

## **SUPPLEMENT TO SEWER SERVICE AGREEMENT**

THIS AGREEMENT made and entered into this 24<sup>th</sup> 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 and DTMA have developed a Sewer Service Agreement (“Original Agreement”) which provides that DTMA will construct, own, and operate sanitary sewer facilities in Conewago Township, (the “Laurel Woods Project” or “Project”) which Agreement is being executed concurrently herewith; and

WHEREAS, although the Parties originally contemplated that DTMA would provide long-term financing for the Laurel Woods Project at the interest rate that it is paying on municipal bonds which were issued in 2002, the average rate of which is 4.91%, Conewago has received recent information which leads it to believe it may be able to obtain alternate financing, in whole or in part, through the Pennsylvania Infrastructure Investment Authority (“Pennvest”) at a substantially lower rate of interest; and

WHEREAS, the Laurel Woods Project has been bid and DTMA wants to award the bid at its meeting on March 24, 2003; and

WHEREAS, it is unlikely that Conewago will receive any confirmation of its ability to obtain the Pennvest or other loan to finance its portion of this project by March 24, 2003; and

WHEREAS, at the time of execution of this Agreement the Parties cannot be certain of the exact source of permanent financing for the Project or exactly in which entity legal title to the Project will be vested; and

WHEREAS, it is the desire of the parties to proceed with construction of the Project in advance of fully resolving these matters.

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

#### SECTION 1.00

##### GENERAL

- A. The Original Agreement for the Laurel Woods Project between DTMA and Conewago being executed concurrently herewith, is incorporated herein by reference in its entirety and shall remain in full force and effect, except to the extent modified by this Supplement.
  
- B. In the event Conewago pursues financing through Pennvest, Conewago shall keep DTMA fully involved in the process.
  - 1. 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 in preparation of such meetings.
  
  - 2. DTMA shall be provided with copies of any and all communication between Conewago (or its consultants) and Pennvest officials including, but not limited to: letters, applications, and agreements.

- C. Conewago shall obtain DTMA's written approval prior to entering into a loan or other agreement with Pennvest.
1. DTMA shall not unreasonably withhold approval of any loan or agreement with Pennvest.
  2. After the terms of a Pennvest loan are known and prior to Conewago executing a loan agreement with Pennvest, DTMA shall be provided an opportunity to evaluate the relative economics of Pennvest and DTMA financing. DTMA shall also have the option, but not the obligation, to offer Conewago alternative financing arrangements as the result of such evaluation.
  3. In the event that DTMA and Conewago cannot agree on the acceptability of the terms of Pennvest financing and alternative financing arrangements are either not offered or not accepted, the Parties shall take steps to change the nature of their contractual relationship according to the Contract Conversion provisions of Section 5.00 C.

## SECTION 2.00

### OWNERSHIP SCENARIOS UNDER PENNVEST FINANCING

- A. DTMA Ownership - If Pennvest rules and regulations permit Project ownership by DTMA, then ownership of the Project shall be vested with DTMA and Project financing shall be handled as described in Section 3.00.
- B. Conewago Ownership with Long-Term Lease to DTMA - If Pennvest rules and regulations require Conewago to own the Project and permit Conewago to lease the Project to DTMA for a nominal fee, DTMA shall transfer ownership of the Project to Conewago and concurrent therewith Conewago shall enter into a separate written lease agreement with DTMA. Notwithstanding the transfer of ownership to Conewago, DTMA shall be regarded as the owner of the Laurel Woods Project for purposes of applying the provisions of the Original Agreement. [Such] The lease agreement shall contain at a minimum the following provisions:

1. The lease shall be for the sum of one (\$1.00) dollar per year. At the end of the term of the Pennvest loan Conewago shall transfer ownership of the Project to DTMA for the sum of one (\$1.00) dollar.
  2. DTMA shall be responsible for the operation and maintenance of the Project and for billing the customers of the Project including all fees and expenses for doing so.
  3. DTMA shall be responsible to insure the Project facilities to the extent that insurance is available for such facilities.
  4. Project financing shall be handled as described in Section 3.00.
- C. If Pennvest rules and regulations require Conewago to own the Project and do not permit Conewago to lease the Project to DTMA for a nominal fee, Conewago shall abandon Pennvest financing and return to the provisions of the Original Agreement, or the Parties shall change the nature of their contractual relationship according to the Contract Conversion provisions of Section 5.00 C.

### SECTION 3.00

#### DTMA ROLE IN PENNVEST FINANCING

- A. Interim Financing by DTMA - In the event Pennvest funds are not immediately available to Conewago, DTMA agrees to provide short-term interim financing from its 2002 bond proceeds. Such interim financing shall be available until March 3, 2006 (36 months from the date of DTMA's letter to Pennvest regarding an offer of interim financing).
1. Disbursements of bond funds made by DTMA on Conewago's behalf as part of interim financing shall bear interest at a nominal annual rate of 4.91%. Interest shall accrue from the date the payment is approved by DTMA's Board until settlement on this short-term financing.

2. Conewago shall schedule a settlement within 30 days of receiving Pennvest funds which represent reimbursement to DTMA for costs advanced on behalf of Conewago.
  3. In the event that DTMA continues after settlement to make disbursements on Conewago's behalf due to contractual obligations relating to the Project, interest on such payments at the rate of 4.91% shall accrue from the date the payment is approved by DTMA's Board until reimbursement is received from Conewago.
  4. Interest on bond funds used by DTMA during Project construction shall be aggregated and become part of the Capital Costs.
- B. To the extent that Pennvest may not fully fund the Project, DTMA may consider providing gap financing to Conewago under the provisions of the Original Agreement and this Supplement as applicable.

#### SECTION 4.00

#### FEES, RATES, AND CHARGES

- A. Except as specifically provided in this Supplement or the Original Agreement, DTMA shall be solely responsible to establish the fees, rates, and charges for the Conewago Customers.
- B. Section 2.00, 'Fees, Rates, and Charges' of the Original Agreement shall be modified as necessary to reflect any change in the fees, rates, and charges applicable to Conewago Customers necessitated by Conewago obtaining Pennvest funding including but not limited to the following:
1. Changes in the Capital Costs, Net Capital Costs, and Capital Surcharge.
  2. Changes in the amortization of the Net Capital Costs due to changes in the term of the loan or interest rate.

3. Lack of Pennvest funding for certain Capital Costs such as grinder pump credits.
- C. In order to minimize the need to create a two-component Capital Surcharge, Conewago agrees to reimburse DTMA directly for any Capital Costs which are not funded by Pennvest provided, however, that such unfunded Capital Costs are less than \$30,000.

SECTION 5.00

MISCELLANEOUS

- A. To the extent that additional administrative fees or any other costs or expenses are incurred by DTMA, directly or indirectly, as a result of using Pennvest funding or relating to a rising out of Pennvest funding, or applying for or considering applying for such funding, or any issues relating to Conewago's ownership of the Project, Conewago agrees to reimburse DTMA for all such expenses within thirty (30) days of receiving written notice thereof, provided however, that in any event, any such charges shall be necessary and reasonable based on the extra effort or requirement(s) created by such Pennvest funding or the application or consideration of application for the same, or Conewago's ownership of the Project. Without limitation, it is agreed and acknowledged that such additional expenses may include, but not be limited to DTMA administrative and staff time: the cost of consultants, legal counsel, accountants and/or others in document or application preparation, or review; time and expense incurred in complying with an documenting compliance with regulations; any and all construction change orders required by or relating to Pennvest funding; and any PUC or other regulatory matters related to or arising out of Pennvest funding.
- B. In the event that Conewago has not obtained Pennvest financing pursuant to the terms of this Supplement prior to March 3, 2006, the Parties agree that this Supplement shall terminate and the terms of the Original Agreement shall govern the Project, unless otherwise agreed to in writing by the Parties.

C. Contract Conversion - In the event Conewago and DTMA are required to change the nature of their contractual relationship pursuant to Section 1.00 C.3 or Section 2.00 C, the following actions shall be taken:

1. The Parties shall enter into a wastewater treatment agreement similar to the agreements that DTMA presently has with other surrounding municipalities or authorities. Such an agreement would provide for the sale of conveyance and treatment capacity to Conewago and for the treatment of wastewater originating from properties in the Project area (“Treatment Agreement”).
2. The Parties shall terminate the Original Agreement and this Supplement coincident with execution of the Treatment Agreement.
3. The Parties shall execute any and all documents necessary to transfer all right and title to the Project to Conewago including: land and rights-of-way and constructed facilities.
4. Conewago shall reimburse DTMA for any and all project costs advanced by DTMA together with interest thereon at the annual nominal rate of 4.91% from the date the costs were approved by the Authority Board to the date of settlement. In addition, the reimbursement shall include a flat fee of \$10,000 which is a good faith estimate of the unbilled administrative, engineering, and legal expenses as of the date of this Agreement which DTMA incurred in furtherance of the Project.
5. Upon written request by Conewago, DTMA shall offer Conewago a cost proposal and draft agreement to perform billing services and to manage, operate, and maintain the Project facilities. In the event that Conewago does not engage DTMA to provide such services, Conewago shall be responsible at their own expense to convert the Project facility alarm systems so that they can be transmitted to a location other than DTMA’s offices.

D. Due to the complexity of this transaction and the number of currently unknown factors, the Parties acknowledge that there may need to be additional procedures developed or modifications made to this supplement and/or the Original Agreement to implement the intent of the parties. Therefore, the Parties agree to take such further action as required.

IN WITNESS WHEREOF, the Parties hereunto executed this Addendum as of the date and year first set forth herein above, intending thereby to be legally bound.

ATTEST:

DERRY TOWNSHIP MUNICIPAL  
AUTHORITY

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
Chairman

(SEAL)

ATTEST:

CONEWAGO TOWNSHIP

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
Chairman

(SEAL)

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