30, 2026