

REIMBURSEMENT AGREEMENT

THIS AGREEMENT made and entered into this 11th day of August 2004, 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").

RECITALS

WHEREAS, Conewago and DTMA entered into a Sewer Service Agreement dated December 4, 2003 ("Service Agreement"); and

WHEREAS, the Service Agreement provides (Iter. Alia) for DTMA to construct certain sewer facilities ("Project") and upon completion to transfer ownership of the Project to Conewago; and

WHEREAS, Section 3.20 of the Service Agreement requires Conewago to make a lump sum payment of \$280,000.00 ("Payment") to DTMA at the time that DTMA transfers the Project to Conewago; and

WHEREAS, the Payment was calculated to be in an amount that is sufficient to enable DTMA to charge to its Conewago customers the same user rate that it charges to its customers in Derry Township; and

WHEREAS, the Payment is not eligible to be funded out of proceeds which Conewago will receive for the Project from PENNVEST grants or loans, but rather will be funded from general revenues of Conewago; and

WHEREAS, Conewago desires to be reimbursed for some or all of the Payment pursuant to the terms of this Reimbursement Agreement and the provisions of Section 5607 of the Municipality Authorities Act; and

WHEREAS, pursuant to Section 5.20 of the Service Agreement, DTMA has requested Conewago to provide funds that will enable DTMA to provide grinder pump subsidies (or credits) to certain "Laurel Drive Customers" (as that term is defined in Section 1.40 of the Service Agreement).

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

SECTION 1.00

GENERAL PROVISIONS

- A. The recitals above are incorporated herein by reference and made a part of this Agreement.
- B. The Service Agreement shall remain in full force and effect except to the extent, if any, it is specifically modified by this Agreement.
- C. The term of this Agreement shall be for a period of seven (7) years from the date of its execution.

SECTION 2.00

ADDITIONAL DEFINITIONS

- A. "Act" means the Municipality Authorities Act as amended from time to time (53PA C.S. CH 56).

- B. "Connection Fee" shall have the meaning given to it in Section 6.10 of the Service Agreement.
- C. "Direct Customer" means any Project Customer whose property is directly connected to the Project by a "Service Line" (as that term is defined in the Act).
- D. "Project Customer" means any owner of property in Conewago who is required to connect or whose property is already connected to the Project Facilities.
- E. "Reimbursement Part" shall have the meaning given to it in the Act.

SECTION 3.00

REIMBURSEMENTS AND ADJUSTMENTS

- A. DTMA shall include in the Connection Fee charged to Direct Customers a Reimbursement Part in the amount of \$1,100.00 per connection.
- B. DTMA shall remit to Conewago all monies collected for the Reimbursement Part by the 20th day of the month following the month during which the monies were received by DTMA, subject to the following provisions:
 - 1. In the event that Direct Customers pay their Connection Fee in full prior to obtaining a sewer connection permit, DTMA shall include the entire \$1,100 Reimbursement Part in the remittance amount for the month received.
 - 2. In the event that Direct Customers pay their Connection Fee by entering into an installment agreement with DTMA, DTMA shall include the \$1,100 Reimbursement Part in the remittance amount for the month in which the final payment under the installment agreement is received.
- C. DTMA shall have the right to make certain adjustments to the amounts remitted to Conewago as follows:

1. DTMA shall deduct from the remittances due to Conewago the aggregate amount of grinder pump subsidies (or credits) that have been provided to Laurel Drive Customers pursuant to Section 5.20 of the Service Agreement. The amount of any individual grinder pump subsidy granted to Laurel Drive Customers shall be solely as determined by DTMA, but shall not exceed at any time the amount that DTMA would grant to its customers in Deny Township.
 2. If at the end of the term of this Agreement DTMA has, due to extenuating circumstances, been unable to collect the full amount due from a Direct Customer with whom it has an installment agreement, DTMA shall have no obligation to make a remittance to Conewago for such customer provided, however, that in the event that DTMA receives full payment at some future time it shall make remittance to Conewago at that time.
- D. Except as provided in C.2 above, DTMA shall have no obligation to make remittances to Conewago beyond the term of this Agreement for any reason whatsoever. In addition, DTMA's obligation to charge a Reimbursement Part to Direct Customers and to make remittances to Conewago shall end if during the term of this Agreement the aggregate amount of remittances reaches the original payment amount of \$280,000.

SECTION 4.00

OTHER PROVISIONS

- 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 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.

- C. DTMA shall indemnify, defend and hold harmless Conewago, its members, directors, officers, employees and agents 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.

- D. Conewago shall indemnify, defend and hold harmless DTMA, its members, directors, officers, employees and agents from and against all losses, claims, damages, liabilities, actions, decrees, orders, judgments and expenses, including reasonable professional fees and disbursements, to the extent not reimburses 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; (2) the operation of the Agreement under the Act or other laws of the Commonwealth of PA; and/or (3) Conewago's negligence within the scope of Conewago's obligations under this Agreement.

- E. 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.

- F. 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 either 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.

- G. This document constitutes the entire Agreement between the parties regarding reimbursements, and there are no other representations or agreements, verbal or written, other than those contained herein. This Agreement may not be modified, amended or supplemented except by written agreement of all parties hereto.

- H. 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.

- I. 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.

- J. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania.

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**

Robert J. , (Asst.) Secretary
(SEAL)

By:
, Chairman

ATTEST: **CONEWAGO TOWNSHIP**

Shirley A. Bretz, Secretary
(SEAL)

By:
Jay M. Brandt, Chairman