

02-1578-CD
PA. AMERICAN WATER CO. vs. KENNETH JOHNSTON

**PENNSYLVANIA AMERICAN WATER COMPANY
WAIVER OF LIEN**

This instrument executed the 18th day of September, 2002 by
KENNETH JOHNSTON, an individual, doing business as, _____
Johnston Construction Co. (the "Contractor"), for the benefit of PENNSYLVANIA-
AMERICAN WATER COMPANY, a Pennsylvania for Profit Corporation ("Owner").

WITNESSETH

A. Owner has entered into an agreement with Contractor (the "Contract") which provides for the construction, extension, acquisition, improvement or expansion by Contractor of a water supply system ("System") within the meaning of the Pennsylvania Infrastructure Investment Authority Act, on a parcel of ground located in Decatur Township, Clearfield County, Pennsylvania. The improvements to be constructed are herein called "Project" and the parcel of ground is herein called the "System". The System is more fully described on Exhibit "A" attached to the Loan Agreement. Owner has fee simple title to the System.

B. By the terms of the Contract, Contractor has covenanted, promised and agreed that no mechanics' or materialmen's liens will be filed or maintained against the Project or the estate or title of Owner in the System or any part thereof, or the appurtenances thereto, either by itself or anyone

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Prothonotary

else for or on account of any work, labor or materials supplied in the performance of the Contract, or under any supplemental contract or for extra work, or in the erection, construction or completion of the Project on the System or any appurtenance thereto.

NOW, THEREFORE, in consideration of the contract and intending to be legally bound hereby:

(1) WAIVER OF LIEN. Contractor, for itself, its subcontractors, materialmen, laborers and anyone else acting or claiming through or under it, does hereby waive and relinquish all right to file a mechanic's lien, or notice of intention to file any lien, and does hereby covenant, promise and agree, to the extent permitted by law, that no mechanic's lien or other lien of any kind whatsoever shall be filed or maintained against the Project or the estate or title of the Owner in the System or the Project or the appurtenances thereto, by or in the name of Contractor, or any subcontractor, materialman or laborer for work done or materials furnished under the Contract or by any other party acting through or under them or any of them for and about the Project or the System or any part thereof.

(2) INDEPENDENT COVENANT. This Agreement waiving the right of lien shall be an independent covenant, shall operate and be effective irrespective of Owner's performance under the Contract and shall operate and be effective as well with respect to work done and materials furnished under any supplemental contract for extra work in the erection, construction and completion of the Project as to any work and labor done and materials furnished under the Contract.

(3) REMOVAL OF ANY LIEN. If any such mechanic's lien or other lien of any kind whatsoever shall be filed or maintained against the Project or the estate or title of the Owner in the System or appurtenances thereto, Contractor promptly and at its expense shall cause such lien to be removed or satisfied.

(4) POWER OF ATTORNEY TO SATISFY LIEN. In order to give Owner full power and authority to protect itself, the Project, the System, the estate or title of the Owner therein, and the appurtenances thereto, against any and all liens filed by the Contractor or anyone acting under or through it in violation of the foregoing covenant, the Contractor, to the extent permitted by law, hereby irrevocably authorizes and empowers any Attorney of any Court of Common Pleas of the Commonwealth of Pennsylvania, to appear as Attorney for it, them or any of them, in any such Court, and in its or their name or names, to the extent permitted by law, mark satisfied of record at the cost and expense of the Contractor or of any subcontractor or materialman, any and all lien or liens, filed in violation of the foregoing covenant, or cause to be filed and served in connection with such lien or liens, any pleading or instrument, or any amendment to any pleading or instrument previously filed by it or them, to incorporate therein, as part of the record, the waiver contained in this instrument, and for such act or acts this instrument shall be good and sufficient warrant and authority, and a reference to the court, term and number in which and where this Agreement shall have been filed shall be a conclusive evidence of the authority herein contained to warrant such action, and the Contractor for itself and, to the extent permitted by law, for them does hereby remise, release and quitclaim all rights and all manners of errors, defects

and imperfections whatsoever in entering such satisfaction or in filing such pleading, instrument or amendment, or in any way concerning them.

(5) WORK NOT COMMENCED. Contractor hereby represents and warrants that no work of any kind or nature has yet been done on the System and no materials whatsoever have as yet been furnished to the System by anyone under, toward or in connection with the execution or performance of the Contract and that no such work shall be done and no such materials shall be furnished until receipt of notice from Owner authorizing the same.

(6) FILING WITH PROTHONOTARY. This instrument is made and intended to be filed with the Prothonotary in accordance with the requirements of Section 1402 of the Mechanics Lien Law of 1963 of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the undersigned Contractor has executed this instrument as of
the day and year first above written.

ATTEST:

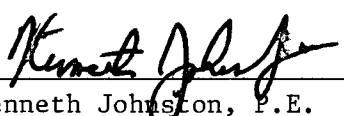


Lois J. Zeal, Secretary

(SEAL)

CONTRACTOR:

Johnston Construction Company



Kenneth Johnston, P.E.
Vice President

COMMONWEALTH OF PENNSYLVANIA:

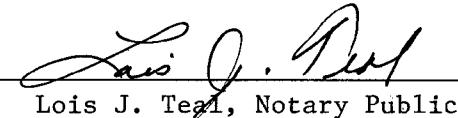
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COUNTY OF York

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On this, the 18th day of September, 2002, a Notary Public in and for the Commonwealth of Pennsylvania, personally appeared Kenneth Johnston, P.E. who acknowledged himself to be the Vice President of Johnston Construction Co., a Pennsylvania Corporation, and that as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.


Lois J. Teal, Notary Public

Notary Public

My Commission Expires:

