



February 12, 2018

VIA E-FILE

**David P. Zambito**

Direct Phone 717-703-5892

Direct Fax 215-989-4216

dzambito@cozen.com

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
Harrisburg, PA 17120

**Re: Joint Application of Aqua Pa. and the Borough of Phoenixville for approval of 1) the acquisition by Aqua of the water system assets of Phoenixville used in connection with water service provided by Phoenixville in East Pikeland and Schuylkill Townships, Chester County, and in Upper Providence Township, Montgomery County, PA; and 2) the right of Aqua to begin to supply water service to the public in portions of East Pikeland Township, Chester County, and Upper Providence Township, Montgomery County, PA and 3) the abandonment by Phoenixville of public water service in East Pikeland Township, Chester County, and in Upper Providence Township, Montgomery County, and to certain locations in Schuylkill Township, Chester County, PA; Docket Nos. A-2018-2642837 and A-2018-2642839**

**PROTEST OF PENNSYLVANIA-AMERICAN WATER COMPANY**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission, please find Pennsylvania-American Water Company's Protest in the above-referenced proceeding. A copy of this document has been served in accordance with the attached Certificate of Service.

If you have any questions regarding this filing, please direct them to me. Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR

By: David P. Zambito

Counsel for *Pennsylvania-American Water Company*

DPZ:kmg  
Enclosure

cc: Per Certificate of Service  
Brian A. Ardire, Esquire

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of Aqua Pa. and the Borough of :  
Phoenixville for approval of 1) the acquisition by Aqua of :  
The water system assets of Phoenixville used in :  
Connection with water service provided by Phoenixville in :  
East Pikeland and Schuylkill Townships, Chester County, : Docket Nos. A-2018-2642837  
And in Upper Providence Township, Montgomery County, : and A-2018-2642839  
PA; and 2) the right of Aqua to begin to supply water :  
Service to the public in portions of East Pikeland :  
Township, Chester County, and Upper Providence :  
Township, Montgomery County, PA and 3) the :  
Abandonment by Phoenixville of public water service in :  
East Pikeland Township, Chester County, and in Upper :  
Providence Township, Montgomery County, and to certain :  
Locations in Schuylkill Township, Chester County, PA :

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing Protest of Pennsylvania-American Water Company, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**VIA FIRST CLASS MAIL:**

Thomas T. Niesen, Esquire  
Thomas, Niesen and Thomas, LLC  
212 Locust Street, Suite 302  
Harrisburg, P A 17101  
Counsel for *Aqua Pennsylvania, Inc.*


Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5<sup>th</sup> Floor  
Harrisburg, PA 17101-1923

Adeolu A. Bakare, Esquire  
McNees, Wallace and Nurick, LLC  
100 Pine Street  
Harrisburg, PA 17101  
Counsel for *Borough of Phoenixville*

Office of Small Business Advocate  
Commerce Building, Suite 202  
300 North Second Street  
Harrisburg, PA 17101-1303

Bureau of Investigation & Enforcement  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor West  
Harrisburg, PA 17120

DATED: February 12, 2018

  
\_\_\_\_\_  
David F. Zambito, Esquire  
Counsel for *Pennsylvania-American Water Company*

## VERIFICATION

I, Andrew L. Swope, hereby state that the facts set forth above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: February 12, 2018



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of Aqua Pa. and the Borough of :  
Phoenixville for approval of 1) the acquisition by Aqua of :  
The water system assets of Phoenixville used in ;  
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East Pikeland and Schuylkill Townships, Chester County, :     Docket Nos. A-2018-2642837  
And in Upper Providence Township, Montgomery County, :     and A-2018-2642839  
PA; and 2) the right of Aqua to begin to supply water :  
Service to the public in portions of East Pikeland :  
Township, Chester County, and Upper Providence :  
Township, Montgomery County, PA and 3) the :  
Abandonment by Phoenixville of public water service in :  
East Pikeland Township, Chester County, and in Upper :  
Providence Township, Montgomery County, and to certain :  
Locations in Schuylkill Township, Chester County, PA :

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**PROTEST OF PENNSYLVANIA-AMERICAN  
WATER COMPANY**

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TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW COMES Pennsylvania-American Water Company (“PAWC”), by and through its counsel, Cozen O’Connor, to file this Protest (“Protest”), pursuant to 52 Pa. Code §§ 3.502 and 5.51 *et seq.*, to the Joint Application referenced above (the “Application”). In support thereof, PAWC states as follows:

1. The name and address of PAWC is:

Pennsylvania-American Water Company  
800 West Hersheypark Dr.  
Hershey, PA 17033

2. The names, business addresses, and contact information of PAWC's attorneys are:

David P. Zambito (PA ID #80017)  
Jonathan P. Nase (PA ID #44003)  
Cozen O'Connor  
17 North Second Street, Suite 1410  
Harrisburg, PA 17101  
Tel: (717) 703-5892  
E-mail: dzambito@cozen.com  
jnase@cozen.com

Brian A. Ardire (PA ID #209386)  
Pennsylvania-American Water Company  
800 West Hersheypark Drive  
Hershey, PA 17033  
Phone: (717) 531-3362  
E-mail: Brian.Ardire@amwater.com

3. PAWC is a certificated public utility under the jurisdiction of the Pennsylvania Public Utility Commission ("Commission" or "PUC"). PAWC provides public water and wastewater service in portions of 36 counties and approximately 400 communities across the Commonwealth of Pennsylvania. As of December 31, 2017, PAWC provided water service to approximately 657,854 customers and wastewater service to approximately 64,917 customers.

4. On January 12, 2018, Aqua Pennsylvania, Inc. ("Aqua") and the Borough of Phoenixville ("Phoenixville") (collectively, the "Joint Applicants"), filed the Application.

5. The Application, at ¶ 3, asks the Commission to grant Aqua the right to begin providing water service to the public in the territory shown on maps attached to the Application as Exhibit A, Exhibit B and Exhibit C (the "Requested Territory"). The Application, at ¶ 41, notes that PAWC has authority to provide water service abutting or within one mile of the Requested Territory, but the Application alleges that it will not create any competitive condition.

6. Based on PAWC's review of the Application and the attached exhibits, it appears that the Requested Territory may encroach on PAWC's existing certificated territory. PAWC has

a direct, immediate and substantial interest in remaining the only public utility authorized to provide water service to the public in its certificated service territory. Further, it would not be in the public interest for the Commission to grant two public utilities overlapping authority to provide water service to the public for compensation. Such a decision could lead to a duplication of facilities and destructive competition for customers between the two utilities.

7. The Application, at ¶ 3, asks the Commission to approve Aqua’s acquisition of the water system assets of Phoenixville, used in connection with water service provided by Phoenixville in East Pikeland and Schuylkill Townships, Chester County, and Upper Providence Township, Montgomery County (the “Transaction”). Attached to the Application as Exhibit D is the Asset Purchase Agreement (“APA”) between the Joint Applicants. The APA defines the assets that are included in, and excluded from, the Transaction. *See especially*, APA §§ 1.1 and 1.3

8. Based on PAWC’s review of the Application and the attached exhibits, it appears that Phoenixville may be attempting to sell to Aqua assets that are actually owned by PAWC rather than Phoenixville. PAWC has a direct, immediate and substantial interest in preventing a third party from attempting to sell facilities that PAWC owns and uses to provide water service to the public for compensation. Further, it would not be in the public interest for the Commission to approve the transfer, from Phoenixville to Aqua, of property that is owned by PAWC.

9. The Application, at ¶¶ 25-26, states that the Joint Applicants have entered into a Water Supply Agreement (“2018 WSA”) whereby Phoenixville will supply water to Aqua after closing on the Transaction. The 2018 WSA is attached to the Application as Exhibit G1. The Application, at ¶¶ 44-45, asks the Commission to approve this contract pursuant to 66 Pa. C.S. § 507.

10. The 2018 WSA includes a “partial assignment” of rights and obligations under an existing Water Supply Agreement between Phoenixville and Citizen Utilities Home Water Company (“Citizens”) dated March 10, 1986 (“1986 WSA”), which is attached to the Application as Exhibit G2. PAWC is the successor to the rights and obligations of Citizens under the 1986 WSA.

11. The 1986 WSA provides that neither party to the agreement may assign it without the other party’s approval, which shall not be unreasonably withheld. Exhibit G2 p. 11. The Application correctly notes that PAWC has not agreed to the assignment of the 1986 WSA from Phoenixville to Aqua.

12. PAWC was not willing to consent to the assignment because, among other things, the effect of the assignment would have resulted in prejudice to PAWC and its rights under the 1986 WSA. Moreover, it appears that Aqua can complete the proposed acquisition without disturbing the 1986 WSA by entering into a suitable agreement with Phoenixville to transport water to PAWC.

13. Citing the Commission’s authority to reform contracts of a public utility pursuant to Section 508 of the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. § 508, Paragraph 28 of the Application asks the Commission to approve the partial assignment of the 1986 WSA from Phoenixville to Aqua.

14. In order to modify an existing contract, the Commission must find that a term or condition is “unjust, unreasonable, inequitable, or otherwise contrary or adverse to the public interest and the general well-being of this Commonwealth.” Based on its review of the Application, PAWC cannot determine what term or condition allegedly meets this standard, or why that term or condition meets this standard. Moreover, it is unclear how the Joint Applicants

believe that the said term or condition should be modified. PAWC respectfully submits that the Commission should not delete or modify Section 5 of the 1986 WSA, because that would deprive both parties of their right to reasonably withhold their approval of future assignments of the 1986 WSA. The Commission should be reluctant to modify a lawfully-negotiated contract where one of the parties is opposed to the modification; particularly where Aqua has not demonstrated that it has fully exhausted reasonable alternatives to contract modification.

15. PAWC has a direct, immediate and substantial interest in preserving its existing contracts. Indeed, the modification of the 1986 WSA, as requested by Aqua, could eventually result in higher rates for PAWC's ratepayers should Aqua elect to increase bulk service rates -- which would be contrary to the public interest. It could give Aqua an undue competitive advantage over PAWC in the region. As such, Aqua's averment that the approval of the Application would not create any competitive condition is simply not accurate. *Cf.* Application, at ¶ 41.

16. By its express terms, Section 508 requires the Commission to give "reasonable notice and hearing" before modifying a contract. Thus, PAWC has a statutory right to participate in a proceeding that seeks to vary, reform or revise the 1986 WSA.

17. The 2018 WSA states on page 1 that the 1986 WSA is being assigned to Aqua, but Phoenixville "will continue to discharge certain obligations contained in the [1986 WSA] for the benefit of Aqua to enable Aqua to discharge its obligations to PAWC following the assignment to Aqua" of the 1986 WSA. Upon review of the 2018 WSA, it is unclear to PAWC what obligations of the 1986 WSA are being assigned to Aqua and what obligations will remain with Phoenixville. PAWC has a direct, immediate and substantial interest in clarifying the assignment of the obligations contained in PAWC's existing contract. Moreover, the Commission should not



approve a contract between a public utility and a municipality pursuant to Section 507 if the provisions of that contract are not sufficiently clear.

18. The Application and the 2018 WSA fail to mention a February 27, 1990 Amendment (“1990 Amendment”) to the 1986 WSA, attached hereto as **Attachment A**, nor do they mention a February 27, 1990 Lease and Option to Purchase (“Lease and Option”), which is Exhibit B to the 1990 Amendment, and is included in **Attachment A** hereof. The 1990 Amendment and the Lease and Option were part of a transaction by which Citizens paid Phoenixville’s costs of constructing a water main and related facilities in return for a lease and right of first refusal on the Sowers Avenue Booster Pump Station, located in Upper Providence Township. It is unclear to PAWC how the 2018 WSA would impact PAWC’s rights and obligations under the 1990 Amendment and the Lease and Option. PAWC has a direct, immediate and substantial interest in preserving its rights under existing contracts, including its rights of first refusal to purchase property. Moreover, it would not be in the public interest for the Commission to take action in this matter without a complete factual record that contains all of the pertinent existing contracts.

19. For these reasons, PAWC protests the above-captioned Application and related Section 507 filings.

20. PAWC reserves the right to raise additional issues as this case proceeds further and additional information is obtained from the Joint Applicants through discovery.

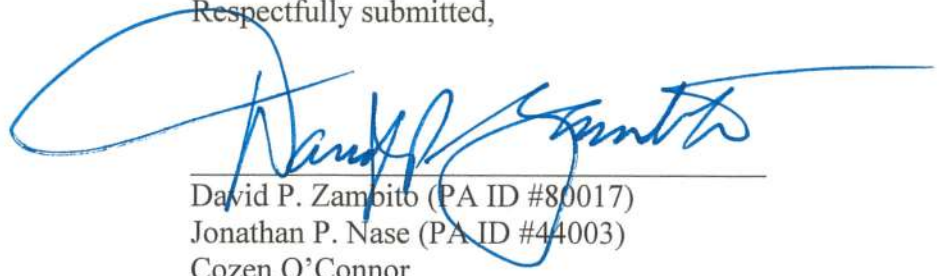
WHEREFORE, for the foregoing reasons, PAWC respectfully requests that:

(1) PAWC be granted “Protestant” status in the above-referenced application proceeding;

(2) The Commission open a Section 507 investigation into the contracts between Aqua and Phoenixville filed with the Application, including the 2018 Water Supply Agreement; and,

(3) Refer this matter to the Office of Administrative Law Judge for hearings and disposition.

Respectfully submitted,



David P. Zambito (PA ID #80017)  
Jonathan P. Nase (PA ID #44003)  
Cozen O'Connor  
17 North Second Street, Suite 1410  
Harrisburg, PA 17101  
Tel: (717) 703-5892  
E-mail: dzambito@cozen.com  
jnase@cozen.com

Brian A. Ardire (PA ID #209386)  
Pennsylvania-American Water Company  
800 West Hersheypark Drive  
Hershey, PA 17033  
Phone: (717) 531-3362  
E-mail: Brian.Ardire@amwater.com

Dated: February 12, 2018

Counsel for *Pennsylvania-American Water Company*

# **ATTACHMENT A**

AMENDMENT TO WATER SUPPLY AGREEMENT BETWEEN  
THE BOROUGH OF PHOENIXVILLE, CHESTER COUNTY, PENNSYLVANIA  
AND CITIZENS UTILITIES HOME WATER COMPANY

This Agreement made and entered into this 27<sup>th</sup> day of February, 1990 by and between the Borough of Phoenixville, Chester County, a municipal corporation of the Commonwealth of Pennsylvania (hereinafter referred to as "Phoenixville") and Citizens Utilities Home Water Company, a Pennsylvania corporation (hereinafter referred to as "Citizens");

WITNESSETH:

WHEREAS, Phoenixville and Citizens each own and operate public utility water systems and, pursuant to their respective Certificates of Public Convenience granted by the Pennsylvania Public Utility Commission <sup>SA DAW</sup> ~~in~~, provide public utility water service for residential, commercial, industrial and corporate purposes to members of the public located in, and in the vicinity of, inter alia, Upper Providence Township, Montgomery County, and East Pikeland Township, Chester County, Pennsylvania; and

WHEREAS, by that certain Water Supply Agreement between Phoenixville and Citizens, dated March 10, 1986 (the "Water Supply Agreement"), Phoenixville has agreed to provide a continuous wholesale supply of water to Citizens to enable Citizens to provide public utility water service, as aforesaid; and

WHEREAS, Phoenixville has constructed and installed a new water main and related facilities along Egypt Road in Upper Providence

Township; and

WHEREAS, Citizens has planned to construct a water main and related facilities along Egypt Road, for purposes of its water service to existing and new Citizens customers; and

WHEREAS, Phoenixville and Citizens have agreed that Citizens will reimburse Phoenixville for the actual cost of said construction and installation of the aforesaid water main and related facilities, in exchange for a long term lease of (and containing an exclusive option for Citizens to purchase) Phoenixville's Sowers Avenue booster station and appurtenances; and

WHEREAS, Phoenixville and Citizens accordingly desire to amend the Water Supply Agreement, as aforesaid.

NOW, THEREFORE, for and in consideration of the foregoing agreements and of the mutual covenants herein contained, the parties hereto agree to, and do by these presents, amend the Water Supply Agreement as follows:

1. Citizens shall reimburse and pay over to Phoenixville the actual cost to construct and install along Egypt Road, Upper Providence Township, Montgomery County, a 12 inch water main and associated appurtenances, water valves, hydrants and service connections, including all trench restoration, sheeting, shoring and bracing, testing and disinfection, and administrative and engineering expenses, as required by applicable governmental authorities.

Phoenixville shall submit to Citizens a detailed invoice setting forth such actual construction, administrative and engineering costs, as a basis for said payment by Citizens, and Citizens agrees to pay the same within 60 days from its receipt of said invoice. A drawing showing in red the approximate location of such facilities is set forth and made a part hereof as Exhibit "A" hereto.

2. The aforesaid water line facilities shall, upon such payment, as outlined in 1 above, constitute property owned by Citizens, and shall be operated and maintained by Citizens in accordance with all applicable laws, regulations and generally accepted industry standards.

3. Phoenixville shall execute and deliver to Citizens, as of the effective date of this Agreement, a lease to Citizens containing an option to purchase, in the form of the lease and option to purchase attached hereto and made a part hereof as Exhibit "B", for the property and appurtenances constituting Phoenixville's Sowers Avenue booster station, located in Upper Providence Township, Montgomery County.

4. Citizens shall scrap the existing booster station equipment, and equip said booster station with new pumps, motors and controls, which shall constitute property owned by Citizens, and shall be operated and maintained by Citizens in accordance with all applicable laws, regulations and generally accepted industry standards.

5. A metering point shall be established at said booster station, to enable both parties hereto to determine the quantity of

water passing through said booster station and the related water main facilities.

6. In all other respects, the provisions of the Water Supply Agreement are hereby confirmed.

7. This Agreement shall become effective 30 days after a copy is filed with the Pennsylvania Public Utility Commission, unless proceedings are thereupon instituted to determine the reasonableness, legality or any other matter affecting the validity thereof.

8. Attached hereto and made a part hereof, as Exhibit "C", is a duly certified resolution evidencing Phoenixville's acceptance of this Agreement and authorizing its execution.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

Attest:

Patricia M. Ganser

BOROUGH OF PHOENIXVILLE

BY Douglas A. Werner

Attest:

Char. van Antfer

CITIZENS UTILITIES HOME WATER COMPANY

BY David E. Chandawayne  
Vice President

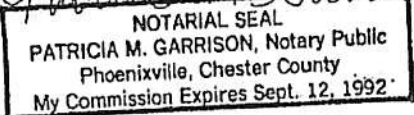
COMMONWEALTH OF PENNSYLVANIA )  
 )  
 : ss.  
COUNTY OF CHESTER )

On this, the 20<sup>th</sup> day of February, 1990, before me, the undersigned officer, personally appeared Douglas A. Werner, who acknowledged himself to be the Council President of the Borough of Phoenixville, a municipal corporation, and that he as such Council President, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the Borough by himself as Council President, and desired the same might be recorded as such.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Patricia M. Garrison

Douglas A. Werner



~~COMMONWEALTH OF PENNSYLVANIA~~ )  
STATE OF CONNECTICUT : ss.  
~~COUNTY OF BERKS - FAIRFIELD~~ )

On this, the 27<sup>th</sup> day of FEBRUARY, 1990, before me, the undersigned officer, personally appeared DAVID B. CHARNOVITZ, who acknowledged himself to be the VICE PRESIDENT of Citizens Utilities Home Water Company, a corporation, and that he as such VICE PRESIDENT, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as VICE PRESIDENT and desired the same might be recorded as such.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Patricia M. Garrison

My Commission Expires Mar. 31, 1990





SUBJECT

# OAKS AREA WATER MAIN EXTENSION

UPPER PROVIDENCE TWP. • MONTGOMERY COUNTY • PENNSYLVANIA

## Bursich Associates INC.

consulting engineers

2129 East High Street

Pottstown PA 19464

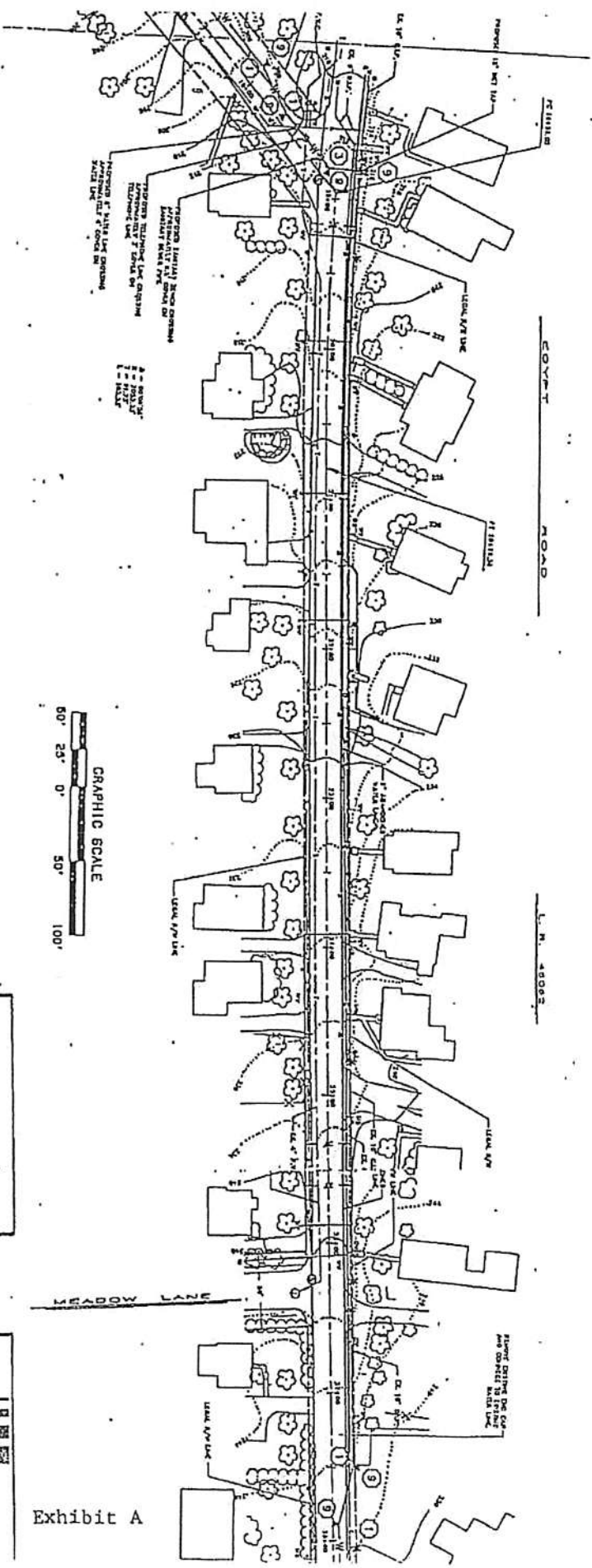


Exhibit A

*Cable 0216-001*

LEASE AND OPTION TO PURCHASE

This Indenture made and entered into as of the 27<sup>th</sup> day of *February*, 1990 by and between the BOROUGH of PHOENIXVILLE, a Pennsylvania municipal corporation, as Lessor (hereinafter referred to as "Phoenixville") and CITIZENS UTILITIES HOME WATER COMPANY, a Pennsylvania corporation, as Lessee (hereinafter referred to as "Citizens").

W I T N E S S E T H :

That for and in consideration of the respective covenants and agreements to be performed by the parties hereto, and of the sum of One dollar (\$1.00) to it in hand paid by Citizens, the receipt whereof is hereby acknowledged, Phoenixville has leased, rented, let and demised and by these presents does lease, rent, let and demise unto Citizens, its successors and assigns, together with that certain option to purchase set forth herein, the parcel of land as more fully set forth and shown in red on the plans attached hereto and made a part hereof as Attachment A, and the improvements and appurtenances thereon situated (all of which is collectively referred to hereinafter as the "Demised Premises"), situate in Upper Providence Township, Montgomery County, Pennsylvania, and for any and all of the purposes hereinafter contemplated or provided, with full power and authority to Citizens to enter upon, take possession of and occupy and at its own expense to use and operate the same, to renew, repair or replace all or

EXHIBIT "B"

any part of the existing appurtenances, to construct and install all additional appurtenances as in the judgment of Citizens may be advisable, and generally to do all things necessary to conduct, continue and extend its business.

TO HAVE AND TO HOLD the Demised Premises, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging and all rights and privileges in anywise incident or appertaining thereto, unto Citizens, as aforesaid, from and including the day and year first above written.

ARTICLE I. Term of Lease.

1. The lease set forth herein (the "Lease") shall begin as of the day and year first above written, and shall continue for an initial term of five (5) years thereafter unless sooner terminated as herein provided.

2. In the event that by the end of the initial term of the Lease Citizens has not purchased the Demised Premises, the Lease shall continue in full force and effect for an additional term of fifty (50) years thereafter unless sooner terminated as herein provided.

3. Possession of the Demised Premises shall be given simultaneously with the execution of this Indenture.

4. Citizens may, upon one year's advance written notification to Phoenixville, elect to terminate the Lease before its expiration if the Lease ceases to be useful in the furtherance and fulfillment of the underlying covenants and agreements constituting obligations to be performed by Citizens.

5. Either party to the Lease may, upon written notification to the other party, elect to terminate the Lease before its expiration in the event that totally unforeseen circumstances such as those caused by an act of God render further performance under the Lease impossible or cost prohibitive.

6. In the event that Citizens elects to purchase the Demised Premises pursuant to its option to do so hereunder, the Lease shall expire as of the date of such purchase, and Citizens' leasehold interest in and to the Demised Premises and its right, title and interest as the purchaser of the Demised Premises shall be deemed to have been merged.

ARTICLE II. Rent.

1. The rent during the initial term of the Lease shall be One Thousand dollars (\$1,000.00) annually. Phoenixville hereby acknowledges payment by Citizens as of the day and year first above written of the first annual installment of rent due hereunder. Subsequent annual installments of rent due hereunder shall be paid not later than ten (10) days following each annual anniversary date of the initial term of the Lease.

2. The rent during the additional term of the Lease shall be One Thousand dollars (\$1,000.00) annually for the first five (5) years of said term, and one dollar (\$1.00) annually for the balance of said term, payable in annual installments not later than ten (10) days following each annual anniversary date of the additional term of the

Lease.

3. In the event that Citizens elects to purchase the Demised Premises pursuant to its option to do so hereunder, rent for the then current year of the Lease shall be prorated to the date of such purchase.

ARTICLE III. Option to Purchase.

1. At any time within the initial term of the Lease or during the first five (5) years of the additional term thereof, Citizens may at its option purchase the Demised Premises for a consideration to be agreed upon with Phoenixville.

2. As a part of the consideration hereof and without prejudice to the foregoing option Citizens at all times during the Lease term shall have the following preemptive right: Phoenixville shall not during the term of the Lease sell, lease, grant options in respect of, or otherwise dispose of the whole or any part of the Demised Premises, or the whole or any part of Phoenixville's reversionary interest therein, without giving Citizens a thirty (30) day option within which to purchase, or otherwise acquire the Demised Premises, or such reversionary interest therein, on the same terms and conditions as those on which Phoenixville is willing to make such sale or other disposition to any other party. Phoenixville shall promptly notify Citizens in writing of said terms and conditions and submit, in writing, any bona fide offer acceptable to Phoenixville which it may have received. If said bona fide offer does not separately set forth

the offered purchase price for the Demised Premises, then the purchase price for purposes of Citizens' option to purchase hereunder shall be the greater of (a) Phoenixville's depreciated original cost value for the Demised Premises, as set forth on its books of account as of the calendar quarter then most recently ended or (b) the appraised value then determined by a competent appraiser selected by mutual agreement of the parties hereto, utilizing generally accepted standards and practices applicable to appraisals of such facilities. Failure to exercise this right on one or more occasions shall not affect the right of Citizens to exercise its preemptive right upon any occasion thereafter arising during the term of the Lease.

ARTICLE IV. Title and Survey.

1. Phoenixville covenants that it has lawful title to the Demised Premises, free and clear of all liens, mortgages and encumbrances, and that it has full authority to make this Indenture on the terms herein set forth.

2. Upon request by Citizens, Phoenixville will furnish to Citizens an abstract of title covering the Demised Premises, which abstract shall show a good and marketable title to said premises, as described above, to be vested in Phoenixville.

3. Citizens will, at its own expense, procure a survey of the Demised Premises if it desires such survey.

ARTICLE V. Recording of Indenture.

1. This Indenture shall be duly recorded in the Office for

the Recorder of Deeds of Montgomery County, Pennsylvania.

2. Should any transfer tax be required in connection with the recording of this Indenture under the laws of the Commonwealth of Pennsylvania, such tax shall be at the expense of Citizens.

ARTICLE VI. All Taxes Payable by Citizens.

1. In addition to the consideration hereinabove specified, and as a further part of the consideration to be furnished by Citizens as additional rental for the term demised, Citizens covenants and agrees with Phoenixville that Citizens will promptly pay all taxes which are levied or assessed by any and all taxing authorities and become due and payable at any time during the term of the Lease, including all taxes, charges, assessments, impositions, liens for public improvements, special charges and assessments and in general all taxes, tax liens or liens in the nature of taxes which may be assessed, imposed or levied against the Demised Premises, including the land and all buildings, fixtures and improvements which may be hereafter placed thereon, together with any interest, penalties or other charges which may accrue thereon; provided that in the event any of said taxes or assessments are payable according to the terms of their impositions, in installments, then Citizens shall have the right to pay the same as such installments fall due.

2. Nothing herein contained shall obligate Citizens to pay any income tax or any other tax which may be levied or assessed against Phoenixville, with respect to, or because of, the income derived from

the Lease; nor shall Citizens be deemed obligated hereby to pay any corporation, franchise or other tax which may be assessed or levied against Phoenixville, or any corporate successor or transferee of, or claiming under, Phoenixville.

3. In the event that Citizens shall fail, refuse or neglect to make any payment as required by this Article, then Phoenixville at its option may, without constituting a waiver of the default thus occurring in the Lease, pay the same, and the amount or amounts so paid, including reasonable attorneys' fees and expenses incurred because of or in connection with such payments, together with interest on all such amounts at the legal rate of interest then prevailing, shall be repaid by Citizens unto Phoenixville upon demand, and may be collected or enforced by Phoenixville in the same manner as though said amount were an installment of rent specifically required by the terms of the Lease to be paid by Citizens unto Phoenixville.

ARTICLE VII. Property and Liability Insurance;  
Indemnification.

1. During the term of the Lease, Citizens shall keep all buildings, improvements and appurtenances constituting the Demised Premises insured with a reliable and responsible company or companies, and shall give notice to Phoenixville annually to confirm that such coverage exists in sufficient amount or amounts to fully and adequately insure against destruction of or damage to the Demised Premises. If Citizens changes insurance carriers or the amount of coverage, it shall provide notice thereof to Phoenixville within 10 days.



2. During the term of the Lease, all policies issued, and renewals thereof, of all such insurance are to be assigned, and in case of loss may be made payable, to Phoenixville or Citizens, as their respective interests may appear; provided, however, that in case of destruction of or damage to said premises, insurance payments may be made directly to Citizens upon presentation of an appropriate Citizens certificate evidencing that the payment of said sums are necessary for the refurbishment, repair or rebuilding of said premises, and that such amounts shall be expended on work done on, or for materials furnished for, such rebuilding, repair or refurbishment.

3. Any and all money which Phoenixville shall receive by reason of any loss to or destruction of all or a portion of the Demised Premises is hereby constituted a trust fund to be used for the rebuilding, repair or refurbishment of said premises as herein provided.

4. All work performed by Citizens at the Demised Premises during the term of the Lease shall be done in a workmanlike manner and in accordance with applicable laws and governmental rules and regulations, by competent employees of Citizens, or its contractors. Citizens shall indemnify Phoenixville, and hold it harmless, from and against any damages, losses or claims, not attributable in whole or in part to the fault, failure or negligence of Phoenixville, arising from Citizens' occupancy of the Demised Premises during the term of

settlement of the Lease. Public liability and workers' compensation insurance coverages in reasonable amounts shall be kept in full force and effect by Citizens and its contractors, insuring against damages, losses or claims arising from Citizens' occupancy of the Demised Premises or from the performance of any work at the Demised Premises, and certificates evidencing such coverages shall be provided by Citizens upon request.

ARTICLE VIII. Mortgage by Citizens.

During the term of the Lease, Citizens may at any time mortgage, or convey by deed of trust in the nature of a mortgage, its leasehold estate in the Demised Premises and any building or improvement situate thereon; provided, however, that it shall not be in default of any agreements to be kept, observed and performed by Citizens for the benefit of Phoenixville, and shall have paid all taxes, assessments, insurance premiums and other charges of every kind which shall have accrued hereunder; and provided further, that no mortgagee or trustee or anyone to claim by, through or under such mortgage or deed of trust shall, by virtue thereof, acquire any greater rights in the Demised Premises and any building or improvements thereon than Citizens then has under the Lease; and provided further, that such mortgage or deed of trust shall be subject to all the conditions and obligations of this Indenture and to the rights of Phoenixville thereunder.

ARTICLE IX. Phoenixville's Interest Not Subject to Mechanic's Liens.

1. It is hereby stipulated and agreed by and between the parties hereto that during the term of the Lease there shall be no mechanic's liens upon Phoenixville's interest in the Demised Premises, or against anything constituting an integral part thereof.

2. The mere fact of the existence of a mechanic's or materialman's lien or liens, however, shall not of itself operate as a forfeiture or termination of the Lease, provided that Citizens shall promptly cause the same to be cancelled, released and extinguished or the Demised Premises released therefrom by the posting of a bond, or by any other method prescribed by law.

ARTICLE X. Return of Premises to Phoenixville.

Citizens covenants, stipulates and agrees that upon the expiration of the Lease, whether by lapse of time or otherwise, and unless Citizens has elected to purchase the Demised Premises pursuant to the option provided for herein, it will remove any and all equipment, and all other property installed and owned by it at the Demised Premises, and immediately thereafter will peaceably and quietly deliver up the Demised Premises to Phoenixville.

ARTICLE XI. Assignment.

This Indenture shall not be assigned, except upon the written consent of both parties hereto.

ARTICLE XII. Miscellaneous Provisions.

1. Time is of the essence with respect to this Indenture.

2. It is understood and agreed that no modification, release, discharge or waiver of any provisions hereof shall be of any force or effect unless in writing signed by the parties hereto.

3. All covenants, promises, conditions and obligations herein contained or implied by law shall be binding upon the successors and assigns of each of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be executed as of the day and year first above written.

Attest:

Patricia M. Harrison

BOROUGH OF PHOENIXVILLE

By Douglas A. Werner

Attest:

Charles W. [unclear]  
and [unclear]

CITIZENS UTILITIES HOME WATER COMPANY

By David E. Chardavoyne  
Vice President

COMMONWEALTH OF PENNSYLVANIA )  
 : ss.  
COUNTY OF CHESTER )

On this, the *9<sup>th</sup>* day of *February*, 1990, before me, the undersigned officer, personally appeared *Douglas H. Werner*, who acknowledged himself to be the *Council President* of the Borough of Phoenixville, a municipal corporation, and that he as such *Council President*, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the Borough by himself as *Council President* and desired the same might be recorded as such.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

*Patricia M. Garrison*  
NOTARIAL SEAL  
PATRICIA M. GARRISON, Notary Public  
Phoenixville, Chester County  
My Commission Expires Sept. 12, 1992

*Douglas A. Werner*

~~COMMONWEALTH OF PENNSYLVANIA~~ )  
~~STATE OF CONNECTICUT~~ : ss.  
COUNTY OF ~~BERKS FAIRFIELD~~ )

On this, the *27<sup>th</sup>* day of *FEBRUARY*, 1990, before me, the undersigned officer, personally appeared *DAVID E. CHARBANOYNE*, who acknowledged himself to be the *VICE PRESIDENT* of Citizens Utilities Home Water Company, a corporation, and that he as such *VICE PRESIDENT*, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as *VICE PRESIDENT* and desired the same might be recorded as such.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

*Patricia M. Garrison*

My Commission Expires Mar. 31, 1990

RESOLUTION # 90-02

Whereas, the Borough of Phoenixville has entered into an Agreement with Citizens Utilities Home Water Company to sell bulk water, and

Whereas, the Borough of Phoenixville and Citizens Utilities Home Water Company each own and operate a public water system, pursuant to their respective Certificates of Public Convenience operated by the Pennsylvania Public Utility Commission to provide water service for residential, commercial, industrial and corporate purposes, and

Whereas, in the Agreement signed by the Borough of Phoenixville and Citizens Utilities Home Water Company dated March 10, 1986, Phoenixville has agreed to provide wholesale supply of water to Citizens Utilities Home Water Company, and

Whereas, Phoenixville has constructed and installed a new water main and related facilities along Egypt Road in Upper Providence Township, and

Whereas, Citizens Utilities Home Water Company has planned to construct a water main and related main along Egypt Road for the purpose of its water services to its customers, and

Whereas, Phoenixville and Citizens Utilities Home Water Company have agreed that Citizens Utilities Home Water Company will reimburse Phoenixville for the cost of the installation of new water main and related facilities, in exchange for a long term lease of Phoenixville's Sowers Avenue Booster Station, and

Whereas, Phoenixville and Citizens Utilities Home Water Company accordingly desire to amend the existing Water Supply Agreement.

NOW, THEREFORE, BE IT RESOLVED AND IT HEREBY IS RESOLVED that the existing Water Supply Agreement be amended and the Council President be authorized to execute the Agreement.

ENACTED AND ADOPTED this 13th day of March, 1990.

BOROUGH COUNCIL OF PHOENIXVILLE

By: James A. Werner  
Council President

Attest: Patricia M. Gannon  
Borough Secretary

EXAMINED AND APPROVED this 13th day of March, 1990.

Michael J. Boas  
Mayor