



RESOLUTION

RATIFYING THE AGREEMENT BETWEEN THE CITY OF NASHUA AND TOWN OF MILFORD, NEW HAMPSHIRE ENTITLED "WATER SUPPLY AND INDEMNITY AGREEMENT" PERTAINING TO THE ACQUISITION OF PENNICHUCK WATER WORKS, INC.

CITY OF NASHUA

In the Year Two Thousand and Eight

RESOLVED by the Board of Aldermen of the City of Nashua that the Mayor, Bernard A. Streeter, was duly authorized to execute, on behalf of the City of Nashua, the "Water Supply and Indemnity Agreement" between the City of Nashua and the Town of Milford, New Hampshire and his execution of that Agreement on January 4, 2008 is hereby approved and ratified.

WATER SUPPLY AND INDEMNITY AGREEMENT

THIS WATER SUPPLY AND INDEMNITY AGREEMENT is made as of this ____ day of December, 2007 by and between the Town of Milford, a municipal corporation established and existing under the laws of New Hampshire (hereinafter referred to as “Milford”), with an address of Town Hall, One Union Square, Milford, New Hampshire 03055, and the City of Nashua, a municipal corporation established and existing under the laws of New Hampshire (hereinafter referred to as “Nashua”), with an address of City Hall, 229 Main Street, Nashua, New Hampshire 03060.

RECITALS:

WHEREAS, Milford has entered into an Agreement with Pennichuck Water Works, Inc., a public water system located primarily in Nashua and Merrimack, New Hampshire (“Pennichuck”), dated as of March 21, 2002, pertaining to the provision of water supply for Milford, which Agreement is attached hereto as Attachment A (the “Pennichuck Agreement”); and

WHEREAS, Nashua desires, pursuant to RSA 38, to acquire by eminent domain and operate the existing public water system currently owned and operated by Pennichuck; and

WHEREAS, Milford desires to contract with Nashua, and Nashua desires to contract with Milford, that, should the New Hampshire Public Utilities Commission (the “NHPUC”) approve Nashua’s pending RSA 38 petition, Nashua will assume the obligations of Pennichuck under the Pennichuck Agreement and will provide water supply and related services to Milford upon and subject to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Agreement Conditional Upon NHPUC Approval. The effectiveness of this Agreement is conditioned upon the receipt of final, non-appealable approval of Nashua’s pending RSA 38 petition.

2. Taking and Continuity of Water Supply. Upon the occurrence of the condition set forth in Section 1 above, and Nashua's subsequent acquisition, directly, indirectly, or by or through a successor-in-interest to Nashua, of water supply assets currently owned and operated by Pennichuck, such that Pennichuck's performance of its obligations under the Pennichuck Agreement is excused, frustrated, or rendered impracticable (in any case, a "Taking"), Nashua shall assume and thereafter perform all obligations of Pennichuck under the Pennichuck Agreement and provide Milford with water supply and related services pursuant to the terms and conditions of the Pennichuck Agreement, with the exception of the termination clause in Section 5 thereof which shall no longer have any force or effect, and Nashua shall also perform all of the additional terms and conditions set forth in this Agreement. For the avoidance of doubt, Nashua agrees hereunder to fully perform each all of the obligations of Pennichuck under the Pennichuck Agreement as if Section 5 thereof had never been included therein.

3. Continued NHPUC Regulatory Jurisdiction. Nashua acknowledges and agrees that the NHPUC has and will maintain regulatory jurisdiction over Nashua's provision of water supply and related services to Milford.

4. No Challenge to NHPUC Jurisdiction. Nashua agrees not to initiate, instigate, support, or sponsor, directly or indirectly, any suit, action, appeal, collateral attack, legislation, or other effort to challenge, negate, restrict, limit, or remove the jurisdiction of the NHPUC over Nashua's provision of water supply and service to Milford.

5. Indemnification. Nashua and its successors, transferees and/or assigns shall indemnify, defend and hold harmless Milford from and against any and all claims, demands, damages, liabilities, suits, actions, causes of action, proceedings, rate increases (except those specifically contemplated by the Pennichuck Agreement), costs and expenses, including, without limitation, reasonable attorney's fees and expenses (collectively, the "Indemnified Losses"), asserted against or incurred by Milford arising from, related to, or as a direct or indirect result of the breach of any obligation, covenant, representation, or warranty contained in the Pennichuck Agreement and/or this Agreement by Nashua, or by any of its permitted assignees, successors or transferees. In the event that the NHPUC declines, whether or not on its own motion, to exercise regulatory jurisdiction over Nashua's provision of water supply and related services to Milford for the term of the obligations assumed and agreed to be performed by Nashua hereunder, this Agreement, the Pennichuck Agreement and such obligations shall be enforceable by petition to the Hillsborough County

Superior Court, Southern District, and Nashua and its successors, transferees and/or assigns shall indemnify and hold Milford harmless against any Indemnified Losses incurred by Milford arising from, related to, or as a direct or indirect result of any such declination of jurisdiction. The rights and obligations of the parties under this Section 5 shall survive the expiration or any earlier termination of this Agreement.

6. Assignment. Neither party hereto may assign or transfer this Agreement and/or the Pennichuck Agreement, or any of its rights or obligations hereunder or thereunder, in whole or in part, without the prior written consent of the other party, except as provided for below. Any transfer, conveyance or assignment by Nashua of all or any substantial part of the former assets of Pennichuck to the Merrimack Valley Regional Water District or to any other entity shall be completed only if the transferee, grantee, or assignee of such assets has agreed in writing to assume and perform each and all of the obligations of Nashua hereunder, and no such transfer, conveyance, or assignment shall relieve Nashua of its obligations to Milford hereunder.

7. Binding Effect, Transfer and Succession. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted transferees and assigns. The obligations of Nashua under this Agreement and the Pennichuck Agreement shall be binding upon any acquiror or transferee of any of the water supply assets used, useful and/or usable by Nashua to provide water supply and related services to Milford hereunder, and any instrument purporting to convey any such assets shall include an explicit agreement by the acquiror or transferee to be bound to perform Nashua's obligations under this Agreement and the Pennichuck Agreement. It is understood and agreed by both parties to this Agreement that any such acquisition, transfer, or assignment shall in no way amend, modify, compromise, diminish, or alter this Agreement and/or the Pennichuck Agreement, or any of the terms and conditions hereof or thereof.

8. Notices. Any notice, request, report, or other document required or permitted under the this Agreement and/or the Pennichuck Agreement shall be in writing and sent by certified mail, return receipt requested, postage prepaid and addressed to the individuals identified and at the addresses set forth in Attachment B to this Agreement (or to such other address as either party may hereafter designate by written notice given as aforesaid), and such notice shall be deemed effective upon receipt.

9. Entire Agreement; Amendment. This Agreement and the assumed provisions of the Pennichuck Agreement contain the entire agreement between the parties hereto with respect to the subject matter hereof and supersede any and all prior or contemporaneous negotiations, discussions, representations, understandings and agreements, whether written or oral, between the parties with respect to such subject matter, all of which are merged herein. No amendment, modification, change, or addition to this Agreement or the Pennichuck Agreement shall be effective unless made in a written instrument signed by both the Town of Milford Board of Selectmen and the Mayor or Board of Aldermen for City of Nashua.

10. Severability. In the event that any one or more of the provisions contained in this Agreement and/or the Pennichuck Agreement shall, for any reason, be held by the NHPUC or a court of competent jurisdiction in a final, non-appealable ruling to be invalid, illegal, or unenforceable in any respect, such provision(s) shall be modified or amended only to the extent necessary to remove the invalidity, illegality, or unenforceability. Should such amendment or modification of such provision(s) be impossible, this Agreement and the Pennichuck Agreement shall be construed as if it never contained the invalid, illegal, or unenforceable provision(s), and such provision(s) shall not affect any other provision of this Agreement and/or the Pennichuck Agreement.

11. Governing Law. This Agreement is made and executed in the State of New Hampshire, and the validity, interpretation, performance, and enforcement thereof shall be construed in accordance with, and shall be governed by and enforced under, the substantive laws of the State of New Hampshire, without regard to the conflicts of law principles of said State or of any other jurisdiction.

12. Jurisdiction and Venue. The parties hereto agree that jurisdiction and venue to interpret and enforce this Agreement and/or the Pennichuck Agreement lie with the NHPUC and the Hillsborough Superior Court Southern District for the State of New Hampshire, and the parties hereby waive any objection to such jurisdiction and venue, including any objection to an inconvenient forum. If the NHPUC declines to exercise jurisdiction over claims arising under over this Agreement and/or the Pennichuck Agreement, or if for any reason its jurisdiction over claims arising under this Agreement and/or the Pennichuck Agreement is negated, restricted, limited, or removed, then claims arising under this Agreement and the Pennichuck Agreement

shall be subject to the exclusive jurisdiction and venue of the Hillsborough Superior Court for the State of New Hampshire and shall be interpreted and enforced thereby.

13. Right to Specific Performance. Nashua acknowledges that the unique and particular nature of the water supply and related services to be provided by Nashua to Milford under this Agreement and the Pennichuck Agreement renders money damages an inadequate remedy for the failure by Nashua to perform its obligations under this Agreement and the Pennichuck Agreement, and that Milford otherwise lacks an adequate remedy at law for Nashua's failure to perform such water supply and related service obligations for the benefit of Milford. Nashua agrees that, in the event of any such failure by Nashua to perform such water supply and service obligations under this Agreement and the Pennichuck Agreement, Milford shall be entitled to obtain a decree of specific performance of this Agreement, and/or an injunction or other similar equitable remedy, without the posting of any bond or other security or assurance therefor. The foregoing rights and remedies are in addition to, and not in limitation of or to the exclusion of, any of Milford's other rights and remedies under this Agreement and/or the Pennichuck Agreement, at law, or in equity.

14. Waiver. None of the provisions of this Agreement or the Pennichuck Agreement may be waived except in a writing signed by the party against which waiver is sought to be enforced. In the case of the Town of Milford, no waiver shall be valid unless in writing, signed and authorized by its Board of Selectmen. In the case of the City of Nashua, no waiver shall be valid unless in writing, signed and authorized by its Mayor or Board of Aldermen. The failure of a party to enforce any right arising under this Agreement and/or the Pennichuck Agreement on any one or more occasion(s) shall not operate as a waiver of that or any other right on that or any other occasion.

15. Rights Cumulative. Unless expressly stated to the contrary therein, all rights and remedies of the parties under this Agreement and/or the Pennichuck Agreement shall be cumulative, and the exercise of one or more rights or remedies shall not preclude the exercise of any other right or remedy available under this Agreement and/or the Pennichuck Agreement, at law, or in equity.

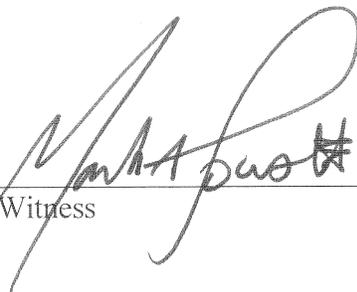
16. Representations and Warranties. Each party represents and warrants to the other party that its execution, delivery, and performance of this Agreement have been duly authorized and

approved by all necessary actions of its governing body and/or its legislative body, and any other required agency or entity, that this Agreement represents the binding obligation of such party, enforceable in accordance with its terms and conditions, and that the performance of its obligations hereunder will not contravene any contract, agreement, bond, indenture or other commitment to which it is a party or by which it or any of its properties is bound or subject.

17. Captions. The section headings and captions of this Agreement are for convenience of reference only and do not constitute a part of this Agreement and shall not affect the interpretation or construction of any term or provision of this Agreement.

18. Counterparts. This Agreement may be executed in one or more counterparts, and by the parties hereto on separate counterparts, each of which shall be deemed an original for all purposes, but all of which together when fully executed shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by and through their respective duly authorized representatives as of the date first written above.



Witness

CITY OF NASHUA

By Its Mayor and Board of Aldermen

By: 

Name: BERNARD A. STREETE
Title: MAYOR

Duly Authorized

TOWN OF MILFORD

By Its Board of Selectmen

Witness

By: _____

Name: _____

Witness

By: _____

Name: _____

Witness

By: _____

Name: _____

Witness

By: _____

Name: _____

Witness

By: _____

Name: _____

ATTACHMENT A
PENNICHUCK AGREEMENT

AGREEMENT

AGREEMENT made as of this 25th day of March, 2002 by and between the Town of Milford, a municipal corporation established and existing under the laws of New Hampshire (hereinafter referred to as "Milford"), and Pennichuck Water Works, Inc., a New Hampshire corporation with its principal place of business in Nashua, New Hampshire (hereinafter referred to as the "Company").

WITNESSETH:

WHEREAS Milford desires that the Company provide it with water service to the extent stated herein; and

WHEREAS the Company is engaged in business as a public utility in the State of New Hampshire in gathering and distributing water to the public and is willing to undertake to provide the desired source of water service to the Town of Milford upon the terms and conditions and subject to certain contingencies set forth herein; and

WHEREAS Milford desires that the water service continue to be available on an uninterrupted basis, pursuant to this Agreement, and for this Agreement to become effective on April 1, 2002.

NOW, THEREFORE, Milford and the Company, for and in consideration of the mutual covenants and agreements set forth herein, do hereby agree as follows:

1. Volume of Use

Milford shall have the right to take up to, but not in excess of, 1,389 gallons per minute (2 million gallons per day), provided that takings in excess of 1,389 gallons per minute for fire fighting purposes, or other declared emergencies shall not be deemed a violation of the provisions of this paragraph. In the event the Company's water supply is impaired due to unusual circumstances beyond the reasonable control of the Company, the Company shall have the right, in its discretion upon twenty-four hours notice to Milford, to temporarily reduce the

amount thereafter to be taken by Milford. The Company will promptly notify Milford when the circumstances which lead the Company to its decision to so reduce takings by Milford have ceased to exist, and, thereupon, the rights of Milford to take water as herein set forth shall be restored.

It is recognized that during the term of this Agreement the parties intend that the Company provide Milford with a supplemental source of water service and that Milford will continue to use its present source of supply, absent unusual circumstances or the temporary malfunction of its wells or related equipment. Milford agrees to provide the Company with reasonable notice of any unusual circumstance or malfunction of equipment which would necessitate its use of the Company's source of water for purposes other than as a supplemental source of supply. In the event Milford expects its consumption requirements to exceed 1,389 gallons per minute, Milford shall provide the Company with notice sufficient for the Company to evaluate the capacity of its facilities to produce water to meet the demands of such increased consumption, said notice to be made at least six months 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 will agree to provide additional supply. The Company retains the right to refuse to increase the supply.

2. Effective Date, Term and Extension Periods

This Agreement shall take effect on April 1, 2002 and shall remain in effect until Twenty (20) years after the date that water service is first available to Milford hereunder. The above Agreement shall automatically renew for each of two (2) ten (10) year extensions unless a party gives written notice to the other party of its desire to terminate the Agreement at least twelve (12) months prior to the expiration date. Commencing on the date that water service is first available to Milford and continuing for the life of this Agreement, Milford agrees to pay a minimum fixed amount of Eighty-one Thousand Dollars (\$81,000) per year in equal monthly installments to the Company in consideration of the aforementioned capacity.

3. Volumetric Charge

For all water taken by Milford, in addition to the minimum fixed amount referenced above, Milford shall pay the rate of \$0.97 per 100 cubic feet, the Company's "production cost", excluding administrative and general cost. This rate shall change from time-to-time in pro rata accordance with the Company's tariff, and published rate, on file with the New Hampshire Public Utilities Commission ("NHPUC") in effect in the City of Nashua.

If Milford uses in excess of 450,000 gallons per day for a period in excess of one year, the Company agrees to conduct a cost of service study. Based upon this cost of service study and conditioned upon continued use in excess of 450,000 gallons per day the Company agrees to discuss modification of the above referenced rate. Any change in the rates shall be subject to the approval of the NHPUC.

4. Contingencies

This Agreement is subject to approval of the New Hampshire Public Utilities Commission.

5. Condemnation

It is understood that the City of Nashua and the Towns of Milford, Amherst, and Merrimack have a statutory right under RSA 38 to acquire the plant and properties of the Company located within their respective municipal areas, which, if so acquired, could make it impossible for the Company, thereafter, to render water service to Milford under the terms of this Agreement. It is agreed that any condemnation of the Company's plant and property by Milford will not relieve Milford of its obligation for payment, subject to the conditions expressed in the paragraph 2 above, to the Company of the monthly installments for the term of the Agreement to the extent that any purchase price agreed on or directed by the statutory process does not include consideration of this debt. If plant or property of the Company is so acquired by any of the aforementioned municipalities other than Milford, and such acquisition directly and adversely affects the ability of the Company to provide water service to Milford, the obligations of the

parties under the terms of this Agreement shall cease and terminate.

6. Restrictions of Use

Milford agrees that the Company shall not be obligated to provide water service to any other municipality or water company by virtue of any assignment by Milford of its rights under this Agreement or any contract of sale of water by Milford to any other municipality or any other commercial use of water outside the municipality unless the Company consents in writing.

Recognizing that the service provided by the Company is subject to environmental and other factors beyond the Company's control, it is agreed that Milford shall not be entitled to compel the Company to supply it with water as a result of the Company's determination that its ability to meet supply is impaired. In any such circumstances, however, Milford shall receive a pro rata credit for any decrease in supply during the period of restriction or impairment of supply on a per diem basis against the minimum fixed amount for that period.

Milford shall impose on its customers, which receive water supplied by the Company pursuant to this Agreement, the same restriction on water use which the Company shall impose from time to time on its core system customers.

7. Regional Interconnection

The Company shall have the right to utilize water mains within the municipality provided that it does not diminish water supply, pressure or quality to the municipality. The Company shall pay the town a fee for use of the municipality's water mains, to be negotiated at such time as such access is required based upon Milford's cost-of-service.

8. Integration Clause

This instrument constitutes the entire Agreement between the parties and is executed by each with reliance upon any representations made by either to the other during the course of the negotiations with respect thereto.

9. Successor Clause

In the event of a sale of all or part of Pennichuck Water Works, Inc. assets, it is

understood and agreed to by both parties to this Agreement, that such a sale shall in no way compromise, diminish or alter this contract or conditions thereof.

10. Severability Clause

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.

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.

Witness

By: Stephany J. Denlinger
Its: Vice Pres.

TOWN OF MILFORD,
By Its Board of Selectmen

Witness

By: [Signature]
Selectman

Witness

By: John S. Puro
Selectman

Witness

By: Nancy A. Amato
Selectman



Witness

By: Noreen A O'Connell
Selectman



Witness

By: Cynthia H
Selectman

ATTACHMENT B

Notices, requests, reports, or other documents required or permitted under the foregoing Water Supply and Indemnity Agreement shall be directed to:

For Milford:

Milford Board of Selectmen
Town Hall
One Union Square
Milford, NH 03055

For Nashua:

[Name]
City Hall
229 Main Street
Nashua, NH 03060