

May 28, 2020

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

In re: Docket No. A-2019-3015173

Application of Aqua Pennsylvania Wastewater, Inc. pursuant to Sections 1102, 1329 and 507 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of the Delaware County Regional Water Quality Control Authority

Dear Secretary Chiavetta:

We are counsel to Aqua Pennsylvania Wastewater, Inc. ("Aqua" or "Company") in connection with its above referenced Application, filed with the Public Utility Commission ("Commission") on March 3, 2020, pursuant to Sections 1102, 1329 and 507 of the Public Utility Code, for approval of the acquisition of the wastewater system assets of the Delaware County Regional Water Quality Control Authority. By letter dated May 7, 2020, we provided responses to Information Requests of the Bureau of Technical Utility Services, including a response to Information Request 28, advising that Aqua would provide a complete copy of a Supplemental Agreement dated November 26, 1952 upon receipt of a complete copy of the Agreement in response to a Right-to-Know Request. This letter supplements that response as follows:

INFORMATION REQUEST 28:

Checklist Item No. 25 – The Application's Exhibit F4, Supplemental Agreement dated November 26, 1952, is missing pages 1, 3, 5, 7, 9, 11 and 13. Please provide a complete copy of this agreement that includes the noted missing pages.

RESPONSE:

A complete copy of the Agreement is included with this letter.

The Verification of William C. Packer verifying the foregoing is attached hereto.

Please contact me with any questions about the foregoing.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By 

Thomas T. Niesen

cc: Certificate of Service (w/encl.)
Alexander R. Stahl, Esquire (via email, w/encl.)
Thomas S. Wyatt, Esquire (via email, w/encl.)

**SUPPLEMENTAL AGREEMENT DATED
NOVEMBER 26, 1952**

Supplemental Agreement

Dated November 26, 1952

Between

CENTRAL DELAWARE COUNTY AUTHORITY

and

BOROUGH OF MORTON
BOROUGH OF PROSPECT PARK
BOROUGH OF RIDLEY PARK
BOROUGH OF RUTLEDGE
BOROUGH OF SWARTHMORE
TOWNSHIP OF NETHER PROVIDENCE
TOWNSHIP OF RIDLEY
TOWNSHIP OF SPRINGFIELD

International, 236 Chestnut St., Phila. 6, Pa.

SUPPLEMENTAL AGREEMENT, made this 26th day of November, A. D. 1952, by and between the BOROUGHS OF MORTON, PROSPECT PARK, RIDLEY PARK, RUTLEDGE and SWARTHMORE, and the TOWNSHIPS OF NETHER PROVIDENCE, RIDLEY and SPRINGFIELD, political subdivisions of the County of Delaware, Commonwealth of Pennsylvania (hereinafter called the "Municipalities"), parties of the first part,

AND

CENTRAL DELAWARE COUNTY AUTHORITY, a joint municipal authority organized by the said Municipalities under the provisions of the "Municipality Authorities Act of 1935" (Act of June 28, 1935, P. L. 463, as amended) and operating under the provisions of the "Municipality Authorities Act of 1945" (Act of May 2, 1945, P. L. 382), its amendments and supplements (hereinafter called the "Authority"), party of the second part.

WHEREAS, the Authority now maintains and operates a certain sewerage system consisting of sewers, sewage pumping stations and appurtenant equipment, on behalf of the said Municipalities which are its constituent members; and

WHEREAS, the Borough of Swarthmore now maintains and operates a certain terra cotta outfall sewer extending from a point north of Yale Avenue in the Borough of Swarthmore to a point north of MacDade Boulevard in the Township of Ridley, pursuant to the terms of an agreement dated October 5, 1938, between the Borough of Swarthmore and the Township of Ridley and of an agreement dated May 6, 1935, between the Borough of Swarthmore and the Township of Springfield, which outfall sewer is not adequate to handle the flow of sanitary sewage emanating from the area it serves; and

WHEREAS, it is proposed that the Authority shall assume the responsibility of operating and maintaining a portion of said outfall

sewer heretofore so operated and maintained by the Borough of Swarthmore; and

WHEREAS, the Authority proposes to supplement said outfall sewer by constructing a new outfall sewer to be known as the Little Crum Creek Outfall Sewer over rights-of-way to be acquired by it, extending from a point approximately 266 feet north of Yale Avenue in the Borough of Swarthmore to a point north of MacDade Boulevard in the Township of Ridley, and, upon completion thereof, to operate and maintain the same; and

WHEREAS, the Authority is now constructing a sewage treatment plant for the primary treatment of the effluent from said sewerage system upon a site owned by it in the Township of Ridley and has agreed to complete the construction thereof prior to May 1, 1953; and

WHEREAS, by the terms of an agreement dated July 9, 1936, between the Municipalities and General Steel Castings Corporation, a Delaware corporation with a plant in the Township of Ridley, the Township of Ridley has undertaken to provide a force-main sewer from the property line of the plant of General Steel Castings Corporation to said sewage treatment plant; and

WHEREAS, the Authority proposes to construct said force-main sewer over rights-of-way to be acquired by it, and, upon completion thereof, to operate and maintain the same; and

WHEREAS, based upon construction bids received by the Authority on November 24, 1952, it is estimated that the total cost of constructing said outfall sewer will be approximately \$133,000, and that the total cost of constructing said force-main sewer will be approximately \$27,000, in each case including all costs and expenses properly allocable to such construction; and

WHEREAS, for the purpose of paying the cost of construction of said outfall sewer and said force-main sewer the Authority

proposes to issue and sell \$160,000 principal amount of its Sewer Revenue Bonds, Series B, dated December 1, 1952, and to secure said bonds by the Trust Indenture (hereinafter called the "Indenture") dated December 1, 1951, between the Authority and The Pennsylvania Company for Banking and Trusts, as Trustee (hereinafter called the "Trustee"),

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: That, for and in consideration of the premises, as well as of the mutual promises herein contained, the parties hereto, intending to be legally bound hereby, do hereby severally agree—each for itself, and not for any other party—as follows:

ARTICLE I.

CONSTRUCTION OF OUTFALL SEWER AND FORCE-MAIN SEWER.

1.01. The Authority shall at its own cost and expense construct a new outfall sewer to be known as the Little Crum Creek Outfall Sewer (hereinafter called the "Outfall Sewer") over rights-of-way to be acquired by it extending from a point approximately 266 feet north of Yale Avenue in the Borough of Swarthmore to a point north of MacDade Boulevard in the Township of Ridley, in accordance with plans and specifications prepared by Damon & Foster, Civil Engineers—a copy of which is on file at the office of the Authority—duly approved by the Board of the Authority on October 31, 1952, and by the Sanitary Water Board of the Commonwealth of Pennsylvania, and shall use its best efforts to complete such construction and equipment prior to June 1, 1953.

1.02. The Authority shall at its own cost and expense construct a force-main sewer (hereinafter called the "Force-Main Sewer") over rights-of-way to be acquired by it from the property line of the plant of General Steel Castings Corporation in the Township of Ridley to the sewage treatment plant of the Authority, in accordance with plans and specifications prepared by Damon & Foster, Civil Engineers—a copy of which is on file at the office of the Authority—duly approved by the Board of the Authority on October 31, 1952,

and shall use its best efforts to complete such construction prior to June 1, 1953.

1.03. Upon completion, the Outfall Sewer and the Force-Main Sewer shall be connected by the Authority, likewise at its own cost and expense, with the said sewerage system as shown on a certain Plan of Damon & Foster, Civil Engineers, dated February 15, 1938, entitled "Plan of Joint Sewer System to be operated and maintained by the Central Delaware County Authority."

1.04. Upon completion of the Outfall Sewer, the Authority agrees to accept therein all or any portion of the sanitary sewage of each Municipality emanating within the watershed served thereby and, upon completion of the Force-Main Sewer, the Authority agrees to accept therein all sanitary sewage emanating from the plant of General Steel Castings Corporation in the Township of Ridley.

1.05. Each Municipality hereby states that it has complete and satisfactory information with respect to the Outfall Sewer and the Force-Main Sewer which the Authority has agreed to construct and with respect to the estimated cost of operation and maintenance thereof, and that the plans and specifications for the Outfall Sewer and the Force-Main Sewer have been approved by and are satisfactory to each Municipality.

1.06. Each of the following Municipalities shall pay to the Authority—but only from available current revenues or from sewer rentals legally available for the purpose, or from both—its proportionate share of the full amount which the Authority may be required to expend from time to time—over and above the moneys available for such purpose from the proceeds of said Sewer Revenue Bonds, Series B—for the rights-of-way acquired or to be acquired by the Authority in connection with the construction of the Outfall Sewer, computed as follows:

Municipality	Proportion
Borough of Swarthmore	.5198
Township of Ridley	.2738
Township of Springfield	.2064

The payments to be made by said Municipalities pursuant to this Section 1.06 shall be in addition to any and all other payments to be made by said Municipalities or any of them pursuant to any other provision of this Supplemental Agreement.

1.07. The Township of Ridley shall pay to the Authority—but only from available current revenues or from sewer rentals legally available for the purpose, or from both—the full amount expended by the Authority from time to time for the rights-of-way acquired or to be acquired by the Authority in connection with the construction of the Force-Main Sewer.

ARTICLE II.

PAYMENTS BY MUNICIPALITIES.

2.01. Each of the following Municipalities shall pay to the Authority—but only from available current revenues or from sewer rentals legally available for the purpose, or from both—at the times and in the manner hereinafter set forth, as an annual service charge or rental for the use of the Outfall Sewer and the Force-Main Sewer, the amount below set opposite its name:

Municipality	Amount of Annual Service Charge or Rental
Borough of Swarthmore	\$5,366.72
Township of Ridley	\$4,902.96
Township of Springfield	\$2,130.32

2.02. Payments pursuant to Section 2.01 shall be made quarterly on February 1, May 1, August 1, and November 1 of each year commencing February 1, 1954, and continuing to and including November 1, 1978.

2.03. Each Municipality named in Section 2.01 agrees that to the extent that on any such February 1, May 1, August 1, or November 1 the receipts from sewer rentals imposed by it are insufficient to make, or make provision for, the payment required by said Sec-

tion 2.01, it will make, or make provision for, such payment out of any of its other available current revenues.

2.04. Each Municipality agrees that, in the event it becomes necessary for the Authority to issue additional bonds under the Indenture for the purpose of completing the construction of the Outfall Sewer or of the Force-Main Sewer, it will enter into a supplemental agreement with the Authority providing, inter alia, for the payment to the Authority by each Municipality named in Section 2.01 of an annual service charge or rental sufficient to enable the Authority to comply with all of the terms and conditions of the Indenture with respect to the issuance of such additional bonds.

2.05. It is understood and agreed that this Supplemental Agreement and the annual service charges or rentals required to be paid pursuant to the provisions of Section 2.01 are to be assigned to the Trustee and each Municipality hereby assents to such assignment; and the Authority hereby directs each Municipality named in Section 2.01 to, and each such Municipality agrees to, pay to the Trustee all service charges or rentals payable by such Municipality pursuant to said Section 2.01.

2.06. The right of the Authority to demand and receive from the respective Municipalities named in Section 2.01 payment of the sums agreed to be paid by each of such Municipalities pursuant to Section 2.01 shall be unaffected by any failure or delay on the part of the Authority to complete construction of the Outfall Sewer or of the Force-Main Sewer arising out of an inability to obtain requisite materials, or as a result of any stop or suspension order issued by governmental authority, or because of any matter, cause or thing beyond its control.

ARTICLE III.

OPERATION AND MAINTENANCE.

3.01. The Authority agrees that it will, for and during the term of this Supplemental Agreement, at its own cost and expense, operate

and maintain the Outfall Sewer, and that it will keep the same in good order and repair; save where prevented from doing so by Act of God, war, riot, rebellion, sabotage, act of the public enemy, or public calamity—in which event the Authority may suspend operation of the Outfall Sewer until the cause of such suspension shall no longer exist, and for such reasonable time thereafter as may be required to effect a resumption of operations.

3.02. The Authority likewise agrees that it will, for and during the term of this Supplemental Agreement, at its own cost and expense, operate and maintain that portion of the existing terra cotta outfall sewer, now operated and maintained by the Borough of Swarthmore as aforesaid, extending from Station 63 + 27.95 to Station 116 + 97.59 as shown on the said "Plan of Joint Sewer System to be operated and maintained by the Central Delaware County Authority" prepared by Damon & Foster, Civil Engineers, Sharon Hill, Pennsylvania, dated February 15, 1938, and that it will keep the same in good order and repair; save where prevented from doing so by Act of God, war, riot, rebellion, sabotage, act of the public enemy, or public calamity—in which event the Authority may suspend operation of the terra cotta outfall sewer until the cause of such suspension shall no longer exist, and for such reasonable time thereafter as may be required to effect a resumption of operations.

3.03. Each Municipality named in Section 2.01 agrees to pay to the Authority—but only from available current revenues or from sewer rentals legally available for the purpose, or from both—its proportionate share of the full amount expended by the Authority from time to time for the operation, maintenance and repair of the Outfall Sewer and of the said terra cotta outfall sewer, computed as follows:

Municipality	Proportion
Borough of Swarthmore	.5198
Township of Ridley	.2738
Township of Springfield	.2064

The payments agreed to be made by each Municipality in this Section 3.03 shall be in addition to any and all payments required to be made by any of said Municipalities pursuant to that certain Agreement dated December 1, 1938, between the Authority, the Borough of Swarthmore and the Townships of Nether Providence, Ridley and Springfield (relating to the Crum Creek Pumping Station) and/or pursuant to that certain Agreement dated August 1, 1950, between the Authority and the Municipalities (relating to the Willard Drive Pumping Station) and/or pursuant to that certain Agreement dated October 22, 1951, between the Authority and the Municipalities (relating to the Sewage Treatment Plant).

3.04. The Authority agrees that it will, for and during the term of this agreement, at its own cost and expense, operate and maintain the Force-Main Sewer and that it will keep the Force-Main Sewer in good order and repair; save where prevented from doing so by Act of God, war, riot, rebellion, sabotage, act of the public enemy, or public calamity—in which event the Authority may suspend operation of the Force-Main Sewer until the cause of such suspension shall no longer exist, and for such reasonable time thereafter as may be required to effect a resumption of operations.

The Authority shall be under no obligation to operate, maintain or repair any sewerage facilities which may be located inside the property line of the plant of General Steel Castings Corporation.

3.05. The Township of Ridley agrees to pay to the Authority—but only out of available current revenues or from sewer rentals imposed in accordance with law or both—the full amount expended by the Authority from time to time for the operation, maintenance and repair of the Force-Main Sewer.

ARTICLE IV.

DAMAGE OR DESTRUCTION.

4.01. Should the Outfall Sewer or the Force-Main Sewer be damaged or destroyed through any cause whatsoever, the Authority shall repair and reconstruct the same at its own cost and expense.

4.02. (a) Each Municipality named in Section 2.01 agrees to pay to the Authority as an additional service charge or rental for the use of the Outfall Sewer and the Force-Main Sewer—but only from available current revenues, or from sewer rentals legally available for the purpose, or from both—its proportionate share of all costs and expenses reasonably incurred by the Authority in and about such repair and reconstruction—payment of all sums contemplated by this section to be made at such times and in such manner as may be mutually agreed upon between such Municipalities and the Authority, but preferably in equal annual installments on the first day of October in each year during the then-remaining term of this Agreement.

(b) The proportionate share of such costs and expenses allocable to each such Municipality shall be determined on the following basis:

(i) that portion of such costs and expenses attributable to the repair and reconstruction of that portion of the Outfall Sewer shall be allocated among such Municipalities named in Section 2.01 in accordance with the following proportions:

Municipality	Proportion
Borough of Swarthmore	.5198
Township of Ridley	.2738
Township of Springfield	.2064

(ii) that portion of such costs and expenses attributable to the repair and reconstruction of the Force-Main Sewer shall be allocated to the Township of Ridley.

ARTICLE V.

REMEDIES.

5.01. Each Municipality shall provide specifically in its annual budget for such sums as it may be obligated to pay to the Authority during the ensuing year under the terms of this Supplemental Agreement.

5.02. To insure the availability of current revenues adequate for the purpose, each Municipality shall impose annual sewer rentals in an aggregate amount equivalent to at least one hundred and ten per cent. (110%) of the total of: (a) all sums payable by it to the Authority during the then-current year under this Supplemental Agreement and under any and all other agreements between it and the Authority and (b) all sums payable by it to any other person, firm, corporation, municipality or municipal authority during the then-current year for sewer service. So much of said sewer rentals as shall equal one hundred and ten per cent. (110%) of all sums payable by it to the Authority during any such year are hereby pledged to meet any and all obligations of the several Municipalities to the Authority arising hereunder.

5.03. In the event that any Municipality shall fail or refuse to pay any sums due under this Agreement within thirty (30) days after the same shall become due and payable, unless otherwise herein expressly provided, the Authority may—and if notified to do so by a majority of its members it shall—take such legal action to enforce its rights under this Agreement as may be permitted by law.

5.04. Since the Authority will be required to borrow money in connection with the construction of the Outfall Sewer and the Force-Main Sewer, and to issue bonds or other evidence of indebtedness therefor, the Authority is expressly authorized, if so required, to stipulate in its said bonds or other evidence of indebtedness, or in any agreement supplemental thereto, that if at any time the several Municipalities, or any of them, shall fail to make payment to the Authority as required hereunder, the holder or holders of such obligations may take over the operation and maintenance of the plant, equipment or service of the Authority. This right shall be in addition to and not in limitation of the "Remedies of Bondholders" granted in Section 6 of "The Municipality Authorities Act" of May 2, 1945, its amendments and supplements.

ARTICLE VI.

PUBLIC UTILITY LAW.

6.01. In the event that the Commonwealth of Pennsylvania should subsequently confer jurisdiction of the subject matter of this Agreement upon the Pennsylvania Public Utility Commission, in whole or in part, the Municipalities shall, if required so to do, proceed forthwith to obtain all necessary power, right and authority from the said Public Utility Commission or other proper agency of such Commonwealth, in order to carry out the terms, provisions and intendment hereof.

ARTICLE VII.

PERMITS.

7.01. In the event that it may be necessary, for the proper performance of this Agreement on the part of the Authority, to apply to any governmental or other agency for any permit or license to do or perform any act or thing contemplated hereby, and if such application must be made by a Municipality rather than by the Authority, the Municipality affected agrees that it will execute the required application upon request by the Authority—all incidental costs to be paid by the Authority; it being understood that, in executing such application, the Municipality shall not assume any obligations beyond those for which it would have been responsible had the Authority itself made the said application.

ARTICLE VIII.

LIABILITY.

8.01. The Municipalities shall not be held to be jointly liable in the event of failure of any Municipality to perform and discharge its obligations under this Agreement—it being the intent hereof

that this shall constitute the separate Agreement of each of the several Municipalities named herein, grouped merely for convenience as parties of the first part, and not their joint obligations, and that no party hereto shall be in any way liable, jointly or severally, for the performance or non-performance by any other party of any obligation or responsibility assumed hereunder; nor shall default by any Municipality in the discharge of any obligation resting upon it hereunder relieve any other Municipality from full performance of and compliance with the terms hereof.

ARTICLE IX.

SEVERABILITY.

9.01. Should any one or more of the provisions of this Agreement for any reason be held illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement; and this Agreement shall in such circumstances be construed and enforced as if such illegal or invalid provision had not been contained herein.

ARTICLE X.

EFFECTIVE DATE AND TERM.

10.01. This Agreement shall become effective upon its execution and delivery by all of the parties hereto and shall remain in full force and effect until December 31, 1987, and thereafter until all bonds issued and to be issued by the Authority under the Indenture shall have been fully paid, both principal and interest, or until due provision for such payment shall have been made, provided, however, that when all of said bonds issued and to be issued by the Authority under the Indenture shall have been so paid in full or due provision for such payment made, the Authority may terminate this Agreement.

IN WITNESS WHEREOF, on the day and year first above written, the said Municipalities have hereunto set their names and seals, duly signed and attested by their proper officers pursuant to Ordinances or Resolutions adopted by their respective Councils or Commissioners, as the case may be, and the said Authority has hereunto affixed its corporate name and seal signed and attested by its proper officers pursuant to Resolution duly adopted by its Board.

(Seal)

BOROUGH OF MORTON

By

D. L. Armstrong
President of Council

Attest:

John J. Green
Sec'y of Council

(Seal)

BOROUGH OF PROSPECT PARK

By

James A. Brown
President of Council

Attest:

Gordon E. Granger
Sec'y of Council

(Seal)

BOROUGH OF RIDLEY PARK

By

W. Wallace Sappin

Attest:

W. Raymond Saker
Sec'y of Council

President of Council

(Seal)

BOROUGH OF RUTLEDGE

By

J. W. Livingston
President of Council

Attest:

Edward A. Weiss
Sec'y of Council

(Seal)

BOROUGH OF SWARTHMORE

By

H. L. Peck
President of Council

Attest: *Ruth A. Townsend*
Acting Sec'y of Council

(Seal)

TOWNSHIP OF NETHER PROVIDENCE

By

President of Board of
Commissioners

Attest: *Paul Palmer*
Sec'y of Board of
Commissioners

Russell Johnson

(Seal)

TOWNSHIP OF RIDLEY

By

George A. Remington
President of Board of
Commissioners

Attest: *Edward J. Venable*
Sec'y of Board of
Commissioners

(Seal)

TOWNSHIP OF SPRINGFIELD

By

Harry Wagner
President of Board of
Commissioners

Attest: *J. W. Calder*
Sec'y of Board of
Commissioners

(Seal)

CENTRAL DELAWARE COUNTY AUTHORITY

By

J. W. Calder
Chairman

Attest: *William A. Hagerty*
Secretary

VERIFICATION

I, William C. Packer, Vice President - Controller of Aqua Pennsylvania, Inc., hereby state that the facts set forth in the foregoing letter of Counsel of Aqua Pennsylvania Wastewater, Inc., dated May 28, 2020, addressing information requests of the Bureau of Technical Utility Services in the matter at PaPUC Docket No. A-2019-3015173, 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).

William C. Packer

William C. Packer
Vice President – Controller
Aqua Pennsylvania, Inc.

Dated: May 28, 2020

CERTIFICATE OF SERVICE

I hereby certify that I have this 28th day of May, 2020, served a true and correct copy of the foregoing Letter and Additional Information, upon the persons and in the manner set forth below:

VIA ELECTRONIC MAIL

Sean Donnelly, P.E., Supervisor
Water/Wastewater Section
Bureau of Technical Utility Services
Pennsylvania Public Utility Commission
sdonnelly@pa.gov

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Thomas T. Niesen
PA Attorney ID No. 31379