

**LEASE AGREEMENT  
PHASE 2 SERVICE AREA  
CONEWAGO/DTMA**

THIS LEASE 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 CMA 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. (Township, CMA, and DTMA collectively, the "Parties").

**RECITALS**

WHEREAS, this Lease is an integral part of the Service Agreement to which it is attached as Exhibit "A" and into which it is incorporated 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. The purpose of this Lease is as described in Section 1.10 of the Service Agreement.

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

Section 1.30 – Term. The term of this Lease shall coincide with the term of the Service Agreement.

Section 1.40 – Termination. CMA and DTMA intend that this Lease shall remain in effect as provided by Section 1.30. 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 loan obligation to Pennvest without DTMA's written consent.

Section 1.50 – Power to Set Rates. As lessee and possessor of the Facilities, DTMA shall have the exclusive right and responsibility to fix and alter rates and charges applicable to the Project Facilities.

Section 1.60 – Defined Terms. Unless the context clearly indicates otherwise, capitalized terms shall have the meanings given to them in this Lease and any capitalized terms that are not defined in this Lease shall have the meanings given to them in the Service Agreement.

## **SECTION 2.00**

### **PROPERTY WHICH CMA LEASES TO DTMA**

A. Identification of Leased Property

1. CMA hereby leases to DTMA land which CMA owns in fee simple on which the Conewago and Ridge Road Pump Stations are or will be situated.
2. CMA hereby leases to DTMA the rights-of-way which CMA has acquired over various properties owned by third parties on which Conewago Facilities are or will be situated.
3. A listing of the land and rights-of-way leased to DTMA is attached as Exhibit 1 ("CMA Property").
4. CMA hereby leases the Project Facilities (hereinafter "Facilities") to DTMA.

B. Rental Fees. DTMA shall make a monthly rental payment to CMA for the CMA Property and Facilities. The amount of the payment shall be equal to the amount of the monthly payment that CMA is required to make to Pennvest on its loan. CMA shall notify DTMA in writing of the rent due date which shall not be earlier than seven (7) days prior to the date on which CMA's monthly loan payments are due to Pennvest. In no event shall the rent exceed \$17,500 per month. Rental payments under this Lease shall cease to be due when DTMA makes its last payment to CMA corresponding to the last loan payment that CMA is required to make to Pennvest.

C. Permitted use of CMA Property. CMA Property shall be used solely as sites on which Facilities are or will be located and for no other purpose.

D. Possession. DTMA shall be given possession of the CMA Property from the commencement date of this Lease. DTMA shall be given possession of the Facilities as such are constructed and title passes from the construction contractor to CMA pursuant to applicable law and the construction contract. DTMA shall

have full and exclusive use of the Facilities to provide sewer service to the customers served by the Facilities and any extensions thereto.

- E. Maintenance and Capital Improvements. DTMA shall have full and exclusive responsibility for the maintenance of the CMA Property and Facilities. It shall provide the necessary labor, parts, equipment and supplies to maintain the 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 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.
  
- F. Utilities. DTMA shall make arrangements for and pay for all of the costs of utilities and services needed in connection with the Facilities, including but not limited to: electric, telephone, water, and refuse removal.
  
- G. Encumbrances. CMA shall not permit the CMA Property and Facilities to become the subject of any lien, indenture, mortgage, or any other encumbrance except as, and only to the extent, required by Pennvest.
  
- H. DTMA Option to Purchase the CMA Property and Facilities. At the end of the term of this Lease as defined in Section 1.30, DTMA shall have an irrevocable option to purchase the CMA Property and Facilities from CMA for the sum of one dollar (\$1.00). CMA shall notify DTMA within thirty (30) days of the retirement of the Pennvest loan; unless DTMA gives written notice to the contrary within thirty (30) days of such notice from CMA, DTMA's exercise of its option to purchase shall be automatically exercised at any time by rendering of payment of the option price. Concurrent with DTMA's payment of the option price, CMA shall transfer legal title to the CMA Property and Facilities to DTMA. Legal title shall be free and clear of all liens and encumbrances and in a form satisfactory to DTMA.

- I. CMA Access to CMA Property and Facilities. Since CMA hereby leases the CMA Property and Facilities to DTMA, CMA's access to CMA Property and Facilities shall be limited. DTMA shall provide access to CMA for purposes of inspection of the CMA Property and/or Facilities 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.

### **SECTION 3.00**

#### **PROPERTY WHICH DTMA LEASES TO CMA, AND SUBLEASE**

- A. Identification of Leased Property
1. DTMA hereby leases to CMA a right-of-way which DTMA has acquired over property owned by Hershey Trust Company on which Facilities are or will be situated.
  2. A copy of the right-of-way leased to CMA is attached as Exhibit 2 ("Hershey R/W").
- B. Sublease. CMA hereby subleases the Hershey R/W back to DTMA.
- C. Rental Fees. CMA shall pay rent to DTMA in the amount of one dollar (\$1.00) per year, and DTMA shall pay rent to CMA in the amount of one dollar (\$1.00) per year during the term of this Lease and sublease.
- D. Permitted use of Hershey R/W. The Hershey R/W shall be used solely as a site on which Facilities are or will be located and for no other purpose.
- E. Possession. DTMA shall be given possession of the Hershey R/W under the sublease from the commencement date of this Lease.
- F. Maintenance and Capital Improvements. DTMA shall have full and exclusive responsibility for the maintenance of the Hershey R/W.

- G. CMA Access to Hershey R/W. Since CMA hereby subleases the Hershey R/W to DTMA, CMA's access to the Hershey R/W shall be limited. DTMA shall provide access to CMA for purposes of inspection of the Hershey R/W and/or Facilities thereon 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.

**SECTION 4.00**  
**OTHER PROVISIONS**

- A. Insurance. DTMA shall provide at its own expense, liability insurance on the CMA Property and Hershey R/W 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. DTMA shall also provide at its own expense, property and liability insurance for the 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 facilities with a similar purpose that it owns within Derry Township. Upon request DTMA shall provide evidence of coverage to CMA and/or Pennvest. If required by the terms of CMA's Pennvest financing and upon written request by CMA, DTMA shall name CMA and Pennvest as additional insureds as their respective interests may appear. If not required by Pennvest, but upon written request by CMA, DTMA shall name CMA as an additional insured.
- B. Compliance with Laws. The CMA and DTMA shall comply with all laws, ordinances, and regulations applicable to the subject matter of this Lease and sublease.

C. Indemnifications

1. DTMA shall indemnify, defend, and hold CMA, 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 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 Facilities.
  
2. CMA 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) CMA's breach of obligations under this Lease; and/or (2) CMA's negligence within the scope of CMA's obligations under this Lease.

D. Remedies.

1. 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 CMA under the terms of this Lease, CMA 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.

2. CMA 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 CMA 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 CMA may be entitled. The rights and remedies granted to CMA 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.

E. Assignment and Subletting. The Parties are prohibited from making assignments of this Lease and they are also prohibited, except as provided herein, from subletting their respective leased properties. CMA may assign its rights under this Lease to Pennvest, if required by Pennvest as a condition of funding CMA's loan and grant.

F. 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.

G. Time is of the Essence. Time is of the essence of each provision of this Lease.



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:

**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)

## **LIST OF LEASE EXHIBITS**

Exhibit 1 - Listing of Land and Rights-of-Way acquired by CMA

Exhibit 2 - Copy of Hershey R/W acquired by DTMA