

ASSIGNMENT AND ASSUMPTION OF SEWER CAPACITY AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF SEWER CAPACITY AGREEMENT (“Assignment”) is made the 12th day of December, 2018 by and between **EAST BRADFORD TOWNSHIP**, a Pennsylvania second-class township having a mailing address of 666 Copeland School Road, West Chester, PA 19380 (hereinafter referred to as “Assignor” or “Township”) and **AQUA PENNSYLVANIA WASTEWATER, INC.**, a Pennsylvania corporation having a business address of 762 W. Lancaster Avenue, Bryn Mawr, PA 19010 (hereinafter referred to as “Assignee” or “Aqua”).

RECITALS

WHEREAS, on or about November 14, 2017, the Borough of West Chester (hereinafter referred to as the “Borough”) and the Township entered into a Sewer Capacity Agreement, approved and enacted by that certain Township of East Bradford Ordinance No. 07-2017, and as amended by that certain First Amendment to Sewer Capacity Agreement dated November 21, 2018 (collectively, the “Agreement”), a copy of which is attached hereto as **Exhibit A**; and

WHEREAS, Section 9.10 of the Agreement provides that the Township may assign certain of its rights and obligations under the Agreement to Aqua upon the sale of the Township’s sanitary sewer collection system and facilities to Aqua, and that such proposed assignment to Aqua is a Permitted Assignment (as defined in the Agreement) under the Agreement; and

WHEREAS, the Township and Aqua are parties to an Assets Purchase Agreement dated December 20, 2017, as amended by the First Amendment to Assets Purchase Agreement dated April 18, 2018, and as amended by the Second Amendment to Assets Purchase Agreement dated December 12, 2018 (collectively, the “APA”) pursuant to which the Township agreed to sell to Aqua and Aqua agreed to purchase from the Township the Assets (as defined in the APA); and

WHEREAS, the Township and Aqua desire to enter into this Assignment in order to formally assign certain of the Township’s rights, obligations, title, and interest under the Agreement to Aqua, subject to Sections 9.10(c)(1)&(2) of the Agreement, and Assignee desires to accept such assignment.

NOW THEREFORE, in consideration of the mutual covenants, promises, and agreements herein set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and intending to be legally bound hereby, the parties agree as follows:

1. **Definitions.** Unless otherwise defined in this Assignment, all terms defined in the Agreement shall have the same meanings when used in this Assignment. The Background of this Assignment, above, is hereby incorporated within and forms a part of the agreements contained in this Assignment.

2. **Assumption.** Assignor and Assignee hereby acknowledge and agree that Assignee assumes Assignor's obligations under the Agreement as of the Effective Date (as defined below), subject to the exceptions listed in Sections 3 and 4 hereof below and except for Assignor's retained obligations pursuant to Section 9.10(c) of the Agreement.

3. **Assignment; Retained Rights and Obligations.** Assignor assigns to Assignee all rights, duties, title, and interest to the Agreement except those rights and obligations contained in the Agreement at Sections 3.02, 3.03, 4.04, 6.01A, 7.03C, 7.03D and the last paragraph of Section 5.06. Assignee hereby assumes, and shall be responsible for, the performance of all of the duties and obligations to be performed by the Township under the Agreement arising or occurring after the Effective Date of this Assignment, except for those rights and obligations contained in the Agreement at Sections 3.02, 3.03, 4.04, 6.01A, 7.03C, 7.03D and the last paragraph of Section 5.06.

Assignor acknowledges and agrees (i) that it shall remain solely liable for all obligations of the Township contained in Sections 3.02, 3.03, 4.04, 6.01A, 7.03C, 7.03D and the last paragraph of Section 5.06 of the Agreement, and (ii) that the Assignor's retained right under Section 3.02 of the Agreement to acquire any remaining Reserved Capacity shall lapse if Assignor fails to purchase the Reserved Capacity prior to the end of the Term of the Agreement.

4. **Assignor's Obligations Arising from Darlington Ridge or Purchases of Reserved Capacity.**

(a) Capacity at Bradford Ave Pump Station. The capacity at the Bradford Avenue Pump Station cannot presently accommodate Sanitary Sewage flows in excess of a maximum pumping rate of Four Hundred (400) gpm from the Plum Run Pumping Station to the Borough's Bradford Avenue pump station. If the flows to the Bradford Avenue pump station from the Plum Run Pumping Station exceed the maximum of 400 gpm as a result of Assignor's utilization of Reserved Capacity for Darlington Ridge, then Assignor shall reimburse Assignee within thirty days of demand for costs and expenses that Assignee incurs under Section 3.04 of the Agreement for upgrades made to the Bradford Avenue pump station and/or sewerage system in order to convey Sanitary Sewage flows from Darlington Ridge.

(b) Township's Proportionate Share. Until such time as (i) Aqua's Service Area for its East Bradford Division may be expanded to include the Darlington Ridge development in East

Bradford Township and (ii) the Darlington Ridge sewer collection and conveyance system is conveyed to Aqua, Assignor agrees to reimburse Assignee within thirty days of demand for any additional costs or expenses that the Borough charges or assesses to Assignee under Section 5.01 and/or Section 5.03 of the Agreement that are attributable to an increase or increases in "Township's Proportionate Share" (as defined in the Agreement) and which are caused by Assignor's acquisition of Reserved Capacity.

(c) Modifications to Borough's Sewage Collection System. Pursuant to Section 4.04 of the Agreement, Assignor agrees to reimburse Assignee within thirty days of demand for the entire cost of the installation and construction of any modifications of the Borough's Sewage Collection System, which may be required in order to connect the Reserved Capacity. Said modifications, if any, shall be those reasonably recommended by the Borough's Consulting Engineer using generally accepted engineering standards and shall be completed according to the Borough's specifications approved by the Borough's Consulting Engineer in its reasonable discretion. When the Borough's Consulting Engineer certifies that any improvements or modifications to the Borough's Sewage Collection System which are located in the Borough are complete, such improvements or modifications shall be offered or conveyed to the Borough which, when accepted, shall then be owned, operated and maintained by the Borough.

5. Indemnification.

(a) Assignor hereby agrees to indemnify, defend and hold Assignee harmless from and against any and all obligations of the Township accrued under the Agreement prior to the execution hereof but unperformed as of the date of this Agreement.

(b) Subject to Sections 2, 3 and 4 hereof, Assignee hereby agrees to indemnify, defend and hold Assignor harmless from and against any and all obligations of the Township under the Agreement arising after the execution hereof.

6. Effective Date. The Effective Date of this Assignment shall be 12:01 a.m. on the day following Closing under the APA.

7. Adoption, Continuation and Enforcement of Township Ordinances. Assignor agrees to employ, for the benefit of Assignee, the municipal powers available to Assignor under the Agreement, the Pennsylvania Second Class Township Code, and the ordinances of East Bradford Township as necessary to fulfill the ongoing obligations of the Assignor under Sections 4.03, 6.01A, 6.02, 7.03(c), 7.03D, 9.10C.(2), and the last paragraph of Section 5.06 of the Agreement.

8. Representations and Warranties. Assignor represents and warrants to Assignee that (a) Assignor has the full right, power, and authority to make this Assignment; (b) Assignor has obtained or will obtain the consent of any party that needs to consent to this Assignment,

including, without limitation, the Borough; (c) Assignor has no defenses, offsets, claims or counterclaims against the enforcement of the Agreement by the Borough or against Assignor's obligations under the Agreement; and (d) Assignor is not in default under the Agreement nor is there violation by it under the Agreement which with the passage of time or giving of notice or both would constitute a default by it under the Agreement.

9. **Modifications.** This Assignment may only be modified, altered, amended, or terminated by the written agreement of the Assignor, Assignee and the Borough.

10. **Notices.** Any notice, request, demand, or consent made hereunder or in connection herewith to any party hereto shall be in writing and shall be sent to the addresses listed below:

Aqua: Aqua Pennsylvania Wastewater, Inc.
762 W. Lancaster Avenue
Bryn Mawr, PA 19010
Attention: General Counsel

And a required copy to:
Stephen McConnell, Esq.
Reger Rizzo & Darnall LLP
2929 Arch St., 13th Floor
Philadelphia, PA, 19104-2899

Township: East Bradford Township
666 Copeland School Road
West Chester, PA 19380
Attention: Manager

Borough: Borough of West Chester
401 East Gay Street
West Chester, PA 19380
Attention: Manager

11. **Severability.** If any term, covenant, or condition of this Assignment shall be held to be invalid, illegal, or unenforceable in any respect, this Assignment shall be construed without such provision.

12. **Governing Law.** This Assignment shall be governed by and construed in accordance with the internal laws of the Commonwealth of Pennsylvania, without giving effect to any conflicts of law provisions.

13. **Waiver of Trial by Jury.** Assignor and Assignee hereby waive their rights to a trial by jury in any action or proceeding arising out of or related to this Assignment.

14. **Counterparts.** This Assignment may be executed by facsimile, electronically, or by exchange of documents in PDF format, and in several counterparts, each of which shall be deemed an original instrument and all of which together shall constitute a single agreement. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

Balance of Page Intentionally Left Blank – Signatures Appear on Following Page

Signature Page – Assignment and Assumption of Sewer Capacity Agreement

IN WITNESS WHEREOF, the Assignor and Assignee have caused this Assignment and Assumption of Sewer Capacity Agreement to be duly executed the day and year first above written.

**ASSIGNOR:
EAST BRADFORD TOWNSHIP**

By: _____
Name: Vincent M. Pompo
Its: Chairman

**ASSIGNEE:
AQUA PENNSYLVANIA WASTEWATER, INC.**

By: _____
Name: Marc A. Lucca
Its: President

**ACKNOWLEDGEMENT AND CONSENT:
BOROUGH OF WEST CHESTER**


By: 
Name: Diane C. LeBold
Its: President

EXHIBIT A
SEWER CAPACITY AGREEMENT DATED NOVEMBER 14, 2017