

AQUA PENNSYLVANIA WASTEWATER, INC.

BUILDER'S WASTEWATER EXTENSION AGREEMENT

This Agreement incorporates and is made up of the documents referenced herein, including:

BUILDER'S WASTEWATER EXTENSION AGREEMENT

EXHIBITS

1. Requirements for As Built Information
2. Form for Certification of Final Project Cost
3. Refund definitions
4. Specifications for Builder Wastewater Extension Pipeline

ATTACHMENTS

- A. Applications for Domestic Wastewater Service
- B. Description and Plan of Extension Project
- C. Preliminary Cost Estimate for Extension Project
- D. Commitment and Release of Contractor
Commitment and Release of Pump Station Contractor
- E. Assignment of Contractor's Warranty by Builder
Assignment of Pump Station Contractor's Warranty by Builder
- F. Easements
- G. Permits and Regulatory Approvals
- H. Administrative Fee and Administrative Services
- I. Value Added Fee and Value-Added Services
- J. Performance Bond or Irrevocable Letter of Credit
- K. Insurance

EXTENSION: NAME Development

BUILDER'S WASTEWATER EXTENSION AGREEMENT

THIS BUILDER'S WASTEWATER EXTENSION AGREEMENT is made as of June ___, 2023 by and between **AQUA PENNSYLVANIA WASTEWATER, INC.**, a Pennsylvania corporation, with its principal office at 762 W. Lancaster Avenue, Bryn Mawr, Pennsylvania 19010 (hereinafter referred to as "AQUA"), and **NAME, INC.**, a Pennsylvania corporation with its principal office at 121 W. Miner Street, West Chester, PA 19382 (hereinafter referred to as "Builder").

BACKGROUND

The Builder is the owner and developer, or the authorized representative of the owner or developer, of a certain real estate development known as NAME Development which is planned for approximately 51 residential units located in New Garden Township, Chester County, Pennsylvania (hereinafter referred to as "Development").

The Builder wishes to obtain wastewater service from AQUA, and AQUA wishes to provide wastewater service, for the Development.

The Builder wishes to take sole responsibility to furnish and install, at Builder's expense, and to contribute to AQUA, a wastewater system extension, new pump station and related improvements for the Development.

The Builder has furnished a completed Attachment Package for Builder's Wastewater Extension Agreement (the "Package"). The information contained in the Package, all Attachments referred to in the Package, the final, executed documents for which forms are set forth in the Attachments, and all Exhibits to the Agreement, are incorporated into this Agreement.

The Builder represents that _____ will be the Contractor for the Extension Project under this Agreement (the "Contractor") and the parties acknowledge that the Contractor has certain binding obligations under this Agreement that inure to the benefit of AQUA as well as the Builder; the Builder is required to have the Contractor execute this Agreement for the purpose of having the Contractor acknowledge and agree to the terms and obligations imposed on the Contractor by this Agreement.

The Builder represents that _____ will be the Pump Station Contractor for the Extension Project under this Agreement (the "Pump Station Contractor") and the parties acknowledge that the Pump Station Contractor has certain binding obligations under this Agreement that inure to the benefit of AQUA as well as the Builder; the Builder is required to have the Pump Station Contractor execute this Agreement for the purpose of having the Pump Station Contractor acknowledge and agree to the terms and obligations imposed on the Pump Station Contractor by this Agreement.

In the event that more than one Contractor is involved in the work of the Extension Project, then in such event the parties hereto acknowledge that the Package shall specifically delineate the various responsibilities between or among the Contractor which Builder acknowledges shall constitute, in the entirety, the Extension Project.

In consideration of the mutual covenants contained in this Agreement, and intending to be legally bound, the parties agree as follows:

A. OBLIGATIONS REGARDING THE MAIN EXTENSION

- 1. Construction.** The Builder agrees and undertakes as its sole responsibility to design, furnish and install, at Builder's sole expense and in accordance with the terms and conditions of this Agreement, but not limited to, the sanitary sewer mains, clean outs, manholes and /covers, sewer service laterals lines from the sanitary sewer main to the clean outs, a new pump station and any restoration work, as further described in Attachment B to this Agreement (the "Extension Project"). The Builder is responsible for supplying all necessary materials and performing the installation and testing in accordance with this Agreement.
- 2. Commencement of Construction.** Builder may give notice of intention to commence construction on or after the execution of this Agreement by AQUA and may commence construction not less than two (2) weeks after providing written notice.
- 3. Contractor.**
 - (a) Qualifications.** AQUA acknowledges that the Builder plans to have the work on the Extension Project performed by the Contractor. The Builder will cause the Contractor to perform the work on the Extension Project in accordance with this Agreement. The Contractor must be on the current list of contractors, if applicable, which AQUA has pre-qualified as having sufficient experience to install all portions of the Extension Project. Builder must notify AQUA of any change of Contractor, and any new contractor must comply with all terms and obligations of this Agreement which apply to the Contractor, including without limitation this Section 3 and the insurance and indemnification provisions.
 - (b) Responsibility.** Builder and the Contractor will be liable on a joint and severable basis to AQUA for failure to perform the Extension Project in compliance with this Agreement. The Builder will cause a copy of this Agreement to be attached to the contract between the Builder and the Contractor. The Builder will provide AQUA with a copy of the construction contract between the Builder and the Contractor. The Contractor is obligated directly to AQUA by signing and delivering to AQUA the Commitment and Release to Contractor in the form of Attachment D, which includes, without limitation, Contractor's agreements to indemnify AQUA, to maintain certain insurance coverage and, in performing work on the Extension Project, to be responsible for worksite safety

and comply with all requirements contained in this Agreement and applicable laws and regulations.

4. Pump Station Contractor.

- (a) **Qualifications.** AQUA acknowledges that the Builder plans to have the pump station work on the Extension Project performed by the Pump Station Contractor. The Builder will cause the Pump Station Contractor to perform the work on the Extension Project in accordance with this Agreement. Builder must notify AQUA of any change of Pump Station Contractor, and any new contractor must comply with all terms and obligations of this Agreement which apply to the Pump Station Contractor, including without limitation this Section 3 and the insurance and indemnification provisions.
- (b) **Responsibility.** Builder and the Pump Station Contractor will be liable on a joint and severable basis to AQUA for failure to perform the Extension Project in compliance with this Agreement. The Builder will cause a copy of this Agreement to be attached to the contract between the Builder and the Pump Station Contractor. The Builder will provide AQUA with a copy of the construction contract between the Builder and the Pump Station Contractor. The Pump Station Contractor is obligated directly to AQUA by signing and delivering to AQUA the Commitment and Release to Pump Station Contractor in the form of Attachment D, which includes, without limitation, Pump Station Contractor's agreements to indemnify AQUA, to maintain certain insurance coverage and, in performing work on the Extension Project, to be responsible for worksite safety and comply with all requirements contained in this Agreement and applicable laws and regulations.

4. Conduct of Construction.

- (a) **Progress.** Builder agrees to proceed diligently to completion of construction of the Extension Project.
- (b) **As Built Information.** Builder will provide accurate and complete as built information in accordance with Exhibit 1 ("As Built Information") concurrently with progress of construction; will make the As Built Information available to the AQUA representative upon request of AQUA; and will supply complete As Built Information to AQUA prior to or upon Contribution (as hereinafter defined) of the Extension Project.
- (c) **Worksite Responsibility.** The Builder, Contractor and the Pump Station Contractor are responsible for the worksite, including the means and methods of construction, and safety precautions, procedures and programs. Builder will have an OSHA-competent person on-site at all times. AQUA shall have no duty to the employees or contractors of the Builder, Contractor or Pump Station Contractor for any safety aspects of the work. Under no circumstances shall AQUA be deemed to be responsible for the methods of construction or the safety precautions and procedures at the worksite, whether or not an

AQUA representative is on site. Builder, Contractor and Pump Station Contractor are responsible for reviewing and executing all plans and changes in plans, construction methods and procedures, and changes in construction methods and procedures, whether or not required or reviewed by AQUA, so that work is conducted in a safe manner for the protection of anyone on or near the Extension Project.

(d) Compliance with Applicable Laws, Regulations and Specifications. The Builder will install and complete the Extension Project in a workmanlike manner, in accordance with this Agreement, all applicable laws, regulations and ordinances, including without limitation the Pennsylvania Underground Utility Protection Law (or any successor) and any regulations thereunder, general wastewater industry standards, environmental laws and regulations, and the AQUA specifications in effect for materials, construction and testing of the Extension Project as set forth in the Specifications for Builder's Extension Project in Exhibit 4 attached hereto, as may be modified and amended from time to time (hereinafter collectively referred to as "Specifications"). Pursuant to the Pennsylvania Underground Utility Protection Law, before starting work, Builder will independently investigate and verify in the field the existence and location of underground utilities, whether or not indicated on the plans.

(e) Maintenance and Repair. Builder is responsible for all maintenance and repair of the installed Extension Project prior to Contribution, whether or not AQUA has commenced wastewater service.

5. Representations and Warranties.

(a) Warranty of Extension Project by Builder. The Builder hereby warrants that the Extension Project, including without limitation integrity of trenches and integrity of paving and other restoration work, will not leak and will be free from defects in materials and workmanship, the integrity of the pump station which will be free from defects in materials and workmanship for the longer of a period of one and one-half (1-1/2) years, or until fifty percent (50%) of the properties are occupied and sending wastewater flows to the pump station, from the date of Contribution of the final portion of the Extension Project and agrees to assign any Contractor's or Pump Station Contractor's warranty pursuant to the Assignment of Contractor's Warranty by Builder and Assignment of Pump Station Contractor's Warranty by Builder forms contained in Attachment E, and that the final As Built Information, when delivered to AQUA, will be accurate and complete. The Builder will promptly proceed at its own cost and expense to make good all portions of the work or materials determined by AQUA that fail to conform with the Specifications or which are damaged or destroyed by removal of the non-conforming work or materials and will replace or repair those portions to be in accordance with the Specifications and will revise the As-Built Information to be accurate and complete. If Builder fails to remedy or correct non-conforming work or materials or to revise the As Built Information to be accurate and complete, AQUA may bring the work or materials or As Built Information into conformation at the expense of Builder (for which AQUA

may draw down on the Performance Bond or Letter of Credit and/or pursue any other available remedy).

(b) Adequate Financing. Builder represents and warrants that it has adequate financing for completion of the Development, including the Extension Project.

(c) Authorization. Builder represents that it is duly organized and validly existing in the jurisdiction in which it is organized and that the execution, delivery and performance of this Agreement have been duly authorized by Builder.

6. Employees. The Builder and/or the Contractor and Pump Station Contractor will be the legal employer(s) of any and all employees and the sole contractually obligated parties with any independent contractors working on the Extension Project. AQUA will not be the employer or joint employer of any such employees, and neither AQUA nor its representative will have any right to control or supervise the manner and means by which the work is performed. The Builder is responsible for any and all obligations arising by virtue of the employment or independent contract relationship, and compliance with all laws, ordinances, and regulations governing employment and independent contract relationships including, without limitation, obligations arising under the National Labor Relations Act, the Fair Labor Standards Act, the Older Workers Benefit Protection Act, Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Employee Retirement Income Security Act, the Occupational Safety and Health Act, and any similar federal, state or local laws, ordinances, or regulations, as well as all obligations to withhold income or wage taxes, to pay unemployment compensation taxes, to provide workers compensation insurance, and to pay any unemployment compensation, workers' compensation benefits, or other compensation or benefits to such employees or contractors.

7. Indemnification and Insurance.

(a) Indemnity. The Builder acknowledges and agrees that it has undertaken sole responsibility for the Extension Project pursuant to this Agreement. The Builder shall release, indemnify, protect, defend, and save harmless AQUA, and all of its directors, officers, employees and agents (hereinafter sometimes referred to as "indemnified parties"), from and against any and all claims, demands, actions, liabilities, losses, damages, fines, penalties, costs and expenses (including reasonable attorneys' fees and costs of investigation) that may be asserted against or incurred by any of such indemnified parties resulting from, arising out of or related to the Extension Project, and, with respect to the period prior to Contribution of the final portion of the Extension Project, the premises covered by grant(s) of Easement, whether or not caused in whole or in part by the active or passive, sole, concurring, contributory negligence or inherent nature of the operations of a party indemnified hereunder, including, without limitation, claims or liabilities arising out of or related to any and all damage or injury to any person (including loss of life), including any injury or injuries or loss of life to the employees of

the Builder, Contractor or Pump Station Contractor or any other worker, or any property of any persons, corporations or other associations (including the parties hereto and their directors, officers, employees and agents).

- (b) Interpretation.** It is the intent of this provision to absolve, protect and defend AQUA and its directors, officers, employees and agents from any and all claims, demands, actions, liability, losses, damages, fines, penalties and expenses (including reasonable attorneys' fees and cost of investigation) arising out of or related to the Extension Project. This indemnity shall be liberally construed in favor of indemnification to the benefit of AQUA.
- (c) Notice of Potential Claims.** In furtherance of this indemnification, Builder must promptly report, in writing, to AQUA all accidents whatsoever arising out of, or in connection with, the performance of the work, whether on or adjacent to the work site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. In addition, if death, serious personal injury or serious property damage occurs, Builder will immediately report by telephone or messenger, or both, to AQUA.
- (d) Approval of Counsel; Costs and Expenses.** An indemnified party shall have the right to approve counsel appointed on its behalf pursuant to this indemnification and shall be entitled to receive costs and expenses from Builder pursuant to this indemnification beginning upon receipt by indemnified party of formal notice of any claim. An indemnified party shall be entitled to costs and expenses from Builder regardless of the nature of the claim or claims asserted or the dismissal, resolution, settlement or discharge of any claim.
- (e) Environmental and Other Claims.** Indemnification pursuant to this Section shall include, without limitation, indemnification for action of any kind whatsoever, whether direct or indirect, by the United States Environmental Protection Agency (hereinafter referred to as "EPA") or the Pennsylvania Department of Environmental Protection (hereinafter referred to as "DEP") related to or involving any work by Builder under this Agreement.
- (f) Severability.** The individual provisions of this indemnification are deemed to be severable, and the invalidity or unenforceability of any portion of this indemnification shall not affect or impair such portion to the extent it has been deemed valid and enforceable, nor the remaining provisions of this indemnification, which shall continue in full force and effect.
- (g) Insurance.** The Builder, Contractor and the Pump Station Contractor are obligated to provide and maintain the types and levels of insurance set forth in Attachment K to this Agreement.

8. Easements.

- (a) **Grant of Easement.** Prior to beginning work on the Extension Project, the Builder shall provide to AQUA easement rights for all areas (excepting existing public rights-of-way where proper occupancy rights have been obtained for the Extension Project) in which any part of the Extension Project will be installed (hereinafter referred to as “Easements”). Builder has also supplied AQUA with copies of the underlying owners’ deed(s). If Builder is not the owner of all of the property through which the Extension Project will pass, Builder will also need to obtain easement(s) from the owner(s) of the property to allow it access to install the Extension Project.
- (b) **Easement Corrections.** The Builder is responsible for all expenses incurred by AQUA in the event that the Extension Project or other utilities are installed in violation of the terms of the Easements. In the event that any part of the Extension Project is installed by the Builder outside of the easement areas granted to AQUA, the Builder agrees to relocate them within the easement areas and reimburse AQUA for all costs attributable to the improper location of the Extension Project or, with the approval of AQUA, to obtain an additional easement or relocate or widen the easement area so as to locate the Extension Project within the easement areas granted to AQUA.
- (c) **Further Assurances.** During the term of this Agreement, and after Contribution or termination of this Agreement, without further consideration, Builder will provide, obtain, do, execute, acknowledge and deliver, all and every further act, conveyance, transfer, assignment, power of attorney and assurance as AQUA reasonably may require to more effectively convey, transfer to or vest in, and put AQUA in possession of, the required easements for all areas in which any part of the Extension Project is installed.
- (d) **Encumbrances.** Prior to beginning work on the Extension Project, the Builder shall provide to AQUA Easements in proper form to convey perpetual access to the easement areas granted to AQUA, accompanied by a title insurance policy issued by a reputable title insurance company; which title insurance policy shall guarantee to AQUA that the title to the Easement to be conveyed by Builder to AQUA is good and marketable, and free and clear of all mortgages, judgments, liens or encumbrances, and all taxes which might affect the rights of AQUA provided herein by the Builder.

9. Cost Certification.

- (a) **Final Cost Certification.** Upon completion of the Extension Project, the Builder will certify to AQUA the actual cost of the construction. Builder will complete a certification form, satisfactory to AQUA using the format included in Exhibit 2 to this Agreement, which will provide the actual cost of the Extension Project (including the Administrative Fee and Administrative Services Fee contained on Attachment H and the Value-Added Fee and Value-Added Services Fee contained on Attachment I). Upon AQUA’s request, Builder will supply the actual invoices to support the cost certification. Builder will

represent that the stated cost is complete and accurate and indemnify AQUA against any claim that the cost is not complete and accurate. AQUA reserves the right to review and make the final determination of cost. If Builder fails to submit the Final Cost Certification pursuant to the terms of Section 9 of this Agreement within two years of the completion date, at Aqua's sole discretion, Builder may forfeit some or all refunds due under this Agreement.

- (b) Books, Records and Auditing.** The Builder will keep adequate books and records with respect to the costs of the Extension Project and AQUA shall have the right at reasonable times to review and audit those books and records for a period of five (5) years after Contribution.
- (c) Determination of Final Costs by Aqua.** If Builder has not provided a final cost certification to Aqua within 45 days following completion of the final portion of the Extension Project, Aqua will have the right to make such final cost certification based the estimated project costs, or portion thereof, depending on whether the Extension was completed fully completed. Final costs that are determined by Aqua shall not be used to calculate Sewer Connection Refunds or obligate Aqua to make such refund payments. Further, in accordance with the terms of this Section 9, Builder may forfeit some or all refunds if the Final Cost Certification is not submitted within two years from the completion date.

10. Contribution.

- (a) Time of Contribution.** Upon completion of the Extension Project as described in Attachment B, and prior to receiving the first Sewer Connection refund, Aqua shall conduct a post construction inspection and provide Builder with a list of required repairs, for which Builder is solely responsible to correct ("Punch List"). Provided that Builder has made all repairs on the Punch List and is not in breach of any provision of this Agreement, Aqua will notify the Builder in writing of the contribution of the Extension Project ("Contribution"). In order to effect Contribution, Aqua may waive the condition that Builder is not in breach of the Agreement; however, waiver of the condition will not constitute a waiver of Builder's contract breach. In its sole discretion, from time to time; Aqua may effect Contribution of a completed portion or portions of the Extension Project prior to completion of the entire Extension Project, by giving written notice to Builder. Aqua will receive Contribution for no additional consideration, such that the facilities become the property of Aqua (from which Aqua may service customers).
- (b) Title.** Builder hereby grants, sells, conveys, assigns, transfers, sets over to, and vests in AQUA, its successors and assigns, effective the date of Contribution, all of Builder's right, title and interest, legal and equitable, in and to the Extension Project, free from all liens, security interests, encumbrances, restrictions and claims, to have and to hold the Extension Project, including its appurtenances, to AQUA, its successors and assigns, forever, to its and their own use and benefit. The Builder agrees to make the proper

reservations of title in its conveyances to others and to obtain the joinder of all parties necessary to give good and marketable title, so that the Extension Project is properly conveyed to AQUA at the time of Contribution, and all necessary and appropriate easements and rights-of-way are conveyed to AQUA. Upon AQUA's request during the term of this Agreement, Builder will supply to AQUA such additional assurances as AQUA may request that the contractual arrangements necessary to convey good and marketable title have been made by Builder.

- (c) Matters in Connection with Contribution.** The following must be completed prior to Contribution of the final portion of the Extension Project, or, with the permission of AQUA, within one (1) month after Contribution of the final portion of the Extension Project:
- (i)** Completion of the Extension Project in accordance with the Specifications;
 - (ii)** The Extension Project passing all inspection and testing procedures performed by Contractor and Pump Station Contractor in accordance with its regular pre-service procedures;
 - (iii)** Provision of accurate As Built Information to AQUA indicating portions of the Extension Project to be contributed;
 - (iv)** Final cost certification;
 - (v)** Builder's certification, and provision of evidence satisfactory to AQUA, that it has paid or discharged any mechanic's liens or other encumbrances which may have been filed against the Extension Project;
 - (vi)** Builder's certification, and provision of evidence satisfactory to AQUA, that Builder has paid or discharged the Contractor and Pump Station Contractor;
 - (vii)** Payment to AQUA of any outstanding fees or other amounts owing AQUA pursuant to this Agreement;
 - (viii)** Such grant, revision, correction or confirmation of Easements, in addition to Easements granted prior to construction, which AQUA may require to convey all necessary and appropriate easements and rights-of-way; and
 - (ix)** Transfer of all regulatory permits and approvals as indicated on Attachment G attached hereto.
- (d) Further Assurances.** Builder for itself, its successors and assigns, agrees that, at any time, and from time to time after Contribution, at the request of AQUA, its successors and assigns, and without further consideration, the Builder will provide, obtain, do, execute, acknowledge and deliver, all and every such further act, conveyance, transfer, assignment, power of attorney and assurance as AQUA, its successors and assigns reasonably may require to more effectively convey, transfer to or vest in, and put AQUA, its successors and assigns, in possession of, any of the Extension Project. Builder irrevocably constitutes and appoints AQUA, its successors and assigns, as the Builder's true and lawful attorney with full power to institute and prosecute in the Builder's name or in the name of AQUA, its successors and assigns, as the legal attorney of and for the Builder, duly authorized, for the benefit of AQUA, its successors and assigns, any and all

proceedings at law, in equity or otherwise, which AQUA, its successors and assigns, may deem proper for the collection and enforcement of any claim or right of any kind granted, sold, conveyed, transferred or assigned, or intended so to be by Contribution pursuant to this Agreement.

11. Wastewater Service upon Application. Upon proper request being made to AQUA pursuant to the Attachment Package attached hereto, AQUA will furnish wastewater service to each anticipated customer, under AQUA's tariff, rules, regulations and rates then in effect and subject to any changes, which may thereafter become effective. All charges for wastewater service shall be payable to and collected by AQUA.

12. Refunds for Sewer Connections to the Extension Project. Provided Builder is not in default on any provision of this Agreement and has submitted cost accounting within two years of the completion date, Aqua agrees to refund to the Builder part of the Builder's cost of the Extension Project in the manner and in the amounts provided on Exhibit 3. Delays in refund payments will not result in any penalties, interest or increase in refund amounts.

B. RIGHTS AND REMEDIES

1. Event of Default. The occurrence of any of the following events shall constitute an Event of Default under this Agreement:

- (a) The Builder abandons work on the Extension Project and does not provide AQUA with assurances and evidence satisfactory to AQUA, within ten (10) days after written notice to Builder from AQUA, of Builder's intention and ability to promptly recommence and complete work.
- (b) The Builder fails to comply with any other provision of this Agreement and such failure continues for ten (10) days after written notice to Builder from AQUA provided that if within such ten (10) day period, Builder commences to correct such failure and diligently proceeds with such correction, the ten (10) day period shall be extended for such additional time as may be reasonably necessary for Builder to complete such correction.
- (c) A case or proceeding by or against the Builder or otherwise affecting the Development is commenced under any federal or state bankruptcy, reorganization, insolvency, liquidation or similar law.
- (d) Builder notifies AQUA it intends to terminate the Agreement.

2. Rights and Remedies of AQUA upon Default by Builder. Upon an Event of Default as defined in Section B(1), AQUA may, in addition to and not in lieu of any other rights and

remedies it may have as set forth in this Agreement or at law or in equity, exercise the following remedies separately and/or cumulatively:

- (a) Draw Upon the Performance Bond or Letter of Credit and Other Security.** AQUA shall have the right to draw upon the Performance Bond or Letter of Credit and any other security furnished by Builder in the form of Attachment J to this Agreement.
- (b) Require Additional Security.** AQUA shall have the right to require Builder to advance funds and/or provide additional security satisfactory to AQUA, as may be permitted under regulations of the Pennsylvania Public Utility Commission (“PUC”), applicable law and/or AQUA’s tariff on file with the PUC.
- (c) Terminate Agreement.** AQUA may terminate this Agreement upon notice to Builder.
- (d) Complete Extension Project.** AQUA shall have the right (but not the obligation) to complete the Extension Project, in its entirety or to any intermediate point, by independent contractors or by its own workers or such other persons, or in such other manner, or in any combination of the foregoing as AQUA may determine in its sole discretion. If AQUA elects to proceed with the work on the Extension Project, AQUA shall have the right to take possession of all existing materials and supplies of the Builder relating to the Extension Project for the purpose of including them in the improvement, and the Builder hereby assigns to AQUA all its right, title, easements and interest in and to such materials, subject to the contingency of AQUA’s election to proceed with work under this Section. If Aqua elects to continue or complete the Project upon the Builder’s default, Builder will not be entitled to any refunds under Exhibit 3, and Aqua may condition its continuation or completion of the Project (whether in its entirety or to any intermediate point) on the receipt of an advance of funds and/or security satisfactory to Aqua from Builder or third parties, as may be permitted under regulations of the Pennsylvania Public Utility Commission (PUC), applicable law and/or Aqua’s tariff on file with the PUC.

3. Rights of AQUA. Among other rights and remedies that AQUA may have under this Agreement, and notwithstanding any other provisions of this Agreement, AQUA shall have the following rights which it may exercise in addition to and not in lieu of any other rights and remedies it may have as set forth in this Agreement or at law or in equity:

- (a) Right to Make Further Main Extension.** AQUA shall have the right to extend or expand the Extension Project installed under this Agreement, connect thereto and renew or enlarge the same without in any way changing the terms under this Agreement.
- (b) Right to Specific Performance of Offer of Contribution and Grant(s) of Easement.** The parties acknowledge and agree that money damages would be insufficient to compensate AQUA for breach of the Builder’s covenants to contribute the Extension Project to AQUA, to the extent the Extension Project is actually installed, and to provide

Easements to AQUA, as provided in this Agreement, and that, therefore, AQUA is entitled to specific performance of Builder's Contribution for completed portions of the Extension Project and to the Easements pursuant to Section A(8) and (10), and Attachment F.

- (c) Refusal to Accept Contribution.** If the Extension Project is not done in accordance with the Specifications or if the Builder does not comply with any of the Builder's obligations set forth in this Agreement, AQUA may refuse to accept Contribution of the Extension Project, in which event AQUA may (a) refuse to provide wastewater service through the Extension Project main extension and to any parcel or building lots that would otherwise request service from that main extension, or (b) treat Builder as the owner of the Extension Project resulting in (i) Builder bearing all continuing responsibility for maintenance and repairs, (ii) requirement that Builder install a single flow meter pit for the Extension Project to receive wastewater service as a single customer, if applicable, (iii) preservation of AQUA's rights to any unpaid amounts under this Agreement and other remedies for Builder's breach of the Agreement, (iv) ineligibility for refunds since Contribution will not be made.
- (d) Right of Set-Off.** AQUA may offset any of its claims against the Builder against any amounts which AQUA or Aqua Pennsylvania, Inc. (hereinafter referred to as "Aqua") may owe the Builder, or parties controlling, controlled by or under common control with the Builder (hereinafter referred to as "Builder's Affiliates") either under this Agreement or other agreements between AQUA or Aqua and the Builder or Builder's Affiliates, whether or not related to the Extension Project.
- (e) Emergency Repairs.** In the event of an emergency during or after the term of this Agreement prior to Contribution, AQUA shall have the right to make repairs to the Extension Project and charge the cost to Builder.
- (f) Attorneys' Fees.** The Builder agrees that if suit is brought by AQUA against it to enforce this Agreement, including, but limited to, AQUA's right of indemnification, and AQUA prevails in such suit, AQUA shall be entitled to collect all reasonable costs and expenses of suit, including but not limited to reasonable attorney's fees.
- 4. Rights and Remedies Cumulative; No Waiver.** No right or remedy conferred in this Agreement upon AQUA or otherwise available to AQUA is intended to be or shall be construed to be exclusive of any other right or remedy, but each and every such right and remedy shall be cumulative and shall be in addition to every other right and remedy given under this Agreement, under any of the documents or instruments to be furnished or delivered to AQUA pursuant to this Agreement, and now or hereafter existing at law, in equity or by statute. No delay or omission by AQUA to exercise any right or power under this Agreement shall impair such right or power or shall be construed to be a waiver or acquiescence in any event of default, default or breach of this Agreement, nor shall the giving, taking or enforcement of any other or additional security under this

Agreement operate to waive any rights, powers or remedies of AQUA, and any single or partial exercise of any right or power by AQUA will not preclude other or further exercise thereof or the exercise of any other right, and no waiver will be valid unless in writing and signed by AQUA, and then only to the extent specified.

C. GENERAL

1. **Term and Termination.** This Agreement shall continue in effect until the earlier of Contribution of the final portion of the Extension Project, termination of this Agreement, or the date which is five (5) years after the effective date of this Agreement, subject to the survival of certain provisions pursuant to Section C (5). Upon termination of this Agreement prior to Contribution of the final portion of the Extension Project, Builder will cease all work on the Extension Project and will cause Contractor and Pump Station Contractor to cease all work on the Extension Project.
2. **Exhibits and Attachments.** All exhibits and attachments referenced herein are incorporated in this Agreement and are made fully a part thereof as though fully set forth in the body of this Agreement.
3. **Governing Law.** This Agreement, all attachments and exhibits hereto, and all documents and instruments to be furnished or delivered hereto, shall be governed by the laws of the Commonwealth of Pennsylvania without giving effect to conflicts of laws principles.
4. **Assignment; Change in Ownership.** The Builder shall not assign its rights and obligations under this Agreement, or transfer control or ownership of the Extension Project or any part thereof, directly or indirectly, voluntarily or involuntarily, without the prior written approval of AQUA.
5. **Taxes and Fees.** All federal, state and local taxes, excise taxes, permit fees, and similar fees and taxes in connection with this Agreement, including without limitation, any sales or use taxes and taxes on contributions in aid of construction, any and all income taxes imposed on AQUA in connection with the Extension Project as a result of Contribution or otherwise, and any and all income taxes imposed on AQUA as a result of Builder's obligation to pay taxes pursuant to this Section, in each case whether in effect on the date of the execution of this Agreement or subsequently imposed or assessed, are for the account of, and are to be paid by, Builder upon demand by AQUA.
6. **Survival of Provisions on Contribution or Termination.** All warranties, representations, agreements and covenants made by Builder in this Agreement, or in any document or instrument referred to in, or to be delivered or furnished pursuant to, this Agreement, will survive Contribution of the final portion of the Extension Project and any termination of this Agreement.

7. **Entire Agreement; Amendments.** This Agreement, together with all exhibits and attachments, and the final executed form of all documents for which the form is set forth in the attachments, constitute the entire agreement between AQUA and Builder with respect to the Extension Project. Prior or contemporaneous discussions or agreements are not part of this Agreement and are of no force or effect. This Agreement may be modified or amended only by a writing signed by the party against whom enforcement is sought.
8. **Severability.** The provisions of this Agreement and all other agreements and documents referred to herein are to be deemed severable, and the invalidity or unenforceability of any provision shall not affect or impair such provision to the extent it has been deemed valid and enforceable, nor the remaining provisions, which shall continue in full force and effect.
9. **Third Parties.** Nothing contained in this Agreement shall be deemed to confer upon the Contractor, Pump Station Contractor or any third party any right against AQUA.
10. **Headings.** The headings of any section or subsection of this Agreement are for convenience only and shall not be used to interpret any provision of this Agreement.
11. **Binding Agreement; Successors and Assigns.** This Agreement is binding on and will inure to the benefit of the parties and their successors and permitted assigns.
12. **Notices.** Notices, demands and requests required or permitted to be given under this Agreement (hereinafter collectively referred to as “Notices”) must be in writing and must be delivered personally or by nationally-recognized courier or sent by United States certified mail, return receipt requested, postage prepaid. Notices must be addressed to the party at its address set forth below. A notice is effective when actually received or rejected. The initial addresses of the parties may be changed by appropriate notice:

To Builder:

NAME, Inc.
ADDRESS
Attn:, President

To AQUA:

Aqua Pennsylvania Wastewater
762 W. Lancaster Avenue
Bryn Mawr, PA 19010
Attn: New Business Representative

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

AQUA PENNSYLVANIA WASTEWATER, INC.,
a Pennsylvania corporation

Witness: _____
New Business Manager

By: _____
, Vice President of Capital Planning,
Design and Construction

NAME, INC.

Witness: _____

By: _____
NAME, President

Federal E.I. Number: _____

CONTRACTOR:

The Contractor executes this Agreement to acknowledge and agree to the terms and obligations imposed on the Contractor by this Agreement.

Witness: _____ By: _____
[Authorized Signature] [Authorized Signature]

PUMP STATION CONTRACTOR:

The Pump Station Contractor executes this Agreement to acknowledge and agree to the terms and obligations imposed on the Pump Station Contractor by this Agreement.

Witness: _____ By: _____
[Authorized Signature] [Authorized Signature]

Exhibit 1

Requirements for As Built Information

The As Built Information for the Extension Project will accurately represent actual construction of the sanitary sewer main and appurtenances, be sufficient to permit Aqua Pennsylvania Wastewater to obtain the full benefit of the protections of the Pennsylvania Underground Public Utility Protection Law upon and after Contribution, and contain the following legible information, documented in detail in a project construction log and noted on a copy of the drawings:

- (1) Variations from the final Plan (which is incorporated by reference in Attachment B to this Agreement).
- (2) Limits of any rock encountered in the excavation.
- (3) Locations of manholes, wyes, connections, valves, etc. relative to fixed points (*e.g.*, edge of curb, existing manholes or valve boxes, telephone poles, etc.).
- (4) Final elevation information including Rim, invert, and outfall elevations including revised profile plans.

EXHIBIT 2

Certification Form for Final Project Cost

***** ACTUAL COSTS MUST BE SUBMITTED WITHIN ONE MONTH OF PROJECT COMPLETION AND PRIOR TO CONTRIBUTION*****

Sample Only

EXHIBIT 3

Refund Definitions and Explanation

A refund will be paid to the Builder for each Sewer Connection that is made to the main extension within the period of five (5) years from the date of this Agreement (“Refund Period”). In no event will Aqua be required to refund more than the total cost of the Extension Project as determined by the final, accepted Certification of Final Project Cost. Which method of refund (as described below) is applicable will depend on whether, in Aqua’s judgement, the main extension is or is not primarily for the connection of residential homes or commercial properties to the Aqua distribution system. Aqua has no obligation to refund all or a portion of the project cost beyond the refund computed under the method described below. Builder acknowledges that some portion of the project cost may never be refunded. Any un-refunded portion of the Extension Project cost will become the property of Aqua as a non-refundable contribution in aid of construction.

- (a) Residential Homes: For each Sewer Connection made during the said five-year period to a main extension determined to be primarily for Residential Homes, the Builder shall be entitled to a refund equal to the average installed cost of thirty-five (35) feet of the said Extension Project. This refund shall be paid in five (5) equal installments (20% of the refund) for the five consecutive years beginning the first full calendar year following the date when the Sewer Connection billing account is activated with Aqua. In determining the cost per foot, the actual cost of the Extension Project shall be divided by the overall length of the main calculated in feet. The actual Extension Project cost shall, for these purposes, be the Total Project Cost as certified by the Builder in the final, accepted Certification of Final Project Cost, excluding taxes. The maximum refund per Sewer Connection shall be \$2,000 for Residential Homes.
- (b) Structures other than Residential Homes. For Sewer Connections made during the said five (5) year period to a main extension determined to be primarily for structures that are Commercial or Public facilities, the Builder shall have the option to select the refund formula set forth in subparagraph (a) above (subject to the \$2,000 cap per Sewer Connection, or the following formula, wherein the Depositor shall be entitled to a refund equivalent to 2.25 times the Sewer revenue from the wastewater received by Aqua for each Sewer Connection to the aforesaid main during the first full calendar year following the date when the Sewer Connection billing account is activated with Aqua. When an option is selected, it is understood that all Sewer Connections to the main for structures other than residential homes will be subject to the same refund formula.

The term “Sewer Connection” means a single sanitary sewer service line for domestic wastewater service that is connected directly to the sanitary sewer main and served through only

one (1) sewer lateral that is installed pursuant to this Agreement. A sanitary sewer lateral cannot be a Sewer Connection until the prospective customer is ready to take sanitary sewer service and their billing account is activated with Aqua. The Builder is not a prospective customer and therefore does not qualify as a Sewer Connection for refunding.

There can only be one Sewer Connection for each customer account.

The Builder shall have no right to refunds under this Agreement except with respect to Sewer Connections made directly to the wastewater main installed under this Agreement and not wastewater mains installed pursuant to any other agreement. Delays in refund payments will not result in any penalties, interest or increase in refund amounts.

The payment of refunds will not commence until Contribution of the final portion of the Extension Project. If Builder fails to complete the Final Cost Certification pursuant to the terms of Section 9 of this Agreement, at Aqua's sole discretion, Builder may forfeit some or all refunds due under this Agreement. The Builder will not be entitled to refunds during any period of time during which it, or any person or entity it controls, is controlled by or is under common control with, is in default under this Agreement or any other agreement with Aqua or its affiliated companies.

EXHIBIT 4

**SPECIFICATIONS FOR BUILDER
WASTEWATER EXTENSION PIPELINE
CONSTRUCTION**

Refer to Aqua's standard specifications which are provided separately and titled:

**AQUA PENNSYLVANIA WASTEWATER, INC.
762 West Lancaster Avenue
Bryn Mawr, Pennsylvania 19010**

**STANDARD SPECIFICATIONS
FOR
BUILDER EXTENSION WASTEWATER PIPELINE CONSTRUCTION**

prepared by



**Entech Engineering, Inc.
201 Penn Street
Reading, Pennsylvania 19601**

Entech No. 4111.89

Revised January 13, 2017