

**BILATERAL LEASE AGREEMENT
CONEWAGO/DTMA**

THIS BILATERAL LEASE AGREEMENT (“Lease”) made and entered into this __ day of _____, 2003, by and between:

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.

AND

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 (collectively, the “Parties”).

RECITALS

WHEREAS, for a number of years the Parties have discussed the possibility of DTMA extending its sewer facilities (“DTMA Facilities”) into and providing sewer service to significant portions of Conewago Township; and

WHEREAS, the provision of service to significant portions of Conewago Township involves the design and construction of gravity sewer mains, laterals, pump stations, force mains, and other appurtenances (“Sewer Facilities” or “Facilities”); and

WHEREAS, pursuant to an agreement dated July 11, 2001, DTMA through its consulting engineer designed Sewer Facilities to serve a significant portion of Conewago Township as set forth in plans and specifications developed by Buchart Horn Inc., dated January 2003 and bearing a contract number of 2003-01 (“Project” or “Project Facilities”); and

WHEREAS, Conewago subsequently requested that DTMA construct the Project Facilities pursuant to a Sewer Service Agreement and a Supplement to Sewer Service Agreement, both of which were dated March 24, 2003 (collectively “March 2003 Agreement”); and

WHEREAS, DTMA acquired lands and rights-of-way on which are located certain of the Project Facilities; and

WHEREAS, on March 24, 2003 DTMA awarded a contract for the construction of the Project Facilities; and

WHEREAS, at the time of the execution of the March 2003 Agreement the Parties were uncertain as to the exact manner in which the Project would be financed, owned, and operated; and

WHEREAS, on May 21, 2003 Conewago applied to the Pennsylvania Infrastructure Investment Authority (“Pennvest”) for financial assistance in regard to the Project and on July 27, 2003 received a funding offer for the Project from Pennvest, consisting of a grant of up to \$1,906,666.00 (“Pennvest Grant”) and a loan of up to \$2,843,334.00 (“Pennvest Loan”), collectively (“Pennvest Funding”); and

WHEREAS, the Parties understand that Pennvest will require that Conewago hold legal title to and provide for the operation of the Project Facilities during the term of the Pennvest Loan; and

WHEREAS, for good and practical business reasons Conewago desires, to the maximum extent permitted by Pennvest, that DTMA regard and operate the Project Facilities as though they were an extension of DTMA Facilities located in, and directly serving customers in Conewago Township; and

WHEREAS, concurrent with the execution of this Lease, the Parties are entering into a new sewer service agreement (“Service Agreement”) which takes into consideration the Pennvest Funding and certain Pennvest requirements including the requirement for Conewago to be the legal owner of the Project; and

WHEREAS, this Bilateral Lease Agreement is an integral part of the Service Agreement and is incorporated into it by reference.

NOW, THEREFORE, in consideration of the premises, the mutual terms, covenants, and conditions herein contained, the Parties hereto, intending to be legally bound, do hereby agree and covenant as follows:

SECTION 1.00
PURPOSE AND GENERAL PROVISIONS

Section 1.10 - Purpose. This Lease establishes an arrangement whereby DTMA leases to Conewago certain land and licenses the use of rights-of-way on which the Project Facilities have been or will be situated. In turn, Conewago leases the Project Facilities to DTMA for use in providing sewer service to customers in the Project service area. This Lease is to be in effect during the term of the Pennvest Loan and is designed to satisfy Pennvest’s requirement that Conewago be the legal owner of the Project Facilities. DTMA shall have the irrevocable right to purchase the Project Facilities from Conewago upon retirement of the Pennvest Loan.

This Section 1.10 gives only a general overview of the purpose for this Lease and in the event of any conflict between this Section and the detailed terms contained in the following Sections, the following Sections shall govern.

Section 1.20 - General. The Recitals above are incorporated herein by reference and made a part of this Lease.

Section 1.30 - Invalidity. In the event that Pennvest is unwilling to fund the Project due to the provisions of this Lease or of the Service Agreement of which this Lease is a part, this Lease shall be null and void and the March 2003 Agreement between Conewago and DTMA shall remain in full force and effect.

SECTION 2.00

PROPERTY WHICH DTMA LEASES OR LICENSES TO CONEWAGO

(“LAND LEASE”)

A. Identification of Leased Property

1. DTMA hereby leases to Conewago land which DTMA owns in fee simple on which is or will be situated the Church Road and Roundtop Road Pump Stations. (The Woodbine Road Pump Station is or will be situated entirely within the public road right-of-way and is therefore, not included in the provisions of this Section 2.00 A.).
2. DTMA hereby licenses to Conewago the use of rights-of-way which DTMA has acquired over various properties owned by third parties which do or will contain Project Facilities.

A listing of and detailed descriptions of the land and rights-of-way are contained in Exhibits A-1 through A-12 (“DTMA Property”).

- B. Rental Fees. Conewago shall pay rent and licensing fees to DTMA in the amount of one dollar (\$1.00) per year during the term of this Lease as defined in Section 4.00 A.
- C. Use of the DTMA Property. The DTMA Property shall be used solely as sites on which Project Facilities are or will be located and for no other purpose.

- D. Insurance. DTMA shall provide at its own expense, liability insurance on the DTMA Property to the extent that such coverage is reasonably available from commercial sources of such insurance. The limits of such insurance shall be equal to limits of insurance that DTMA carries on property with a similar purpose that it owns within Derry Township.
- E. Conewago Access to DTMA Property. Since Conewago intends to lease the Project Facilities to DTMA for operation and maintenance, Conewago's access to DTMA Property on which the Project Facilities are located shall be limited. DTMA shall provide access to Conewago for purposes of inspection of the Property upon written request to the DTMA Manager made at least seven (7) days in advance. Such requests shall generally be granted no more frequently than annually and shall be coordinated to occur at the same time as any inspection performed under Section 3.00 G.

SECTION 3.00

PROPERTY WHICH CONEWAGO LEASES TO DTMA

("PROJECT LEASE")

- A. Identification of Leased Property. Conewago shall lease the Project Facilities to DTMA.
- B. Rental Fees. DTMA shall pay rent to Conewago. The amount of rent shall be equal to the amount of the payment Conewago is required to make on the Pennvest Loan and shall be paid with the same frequency as Conewago is required to make payments on the Pennvest Loan. Conewago shall notify DTMA in writing of the rent due date which shall not be earlier than seven (7) days prior to the dates on which Conewago's loan payments are due to Pennvest. In no event shall the rent exceed \$13,076.33 per month. Rental payments under this Lease shall cease to be due when DTMA makes its last payment to Conewago corresponding to the last payment that Conewago is required to make to Pennvest.

- C. Possession and Use. DTMA shall be given possession of the Project Facilities from the commencement date of this Lease as defined in Section 4.00 A. DTMA shall have full and exclusive use of the Project Facilities to provide sewer service to the customers served by the Project Facilities and any extensions thereto.
- D. Maintenance and Capital Improvements. DTMA shall have full and exclusive responsibility for the maintenance of the Project Facilities. It shall provide the necessary labor, parts, equipment and supplies to maintain the Project Facilities and shall repair or replace them as needed so as to provide continuous service to the extent possible. DTMA may in its sole discretion make capital improvements to increase the efficiency or effectiveness of the Facilities. DTMA may also make capital improvements as it deems necessary to increase the capacity of the Project Facilities and may construct or permit others to construct extensions thereto, pursuant to provisions of the Service Agreement. Any capital improvements made by DTMA shall be at its own expense.
- E. Insurance. DTMA shall provide at its own expense property and liability insurance for the Project Facilities and any personal property of DTMA located on or within them to the extent that such coverage is reasonably available from commercial sources of such insurance. The limits of such insurance shall be equal to limits of insurance that DTMA carries on property with a similar purpose that it owns within Derry Township. Upon request DTMA shall provide evidence of coverage to Conewago and/or Pennvest. If required by the terms of Conewago's Pennvest financing and upon written request by Conewago, DTMA shall name Conewago and Pennvest as additional insureds as their respective interests may appear.

- F. Utilities. DTMA shall make arrangements for and pay for all of the costs of utilities and services needed in connection with the Project Facilities, including but not limited to: electric, telephone, water, and refuse removal.
- G. Conewago's Access to the Project Facilities. DTMA shall provide access to Conewago for purposes of inspection of the Project Facilities, upon written request to the DTMA Manager made at least seven (7) days in advance by telephone or in writing. Such requests shall generally be granted no more frequently than annually and shall be coordinated to occur at the same time as any inspection performed under Section 2.00 E.
- H. Encumbrances. Conewago shall not permit the Project Facilities to become the subject of any lien, indenture, mortgage, or any other encumbrance except as, and only to the extent, required by Pennvest.
- I. DTMA Option to Purchase the Project Facilities. At the end of the term of this Lease as defined in Section 4.00 A, DTMA shall have an irrevocable option to purchase the Project Facilities from Conewago for the sum of one dollar (\$1.00). DTMA shall notify Conewago in writing of its intention to exercise its option no later than thirty (30) days after the date that DTMA makes its last rental payment under this Lease. Concurrent with DTMA's payment of the option price, Conewago shall transfer legal title to the Project to DTMA. Legal title shall be free and clear of all liens and encumbrances and in a form satisfactory to DTMA.

SECTION 4.00

COMMON PROVISIONS

The following provisions shall apply to both the Land and Project Leases:

- A. Term. The term of this Lease shall be for approximately 20 years. It shall begin on the date that DTMA transfers the Project to Conewago. It shall end on the date that Conewago transfers legal title to the Project Facilities to DTMA

pursuant to Section 3.00 I or in the alternative on the date that Conewago receives notice from DTMA that it does not intend to exercise its option to purchase the Project.

- B. Termination. The Parties intend that this Lease shall remain in effect as provided by Section 4.00 A. Termination at any time other than at the end of the term for reasons not now foreseen, shall be permitted only upon mutual written consent of the Parties. Conewago shall not prepay its obligation to Pennvest without DTMA's express written consent.
- C. Compliance with Laws. The Parties shall comply with all laws, ordinances, and regulations regarding their respective properties.
- D. 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, order, judgements, 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 Lease; and/or (2) DTMA's negligence within the scope of DTMA's obligations under this Lease; and or DTMA's negligent operation of the Project Facilities.
 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, judgements, 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)

Conewago's breach of obligations under this Lease; and/or (2)
Conewago's negligence within the scope of Conewago's obligations under
this Lease.

E. Remedies.

- A. DTMA shall have all rights and remedies available at law and in equity, including specific performance and declaratory judgment, available to enforce the intent and all provisions hereof. In the event of any default in performance of any obligation by Conewago under the terms of this Lease, Conewago shall be required to pay any and all costs incurred by DTMA including reasonable legal, expert, court, and service costs expended in enforcement of any provision of this Lease, as well as any other relief to which DTMA may be entitled. The rights and remedies granted to DTMA herein are cumulative and the exercise of any right or remedy shall be without prejudice to the enforcement of any other right or remedy authorized herein, by law or, in equity. The waiver of one breach shall not be deemed a waiver of any other breach. Forbearance to enforce one or more of the remedies herein shall not be deemed or construed to constitute a waiver of that right or remedy or any other right or remedy for that default.
- B. Conewago shall have all rights and remedies available at law and in equity, including specific performance and declaratory judgment, available to enforce the intent and all provisions hereof. In the event of any default in performance of any obligation by DTMA under the terms of this Lease, DTMA shall be required to pay any and all costs incurred by Conewago including reasonable legal, expert, court, and service costs expended in enforcement of any provision of this Lease, as well as any other relief to which Conewago may be entitled. The rights and remedies granted to Conewago herein are cumulative and the exercise of any right or remedy shall be without prejudice to the enforcement of any other right or remedy authorized herein, by law or, in equity. The waiver of one

breach shall not be deemed a waiver of any other breach. Forbearance to enforce one or more of the remedies herein shall not be deemed or construed to constitute a waiver of that right or remedy or any other right or remedy for that default.

- F. Assignment and Subletting. The Parties are prohibited from making assignments of this Lease and they are also prohibited from subletting their respective leased properties except that Conewago may assign its rights under this Lease to Pennvest, if required by Pennvest as a condition of funding Conewago's loan and grant.
- G. Waiver. No delay or omission in the exercise of any right or remedy of either Party under this Lease shall impair such a right or remedy or be construed as a waiver.
- H. Time is of the Essence. Time is of the essence of each provision of this Lease.
- I. Governing Law. The construction of this Lease and the rights and remedies of the Parties hereto, shall be governed by the laws of the Commonwealth of Pennsylvania.
- J. Amendments, Additions, and Changes. No modification, amendment, change, or addition to this Lease shall be binding on the Parties unless reduced to writing and signed by their authorized representatives.
- K. Entire Agreement. This Lease, together with the Service Agreement, contains the entire understanding between the Parties and supersedes any prior written or oral agreements between them respecting the subject matter of the Lease. There are no representations, agreements, arrangements, or understandings, oral or written, between the Parties hereto relating to the subject matter of this Lease which are not fully expressed herein, except as may be provided in the Service Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Lease 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

By:

(Asst.) Secretary

(Vice) Chairman

(SEAL)

ATTEST:

CONEWAGO TOWNSHIP

By:

Secretary

Chairman

(SEAL)

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