

**ORIGINAL**

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WASHINGTON  
NEW YORK

LOS ANGELES  
MIAMI  
LONDON

March 14, 1986

JOHN H. ISOM

DIAL DIRECT (717) 238-1805

**RECEIVED**

**MAR 14 1986**

**SECRETARY'S OFFICE  
Public Utility Commission**

Jerry Rich, Secretary  
Pennsylvania Public Utility  
Commission  
P. O. Box 3265  
Harrisburg, Pennsylvania 17120

Re: Water Supply Agreement Between  
Borough of Phoenixville, County  
of Montgomery, Pennsylvania and  
Citizens Utilities Home Water  
Company

Dear Secretary Rich:

Enclosed, for filing, are three copies of a document entitled "Water Supply Agreement Between the Borough of Phoenixville, Montgomery County, Pennsylvania and Citizens Utilities Home Water Company". Borough of Phoenixville is a municipal corporation and Citizens Utilities Home Water Company is a public utility providing water service to the public subject to the regulatory jurisdiction of the Pennsylvania Public Utility Commission. The enclosed contract is being filed pursuant to Section 507 of the Public Utility Code, 66 Pa. C.S.A. §507.

Yours truly,

*John H. Isom*  
John H. Isom

**DOCUMENT  
FOLDER**

JHI:gjm

enclosure

cc: James Dunworth, Esquire (w/enc.)  
Attorney for Borough of Phoenixville

**DOCKETED**  
MAR 17 1986

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

THIS AGREEMENT, made and entered into this 10<sup>th</sup> day of March, 1986, and executed in duplicate originals (each executed copy constituting an original) by the BOROUGH OF PHOENIXVILLE, 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");

**DOCUMENT  
FOLDER**

**RECEIVED**

MAR 14 1986

SECRETARY'S OFFICE  
Public Utility Commission

**W I T N E S S E T H:**

WHEREAS, Citizens owns and operates public utility water systems and provides public utility water service to the public located in and in the vicinity of Upper Providence and East Pikeland Townships, Montgomery County, Pennsylvania, for residential, commercial, industrial and corporate purposes, pursuant to Certificates of Public Convenience granted by the Pennsylvania Public Utility Commission; and,

WHEREAS, Phoenixville presently owns and operates a 6.0 million gallon per day (mgd) water treatment plant along the Schuylkill River and furnishes water service to itself and the Village of Mont Clare in Upper Providence Township; and,

WHEREAS, Citizens has been requested by developers to provide public utility water service to a portion of Upper Providence Township along Egypt Road in support of proposed development and Citizens proposes to enter into a Water Facilities Line Extension Agreement with one or more of said developers; and,

**DOCKELL**  
MAR 17 1986

WHEREAS, Citizens desires to obtain a wholesale supply of water from Phoenixville for Citizens' use in portions of Upper Providence

Township and in a certain portion of its certificated service area within East Pikeland Township; and

WHEREAS, Phoenixville is willing to provide a continuous wholesale supply of water to Citizens to enable Citizens to provide public utility water service within Upper Providence Township and East Pikeland Township.

NOW, THEREFORE, for and in consideration of the foregoing and of the mutual covenants herein contained, the parties hereto agree as follows:

## ARTICLE I

### SCOPE OF AGREEMENT

#### Section 1 - Water Supply Requirements

1. Subject to the terms and conditions hereinafter set forth, Phoenixville shall deliver and sell to Citizens and Citizens shall purchase and receive from Phoenixville (i) its total supply of water required to accommodate the residential, commercial, industrial and corporate water requirements within Citizens' proposed service area, shown on Exhibit "A" attached hereto, and made a part hereof, along Egypt Road in Upper Providence Township, Montgomery County, Pennsylvania; provided, however, that Citizens shall not be obligated to use water purchased from Phoenixville to service areas for which a Water Facilities Line Extension Agreement was executed prior to the satisfaction of the conditions precedent for service within Upper Providence Township as contained in Article V, Section 2, herein; and (ii) its total supply of water for use within that certain proposed service area serving Southill Development within East Pikeland Township for which Citizens has a Certificate of Public Convenience, as shown on Exhibit "B", attached hereto and made a part hereof.

Citizens shall not sell, furnish or give away water to or for customers within the Village of Mont Clare presently served by the Borough of Phoenixville and shown on Exhibit "A" or in any area within Lower Providence Township, subject to the provisions of Article I, Section 3 herein, or unless permitted by separate agreements. Phoenixville shall not sell, furnish or give away any water to or for customers within Citizens' proposed service areas shown on Exhibits "A" or "B" or in Citizens remaining certificated service areas within East Pikeland Township. Except as provided for in this Article I, Section 1, Paragraph 1, if Citizens chooses not to obtain water for the area shown on Exhibit "A" and/or the area shown on Exhibit "B", then Phoenixville, subject to the approval of the regulatory agencies, shall be free to supply and sell water in those areas.

2. To the extent required by Citizens, Phoenixville shall furnish and deliver water in an amount not to exceed a 1.15 mgd peak day water demand to the proposed service areas shown on Exhibits "A" and "B".

#### Section 2 - Term and Renewal of Agreement

1. This Agreement shall continue in effect until January 1, 2026.

2. Not later than the first day of March, 2025, both Phoenixville and Citizens shall commence negotiations for continuation, extension or renewal of this Agreement.

#### Section 3 - Emergency Water Service Agreements

Nothing in this Agreement shall be construed to prohibit Citizens from entering into any water service agreement with any other person,

corporation, firm, municipality, or utility for the purpose of obtaining or providing water in the event that there is a partial or total failure by Phoenixville to supply the quantities called for in Article I, Section 1 of this Agreement, or in the event that the water supply from Phoenixville becomes contaminated.

#### Section 4 - Water Service Delivery

1. Phoenixville shall furnish and deliver water to Citizens for use in Upper Providence Township at Citizens' metering point attached to Phoenixville's system at the intersection of Walnut Street and Bridge Street within the Village of Mont Clare.

2. Phoenixville shall furnish and deliver water to Citizens at suitable pressures and flows for use in East Pikeland Township at a metering point to be mutually agreed upon.

3. At all times, Phoenixville shall have the capability to furnish and deliver water to Citizens at the metering points described in Article I, Section 4, Paragraph 1, herein, at a flow rate greater than 1,100 gallons per minute (gpm) and a residual pressure greater than 70 pounds per square inch (psi). The static pressure at said metering point will not exceed 125 psi, however.

4. Water delivered at Citizens' metering points shall be clear, potable water, safe for human consumption, meeting drinking water standards of the Pennsylvania Public Utility Commission, the Pennsylvania Department of Environmental Resources, the United States Environmental Protection Agency and successor agencies.

#### Section 5 - Billing and Invoices

1. Invoices rendered pursuant to the rates and terms herein agreed upon shall be submitted monthly to Citizens by the fifth of the

month and shall contain statements of Citizens' meter readings at the beginning and at the end of the monthly billing period, and such other pertinent invoice data as may be required by Citizens. Citizens shall pay each invoice so rendered within thirty (30) days of the receipt thereof.

2. Should Citizens dispute any portion of the monthly billing, the following procedure shall be utilized, if not contrary to Pennsylvania Public Utility Commission Rules and Regulations:

- A. Citizens shall provide written notice to Phoenixville within 30 days of the receipt of the monthly invoice setting forth the basis for the dispute and indicating the contested dollar amount.
- B. The disputed matter, if not otherwise resolved, shall be submitted to arbitration within 30 days of notice provided under Article I, Section 5, Paragraph 2.A, herein. Arbitration shall be conducted in accordance with the Pennsylvania Uniform Rules of Procedure for Arbitration.
- C. The arbitrator's decision shall also award the prevailing party simple interest on the amount awarded at the then effective prime interest rate of Marine Midland Bank, New York.

## ARTICLE II

### TECHNICAL PROVISIONS

#### Section 1 - Measurement of Water Deliveries

All water furnished and delivered by Phoenixville to Citizens, for use within Upper Providence Township, shall be measured by

metering equipment located in the metering pit at the intersection of Walnut Street and Bridge Street in the Village of Mont Clare.

### Section 2 - Meter Tests

1. In the event that any meter installed for measuring the quantity of water delivered to Citizens fails to register, the parties shall establish the duration of the period during which said meter failed to register and the quantity of water delivered through said meter during such period and, upon agreement, an appropriate adjustment based thereon shall be made in the amount billed to Citizens; provided, however, that the procedure resulting from application of this Article II, Section 2, Paragraph 1 does not contravene the Pennsylvania Public Utility Commission Rules and Regulations.

2. Testing of the meter installed for measuring the quantity of water delivered to Citizens by the Borough of Phoenixville and any appropriate adjustments to meter readings shall be governed by the regulations of the Pennsylvania Public Utility Commission codified at 52 PA Code Sections 65.8 and 65.9.

### Section 3 - Continuity of Service and Consumption

1. Phoenixville shall use reasonable diligence to provide a regular and uninterrupted supply of water to Citizens' metering points, but shall not be liable for damages to Citizens for failure, suspension, diminution or other variations beyond the control of Phoenixville, including but not limited to acts of God or the public enemy, fire, floods, earthquakes or other catastrophes, failure or breakdown of transmission or other facilities. Phoenixville shall diligently seek to remedy the effects of any such occurrences.

2. If Phoenixville is unable to supply the water requirements of Citizens specified in Article I, Section 1, Paragraph 1, herein, for any reason, including, but not limited to requirements in excess of amounts guaranteed pursuant to Article I, Section 1, Paragraph 2, Citizens may obtain additional water service from sources other than those of Phoenixville.

3. Citizens shall use reasonable diligence in the operation and maintenance of any pumping and storage facilities and will not require water to be supplied to its Upper Providence Township facilities at a flow rate greater than 1,100 gpm or at an amount greater than 1.15 mgd.

### ARTICLE III

#### RATES AND CHARGES

##### Section 1 - Determination of Payments

Phoenixville hereby agrees that the purchased water rate shall be as established by the Pennsylvania Public Utility Commission and may not be changed except by Order of the Pennsylvania Public Utility Commission. Phoenixville and Citizens each reserve the right (but do not have the obligation) to file with the Pennsylvania Public Utility Commission for a change in the purchased water rate at anytime.

### ARTICLE IV

#### PROVISION AND MAINTENANCE OF FACILITIES

##### Section 1 - Facilities to be Provided by Phoenixville

Phoenixville agrees to provide and maintain all water treatment and transportation facilities, up to and including all metering points.

Section 2 - Facilities to be Provided by Citizens

Citizens agrees to provide and maintain all facilities required to connect the metering points with its water transmission and distribution systems. Citizens further agrees to provide and maintain any signaling devices within its systems that are necessary to control pumping rates from any booster station.

Section 3 - Access to Facilities

Authorized representatives of Phoenixville and Citizens will be allowed access to the metering points at suitable times to perform the obligations of Phoenixville and Citizens with respect to this Agreement.

ARTICLE V

GENERAL PROVISIONS

Section 1 - General Conditions Precedent

This Agreement is expressly subject to and conditioned upon the following:

1. The prior approval of this Agreement by the Pennsylvania Public Utility Commission.
2. The approval by the Pennsylvania Public Utility Commission of any surcharge necessary for recovery of all costs under this Agreement which, in Citizens' sole judgement, will, in fact, enable Citizens to recover all costs to Citizens resulting from this Agreement.

Section 2 - Conditions Precedent Applicable Solely to Service Within Upper Providence Township

Purchase of water from Phoenixville by Citizens for use within Upper Providence Township is expressly subject to and conditioned upon the following:

1. The prior granting of a Certificate of Convenience and Necessity by the Pennsylvania Public Utility Commission for Citizens' provision of water service to the area described in Exhibit "A".

2. Execution of a Water Facilities Line Extension Agreement with one or more developers for construction of water transmission facilities within the area described in Exhibit "A".

Section 3 - Risk; Liability; Insurance; Penalties

1. Phoenixville shall perform all construction, operation and maintenance necessary to provide a supply of purchased water pursuant to this Agreement solely at its own risk and, in case of accident, damage or destruction of its water treatment or transmission facilities necessary to provide purchased water under this Agreement, Phoenixville will replace or repair forthwith at its own expense whatever is damaged or destroyed.

2. Phoenixville hereby assumes full responsibility and liability for the injury or death of any person, or persons, or loss or damage to any property, or to Citizens, contributed to or caused by the active or passive negligence of Phoenixville, its agents, servants, employees or subcontractors in the execution of the construction to be performed under this Agreement, or any claims arising from any action, in bringing the water to the metering points referred to in Article I, Section 4 hereof. Phoenixville will indemnify and hold harmless Citizens, its officers, directors, agents and employees from and against claims or expenses, including penalties and assessments, to which they or any of them may be subjected by reason of such failure to non-negligently construct and in case any suit or other proceeding shall be brought on account thereof,

Phoenixville will assume the defense at Phoenixville's own expense and will pay all judgments rendered therein.

3. Citizens hereby assumes full responsibility and liability for the injury or death of any person, or persons, or loss or damage to any property, or to Phoenixville, contributed to or caused by the active or passive negligence of Citizens, its agents, servants, employees, or subcontractors in the execution of the construction to be performed under this Agreement, or any claims arising from any action, in taking the water beyond the metering points referred to in Article I, Section 4 hereof. Citizens will indemnify and hold harmless Phoenixville, its officers, directors, agents and employees from and against any such claims or expenses, including penalties and assessments, to which they or any of them may be subjected and in case any suit or other proceeding shall be brought on account thereof, Citizens will assume the defense at Citizens' own expense and will pay all judgments rendered therein.

4. Phoenixville agrees to procure and maintain all insurances on its water treatment and transportation facilities construction and operation, and comprehensive general liability, required under this Article V, Section 3, Paragraphs 1 and 2. Such coverages shall be in content and amounts adequate to cover the risk commensurate with the operation and any construction to be performed under this Agreement.

5. Any penalties, fines, assessments, legal expenses, or civil damages assessed against Phoenixville for any omission or commission associated with the construction, operation (including but not limited to NPDES discharge penalties) or maintenance of the water treatment and transportation facilities not in accordance with any federal, state or local statute, rule, regulation or procedure, shall be borne

solely by Phoenixville, unless it is established that such fine or penalty was the result of some negligent or wrongful action or inaction of Citizens.

Section 4 - Notices

All notices or communications hereunder shall be sent to Phoenixville, addressed as follows:

Borough of Phoenixville  
Attn: William Herman, Borough Manager  
140 Church Street  
Phoenixville, PA 19460

or to such other addresses as Phoenixville may advise Citizens in writing, and to Citizens at:

Citizens Utilities Home Water Company  
Attn: A. Wyda, Manager  
135 North Fourth Street  
Royersford, PA 19468

with copy to:

Citizens Utilities Home Water Company  
Attn: David E. Chardavoyne  
Assistant Vice President  
High Ridge Park  
Stamford, CT 06905

or to such other addresses as Citizens may advise Phoenixville in writing.

Section 5 - Successors and Assigns

This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns, provided however that any assignment shall be approved by the other party, which approval shall not be unreasonably withheld.

## Section 6 - Miscellaneous

This Agreement may not be modified or amended except by a writing signed by both parties. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and expressly supersedes and revokes all other prior or contemporaneous promises, representations and assurances of any nature whatsoever with respect to the subject matter hereof. The remedies provided in this Agreement in favor of either party shall not be deemed either party's exclusive remedy but shall be in addition to all other remedies available at law or in equity. In the event any provision of this Agreement is for any reason adjudicated deficient, unenforceable, irregular and/or invalid, the parties hereto and each of them, will promptly take such action or proceedings as may be necessary to correct such deficiency or otherwise validate that provision. If any provision of this Agreement is declared void and unenforceable, such provision shall be deemed severed from this Agreement, which shall otherwise remain in full force and effect. No waiver by either party of any breach by the other of any provision of this Agreement nor any failure by either party to insist on strict performance by the other of any provision of this Agreement shall in any way be construed to be a waiver of any future or subsequent breach by either party or bar the right of either party to insist on strict performance by the other of the provisions of this Agreement in the future.

## Section 7 - Effective Date

This Agreement shall become effective 30 days after a copy is filed with the Pennsylvania Public Utility Commission.

Section 8

Attached as Appendix "C" hereto, and incorporated herein by reference, is a certified copy of an ordinance of Borough of Phoenixville accepting this Agreement and authorizing its duly authorized representatives to execute this Agreement in behalf of Borough of Phoenixville.


IN WITNESS WHEREOF, the BOROUGH OF PHOENIXVILLE and CITIZENS UTILITIES HOME WATER COMPANY have caused this Agreement to be signed by their respective officers and attested by their Borough Clerk and Assistant Secretary, respectively, and their seals affixed hereto, all as of the day and date first hereinabove set forth.

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Borough Attorney

SEAL

ATTEST:

  
\_\_\_\_\_  
Borough Clerk

BOROUGH OF PHOENIXVILLE, a  
Pennsylvania municipal  
corporation

By   
Its \_\_\_\_\_

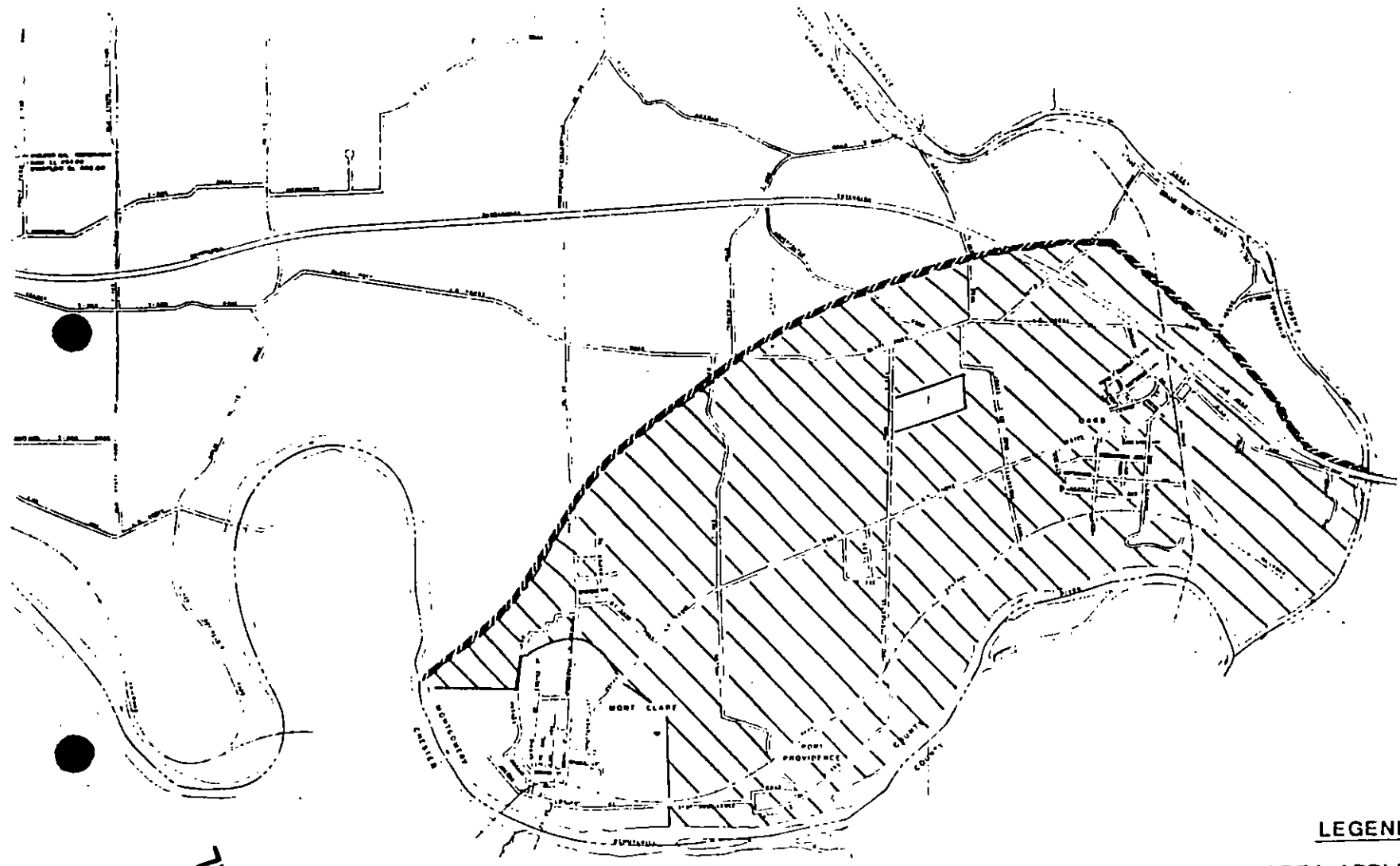
CITIZENS UTILITIES HOME WATER  
COMPANY, a Pennsylvania  
corporation

By   
Its Asst Vice President

SEAL

ATTEST:



  
\_\_\_\_\_  
Assistant Secretary



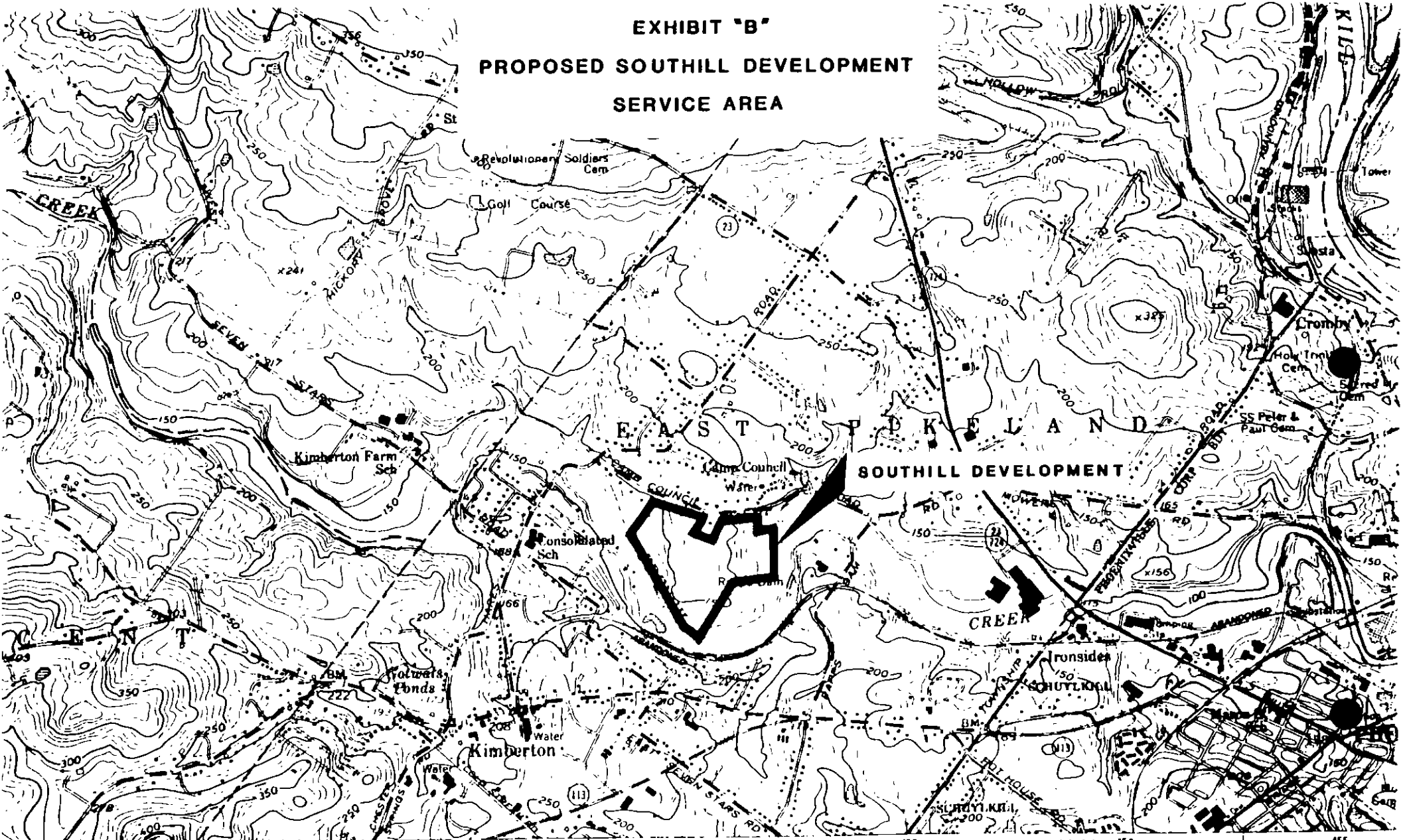
CITIZENS UTILITIES HOME WATER COMPANY  
EXHIBIT A

POOR ORIGINAL

LEGEND

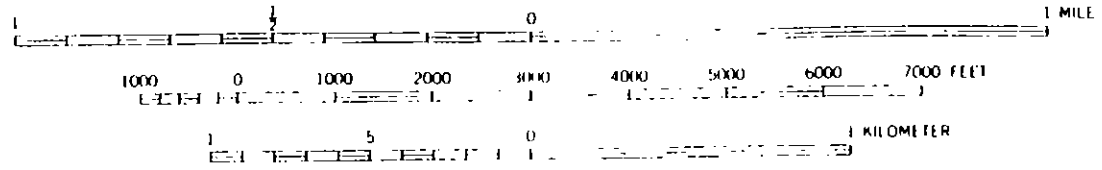
- 
 AREA APPLIED FOR BY  
CITIZENS UTILITIES HOME  
WATER COMPANY
- 
 SOUTHERN BOUNDARY OF  
CITIZENS UTILITIES HOME  
WATER COMPANY CERTIFICATED  
AREA

**EXHIBIT "B"**  
**PROPOSED SOUTHILL DEVELOPMENT**  
**SERVICE AREA**

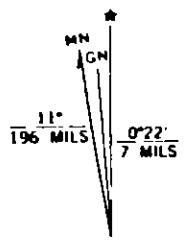


449 CHESTER SPRINGS 26 MI DOWNINGTOWN 42 MI 450 35' 451 (MALVERN) 5864 11 SE 453 32'30" 454 455 PENNSYLVANIA

SCALE 1:24000

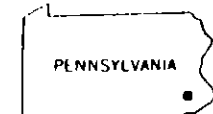


CONTOUR INTERVAL 10 FEET  
 NATIONAL GEODETIC VERTICAL DATUM OF 1929



UTM GRID AND 1983 MAGNETIC NORTH

**POOR ORIGINAL**



CURFEW ORDINANCE

Mr. Griffith made a motion the Solicitor prepare an ordinance amendment which would delete the siren requirement with regard to the curfew law, seconded by Mr. Beluch, and approved.

PROPOSED REVISIONS OF PARKING ORDINANCES AND ORDINANCE COMMITTEE MEETING FOR REVIEW OF REVISIONS

Mr. Griffith made a motion the Solicitor review the proposals of the Parking Authority for revision of the parking ordinances and that the Solicitor report back to the committee on these proposed revisions, seconded by Mr. Beluch, and approved.

Mr. Beluch made a motion that a Special Ordinance Committee meeting be set for the review of the proposals of the Parking Authority, and possibly, after said meeting a special Council could be held to either approve or disapprove these proposals, seconded by Ms. Rambo, and approved.

Mrs. August requested that the Solicitor of the Parking Authority be present at this meeting.

Mr. Beluch said anyone interested in the parking plan should be present.

UTILITIES-HEALTH-SANITATION

Mr. McGuigan reported the Utilities-Health-Sanitation Committee met on January 27, 1986.

Mr. McGuigan made a motion that Charles Price of Middle States Energy, Inc. be given a copy of the Borough Solicitor's comments regarding the proposed trash agreement and that the Manager meet with Mr. Price regarding same, seconded by Mr. Beluch, and approved.

AGREEMENT WITH CITIZENS HOME WATER COMPANY FOR SALE OF BULK WATER

Mr. McGuigan asked the Borough Solicitor if he had any information regarding revisions, as suggested, to the agreement for sale of bulk water between Borough and Citizens Home Water Company.

Mr. Dunworth said he is in receipt of correspondence from Citizens Home Water Company and in summary, each and every suggestion set forth in written comments has been accepted by Citizens Home Water Company.

Mr. McGuigan made a motion the Borough enter into the agreement for the sale of bulk water with Citizens Home Water Company, seconded by Mr. Beluch.

Motion was approved with one dissenting vote, Mr. Kovach voted no.

INVESTIGATION OF GRANTS THAT MAY BE AVAILABLE

Mr. McGuigan made a motion that the Borough's new engineering firm, SMC Martin, Inc., at the discretion of the Manager, look to see if there are any grants the Borough might be eligible for so the necessary water/sewer adjustments needed as a result of new developments could be made, seconded by Mr. Beluch, and approved.

CONNECTION FEES

Mr. McGuigan made a motion the ordinance regarding connection fees be reviewed at the next Ordinance Committee meeting, seconded by Mr. Beluch.

Motion was approved with three dissenting votes, Mr. Mark, Mr. Horenci and Mr. Smith voted no.

PAYMENT OF ENGINEERING FEES BY DEVELOPER OF ELAND DOWNE

Mr. McGuigan made a motion the Solicitor write a letter to the developer demanding immediate payment of what is owed for engineering fees prior to the next meeting of the Utilities-Health-Sanitation Committee, seconded by Mr. Smith.

Motion was approved with one dissenting vote, Mr. Kovach voted no.

PARKS-PROPERTY-PUBLIC SAFETY

Mr. Beluch reported the Parks-Property-Public Safety Committee met on February 4, 1986.

Mr. Beluch asked if the proper language has been worked out with regard to the twenty year contract with Decker Energy.

Mr. Herman said Decker Energy has a clear understanding of the intent of the revisions to the problem with hard figures and their attorney is to contact Mr. Dunworth to iron out acceptable language.

Mr. Beluch made a motion the Manager and Solicitor work out the proper language for this twenty year contract with Decker Energy, seconded by Ms. Rambo.

(No indication of vote being taken on this motion.)

I hereby certify this is a true and exact copy of the minutes (page 116) of the meeting of Borough Council, February 11, 1986.

*William J. Stinson*  
Borough Secretary