

SEWER SERVICE AGREEMENT

PHASE 2 SERVICE AREA

CONEWAGO/DTMA

THIS AGREEMENT made and entered into this ____ day of _____ 2007,
by and among:

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, ("**CMA**"), 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 updated its Act 537 Sewage Facilities Plan ("Plan") on September 14, 2005, and subsequently received approval of the Plan from the Pennsylvania Department of Environmental Protection on January 30, 2006; and

WHEREAS, to assist in implementing the Plan, Township formed the CMA in accordance with the Municipality Authorities Act ("Act"); and

WHEREAS, the Plan proposes that public sewer service be provided to an additional portion of Conewago Township which is defined generally in an exhibit to the Plan entitled "Public Wastewater Alternative 4-A" ("Phase 2 Service Area"); and

WHEREAS, the Plan further proposes that the wastewater generated within the Phase 2 Service Area be conveyed to a manhole in the vicinity of the Jacob's Creek Subdivision in Derry Township which manhole is part of the existing sewage collection, conveyance, and treatment system owned and operated by DTMA ("DTMA System"); and

WHEREAS, DTMA has determined that the DTMA System has adequate capacity to collect, convey and treat such sewage and is willing to do so subject to the terms and conditions of this Sewer Service Agreement - Phase 2 Service Area ("Agreement"); and

WHEREAS, DTMA presently renders sewer service to a portion of Conewago Township according to the terms of a Sewer Service Agreement between Township and DTMA dated December 4, 2003 ("Phase 1 Agreement"), and a Bilateral Lease Agreement between Township and DTMA also dated December 4, 2003 ("Phase 1 Lease"); and

WHEREAS, the collection and conveyance of wastewater from the Phase 2 Service Area to the DTMA System will require CMA to construct certain sanitary sewer facilities within Conewago Township including, but not limited to: manholes, sewer mains, laterals, pump stations, and force mains ("Conewago Facilities"); and to also construct a sewer main and other appurtenances within Derry Township ("Derry Main"); and

WHEREAS, DTMA has many years of experience in providing sanitary sewer service and operating wastewater facilities; and its consulting engineer, Buchart Horn Inc., has many years experience in designing such facilities; and

WHEREAS, pursuant to an agreement dated October 28, 2005 among Township, CMA, and DTMA ("Design Agreement"), Buchart Horn has developed plans and specifications for the Conewago Facilities and the Derry Main as set forth in plans and a project manual both entitled "Conewago Municipal Authority, Sanitary Sewer Extension Phase II, Contract No.2006-01, BH Job No. 70078-41" dated October 2006 ("Plans") ; and

WHEREAS, the construction of the Conewago Facilities and Derry Main in strict conformance with Plans will result in a sewer extension which is acceptable to DTMA for connection to the DTMA system and for subsequent operation and maintenance by DTMA (“Project” or “Project Facilities”); and

WHEREAS, CMA submitted an application to the Pennsylvania Infrastructure Investment Authority (“Pennvest”) for financial assistance in connection with the Project; and

WHEREAS, on July 18, 2006 Pennvest awarded CMA a \$618,782 grant and a \$6,623,782 loan for thirty years at an interest rate of one percent (1%) to make possible the construction of the Project Facilities; and

WHEREAS, Pennvest subsequently revised the loan amount to \$4,591,356 and the term to 299 months, (the \$618,782 grant and 1% \$4,591,365 loan collectively “Project Funding”); and

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

WHEREAS, for good and practical business reasons Conewago desires that to the maximum extent possible, DTMA, as CMA’s agent, regard, operate and use the Conewago 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 Agreement, the Parties are entering into a Lease Agreement (“Lease”) which will make land, rights-of-way and Project Facilities available to CMA and DTMA for their use in carrying out the purposes of this Service Agreement, a copy of which Lease is attached to this Agreement as Exhibit “A” and incorporated herein by reference; and

WHEREAS, CMA does not have significant financial resources of its own, DTMA requires Township to be a party to this Agreement in order to guarantee CMA’s financial obligations hereunder (“Township Guarantee”); and

WHEREAS, the provision of Project Funding by Pennvest and the Township Guarantee by Township is absolutely essential to DTMA's willingness to enter into this Agreement.

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 Agreement provides (Inter. Alia) a legal framework within which CMA, DTMA and Township can provide sewer service to the Phase 2 Service Area while satisfying Pennvest requirements for ownership and operation of the Project. It provides for CMA to finance and construct and own the Project Facilities. The Project Facilities will then be leased to DTMA for operation as CMA's agent. It further provides for CMA to lease to DTMA, land on which Project pump stations will be constructed and to lease to DTMA the use of rights-of-way on which Conewago Facilities will be located. Concurrent with the termination of CMA's loan obligation to Pennvest, DTMA has the irrevocable right to purchase the Project Facilities as provided in the Lease. This Section 1.10 provides only a general overview of the purpose of this Agreement and in the event of any conflict between this section and the detailed terms and conditions contained in the following Sections, the following Sections shall govern.

Section 1.20 - Term. The term of this Agreement shall begin on the date of its execution by all Parties and it shall end on the date that CMA transfers legal title of the Conewago Facilities to DTMA pursuant to the Lease or in the alternative on the date that CMA receives notice from DTMA that it does not intend to exercise its option to purchase the Conewago Facilities.

Section 1.30 - Termination. CMA and DTMA intend that this Agreement shall remain in effect as provided by Section 1.20. 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.

Section 1.40 - Additional Definitions.

- A. “Conewago Customer” means any owner of property in Conewago Township who connects their improved property to the Conewago Facilities or any future extension to the Conewago Facilities.
- B. “Conewago System” means the Conewago Facilities and any future extensions thereto.
- C. “Connection Charge” means any of the enumerated fees authorized by the Act charged to property owners who desire to or are required to connect to an authority’s sewer system. Connection Charges may include without limitation a: connection fee, customer facilities fee, and tapping fee (capacity part, distribution or collection part, special purpose part, and reimbursement part).
- D. “Derry Customer” means any owner of property in Derry Township who connects their improved property to the Derry Main or any future extension to the Derry Main.
- E. “Equivalent Dwelling Unit” or “EDU” is a unit of measure of the amount of wastewater attributed to a nonresidential establishment compared to a single-family residence. For purposes of this Agreement, one EDU is equal to an actual or estimated wastewater discharge of 228.1 gallons per day.
- F. “Initial Customer” means any owner of improved property in Conewago Township who as a result of the Project:
 - 1. Receives a mandatory notice to connect their property to the Conewago Facilities and who does so; or

2. Voluntarily connects their improved property to the Conewago Facilities and who would have received a mandatory connection notice were it not for the distance from the street or right-of-way line to the principal building on the property.

In any case where it is not clear whether or not an owner of an improved property in Conewago Township is an Initial Customer, DTMA shall have the right in its sole discretion to make such determination.

- G. "Project Customer" means any Conewago or Derry Customer.
- H. "Sewer" or "Sewer Facilities" means without limitation: gravity sewer mains, laterals, pump stations, force mains, manholes, and other appurtenances.

Section 1.50 – Other General Matters.

- A. The Recitals above are incorporated herein by reference and made a part of this Agreement.
- B. Except as may be specifically amended herein, the Design Agreement, Phase 1 Agreement, and Phase 1 Lease shall continue in full force and effect as provided in those respective documents.
- C. Throughout this Agreement whenever reference is made to DTMA operating, maintaining, or performing similar activities with respect to the Project Facilities, it shall be expressly understood that DTMA is performing such as CMA's agent subject to the terms of this Agreement.

SECTION 2.00
LAND AND RIGHTS-OF-WAY

- A. On or before the date of this Agreement CMA shall:
1. Acquire fee simple ownership of all tracts of land on which Project pump stations are to be constructed (“Pump Station Lots”). Legal titles shall be free and clear of all liens and encumbrances and in a form satisfactory to DTMA. CMA shall provide to DTMA copies of the deeds which shall include a plat and legal description for each Lot.
 2. Acquire all rights-of-way necessary to construct the Conewago Facilities. The rights-of-way shall be in a form satisfactory to DTMA and shall be substantially similar to DTMA’s standard right-of-way agreement and include, a plat, and legal description. CMA shall provide copies to DTMA of all such rights-of-way
- B. On or before the date of this Agreement, DTMA shall at its own expense acquire all rights-of-way necessary for CMA to construct the Derry Main. DTMA shall provide a copy of the right-of-way agreement, plat and legal description to CMA.
- C. The disposition of the Pump Station Lots and rights-of-way acquired pursuant to this Section shall be as provided in the Lease.
- D. The copies required under Sections 2.00 A. and B. must be provided to the respective parties within ninety (90) days from the date of this Agreement.

SECTION 3.00
PROJECT CONSTRUCTION, COSTS AND MANAGEMENT

Section 3.10 - Project Construction and Costs

- A. CMA shall be solely responsible to:

1. Contract for the construction of the Project Facilities.
 2. Secure sufficient funds and pay for, according to applicable contract terms, all costs necessary to construct the Project Facilities, such costs including but not limited to: administrative, accounting, legal, engineering, and construction costs.
- B. CMA shall take no action to increase the amount of Project costs included in the Project Funding beyond CMA's currently estimated amount of \$4,591,365 without DTMA's written approval. Except as provided herein, DTMA shall have no responsibility to pay or to reimburse CMA for Project costs which are not financed by Project Funding.
- C. Since the Plans reflect a Project which is acceptable to DTMA, CMA shall take no action to change the Plans by formal change order to the construction contract or by any other method without first obtaining the express written consent of DTMA. CMA and DTMA shall cooperate to insure that any changes to the Plans which are either necessary or desirable do not adversely affect the acceptability of the Project to DTMA. CMA shall approve any change orders or other changes which DTMA is in its sole judgement determines to be necessary to the acceptability of the Project.

Section 3.20 - Project Management

- A. DTMA shall provide to CMA construction administration and resident Project representative services ("CM Services") for the Project utilizing the services of Buchart Horn Inc. ("Buchart") in accordance with the terms of Proposal No. 19710 dated September 13, 2006 a copy of which is attached as Exhibit "B" and incorporated herein by reference. When DTMA receives invoices from Buchart for CM Services in connection with the Project, it shall:
1. Pay such invoices from its own funds in accordance with the terms of its own agreement with Buchart.
 2. Send an invoice to CMA requesting reimbursement of Buchart's charges for such CM Services. Included with DTMA's invoice shall be copies of

Buchart's invoices for CMA's review. CMA shall make payment to DTMA within thirty (30) days of receipt of each invoice. CMA 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 CMA and Buchart. DTMA reserves the right to charge interest on any invoices which are not paid within the thirty (30) day period.

- B. DTMA, through its own staff, shall provide additional Project management services during construction of the Project Facilities including, but not limited to, attending or presiding at job conferences, conducting inspections of the Project, making decisions concerning the placement of service laterals, coordinating communication among affected residents in the Phase 2 Service Area, the construction contractor, Buchart and CMA. CMA hereby appoints DTMA as its agent to manage and oversee the Project on a day-to-day basis and to make decisions concerning field changes and administrative matters. DTMA shall provide such services for the fee specified in Section 6.20.
- C. So as to maintain an orderly and consistent channel of communication among personnel working on the Project, CMA and Township shall direct all communication concerning Project matters of a material nature through DTMA.

SECTION 4.00

OPERATION OF THE PROJECT FACILITIES

- A. Township and CMA hereby expressly grant to DTMA an exclusive and perpetual right to operate and maintain the Project Facilities in accordance with the terms of this Agreement including the Lease, and the right to operate and maintain any subsequent extensions to the Conewago Facilities approved by Conewago and DTMA. DTMA shall have exclusive right to operate and maintain any extensions to the Derry Main.

- B. DTMA shall be solely responsible to take all actions necessary to operate and maintain the Project Facilities and any extensions thereto whether or not the detailed requirements of such operation and maintenance are specifically set forth in this Agreement or the Lease.
- C. CMA shall apply for any permits and licenses required in connection with operation of the Project Facilities and where permitted immediately assign such to DTMA as CMA's agent. In the alternative, where practical, CMA and DTMA may agree in writing that DTMA shall apply for and hold such operating permits and licenses. In any event CMA shall ensure that DTMA is provided with copies of any and all such permits and licenses.
- D. DTMA shall operate the Project Facilities in compliance with all laws, regulations, permits, and licenses.
- E. DTMA shall have exclusive jurisdiction over and the right to any and all fees, rates and charges applicable and charged to property owners within Derry Township who may in the future make connections directly or indirectly to the Derry Main. This includes without limitation: Connection Charges and user fees.

SECTION 5.00
GRINDER PUMPS

Section 5.10 - General.

- A. In certain circumstances the use of grinder pumps ("Pumps") is necessary in order to provide sewer service to a property. This may occur where the outlet of the building sewer is below the elevation of the sewer main in the street. It may also occur where the design of the Sewer Facilities includes low pressure sewer mains to which properties must be connected.

- B. Where Pumps are required, they shall be located on the individual property to be served. They shall be provided by the property owner and shall meet DTMA's specifications and requirements for such Pumps.
- C. The property owner, at their sole cost and expense, shall be responsible for the installation, continuing operation and maintenance of, and processing any warranty claims on their Pump pursuant to DTMA's Rates, Rules, and Regulations.
- D. As a condition precedent to DTMA issuing a Sewer Connection Permit, property owners requiring the use of Pumps shall execute an agreement with DTMA which sets forth the terms and conditions for installation and use of the Pump including the property owners' continuing responsibility for the operation and maintenance of such Pump. DTMA, at its own expense, shall record the agreement in the office of Recorder of Deeds, Dauphin County, PA.

Section 5.20 - Pump Subsidies.

DTMA may issue to Initial Customers who are required to, or who for good engineering reasons desire to, install a Pump, a payment to help offset the cost of purchasing and installing the Pump ("Subsidy"). DTMA shall be solely responsible to determine the amount of any such Subsidy payments and the customer classes for whom payments will be made. The Subsidy payment for a single-family home shall not be less than \$4,400.

SECTION 6.00

FINANCIAL REQUIREMENTS

Section 6.10 – General

- A. In order to induce DTMA to enter into this Agreement, in addition to other consideration contained herein, CMA shall make certain capital contributions and other payments to DTMA as set forth in this Section 6.00.
- B. The payments required by this Section 6.00 shall be made by CMA regardless of whether or not any such payments are eligible costs under Project Funding.

Section 6.20 - DTMA Administrative Fees

- A. In consideration of DTMA's efforts to bring the Project to the point of construction, CMA shall pay to DTMA an Administrative fee of \$20,000. DTMA shall invoice CMA for the Administrative fee on or within 30 days of the date of CMA's closing on the Pennvest funding. The payment shall be made to DTMA within 60 days of the date of DTMA's invoice.
- B. In consideration of DTMA serving as Project manager pursuant to Section 3.20 B. and performing other administrative functions including setting up customer accounts, CMA shall pay to DTMA an Administrative fee of \$25,000. DTMA shall invoice CMA for the Administrative fee on or about June 1, 2007. The payment shall be made to DTMA within 60 days of the date of DTMA's invoice.

Section 6.30 - Purchase of Capacity in the DTMA System

- A. CMA shall make a lump-sum payment of \$315,000 to DTMA to purchase capacity in the DTMA System. DTMA shall invoice CMA for the capacity purchase on or within 30 days of the date of CMA's closing on the Pennvest funding. The payment shall be made to DTMA within 90 days of the date of DTMA's invoice.
- B. The \$315,000 payment shall pay for up to 210 EDUs of capacity and is estimated by CMA to be sufficient to cover the capacity fees due from the Initial Customers. The Parties understand and acknowledge that this payment shall apply only to the capacity needs of Initial Customers.

Section 6.40 - Capital Contributions

- A. CMA shall make a lump-sum payment of \$832,000 to DTMA as a capital contribution toward the Project. DTMA shall invoice CMA for the capital contribution on or within 30 days of the date of CMA's closing on the Pennvest funding. The payment shall be made to DTMA within 90 days of the date of DTMA's invoice.

B. CMA may obtain capital contributions from third parties, such as Conewago Township property owners, to help it make the payment required by Section 6.40 A, subject to the following requirements:

1. Except as provided in Section 6.30 A, Conewago shall make no representations to contributors of capital that capacity can or will be purchased or otherwise reserved in the DTMA system.
2. DTMA shall accept prepayment of the Special Purpose Part of a Connection Charge applicable to a Conewago Township property provided that DTMA is a party to an agreement providing for the prepayment and approves in advance the form of such an agreement.
3. DTMA reserves the right, in its sole discretion, to accept or reject any other form of capital contribution when it is offered contingent upon DTMA meeting specific terms and conditions.

Section 6.50 - Cost of Pump Subsidies. DTMA shall be solely responsible to pay out of its own funds Subsidies paid pursuant Section 5.20.

Section 6.60 - Township Guarantee. Township covenants with DTMA that it shall provide funds to CMA which are sufficient together with other funds that are available to CMA, to enable CMA to make timely payment to DTMA of all of its financial obligations required by this Agreement.

SECTION 7.00

CUSTOMER FEES, RATES, AND CHARGES

Section 7.10 - Connection Charges.

- A. Conewago acknowledges DTMA's right, as the lessee of the Project Facilities, to impose a Connection Charge on any Project Customer who connects to the Project Facilities and any future extensions thereto.

- B. DTMA shall be solely responsible for the calculation of the maximum and actual amount of the Connection Charges to be imposed on its Project Customers pursuant to the Act.
- C. DTMA shall provide the same Connection Charge financing options to its Conewago Customers as it does to its own similarly-situated customers within Derry Township. The interest rate for such financing shall be as permitted by applicable law and adopted by DTMA.
- D. Connection Charges Applicable to Conewago Customers
1. The Connection Charge imposed on Initial Customers connecting single-family homes to the Conewago Facilities shall not exceed \$7,100 unless otherwise required by DTMA's understanding of the Act and amendments thereto or unless otherwise agreed to in writing by the Parties. DTMA may adjust the amount of the Connection Charge from time to time as permitted under the Act, provided, however, that the Connection Charge imposed on Initial Customers shall not be increased for at least one year following the date that the first mandatory connection notice is issued to an Initial Customer. The Connection Charge imposed on an Initial Customer shall not include a capacity part of the Connection Charge to the extent such capacity part has been prepaid by CMA pursuant to Section 6.30.
 2. To the extent permitted by the Act as determined by DTMA, DTMA shall impose a Connection Charge for improved properties that in the future are connected to the Conewago Facilities or any extensions thereto.

Section 7.20 – User Charges and Related Matters

- A. 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 (kind and class of customer being equal), which rates and charges DTMA in its sole discretion may adjust from time to time pursuant to the Act or other applicable law.

- B. 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 includes, but is not limited to: penalties for late payments, charges for excess strength wastewater, and sampling fees for commercial or industrial establishments.

SECTION 8.00

REQUIREMENTS RELATED TO THE CONEWAGO SYSTEM AND DERRY MAIN

Section 8.10 - Mandatory Connection Ordinance.

- A. On or before the date of this Agreement, Township shall enact an ordinance pursuant to 53 P.S. Chap. 67502 requiring all owners of improved property located within Conewago Township and whose property is adjoining and adjacent to, and whose principal building is within one hundred and fifty feet of the Conewago System to connect thereto upon notice by Township ("Mandatory Connection Ordinance"). Township shall issue such notice(s) within 10 days of written request from DTMA.
- B. Township'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 "C" .
- C. Township shall submit to DTMA a copy of its Mandatory Connection Ordinance either prior to or within ten (10) days of its adoption so that DTMA may evaluate its conformance to the terms of this Agreement. DTMA shall notify Township in writing of its approval of the Ordinance or of the need to correct deficiencies therein. Township shall correct any deficiencies and adopt or readopt the Ordinance as appropriate within 60 days of receiving such notice from DTMA.
- D. Township shall perpetually keep its Mandatory Connection Ordinance in full force and effect and take any and all actions necessary to promptly enforce its provisions.

- E. Upon request by Township, DTMA may, but shall not be obligated to, serve as Township's agent to notify affected Conewago Township property owners of their obligation under the Mandatory Connection Ordinance to connect to the Conewago System. If DTMA agrees to serve as Township's agent, Township shall reimburse DTMA for the cost of producing and mailing the notices.

Section 8.20 - Sewer Use Ordinance.

- A. On or before the date of this Agreement, Township shall enact an ordinance setting forth requirements for use of the Conewago System ("Use Ordinance"). The Use Ordinance may be incorporated within the Mandatory Connection Ordinance required under Section 8.10. It shall incorporate all of the applicable requirements for sewer use that are contained in Township of Derry Ordinance No. 140. The Use 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 Township's 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 "D" and incorporated herein by reference. DTMA shall send to Township a copy of any amendments to its Rates, Rules, and Regulations within ten (10) days of its adoption.
 2. That the discharge of wastewater or any other substance into the Conewago System, other than by and through a direct piped connection, is prohibited. The Use Ordinance shall provide for fines in the maximum amount permitted by law. Accordingly, discharges from tank trucks or similar sources are prohibited.
 3. That DTMA has the right to inspect all new dwellings connected to the Conewago System 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. Township shall require proof of such inspection, approval, and fee payment as part of the Township 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 Conewago System 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, Sewer Facilities, or receiving stream, shall be prohibited and prevented. Further DTMA and Township shall act cooperatively to physically disconnect from the Conewago System any facility discharging such industrial waste.
- B. Township acknowledges that any inspections authorized or performed by DTMA pursuant to Section 8.20 A. 3. or 4. are solely for the purposes stated and shall not constitute inspections to determine the property owner's general compliance with State or local plumbing codes.
- C. To the extent necessary to put into effect the requirements of this Agreement, Township 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 and DTMA determines that such amendments must be adopted by Township, DTMA shall send notification of such event to Township together with a copy of the amendment. Within sixty (60) days of the date of such notification Township shall amend and readopt its Use Ordinance to conform to Derry Township's amendments.
- E. Pretreatment Program. Township's Use Ordinance shall specifically grant to DTMA all of the legal authority which Township may possess to implement 40 CFR 403.8 (f) (1) regarding the establishment and conduct of industrial pretreatment

programs. Township hereby authorizes and empowers DTMA to exercise all authority and powers that Township 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. All Conewago Customers shall be subject to DTMA’s Rates, Rules, and Regulations. Conewago shall fully cooperate with any enforcement action taken by DTMA against any Conewago Customer who violates 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.

- G. Township shall submit to DTMA a copy of its Use Ordinance either prior to or within ten (10) days of its adoption so that DTMA may evaluate its conformance to the terms of this Agreement. DTMA shall notify Township in writing of its approval of the Ordinance or of the need to correct deficiencies therein. Township shall correct any deficiencies and adopt or readopt the Ordinance as appropriate within 60 days of receiving such notice from DTMA.

Section 8.30 – CMA Rates, Rules, and Regulations.

- A. CMA may, or upon written request by DTMA, shall adopt Rates, Rules and Regulations which are substantially similar to and at least as stringent as DTMA’s Rates, Rules and Regulations which are then currently in effect. If adopted pursuant to request by DTMA, such adoption shall occur within 60 days of DTMA’s request.

Section 8.40 - Planning Requirements.

- A. If it has not already done so, then on or before the date of Substantial Completion of the Project Facilities, Township shall amend its subdivision and land development ordinance to require that applicants for subdivision and land

development projects who propose to connect to the Conewago System conform to DTMA's Rates, Rules, and Regulations, Standard Construction Specifications, and any other sanitary sewer extension requirement as a condition of Township's approval of such projects.

- B. When Township receives subdivision, land development, or other plans; project narratives or planning modules; and building permit applications and plans for a project which will connect to the Conewago System ("Development 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 Township approval of such plan(s). DTMA's comments, recommendations, and requirements shall be confined to matters that affect its wastewater facilities including the treatment plant, their operation or maintenance, or its other rights and responsibilities under this Agreement. The Parties shall jointly develop procedures for the implementation of the requirements set forth in this section, or if the Parties fail to develop procedures, DTMA may develop such procedures. Upon failure of Conewago to follow such procedures developed jointly or by DTMA, 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. Township agrees not to issue building permits to applicants who are connecting their properties to the Conewago System until it has received 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 plumbing facilities is required, DTMA may charge a reasonable fee for such inspection, to be paid directly to DTMA, and Township shall require proof of payment of the same, if applicable, as part of the appropriate Township approval process for such projects.

Section 8.50 - Extensions to the Conewago System.

- A. Township shall withhold final approval of any subdivision or land development plan which proposes connection to or extension of the Conewago System until such plan is unequivocally approved in writing by DTMA.
- B. DTMA shall take dedication of all extensions to the Conewago System directly from the developers constructing such extensions.
- C. DTMA shall have the same rights, responsibilities, and authorities with respect to developers of land in Conewago Township as they have toward developers of land in Derry Township including but not limited to the right to:
 - 1. Require the developer to enter into a Sewer Extension Agreement.
 - 2. Require posting of performance surety.
 - 3. Require developer deposits to an escrow account to cover DTMA's costs of legal and engineering reviews of the plans and of inspection.
 - 4. Require that Sewer Facilities be constructed in accordance with DTMA-approved plans and specifications.
 - 5. Inspect the construction of Sewer Facilities.
 - 6. Require record drawings indicating where Sewer Facilities have actually been constructed.
 - 7. Require from the developer a Deed of Dedication for the Sewer Facilities.

Section 8.60 - Rights-of-Way. Township 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 Township regarding use of those streets, easements, and rights-of-way. Where required and necessary, Township and/or CMA

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 Township for work to be performed on Conewago System.

Section 8.70 - Derry Main. DTMA shall have exclusive jurisdiction over any and all matters related to the Derry Main.

SECTION 9.00
OTHER PROVISIONS

Section 9.10 - Communication Among Conewago, DTMA, and Pennvest.

- A. DTMA shall be provided an opportunity to attend and participate in all meetings that Conewago may have with Pennvest officials and any and all meetings Conewago may have with any consultants, advisors, or staff regarding the Project.
- B. DTMA shall be provided with copies of any and all communication among Conewago, its consultants, and Pennvest officials regarding the Project including, but not limited to: letters, applications, and agreements.

Section 9.20 - 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; and or DTMA's negligent operation of the facilities.

- 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 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 Agreement and or (2) Conewago's negligence within the scope of Conewago's obligations under this Agreement.

Section 9.30 - 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 Agreement, 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 Agreement, 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 Agreement, 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 Agreement, as well as any other relief to which Township may be entitled. The rights and remedies granted to Township 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.

Section 9.40 - 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 9.50 - 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 financial matters, each arbitrator shall be an attorney, engineer, rate consultant or certified public accountant. For all other matters, each arbitrator shall be an attorney or 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 9.60 - Entire Agreement. This writing, and the exhibits attached hereto including the Lease 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 including the Lease may not be modified, amended or supplemented except by written agreement of all Parties hereto.

Section 9.70 - 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 9.80 - 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 9.90 - 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:

CONEWAGO TOWNSHIP

(Asst.) Secretary

By: _____
(Vice) Chairman

(SEAL)

ATTEST:

CONEWAGO MUNICIPAL AUTHORITY

(Asst.) Secretary

By: _____
(Vice) Chairman

(SEAL)

ATTEST:

DERRY TOWNSHIP MUNICIPAL AUTHORITY

(Asst.) Secretary

By: _____
(Vice) Chairman

(SEAL)

PHASE 2 SERVICE AGREEMENT EXHIBITS

Exhibit A - Lease agreement

Exhibit B - Proposal No. 19710 (9/13/06) with Buchart

Exhibit C - Copy of Derry's Ordinance No. 140

Exhibit D - DTMA's Rates, Rules, and Regulations