

SEWER DESIGN AGREEMENT

THIS AGREEMENT made and entered into this 28th day of October 2005, by and between:

CONEWAGO TOWNSHIP, ("**Township**"), Dauphin County, a political subdivision of the Commonwealth of Pennsylvania, having its administrative office at 3279 Old Hershey Road, Elizabethtown, PA 17022.

AND

CONEWAGO MUNICIPAL AUTHORITY, ("**Authority**"), a municipal authority organized and existing under the "Municipalities Authorities Act" 53 Pa. C.S. Ch. 56, having its administrative office at 3279 Old Hershey Road, Elizabethtown, PA 17022 (Township and Authority collectively "**Conewago**").

AND

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

RECITALS

WHEREAS, Township has received approval of its Act 537 Plan from the Pennsylvania Department of Environmental Protection, which plan provides for the installation of public sanitary sewer service for a portion of Conewago Township identified in the plan as Public Wastewater Alternative 4-A, ("Project"); and

WHEREAS, DTMA has adequate capacity in its facilities to convey and treat the sewage generated within the Project service area, and is willing to accept, convey, and

treat such sewage pursuant to a separate agreement which may be negotiated between the Parties; and

WHEREAS, in order to provide service to the Project, a sewer main must be constructed to connect the Project to the existing DTMA sewer system which sewer main would be located within Derry Township's corporate limits ("Derry Main"); and

WHEREAS, Conewago is rural in nature and has limited permanent staff to assist it in providing the necessary oversight for the design, bidding, and construction of a sanitary sewer collection system; and

WHEREAS, DTMA currently operates a sanitary sewer collection and treatment system, and has had substantial experience in the designing, bidding, construction, operation, and maintenance of a sanitary sewer collection system; and

WHEREAS, Conewago wants to retain DTMA as its agent in coordinating and providing Project oversight of the design, bidding, and awarding of the bids for the Project and DTMA is willing to serve as Conewago's agent; and

WHEREAS, the Parties anticipate that they may enter into an additional agreement substantially similar to the March 24, 2003 Agreement between Township and DTMA and the March 24, 2003 Supplement thereto whereby DTMA accepts, conveys, and treats the sewage generated within the Project service area, and whereby DTMA owns or leases and operates and maintains the Project facilities ("Additional Agreement"); and

WHEREAS, Authority anticipates making an application to the Pennsylvania Infrastructure Investment Authority ("PENNVEST") for financing for the Project.

NOW, THEREFORE, the Parties hereto agree as follows:

1. The Recitals above are incorporated herein by reference and made a part of this Agreement.
2. Conewago retains DTMA to be its agent to coordinate and oversee the design, bidding, and awarding of construction contracts for the Project.

While Conewago anticipates that it may retain DTMA to perform subsequent activities such as construction administration and inspection, any such retention shall be pursuant to the Additional Agreement. Any arrangement for DTMA to own or lease and operate and maintain the Project facilities shall also be included in the Additional Agreement. Nevertheless, the draft contract documents developed pursuant to this Agreement shall identify DTMA as the “Owner”.

3. DTMA shall provide said services to Conewago utilizing the services of its consulting engineer, Buchart-Horn Inc., in accordance with Proposal No. 19241 for the Project, revised on October 17, 2005, a copy of which is attached hereto as Exhibit A and is incorporated herein by reference, except that the preparation of right-of-way plats as outlined in the Proposal is not authorized to be performed under this Agreement.
4. Buchart Horn, Inc. shall be compensated in accordance with its retainer agreement with DTMA, a copy of which has been provided to Conewago, subject to the terms and conditions contained in Exhibit A; however, the total compensation shall not exceed \$137,900 (excluding right-of-way preparation in accordance with Paragraph 3 above).
5. Upon receipt of invoices from Buchart Horn for the Project, DTMA will review the invoices and immediately forward each invoice to Conewago for its review and payment. Conewago will complete its review and make payment to DTMA within thirty (30) days of receipt of each invoice. Conewago reserves the right to question the correctness of each invoice within said thirty (30) day period and to raise any questions or disputes with DTMA, which shall use its best efforts to resolve any disputes or

questions. The final determination of the correctness of any invoice shall be made by DTMA after consultation with Conewago and Buchart-Horn.

6. Conewago and DTMA reserve the right to terminate this Agreement upon thirty (30) days written notice to the other, in which event no additional work or services shall be provided or authorized after the date such notice is received by the other party, but invoices incurred for work and services in progress at the time such notification is received shall be paid by Conewago in accordance with Paragraph 4 above.
7. DTMA (through Buchart Horn) shall design the Project in accordance with sound engineering standards and DTMA's own policies, construction standards, and specifications. DTMA will review the preliminary and final designs with Conewago or its consulting engineer. DTMA will consider any comments regarding the Project made by Conewago or its consulting engineer; however, DTMA reserves the exclusive right to make the final determinations concerning system size, layout, or other Project design considerations.
8. Conewago shall include in its PENNVEST application for financing of the Project all of the costs associated with the Derry Main, including but not limited to, costs for design, construction, and inspection.
9. In the event that DTMA establishes a separate rate district for the Conewago properties served by the Project and institutes a capital surcharge for such district similar to that provided for in the 2003 Agreement, DTMA shall exclude from the calculation of the capital surcharge the construction costs for the Derry Main, net of the applicable portion of any grants received by Conewago.

10. Prior to DTMA and Buchart-Horn performing basement surveys, Conewago shall develop and publish to every potential customer in the Project service area a notice regarding the Project that is mutually acceptable to Conewago and DTMA.
11. Notwithstanding any other provision of this Agreement, DTMA and Conewago acknowledge there is no implied contract or agreement to proceed beyond the terms of this Agreement and expressly acknowledge DTMA has no obligation to proceed in the event there are irreconcilable differences between the Parties as to design issues or the financial feasibility of the Project.
12. Standard Provisions
 - A. Indemnifications
 - 1) 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 (i) DTMA's breach of obligations under this Agreement; and or (ii) DTMA's negligence within the scope of DTMA's obligations under this Agreement.
 - 2) 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 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 (i) Conewago's breach of obligations under the Agreement and or (ii) Conewago's negligence within the scope of Conewago's obligations under this Agreement.

- B. 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.
- C. 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.
- D. 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.
- E. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be properly executed by all parties

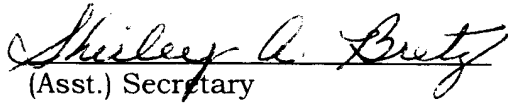
hereto, and all of which shall be regarded for all purposes as one original, and all of which shall constitute one Agreement, legally binding upon the parties.

- F. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania.
- G. Notice. All notices relating to this Agreement shall be in writing and shall be deemed delivered when delivered by Certified Mail, Return Receipt Requested, to the following address:
- i. Conewago Township, 3279 Old Hershey Road, Elizabethtown, PA 17022, Attention: John Rochat, Chairman
 - ii. Conewago Municipal Authority, 3279 Old Hershey Road, Elizabethtown, PA 17022, Attention: Gregory Hill, Chairman
 - iii. Derry Township Municipal Authority, 670 Clearwater Road, Hershey, PA 17033-2453, Attention: Ralph G. Watters, Manager.

IN WITNESS WHEREOF, the Parties have caused these presents to be executed by their duly authorized officers as of the day and year first above written, intending thereby to be legally bound.

ATTEST:

CONEWAGO TOWNSHIP

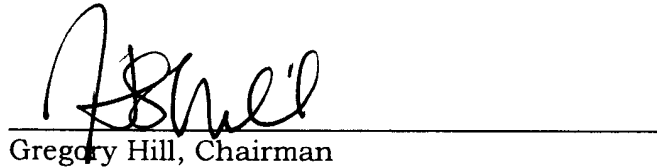

(Asst.) Secretary

John Rochat, Chairman

ATTEST:


CONEWAGO MUNICIPAL AUTHORITY

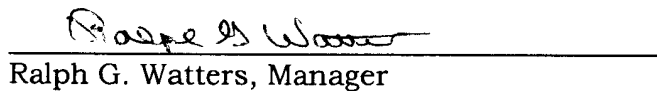

(Asst.) Secretary


Gregory Hill, Chairman

ATTEST:

DERRY TOWNSHIP MUNICIPAL AUTHORITY


Admin. Assistant


Ralph G. Watters, Manager