

SEWER SERVICE AGREEMENT

THIS AGREEMENT made and entered into this 24th day of March 2003, by and between:

DERRY TOWNSHIP MUNICIPAL AUTHORITY (“DTMA”), a municipal authority organized and existing under the “Municipality Authorities Act” 53 Pa. C.S. Ch. 56, having its administrative office at 670 Clearwater Road, Hershey, PA 17033.

AND

CONEWAGO TOWNSHIP (“Conewago”), Dauphin County, a political subdivision of the Commonwealth of Pennsylvania, having its administrative office at 3279 Old Hershey Road, Elizabethtown, PA 17022 (collectively, the “Parties”).

WHEREAS, Conewago prepared an Act 537 Sewage Facilities Plan in 1998 (“537 Plan”), which was submitted to and subsequently approved by the Pennsylvania Department of Environmental Protection on December 30, 1998; and

WHEREAS, Conewago is desirous of implementing the requirements of the 537 Plan in the most efficient and cost effective way; and

WHEREAS, Conewago is rural in nature and does not have a trained and experienced staff with which to own, operate and maintain a wastewater collection and treatment system; and

WHEREAS, DTMA owns and operates a wastewater collection, conveyance, and treatment system adjacent to Conewago in Derry Township, and has many years of experience in designing, financing, owning, and operating wastewater facilities and providing sanitary sewer service; and

WHEREAS, the Parties have discussed the possibility of DTMA extending its facilities into and providing sewer service to portions of Conewago; and

WHEREAS, Conewago and DTMA entered into an agreement dated July 11, 2001 which provides for DTMA through its consulting engineer, Buchart Horn, Inc. of York, PA, to design a sanitary sewer collection and conveyance system for a portion of Conewago Township as set forth in a set of plans by Buchart Horn, dated January 2003 and bearing a contract number of 2003-01 (“Laurel Woods Project”); and

WHEREAS, Conewago has requested DTMA, and DTMA has agreed in principle, to construct and own the Laurel Woods Project and to provide sanitary sewer service to the Laurel Woods Project service area subject to an appropriate agreement between the Parties.

NOW THEREFORE, the Parties, intending to be legally bound by this document, agree as follows:

SECTION 1.00

LAUREL WOODS PROJECT

- A. The Laurel Woods Project shall consist of those facilities being designed pursuant to the July 11, 2001 Agreement between the parties, which Agreement is attached hereto as Exhibit A and incorporated herein.
- B. DTMA shall complete and Conewago shall pay for the design of the Laurel Woods Project according to the terms of the July 11, 2001 Agreement.
- C. DTMA shall pay for the Capital Costs of the Laurel Woods Project (as defined below) from its \$10 million dollar, March 1, 2002 Bond Issue.
- D. Capital Costs of the Laurel Woods Project include but not by way of limitation costs for: rights-of-way and pump station property, bidding, construction, construction administration including full-time resident construction representation and observation, and the aggregate amount of grinder pump credits, excluding, however, design or other costs previously paid for or to be paid for directly by Conewago.

1. An estimated Capital Costs Schedule is attached hereto and incorporated herein.
 2. Within five (5) days from the date DTMA awards the construction contract for the Laurel Woods Project, DTMA shall send to Conewago an updated Capital Costs Schedule based on the contract prices.
 3. Within thirty (30) days from the date DTMA closes out the Laurel Woods Project, DTMA shall send to Conewago a final Capital Costs Schedule based on actual costs. The final Capital Costs Schedule shall be the basis for the Capital Surcharge under Section 2.00 C. In the event the Capital Surcharge is implemented before the final schedule is available, the Capital Costs and Capital Surcharge will be adjusted appropriately when the schedule is available.
- E. Conewago hereby requests and DTMA agrees to take whatever actions are necessary and appropriate to actually construct and put the Laurel Woods Project into operation such that the Laurel Woods Project becomes an integral part of DTMA's wastewater facilities. DTMA shall have full ownership, control, and responsibility for continued maintenance and upkeep of the facilities as if such facilities were constructed solely by DTMA within Derry Township.
- F. Conewago agrees to cooperate with DTMA to complete the construction of the Laurel Woods Project and to take, in a timely manner, any and all official actions necessary in furtherance of this objective specifically including the adoption of a mandatory connection ordinance as further provided in Section 3.01 of the Agreement.
- G. Conewago hereby expressly grants to DTMA an exclusive and perpetual right to operate and maintain the wastewater facilities to be constructed as part of the Laurel Woods Project and any subsequent extensions thereto approved by Conewago and DTMA.

- H. Conewago and DTMA agree to meet and discuss any additional separate areas of Conewago Township to which the Conewago Township Board of Supervisors may wish to have sewer service extended in the future and to expend their best efforts to facilitate such extension(s) of service subject to capacity availability, engineering, and other technical concerns, and the independent discretion of Conewago and DTMA. Any additional areas or projects will be subject to separate agreement.
- I. Conewago and DTMA acknowledge that several grinder pumps have been included in the Laurel Woods Project plan and further understand that all such grinder pumps will be the property and responsibility of the property owner on whose property they are located and further that DTMA has no responsibility for the installation or maintenance of such grinder pumps, which nonetheless, must be installed and operated pursuant to DTMA's Rates, Rules, and Regulations. Conewago Customers (as defined in Section 2.00 A. 1.) required to install such grinder pumps shall be given a credit on their connection fee toward the cost of purchasing and installing said pump. The credit shall be in the same amount that DTMA grants to similarly situated customers in the Township of Derry and such credit shall be based on DTMA's estimate of the difference in cost between a standard gravity sewer connection and a grinder pump connection for a typical property. The credit shall be granted only to property owners of existing homes or other facilities as shown on the Buchart-Horn plan for the Laurel Woods Project. The aggregate amount of all such credits for Conewago Customers shall be included in the Laurel Woods Project Costs and thus be recoverable as part of the Capital Surcharge (pursuant to Section 2.00. C.)

SECTION 2.00

FEES, RATES, AND CHARGES

- A. Connection Fees - Act 203 of 1990 [53 PA. C.S.A. Chap. 5607 (d) (24)] authorizes municipal authorities to charge certain enumerated fees to property owners who desire to or are required to connect to an authority's sewer system. The Act also regulates the maximum amount of such fees. The authorized fees may consist of

various parts defined in the Act including: connection fee, customer facilities fee, tapping fee (capacity part, distribution or collection part, special purpose part, and reimbursement component). For purposes of this Agreement all of the foregoing fees, parts, and components shall be collectively referred to as “Connection Fee”.

1. Conewago acknowledges DTMA’s right to charge a Connection Fee to property owners in Conewago who connect to sewer facilities constructed as part of the Laurel Woods Project or any extensions thereto (“Conewago Customers”).
2. DTMA shall be solely responsible for the calculation of the maximum Connection Fee chargeable to its Conewago Customers pursuant to Act 203 and pursuant to the provisions of the following paragraph (Section 2.00 A.3).
3. The parties agree that the initial Connection Fee chargeable to Conewago Customers connecting existing single-family homes to the sewer collection system as part of the Laurel Woods Project shall be \$6,000 unless otherwise required by DTMA’s understanding of Act 203 or amendments thereto or unless otherwise agreed to in writing by the parties. DTMA may adjust the amount of the Connection Fee from time to time as permitted under Act 203, provided however that the initial Connection Fee chargeable to Conewago Customers shall not be increased for at least one year following the date that the first mandatory connection notice is issued to a property owner in the Laurel Woods Project area.
4. DTMA shall provide the same Connection Fee financing options to its Conewago Customers as it does to its own customers within Derry Township. DTMA will attempt to provide any available information to Conewago Customers on alternate financing options such as grants from government agencies.

5. To the extent permitted by law as determined by DTMA:
 - a. DTMA shall charge a connection fee for improved properties that in the future are connected to the Laurel Woods Project sewers or any extensions thereto.
 - b. Such fees shall be charged to connecting properties whether located inside or outside of Conewago Township.
 - c. Such fees shall be as similar as possible to those Connection Fees charged under Paragraph 3 above, with due recognition, however, to the escalation provisions in Act 203.

- B. Sewer User Rates and Charges - The sewer user rates and charges which DTMA applies to its Conewago Customers shall be the same sewer user rates and charges it applies to its customers located in Derry Township, which rates and charges DTMA in its sole discretion may adjust from time to time pursuant to applicable law.

- C. Capital Surcharge
 1. As used in this Subsection C, the term “Conewago Customers” shall include property owners who connect to sewer facilities constructed as part of the Laurel Woods Project or any extensions thereto whether the property of such owners is located inside or outside of Conewago Township.
 2. DTMA shall make an additional charge to its Conewago Customers which shall be sufficient over time to pay for the Net Capital Costs of the Laurel Woods Project (“Capital Surcharge”). The “Net Capital Costs” are the costs remaining after a deduction has been made from the Capital Costs of certain portions of the Connection Fees paid or financed through DTMA by Conewago Customers.

3. The Net Capital Costs shall be amortized over a 25-year period. The nominal annual interest rate used in the amortization shall be 4.91%, which is the yield on DTMA's 2002 bond issue as reported to the Internal Revenue Service on Form 8038-6. Interest shall begin to accrue on the date the first property is connected to the Laurel Woods Project. In the event that DTMA refinances the 2002 bond issue in the future at a lower interest rate, DTMA shall make a corresponding adjustment in the amortization interest rate. The total of the Capital Surcharge on an annual basis shall be computed by DTMA by applying the term and interest rate to the Net Capital Cost balance, or an estimate thereof.
4. DTMA shall allocate the total annual Capital Surcharge amount to its Conewago Customers based on the current or estimated number of connections to the sewer collection system in the Laurel Woods Project area and extensions thereto. However, DTMA reserves the right to use any other reasonable and uniform allocation method in the event it finds it necessary or practical to do so. For example, if commercial or industrial customers locate within the project area, it may be necessary to allocate the Capital Surcharge on an equivalent dwelling unit basis. DTMA shall review the allocation annually and adjust the amount of the allocation based on any change in the number of connections or other allocation factor being used.
5. DTMA shall invoice Conewago Customers for the Capital Surcharge, which shall be separately identified on the invoice, with the same frequency as it invoices sewer user charges.
6. DTMA shall establish an accounting system to continuously keep track of the aggregate amount of Connection Fees and Capital Surcharges paid toward the Capital Costs ("Master Account").
 - a. The applicable parts of Connection Fees paid or financed by Conewago Customers shall be credited to the Master Account either when paid in full or when a down payment has been made and an

installment loan agreement with DTMA has been entered into for the balance.

- b. Applicable parts of the Connection Fee include those parts under Act 203 that are directly related to recovering the costs of the sewer collection system. These generally may include the connection fee, the distribution or collection fee, and special purpose parts of the tapping fee. Specifically excluded are the capacity part of the tapping fee and customer facilities fees.
- c. In order to simplify maintenance of the Master Account by DTMA, the applicable parts of Connection Fees and Capital Surcharges collected during any calendar month shall be aggregated and applied to the Master Account as of the fifteenth day of the month. Amounts collected shall be applied to interest first and the remainder to principal.

7. DTMA shall provide a summary report of the Master Account to the Conewago Board of Supervisors from time to time and upon reasonable request from Conewago. Conewago shall be responsible for any actual and necessary expense of preparation of such report(s) in the event such request results in the need to provide such information more frequently than annually.

8. At such time as the Net Capital Costs as kept in the Master Account are paid in full, the Capital Surcharge shall be rescinded.

D. Other Rates and Charges and Billing Matters - Conewago Customers shall be subject to any other applicable rates and charges contained in DTMA's Rates, Rules, and Regulations. This could include, for example, penalties for late payments, charges for excess strength wastewater, and sampling fees for commercial or industrial establishments.

SECTION 3.00

MATTERS CONCERNING THE WASTEWATER COLLECTION SYSTEM

Section 3.01 - Mandatory Connection Ordinance.

- A. Within sixty (60) days after execution of this Agreement, Conewago shall enact an ordinance pursuant to 53 P.S. Chap. 67502 requiring all owners of improved property located within Conewago Township and accessible to and whose principal building is within 150 feet from DTMA's sewer system to connect thereto upon notice by Conewago ("Mandatory Connection Ordinance"). Conewago further agrees to issue such notice upon reasonable request from DTMA. This requirement shall also include all Conewago properties currently available for hook up to the DTMA sewer system but which have not yet been connected, provided however, Conewago may with DTMA's written consent defer issuing mandatory connection ordinances to such properties for a period of time not to exceed one year from the date of execution of this Agreement.

- B. Conewago's Mandatory Connection Ordinance shall contain all of the applicable elements regarding mandatory connection that are contained in Township of Derry Ordinance No. 140 as amended, a copy of which is attached as Exhibit B.

- C. Conewago agrees to submit its draft Mandatory Connection Ordinance to DTMA for review and approval prior to adoption by Conewago.

- D. Conewago agrees to perpetually keep its Mandatory Connection Ordinance in full force and effect and to take any and all actions necessary to promptly enforce the provisions of the ordinance.

- E. Conewago requests and DTMA agrees to serve as Conewago's agent to notify property owners of their obligation under the Mandatory Connection Ordinance to connect to the sewer system.

Section 3.02 - Sewer Use Requirements.

- A. Within sixty (60) days after execution of this Agreement, Conewago shall enact an ordinance setting forth requirements for use of DTMA's sewers within Conewago Township. This ordinance may be incorporated within the Mandatory Connection Ordinance required under Section 3.01. The ordinance shall incorporate all of the applicable requirements for sewer use that are contained in Township of Derry Ordinance No. 140. Conewago's ordinance shall specifically provide for the following:
1. That any violation of DTMA's Rates, Rules, and Regulations regarding sewer use shall constitute a violation of Conewago's sewer use ordinance. A copy of DTMA's Rates, Rules, and Regulations in effect on the date of execution of this Agreement is attached as Exhibit C and incorporated herein by reference.
 2. That the discharge of wastewater or any other substance into the DTMA sewage collection system, other than by and through a direct piped connection to the DTMA sewage collection system, is prohibited. The ordinance shall provide for fines in the maximum amount permitted by law. Accordingly, discharges from tank trucks or similar sources shall be prohibited.
 3. That DTMA has the right to inspect all new dwellings prior to issuance of an occupancy permit for the purpose of examining and evaluating all sewer connections and appurtenances associated with that dwelling unit for conformance with DTMA's Rates, Rules, and Regulations; to assure that no unauthorized sewer connections exist and that all wastewater is conducted into the building sewer; and to provide for a fee, if any, to be paid directly to DTMA for the reasonable cost of such inspections. Conewago shall require proof of such inspection, approval, and fee payment as part of the Conewago process for issuance of applicable occupancy permits.

4. That to the extent permitted by law DTMA has the right to inspect any dwelling unit connected to the sewer at any time for the purposes outlined in the immediately preceding Paragraph 3.
 5. That the discharge of industrial wastes, the quantity or quality of which may in DTMA's opinion, have a deleterious effect upon its treatment plant or receiving stream, shall be prohibited and prevented. Further DTMA and Conewago shall act cooperatively to physically disconnect any facility discharging such industrial waste.
- B. Conewago acknowledges that any inspections authorized or performed by DTMA pursuant to Section 3.02 A.3 or 4 are solely for the purposes stated and shall not constitute inspections to determine the property owner's compliance with State or local plumbing codes.
- C. To the extent necessary to put into effect the requirements of this Agreement, Conewago shall enact appropriate amendment(s) to its building permit ordinance and/or other ordinances.
- D. In the event that the Township of Derry amends Ordinance No. 140 so as to materially affect the sewer use requirements within Derry Township, DTMA shall send notification of such event to Conewago together with a copy of the amendment. Within sixty (60) days of the date of such notification Conewago agrees to amend its sewer use ordinance to conform with Derry Township's amendments. DTMA shall send to Conewago a copy of any amendments to its Rates, Rules, and Regulations within ten (10) days of its adoption.
- E. Pretreatment Program - Conewago's sewer use ordinance shall specifically grant to DTMA all of the legal authority which Conewago may possess to implement 40 CFR 403.8 (f) (1) regarding the establishment and conduct of industrial pretreatment programs. Conewago hereby authorizes and empowers DTMA to exercise all authority and powers that Conewago may have under Act 9 of 1992 (35 P.S. 752.1 et. seq), the "Publicly Owned Treatment Works Penalty Law," which

relates to the assessment of penalties on industrial users of the sewage collection system for violations of the industrial waste discharge requirements imposed by DTMA's Rates, Rules, and Regulations, Industrial Pretreatment Program and any applicable requirements of the State and Federal governments.

- F. Conewago acknowledges that Conewago Customers shall be subject to DTMA's Rates, Rules, and Regulations. Conewago shall fully cooperate with any enforcement action taken by DTMA against users of the sewer collection system located within Conewago who violate DTMA's Rates, Rules, and Regulations, and shall take such action in the exercise of its own rights and police powers as may reasonably be requested by DTMA to ensure compliance with the Rates, Rules, and Regulations.

Section 3.03 - Planning Requirements.

- A. Within 120 days after execution of this Agreement, Conewago shall amend its subdivision and land development ordinance to require that applicants for subdivision and land development projects conform to all of DTMA's construction standards and sanitary sewer extension procedures as a condition of Conewago's approval of such projects.

- B. When Conewago receives subdivision, land development, or other plans; project narratives or planning modules; and building permit applications and plans for a project to be located within the Laurel Woods Project service area or subsequent extensions thereto ("Project Information"), it shall promptly provide copies of such information to DTMA. DTMA shall be provided with opportunity to comment upon, to make recommendations, and to impose certain requirements with regard to the project prior to the issuance of Conewago Township approval of such plan(s). DTMA's comments, recommendations, and requirements shall be confined to matters that affect its wastewater facilities, their operation or maintenance, or its other rights and responsibilities under this Agreement. The parties hereto shall develop procedures for the implementation of the requirements set forth in this section, and upon failure of Conewago to follow such procedures, DTMA (1) shall

have no obligation to execute planning modules or other documents or to issue capacity verifications; and (2) shall have the right (notwithstanding any provision in this Agreement to the contrary), to proceed in Dauphin County Court for specific performance of this Agreement, and Conewago shall pay DTMA's costs and reasonable attorney's fees in connection therewith.

- C. Conewago agrees not to issue building permits to applicants within the sewer service area until receiving written notification from DTMA that either a sewer connection permit has been obtained or that DTMA has no objection to release of the building permit. Such projects include, but may not be limited to, improvements or building additions that add or modify plumbing facilities. In the event DTMA determines that an inspection of the same is required, DTMA may charge a reasonable fee for the same, to be paid directly to DTMA. and Conewago shall require proof of payment of the same, if applicable, as part of the appropriate Conewago approval process for such projects.

Section 3.04 - Rights-of-Way. Conewago hereby grants to DTMA all easements or rights-of-way in and to public streets or other public property controlled by it which are reasonably required in the performance of this Agreement, and DTMA shall comply with all reasonable rules and regulations imposed by Conewago regarding use of those streets, easements, and rights-of-way. Where required and necessary, Conewago shall secure for DTMA any and all easements, rights-of-way, licenses or privileges necessary to DTMA in the exercise by DTMA of its rights or in the carrying out by DTMA of its obligations under this Agreement. DTMA shall apply for any road occupancy permits required by Conewago for DTMA's sewage facilities . Conewago agrees to waive any permit fees for the Laurel Woods Project and any subsequent sewer lines installed by DTMA at Conewago's request but not for developer-installed extensions thereto.

SECTION 4.00

MISCELLANEOUS

Section 4.01 - Indemnifications.

- A. DTMA shall indemnify, defend and hold Conewago, its members, directors, officers, employees and agents harmless from and against all losses, claims, damages, liabilities, actions, decrees, orders, judgments, and expenses, including reasonable professional fees and disbursements, to the extent not reimbursed by insurance, whether or not in connection with loss of life, bodily injury, and damage to property, of any kind or character, howsoever caused and arising to the extent from (1) DTMA's breach of obligations under this Agreement; and or (2) DTMA's negligence within the scope of DTMA's obligations under this Agreement.
- B. Conewago shall indemnify, defend and hold DTMA, its members, directors, officers, employees and agents harmless from and against all losses, claims, damages, liabilities, actions, decrees, orders, judgments and expenses, including reasonable professional fees and disbursements, to the extent not reimburses by insurance, whether or not in connection with loss of life, bodily injury, and damage to property, of any kind or character, howsoever caused and arising to the extent from (1) Conewago's breach of obligations under the Agreement and or (2) Conewago's negligence within the scope of Conewago's obligations under this Agreement.

Section 4.02 - Waiver of Rights. The failure of any party hereto to insist upon strict performance of this Agreement or its terms and conditions shall not be construed as a waiver of any of its rights.

Section 4.03 - Arbitration. If any dispute arises between the parties hereto concerning the terms, conditions and covenants of this Agreement, the subject of such dispute shall be submitted to a board of arbitrators within thirty (30) days after written notice from any of the parties. For rate and billing matters, each arbitrator shall be either an engineer, rate consultant or certified public accountant. For all other matters, each arbitrator shall

be an engineer. The board of arbitrators shall consist of three members, one of which shall be chosen by each party to the dispute, and the third shall be chosen by the arbitrators chosen by the parties. If the arbitrators chosen by the parties cannot reach agreement upon the identity of the third arbitrator within ten (10) days of the appointment of the last of them to be appointed, the parties shall file a joint request to the Court of Common Pleas of Dauphin County for appointment of a third arbitrator. Each party shall choose its arbitrator within ten (10) days of receipt of notification of request for arbitration. The costs of arbitration shall be borne equally by the parties. Except as otherwise provided in this Section, the arbitration shall be conducted in accordance with the Uniform Arbitration Act, 42 Pa. C.S.A. 7301, et. seq.

Section 4.04 - Entire Agreement. This writing and the exhibits attached hereto constitute the entire Agreement between the parties, and there are no other representations or agreements, verbal or written, other than those contained herein. This Agreement and the exhibits attached hereto may not be modified, amended or supplemented except by written agreement of all parties hereto.

Section 4.05 - Severability. Should any one or more of the provisions of this Agreement for any reason be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall, under the circumstances, be construed and enforced as if such illegal, invalid or unenforceable provision had not originally been contained herein.

Section 4.06 - Meaning of Phrases. When reference is made herein to a “party” or “respective party”, or phrases of similar importance, such phrases shall refer to the particular municipality or authority, as appropriate under the circumstances.

Section 4.07 - Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be properly executed by all parties hereto, and all of which shall be regarded for all purposes as one original, and all of which shall constitute one agreement, legally binding upon the parties.

Section 4.08 - Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers, as authorized or approved by action of their respective governing bodies, the day and year first above written.

ATTEST:

DERRY TOWNSHIP MUNICIPAL
AUTHORITY

Secretary

By: _____
Chairman

(SEAL)

ATTEST:

CONEWAGO TOWNSHIP

Secretary

By: _____
Chairman

(SEAL)

**CONEWAGO SEWER EXTENSION
SCHEDULE OF CAPITAL COSTS
as of March 24, 2003**

Item	Estimate	Notes
Land and Rights-of-Way	\$25,300	1.
Interest During Construction	0	2.
Engineering		
Design	209,500	3.
Bid Phase Assistance	6,500	4.
Construction Administration & Observation	264,000	5.
Grinder Pump Credits	35,000	6.
Construction	3,375,600	7.
Subtotal	\$3,915,900	
Less: Prepaid Design and Bid Assistance Costs	216,000	
Total Capital Costs	\$3,699,900	

Notes:

1. Direct payments to property owners to acquire rights-of-way.
2. Amount dependent on financing source. DTMA amount currently shown.
3. Not-to-exceed contract amount with Buchart-Horn
4. Prorata share of Bid Phase contract amount of \$10,000 for combined project.
5. Prorata share of CM Phase not-to-exceed contract amount of \$405,000 for combined project.
6. Seven grinder pumps at an estimated \$5,000 credit
7. Actual construction bid amount for Conewago portion of combined project.

Disclaimer: For an official copy of this document, see the Township Office.

This computer version was prepared by **Conewago Online**, which is not affiliated with the township government. Transcription errors are possible and accuracy is not guaranteed.

Last revised: 09/05/2003 02:00 pm. © 2003 by Joel Buckley.