



THOMAS, NIESEN & THOMAS, LLC

Attorneys and Counsellors at Law

THOMAS T. NIESEN
Direct Dial: 717.255.7641
tniesen@tntlawfirm.com

May 2, 2018

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

In re: First Amendment to Asset Purchase Agreement Between
Aqua Pennsylvania Wastewater, Inc. and Limerick Township

Dear Secretary Chiavetta:

We are counsel to Aqua Pennsylvania Wastewater, Inc. (“Aqua”) and, pursuant to Section 507 of the Public Utility Code, 66 Pa. C.S. § 507 (“Section 507”), are submitting with this letter, via electronic filing, a First Amendment to Asset Purchase Agreement, dated March 29, 2018 (“First Amendment”), between Aqua and Limerick Township (“Township”), concerning Aqua’s acquisition of the Township’s wastewater system.

The underlying Asset Purchase Agreement (“APA”) between Aqua and the Township, dated November 16, 2016, was addressed by the Public Utility Commission (“Commission”) as part of its approval of Aqua’s Application at PaPUC Docket No. A-2017-2605434, Order entered November 29, 2017. In respect to Section 507, the Commission concluded there that there is no evidentiary basis upon which to find that the APA failed to satisfy the Section 507 standard pertaining to reasonableness, legality or any other matter effecting the validity of the agreement. The APA provides that the Outside Date for Closing on the acquisition was December 31, 2017 subject to an extension of up to 90 days to March 31, 2018, if necessary to obtain a required Governmental Approval.

The First Amendment extends the Outside Date for Closing on the terms and conditions set forth in it. The Outside Date is redefined from December 31, 2017 to the date that is the earlier to occur of: forty five (45) days following the date upon which the Order adopted by the Commission on November 8, 2017 and entered November 29, 2017 becomes a Final Order as defined under the APA and March 31, 2021. Terms and conditions presented in the Final Amendment include Operation and Management of the Township System, reimbursement by Aqua of certain expenses of the Township and a limited joinder and guaranty of Aqua Pennsylvania, Inc.

May 2, 2018

Page 2

As the purpose of the First Amendment is to extend the closing date for a Commission approved transaction, Aqua submits that the First Amendment is reasonable, legal and valid and asks that the Commission, to the extent necessary, issue a Certificate of Filing in accordance with Section 507.

Please contact me if anything further is required in regard to this matter. We are also filing a copy of this letter at Docket No. A-2017-2605434.

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.)

CERTIFICATE OF SERVICE

I hereby certify that I have this 2nd day of May 2018, served a true and correct copy of the foregoing letter and First Amendment to Asset Purchase Agreement Between Aqua Pennsylvania Wastewater, Inc. and Limerick Township, dated March 29, 2018, upon the persons and in the manner set forth below:

VIA FIRST CLASS MAIL, POSTAGE PREPAID

Carrie B. Wright, Prosecutor
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Christine Maloni Hoover
Erin L. Gannon
Senior Assistant Consumer Advocates
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923

Thomas S. Wyatt, Esquire
Dilworth Paxson LLP
1500 Market Street
Suite 3500E
Philadelphia, PA 19102



Thomas T. Niesen
PA Attorney ID No. 31379

FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT

THIS FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT (the "Amendment") is dated as of this 29 day of March, 2018, is made and entered into by and between LIMERICK TOWNSHIP, Montgomery County, a body corporate and politic, duly organized under the Pennsylvania Second Class Township Code (the "Seller"), and AQUA PENNSYLVANIA WASTEWATER, INC. (the "Buyer"), a Pennsylvania corporation.

BACKGROUND

Seller and Buyer have entered into an Asset Purchase Agreement dated as of November 16, 2016 (the "Agreement"), regarding the purchase and sale of the assets owned and used by Seller in connection with its operation of a sanitary wastewater collection and treatment system that provides sanitary wastewater service to various customers in Limerick Township, Pennsylvania;

Under the Agreement, Buyer's obligation to proceed to Closing is conditioned upon the PaPUC's issuance a Final Order;

The Outside Date for Closing was December 31, 2017, subject to an extension of up to 90 days to March 31, 2018, if necessary to obtain a required Governmental Approval, including a Final Order from the PaPUC; and

As of December 31, 2017, the PaPUC's Order entered November 29, 2017 had not yet become a Final Order as defined in the Agreement, and there is a possibility that the PaPUC Order entered November 29, 2017 will not have become a Final Order by March 31, 2018;

Accordingly, Seller and Buyer now wish to amend the Agreement to provide for an extension of the Outside Date on the terms and conditions set forth in this Amendment.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, each to the other paid, the receipt and sufficiency of which are hereby mutually acknowledged, Buyer and Seller agree that notwithstanding any provision of the Agreement to the contrary:

1. **Defined Terms.** Capitalized terms used but not defined herein shall have the respective meanings ascribed to them in the Agreement.

2. **Definition of "Outside Date".** In Article I, "Definitions", the definition of "Outside Date" is hereby changed from December 31, 2017 to the date that is the earlier to occur of: forty-five (45) days following the date upon which the Order adopted by the PaPUC on November 8, 2017 and entered on November 29, 2017 becomes a Final Order as defined under the Agreement and March 31, 2021.

3. **Operation and Management of the System.** Until Closing, Seller shall continue to operate the System only in the ordinary course of business in accordance with past practices and procedures and in accordance with Article IX of the Agreement.

4. **Reimbursement by Buyer of Certain Expenses of Seller.** Buyer shall reimburse or otherwise pay to Seller the following amounts:

(a) All principal and interest attributable to the period beginning on January 1, 2018 through the Closing Date payable by the Township pursuant to that certain, "Township of Limerick, Montgomery County, Pennsylvania General Obligation Note, Series of 2017" issued by Seller to TD Bank, N.A. in the face amount of \$6,000,000.00 to finance the construction of the new Township Building in accordance with the principal and interest schedule set forth on **Schedule 4(a)** attached hereto. All payments of principal made by the Buyer pursuant to this Section 4(a) shall be credited to the Purchase Price payable by the Buyer at Closing, and all payments of interest made by the Buyer pursuant to this Section 4(a) through March 31, 2019 shall be credited to the Purchase Price payable by the Buyer at Closing, and any interest payments attributable to the period beginning on April 1, 2019 and thereafter shall be in addition to the Purchase Price. All payments due under this subsection (a) shall be paid to the Township on or before such payments are due to be paid by the Township to TD Bank, N.A. per Schedule 4(a);

(b) Beginning April 1, 2018, Seller's anticipated loss of income from the investment of the net sale proceeds of the transaction, agreed by the parties to be 2% per annum based upon net sale proceeds of \$58,000,000 (\$1,160,000 per annum). All payments made by the Buyer pursuant to this Subsection (b) through March 31, 2019 shall be credited to the Purchase Price and any such payments attributable to the period beginning on April 1, 2019 and thereafter shall be in addition to the Purchase Price. Commencing April 2018, Buyer shall make monthly payments to Seller in the amount of \$96,666.67, each of which shall be paid to the Seller on or before the end of each month through Closing, with such payment prorated for any partial month during said term;

(c) Within thirty (30) days following Seller's delivery to Buyer of the underlying invoices for the same, Seller's capital expenditures related to the System following Seller's exhaustion of any EDU Fee Cash received by the Seller after the Effective Date as and when Seller's payments for such capital expenditures are due and payable, but subject to the following terms and conditions:

i. Seller shall have secured Buyer's prior written approval of all capital projects, including the cost thereof, for which reimbursement will be sought by Seller under this subsection (c), which approval shall not be unreasonably delayed by Buyer;

ii. Seller shall continue to impose and collect all EDU Fee Cash as and when such payments are due and receivable from third parties pursuant to Seller's pertinent ordinances, the terms of applicable subdivision and/or land development approvals or other agreement with such EDU Fee Cash obligors;

iii. To the extent reasonably feasible, Seller shall defer any capital projects and related expenditures until following Closing; provided, that under no circumstances shall Seller's obligation hereunder require deferral of any capital

project: (1) the deferral of which could result in harm to persons, property, the environment, or the Acquired Assets; or (2) that would result in the breach by Seller of an existing contractual obligation.

5. **Limited Joinder and Guaranty of Aqua Pennsylvania, Inc.** Aqua Pennsylvania, Inc., the owner of 100% of the issued and outstanding stock of Buyer, hereby agrees to guaranty the timely performance of Buyer's payment obligations pursuant to Section 10(b) below.

6. **Substantiation of Amounts; Right to Audit.** As a condition of the payment by Buyer of any amount required pursuant to this Amendment, Seller shall deliver such information reasonably requested by Buyer to substantiate such amounts to be paid by Buyer hereunder; provided, however, that this Section 6 shall not apply to Buyer's obligation under Section 4(b) above, which amounts have been estimated and agreed to by the parties.

7. **Definition of "Final Order".** The definition of "Final Order" in Article I of the Agreement is hereby deleted in its entirety and replaced with the following language:

"Final Order" means a Governmental Approval by a Governmental Authority as to which (a) no request for stay of the action is pending, no such stay is in effect and if any time period is permitted by statute or regulation for filing any request for such stay, such time period has passed, (b) no petition for rehearing of the action is pending and the time for filing any such petition has passed, (c) such Governmental Authority does not have action under consideration on its own motion and (d) no request for stay by a court or administrative tribunal, or appeal to a court or administrative tribunal of the Government Authority's action seeking:

(i) a determination that the transaction is not in the public interest or that the transaction does not result in affirmative public benefits as required by the Code; or

(ii) a reversal of the PaPUC's order that a Certificate of Public Convenience be issued to Buyer

is pending or in effect and the deadline for filing any such appeal or request for stay has passed.

8. **Closing Date.** Section 13.01 of the Agreement is revised such that the reference to "five (5) Business Days" is hereby changed to "forty-five (45) Business Days".

9. **Events of Termination.** Section 14.01(b)(i) is hereby deleted in its entirety and replaced with the following language:

(i) the Closing shall not have occurred on or prior to the Outside Date; or

10. **Effect of Termination of Agreement.** In the event that Closing does not occur because of:

(a) the failure of any condition set forth in Article XII, or because of termination of the Agreement pursuant to Sections 14.01(a), (b) or (d), Seller shall reimburse Buyer

of all amounts paid under this Amendment within sixty (60) days following the effective date of termination of the Agreement; or

(b) termination of the Agreement by Seller pursuant to Section 14.01(c), Buyer shall pay to Seller an amount equal to \$10,780,000:

i. reduced by the sum of all payments made by Buyer pursuant to Section 4 above for which Buyer would have received a credit against the Purchase Price had Closing occurred; and

ii. reduced by the cost basis of any capital project, measured as of the date of termination, that was funded pursuant to Section 4(c), with "cost basis" being calculated as the amount paid by Buyer pursuant to Section 4(c) above less any accumulated depreciation attributed to such capital project as of the date of termination and less any EDU Fee Cash applied by the Seller pursuant to Section 4(c) above,

with such payment being due within sixty (60) days following the effective date of termination of the Agreement.

11. **Entire Agreement.** The Agreement, as modified by this Amendment, constitute the entire agreement between the Parties pertaining to the subject matter hereof and supersede all prior agreements, negotiations, discussions and understandings, written or oral, between the Parties. There are no representations, warranties, conditions or other agreements, whether direct or collateral, or express or implied, that form part of or affect the Agreement as modified herein, or that induced any Party to enter into the Agreement as modified herein or on which reliance is placed by any Party, except as specifically set forth in the Agreement as modified herein. The Parties acknowledge and agree that (i) each has substantial business experience and is fully acquainted with the provisions of the Agreement as modified herein, (ii) the provisions and language of the Agreement as modified herein have been fully negotiated and (iii) no provision of the Agreement as modified herein shall be construed in favor of any Party or against any Party by reason of such provision of the Agreement as modified herein having been drafted on behalf of one Party rather than the other Party.

12. **Counterparts; Facsimile Execution.** This Amendment may be executed in any number of counterparts which, taken together, shall constitute one and the same agreement. This Amendment shall be effective when it has been executed by each Party and delivered to both Parties. To evidence the fact that it has executed this Amendment, a Party may send a copy of its executed counterpart to the other Party by facsimile transmission. Such Party shall be deemed to have executed and delivered this Amendment on the date it sent such facsimile transmission. In such event, such Party shall forthwith deliver to the other Party an original counterpart of this Amendment executed by such Party.

13. **Ratification.** Except as specifically modified herein, the Agreement is hereby ratified and confirmed in its entirety.

IN WITNESS WHEREOF, the Parties hereto have executed, or caused to be executed by their duly authorized Representatives, this Agreement as of the Effective Date.

LIMERICK TOWNSHIP,
MONTGOMERY COUNTY

AQUA PENNSYLVANIA
WASTEWATER, INC.

By: D. Elaine De Wan
Printed: D. ELAINE DE WAN
Its: CHAIRPERSON

By: Marc A. Lucca
Printed: Marc A. Lucca
Its: President

LIMITED JOINDER OF
AQUA PENNSYLVANIA, INC.
per the terms of Section 5 of this
Amendment:

By: Christopher P. Lohig
Printed: Christopher P. Lohig
Its: SVP, General Counsel, and Secretary

Schedule 4(a)

Township of Limerick, Montgomery County, Pennsylvania
General Obligation Note, Series of 2017
Debt Service Schedule

(attached)

Township of Limerick
SERIES OF 2017

TD BANK PROPOSAL

Settle 12/29/2017
Dated 12/29/2017

1	2	3	4	5	6
<u>Date</u>	<u>Principal</u>	<u>Rate</u>	<u>Interest</u>	<u>Semi-Annual Debt Service</u>	<u>Proposed Fiscal Year Debt Service</u>
6/15/2018		2.150	59,483.33	59,483.33	
12/15/2018	1,153,000	2.150	64,500.00	1,217,500.00	1,276,983.33
6/15/2019		2.150	52,105.25	52,105.25	
12/15/2019	1,173,000	2.150	52,105.25	1,225,105.25	1,277,210.50
6/15/2020		2.150	39,495.50	39,495.50	
12/15/2020	1,199,000	2.150	39,495.50	1,238,495.50	1,277,991.00
6/15/2021		2.150	26,606.25	26,606.25	
12/15/2021	1,224,000	2.150	26,606.25	1,250,606.25	1,277,212.50
6/15/2022		2.150	13,448.25	13,448.25	
12/15/2022	1,251,000	2.150	13,448.25	1,264,448.25	1,277,896.50
TOTALS	6,000,000		387,293.83	6,387,293.83	6,387,293.83
Assumes full draw at settlement.			52,922.83		