

SPECIAL CONTRACT – WATER
CONTRACT NO. NHPUC 2023-2
PENNICHUCK WATER WORKS, INC.

WITH
TOWN OF MILFORD

Date of Signature: February 8, 2023

Effective Date: February 6, 2023

Date of Termination: Five (5) years (“Initial Term”), then three (3) automatic renewals of five (5) years each (each a “Renewal Term”), unless written notice not to renew is given no later than six (6) months prior to the conclusion of the then-existing term.

Authorized in: Docket No. DW 22-070

NHPUC Order No. 26,763

Order Dated: January 20, 2023

WHOLESALE WATER SUPPLY CONTRACT
Between
PENNICHUCK WATER WORKS, INC.
AND
TOWN OF MILFORD

WHEREAS, the Town of Milford (“Town”) is desirous of maintaining to a source of supply for its residents and

WHEREAS, Pennichuck Water Works, Inc. (“PWW”) currently provides water directly to the Town through an existing pumping station and water main that was constructed by PWW and paid for by the Town in accordance with an agreement between PWW and the Town contract dated June 8, 1987; and

WHEREAS, the Town desires to continue to purchase water directly from PWW via the existing 16” interconnection between PWW and the Town; and

WHEREAS, the existing contract between the PWW and the Town expires on February 6, 2023; and

WHEREAS, the pumping station constructed in 1987 has reached the end of its useful life and must be rebuilt to continue to provide service to the Town; and

WHEREAS, PWW and the Town (together, “Parties” or individually, “Party”) now desire to enter into this Wholesale Water Supply Contract (“Agreement”) to set forth the terms, conditions, and rates with respect to PWW’s supply of water to Town for the purpose of supplying potable water to the Town’s water customers.

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 Execution Date and in accordance with the NHPUC Order 26,763 as issued by the NHPUC on January 20, 2023 (the “Approval Date”) for effect February 6, 2023 (“Execution Date”). The initial term of this Agreement shall commence on the Execution Date hereof and shall continue for a period of Five (5) years (the “Initial Term”). Upon completion of the Initial Term, this Agreement shall automatically renew for three (3) additional successive terms of five (5) 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 the Town to PWW 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 PWW to the Town under this Agreement shall be delivered by PWW to the Town at the point of interconnection (“Interconnection Point”) between the Town’s water system and the PWW’s water system as shown on the attached plan, which is made a part hereof as Attachment A. The point of interconnection shall be at a point 10’ outside of the new water booster station (“Station”) along the suction side piping. The Town will own the new Station, including the 10’ of water main on the suction side of the Station leading into the Station from the point of interconnection. The Station will be located in Milford.

The Station shall be designed using the following parameters:

- i. The Station shall be designed to produce a maximum flow rate of 0.90 MGD (625 GPM) with redundancy such that with the largest pump out of service the Station shall still be capable of producing 0.90 MGD.
- ii. The Station shall be above grade.
- iii. The Station shall be controlled via the use of Supervisory Control and Data Acquisition (SCADA) by the Town. PWW shall be provided with a view node of the Station SCADA system at PWW’s Nashua Water Treatment Plant. The Station SCADA control scenario shall be approved by PWW.
- iv. The Station will be completed and in service prior to December 31, 2026.
- v. Once the Station is completed the existing station (Existing Station) will be abandoned in place by:
 - a. Disconnecting the Existing Station piping from the exterior piping and installing new 16” CL51 zinc coating cement lined ductile iron water main around the Existing Station to bypass it.
 - b. Disconnecting the electrical service from the Existing Station.
 - c. Filling the Existing Station with crushed stone.
 - d. Grading, loaming and seeding all areas disturbed in discontinuing the Existing Station.
- vi. A meter will be installed in the Station to record the sale of water to the Town. PWW will be responsible for maintaining and testing the metering equipment (“Meter”) within the Booster Station, which shall be used to measure the quantity of water taken by Town on a monthly basis.
 - i. The Meter shall be inspected and calibrated by PWW in accordance with the applicable regulations of the NHPUC. A copy of any inspection and calibration reports shall be available at PWW’s principal office for examination by the Town during normal business hours on reasonable prior written notice from the Town.

- ii. 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 PWW at least seven (7) days advance written notice of its desire to test the Meter for each test. PWW 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 PWW was present). If the Meter reads within the specifications established by the NHPUC, then the cost of such test shall be borne by the Town. If the Meter does not meet the specifications established by the NHPUC, then PWW 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 Milford. If there is a discrepancy between the tests, then PWW's independent inspector's test results and the Town's test information shall be submitted to the NHPUC for resolution if the parties do not agree. If PWW accepts the results provided by Milford or if PWW's independent results also reflect that the Meter does not meet the specifications established by the NHPUC, then PWW shall adjust its next bill to Milford 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 Milford test shall be paid by PWW.
- iii. In the case of missing or inaccurate flow records due to a faulty Meter or other malfunctioning-related circumstances, PWW shall calculate the payments due from Milford 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 Milford and shall be binding on the Parties.

3. Quantity of Water

- (a) Maximum Daily Demand Subject to the provisions of Section 3(b), The Town shall have the right to take up to, but not in excess of 350,000 gallons of water per day ("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).
- (b) Maximum Peak Demand At all times, the Town's peak draw at the Interconnection Point shall be limited to 625 GPM 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).
- (c) If PWW, in its sole discretion, determines: (i) that its water supply is inadequate to serve the needs of the Town; or (ii) 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 Town to take water as set forth in Sections 3(a) and 3(b) shall be restored. In exercising its discretion concerning a reduction in the amount of

water thereafter to be taken by Town, PWW shall afford at least as favorable treatment to Town as to its Nashua Retail 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 provided the supply inadequacy was not foreseeable and beyond PWW's control.

4. **Increase in Quantity of Water**

If Town wishes to increase the maximum quantity of water that it is permitted to purchase under Section 3, it shall provide PWW with written notice sufficient for PWW 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 PWW's own system. Such notice shall be given at least one (1) year in advance of the desired implementation date of the increase. PWW shall respond to such a request within ninety (90) days, indicating whether it agrees to provide the additional supply. If PWW agrees to increase the maximum quantity of water that may be taken by the Town, PWW 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, PWW shall not be required to increase the maximum quantity provided for in Section 3. 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.

5. **Fees and Construction Expenses**

The Town shall pay PWW the following amounts for the water supplied by PWW under this Agreement:

- (a) The Base Annual Fixed Fee will be \$105,943 subject to the determination of the Base Annual Fixed Fee by the NHPUC (the "Base Annual Fixed Rate") as part of the proceeding to approve this Agreement. PWW may only adjust the Base Annual Fixed Fee in the event a new cost of service allocation study is obtained by PWW (a "Cost of Service Study" or "COSS") and approved by the Commission in direct response to a 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 including, for example, one or more of PWW's Nashua water treatment plant, the Pennichuck Brook Dams or the Merrimack River Raw Water pumping station. The Base Monthly Fixed Fee shall only be adjusted to the extent that the material upgrade is necessary to comply with the regulations and as adjudicated by the Commission and is directly attributable to the Town's cost of service.
- (b) The Town guarantees a minimum daily base usage of 120,000 gallons per day (equal to 160.4 hundred cubic feet ("CCF") per day) each fiscal year for the duration of this contract or a minimum annual purchase volume of 58,556 CCF. Each fiscal year shall begin on September 1st of each year and ending

on August 31st of the following calendar year. In the event that the daily usage of the Town is less than an average of 160.4 CCF/day over any monthly billing period within any fiscal year, the Town will pay the Volumetric Rate (defined in para. 5(c)) for 160.4 CCF/day for that month and the Town will carryover a usage credit into the next month in the amount of the difference between the 160.4 CCF/day paid for in the previous month's bill and the actual CCF/day usage in the month's bill. Credits will carry over month to month during each Fiscal year. There will be no carryover volumetric credit from fiscal year to fiscal year during the Term (i.e., from August to September). If any carryover volumetric credits exist at the end of August, then that credit will be zeroed out going into September of the next fiscal year.

- (c) The initial Volumetric Rate will be \$1.6669 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 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).
- (d) The Monthly Fixed Meter Charge ("MFMC") shall be set at \$66.17 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 meter on an annual basis (based on the use of a 4" water meter). Thereafter, the MFMC 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 PWW charges to its core system customers in the City of Nashua.
- (e) Invoices, Payments, and Disconnection of Service
 - i. PWW shall bill the Town in arrears on a monthly basis for water taken by the Town pursuant to this Agreement. Payment shall be due thirty (30) days after the Town's receipt of each invoice and amounts unpaid shall be subject to one (1%) percent interest per month on the unpaid balance from the date of the Town's receipt of such invoice. The procedures set forth in NHPUC rule Puc 1203.11 shall govern disconnection of service for non-payment.
 - ii. With respect to payments relating to the minimum guaranteed purchase of 58,556 CCF, in the event that Town does not use the allotted base volume of 120,000 GPD or 43,800,000 gallons per year (58,556 CCF per year) over the course of a fiscal year, then the Town will be required to make a payment within forty-five (45) days of the end of the fiscal year (October 15th) for the shortage in usage between the minimum required usage of 58,556 CCF and the actual usage for that fiscal year.

(f) Construction and Regulatory Expenses

- i. The Town will pay 100% of the costs associated with the design, permitting, construction, operation and maintenance of the New Station.
- ii. PWW will purchase and provide the four-inch turbine meter to be installed in the Station to the Town.
- iii. Milford will pay 100% of the costs of the COSS which was required to develop the special contract. The cost of the COSS will be incorporated into the Base Annual Fixed Fee defined in 5.(a) of this Agreement. The portion of the Base Annual Fixed Fee associated with the COSS will be based on 1.1 times the principal and interest associated with this cost based on a term of 20 years and an interest rate equal to the effective interest rate associated with the PWW bonds sold in 2022.
- iv. Milford will pay 100% of the legal costs of the COSS associated with obtaining regulatory approval of the Wholesale Water Supply Contract which was required to develop the special contract. The legal costs will be incorporated into the Base Annual Fixed Fee defined in 5.(a) of this Agreement. The portion of the Base Annual Fixed Fee associated with the legal costs will be based on 1.1 times the principal and interest associated with this cost based on a term of 20 years and an interest rate equal to the effective interest rate associated with the PWW bonds sold in 2022.
- v. PWW will pay 100% of the cost to demolish the existing station defined in 2. v. of this Agreement.

6. 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, the Town agrees and acknowledges that any water provided to it by PWW shall be used only to provide service to its customers within the Town of Milford or to PWW owned water systems located in the Towns of Milford and Amherst.

7. Termination

- (a) Subject to the provisions of Section 7(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 7(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 7(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.

- (c) If the Station (referenced in para. 2 of this Agreement) is not completed and placed into service on or before the 12/31/2026, the Town will be considered in breach of contract and PWW will have the right to terminate this contract within 90 days of notice being delivered to the Town as defined in paragraph 7(b) above. Until the Station has been constructed and placed into service, the Town will be responsible for paying for any repair to the existing station that exceeds \$2,500. Before PWW makes any repair to the existing station that is expected to be \$2,500, PWW will inform the Town of the required repair and the estimated cost of the repair. If the existing station piping is leaking and the Town does not authorize the repair of the leaking piping, PWW will have the right to take the existing station offline until the leaking station piping has been repaired. PWW will have no obligation to deliver any water to the Town until the leak repair to the station piping has been completed. If the Town does not authorize PWW to complete, other than leaking piping, and the failure to make the repair impairs PWW's ability to deliver water to the Town, then PWW will not be held liable to deliver the water stipulated in this Agreement until the required repair to the existing station has been completed.
- (d) If this Agreement is terminated prior to 20 years from its effective Date, the Town will reimburse PWW for any outstanding debt associated with the Construction and Regulatory expenses noted in paragraphs 5(f) iii and iv, above, of this Agreement.

8. **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.

9. **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 9, 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.

10. **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.

11. **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 PWW or Town, 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 PWW should be delivered as follows:

Pennichuck Water Works, Inc.
25 Walnut Street
P.O. Box 428
Nashua, NH 03061-0428
Attn: Chief Executive Officer

Notices to Town should be delivered as follows:

Town of Milford,
Milford Water Department
564 Nashua Street
Milford, NH 03055
Attn: Director of Water Utilities

12. **Action Necessary to Complete Transaction**

Milford and PWW 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.

13. 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.

14. 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.

15. 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.

16. 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 Wholesale Water Supply Contract to be executed by their authorized representatives as of the Execution Date.

PENNICHUCK WATER WORKS, INC.

Donald L. Ware
Witness

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

**Town of Milford
Water and Sewer Commission**

[Signature]
Witness

By: [Signature]
Name: Dale A. White
Title: Commission Chair

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