

01-1639-CD
SANDY TOWNSHIP WATER AND SEWER AUTHORITY -vs- D&M CONTRACTING

SECTION 00500
AGREEMENT

THIS AGREEMENT is dated as of the 19th day of September in the year 2001 by and between the

SANDY TOWNSHIP WATER AND SEWER AUTHORITY
12TH STREET AND CHESTNUT AVENUE
DUBOIS, PA 15801

hereinafter called OWNER, and

D&M CONTRACTING
R. D. #3 BOX 374
NEW ALEXANDRIA, PA 15670

hereinafter called CONTRACTOR.

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

CONTRACTOR shall perform the Work as specified or indicated in the Contract Documents. The Work is as described in SECTION 01000, SUMMARY OF WORK AND SPECIAL REQUIREMENTS. The project for which the work under the Contract Documents may be whole or only a part is generally described as West Sandy Township Waterline Replacement consisting of the installation of approximately 7,100 L.F. of 6"-12" diameter water line and all required appurtenances.

ARTICLE 2 - ENGINEER

The project was designed by Gwin, Dobson & Foreman, Inc., who is to act as the OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned to the ENGINEER in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3 - CONTRACT TIME

- 3.1 The Work will be finally completed within 180 days after the date when the Contract Times commence to run as provided in Paragraph 2.3 of the General Conditions.
- 3.2 Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in Paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER \$500 for each day that expires after the time specified in Paragraph 3.1 above the Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR

William A. Shaw
Prothonotary

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West Sandy Twp. Waterline Replacement
Sandy Twp. Water and Sewer Authority

shall neglect, refuse, or fail to complete the remaining Work within the time specified in Paragraph 3.1 above for completion and readiness for final payment or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER \$500 for each day that expires after the time specified in Paragraph 3.1 above for completion and readiness for final payment.

ARTICLE 4 CONTRACT PRICE

- 4.1 OWNER will pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount equal to the sum of the amounts determined pursuant to paragraphs 4.2 and 4.3 below.
- 4.2 A total of Unit and Lump Sum Prices indicated on the Bid Form, a Total Bid Price of:
Five Hundred, Forty Six Thousand, One Hundred Seventy-Five and 50/100 Dollars (\$546,175.50)
(use words) (figures)
- 4.3 As provided in Paragraph 11.9 of the General Conditions, estimated quantities, if applicable, are not guaranteed, and determinations of actual quantities and classification are to be made by the OWNER/ENGINEER as provided in Paragraph 9.10 of the General Conditions. Unit prices have been computed as provided in Paragraph 11.9.2 of the General Conditions.
- 4.4 All specific cash allowances are included in the above prices and have been completed in accordance with paragraph 11.8 of the General Conditions.

ARTICLE 5 PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions of the Contract. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

- 5.1 OWNER will make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER, monthly during construction as provided in Paragraphs 5.1.1 and 5.1.2. All such payments will be measured by the schedule of values established in Paragraph 2.9 of the General Conditions (and in the case of Unit Price work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.
 - 5.1.1 Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with Paragraph 14.7 of the General Conditions.

Ninety percent (90%) of Work completed (with the balance being retainage) and materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to OWNER as provided in Paragraph 14.2 of the General Conditions). If Work has been 50% completed as determined by the ENGINEER, and if the character and progress of the work have been satisfactory to OWNER and ENGINEER, OWNER, on recommendation of ENGINEER:

one-half of the amount retained by OWNER shall be returned to the CONTRACTOR; provided that the ENGINEER approves the payment of this portion of the retained amount; and provided further, that the CONTRACTOR is making satisfactory progress and there is no specific cause for greater withholding.

5.1.2 In the event that a dispute arises between the OWNER and the CONTRACTOR, which dispute is based on increased costs incurred by one CONTRACTOR occasioned by delays or other actions of another CONTRACTOR, additional retainages in the sum of one and one-half times the amount of any possible liability may be withheld by the OWNER from the CONTRACTOR until such times as a final resolution is agreed to by all parties directly or indirectly involved, unless the CONTRACTOR causing the additional claim furnishes a Bond satisfactory to OWNER to indemnify OWNER against the claim.

5.2 Final Payment

Upon final completion and acceptance of the Work in accordance with Paragraph 14.13 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER in accordance with said Paragraph 14.13. If the work is substantially completed, the ENGINEER shall issue a certificate of completion and a final certificate for payment and the OWNER shall make payment in full within 45 days thereafter, except as provided in Article 5, less only 1 and ½ times such amount as is required to complete any then remaining, uncompleted, minor items, which amount shall be certified by the ENGINEER and upon receipt by the OWNER of any guarantee bonds which may be required, in accordance with the Contract Documents, to insure proper workmanship for a designated period of time. The certificate given by the ENGINEER shall list in detail each and every uncompleted item with a reasonable cost of completion. Final payment of any amount so withheld for the completion of the minor items shall be paid forthwith upon completion of the items in the certificate of the ENGINEER.

ARTICLE 6 INTEREST

All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the maximum rate allowed by law at the place of the Project.

ARTICLE 7 CONTRACTOR'S REPRESENTATIONS

In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

- 7.1 CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in paragraph 8) and the other related data identified in the Bidding Documents including "technical data."
- 7.2 CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance and furnishing of the Work.
- 7.3 CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.

7.4 CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in Paragraph 4.2.1 of the General Conditions. CONTRACTOR accepts the determination set forth in paragraph SC-4.3 of the Supplementary Conditions of the extent of the "technical data" contained in such reports and drawings upon which CONTRACTOR is entitled to rely as provided in paragraph 4.2 of the General Conditions. CONTRACTOR acknowledges that such reports and drawings are not Contract Documents and may not be complete for CONTRACTOR's purposes. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

7.5 CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the site that relates to the Work as indicated in the Contract Documents.

7.6 CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

7.7 CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

- 8.1 This Agreement
- 8.2 Exhibits to this Agreement.
- 8.3 Performance, Payment and other Bonds.
- 8.4 Notice to Proceed.
- 8.5 General Conditions.
- 8.6 Supplementary Conditions.
- 8.7 Specifications (as listed in Table of Contents thereof).

- 8.8 Drawings (as listed in Section 01000: Summary of Work and Special Requirements).
- 8.9 Addenda number 1.
- 8.10 CONTRACTOR's Bid.
- 8.11 Documentation submitted by CONTRACTOR prior to Notice of Award.
- 8.12 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to Paragraphs 3.5 and 3.6 of the General Conditions.
- 8.13 Part II, Federal Requirements.

The documents listed in Paragraphs 8.2 et seq. above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in Paragraphs 3.5 and 3.6 of the General Conditions.

ARTICLE 9 MISCELLANEOUS

- 9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.
- 9.2 No assignment by a party hereto (including Owner and Contractor) of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound (including Owner and Contractor) and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor (including Owner and Contractor) from any duty or responsibility under the Contract Documents.
- 9.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 9.4 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- 9.5 The General Conditions, paragraph 6.73, provides for charging the Contractor for costs associated with any request for substitution made by the Contractor. The Supplementary Conditions provides for charging the Contractor for costs associated with review of any submittals which are classified as excess re-submittals; that is, any re-submittal beyond the first. Contractor agrees to compensate Owner for such charges by allowing deductions from Contractor's progress payments.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in quadruplicate. One counterpart each has been delivered to OWNER, CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed, initialed or identified by OWNER and CONTRACTOR or identified by ENGINEER on their behalf.

This AGREEMENT will be effective on September 19, 2001, (which is the Effective Date of the Agreement).

OWNER: SANDY TOWNSHIP WATER AND SEWER CONTRACTOR: D&M CONTRACTING, INC.
AUTHORITY

By: Jeff B. Schlecht

By: Martin L. Castelli

(CORPORATE SEAL)

(CORPORATE SEAL)

Attest: Blaise J. Terraraccio

Attest: Audrey A. Nowicki

SANDY TOWNSHIP SUPERVISORS

By: Jeff B. Schlecht

Chairman

Attest: Barbara D. Hopkins

Township Secretary

Address for giving notices:

12th Street & Chestnut Avenue
DuBois, PA 15801

Address for giving notices:

D&M Contracting, INC.
R.D. #3, Box 374
New Alexandria, PA 15670

Note: If CONTRACTOR is a corporation, an affidavit giving the principal the right to sign the Agreement must accompany the executed Agreement as indicated below.

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA :

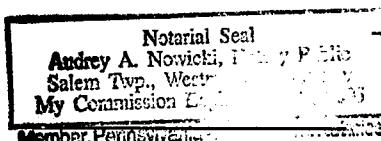
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COUNTY OF Westmoreland:

On this, the 19th day of September, 2001, before me, a Notary Public in and for the Commonwealth of Pennsylvania, personally appeared Martin L. Castelli who acknowledged him self to be the Vice President of D&M Contracting Inc., a Pennsylvania Corporation, and that as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires:



Audrey A. Nowicki
Notary Public

END OF SECTION

FILED

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SECTION 00560
WAIVER OF LIEN

William A. Shaw
Prothonotary

This instrument executed the 19th day of September, by
D & M CONTRACTING, INC., (the "Contractor"), for the benefit of
SANDY TOWNSHIP WATER AND SEWER AUTHORITY and SANDY TOWNSHIP SUPERVISORS,
municipal entities organized and existing under the laws of the Commonwealth of Pennsylvania
("Owner").

WITNESSETH

A. Owner intends to enter into an agreement (the "Agreement") with the Contractor which provides for the Contractor to perform tasks related to the construction of the West Sandy Township Waterline Replacement on tracts of ground located in Sandy Township, Clearfield County, Pennsylvania. The improvements to be constructed are herein called "Improvements."

B. By the terms of the Agreement, Contractor will covenant, promise, and agree that no mechanics' or materialmen's liens will be filed or maintained against the Improvements or the estate or title of Owner in the System or any part thereof, or the appurtenances thereto, either by itself or anyone else for or on account of any work, labor or materials supplied in the performance of the Agreement, or under any supplemental contract or for extra work, or in the erection, construction or completion of the Improvements on the System or any appurtenance thereto.

NOW, THEREFORE, in consideration of the contract and intending to be legally bound hereby:

(1) WAIVER OF LIEN. Contractor, for itself, its subcontractors, materialmen, laborers and anyone else acting or claiming through or under it, does hereby waive and relinquish all right to file a mechanic's lien, or notice of intention to file any lien, and does hereby covenant, promise and agree, to the extent permitted by law, that no mechanic's lien or other lien of any kind whatsoever shall be filed or maintained against the Improvements or the estate or title of the Owner in the System or the Improvements or the appurtenances thereto, by or in the name of Contractor, or any subcontractor, materialman or laborer for work done or materials furnished under the Contract or by any other party acting through or under them or any of them for and about the Improvements or the System or any part thereof.

(2) INDEPENDENT COVENANT. This Agreement waiving the right of lien shall be an independent covenant, shall operate and be effective irrespective of the Owner's performance under the Contract and shall operate and be effective as well with respect to work done and materials furnished under any supplemental contract for extra work in the erection, construction and completion of the Improvements as to any work and labor done and materials furnished under the Agreement.

(3) REMOVAL OF ANY LIEN. If any such mechanic's lien or other lien of any kind whatsoever shall be filed or maintained against the Improvements or the estate or title of the Owner in the System or appurtenances thereto, Contractor promptly and at its expense shall cause such lien to be removed or satisfied.

(4) POWER OF ATTORNEY TO SATISFY LIEN. In order to give Owner full power and authority to protect itself, the Improvements, the System, the estate or title of the Owner therein, and the appurtenances thereto, against any and all liens filed by the Contractor or anyone acting under or through it in violation of the foregoing covenant, the Contractor, to the extent permitted by law, hereby irrevocably authorizes and empowers any Attorney of any Court of Common Pleas of the Commonwealth of Pennsylvania, to appear as Attorney for it, them or any of them, in any such Court, and in its or their name or names, to the extent permitted by law, mark satisfied or record at the cost and expense of the Contractor or of any subcontractor or materialman, any and all lien or liens, filed in violation of the foregoing covenant, or cause to be filed and served in connection with such lien or liens, any pleading or instrument, or any amendment to any pleading or instrument previously filed by it or them, to incorporate therein, as part of the record, the waiver contained in this instrument, and for such act or acts this instrument shall be good and sufficient warrant and authority, and a reference to the court, term and number in which and where this Agreement shall have been filed shall be a conclusive evidence of the authority herein contained to warrant such action, and the Contractor for itself and, to the extent permitted by law, for them do hereby remise, release and quitclaim all rights and all manners of errors, defects and imperfections whatsoever in entering such satisfaction or in filing such pleading, instrument or amendment, or in any way concerning them.

(5) FILING WITH PROTHONOTARY. This instrument is made and intended to be filed with the Prothonotary in accordance with the requirements of Section 1402 of the Mechanics Lien Law of 1963 of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the undersigned Contractor has executed this instrument as of the day and year first above written.

ATTEST:

CONTRACTOR: D&M CONTRACTING, INC.

Audrey A Nowicki
Secretary
(SEAL)

Martin L Castelli
(Vice) President

COMMONWEALTH OF PENNSYLVANIA :

: SS

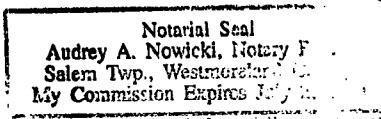
COUNTY OF Westmoreland :

:

On this, the 19th day of September, 2001, before me, a Notary Public in and for the Commonwealth of Pennsylvania, personally appeared Martin L. Castelli who acknowledged him self to be the Vice President of D & M Contracting, Inc., a Pennsylvania Corporation, and that as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires: January 1, 2003



Audrey A Nowicki
Notary Public

GD&F/01022

00560

West Sandy Twp. Waterline Replacement
Sandy Twp. Water and Sewer Authority

PRF 08348167

PERFORMANCE BOND
(TWO YEAR MAINTENANCE BOND)

KNOW ALL MEN BY THESE PRESENTS, that we, _____

D&M Contracting, Inc. _____, as Contractor (the
"Contractor"), and _____
Fidelity and Deposit Company of Maryland. _____,
a corporation organized and existing under laws of the _____
of
Maryland _____; as Surety (the "Surety"), are held and firmly bound unto
the SANDY TOWNSHIP WATER AND SEWER AUTHORITY and SANDY TOWNSHIP SUPERVISORS, as
Owner (the "Owner"), as hereinafter set forth, in the full and just sum of Five Hundred Forty-Six
Thousand, One Hundred Seventy Five and 50/100 Dollars (\$ 546,175.50),
lawful money of the United States of America, for the payment of which we bind ourselves, our heirs,
executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WITNESSETH THAT:

WHEREAS, the Contractor heretofore has submitted to the Owner a certain proposal, dated
September 4, 2001 (the "Proposal"), to perform the West Sandy Township Waterline Replacement
Project, (the "Construction Contract") by agreement dated September 19, 2001 for the Owner,
in connection with the above Construction Contract, pursuant to plans, specifications and other related
documents, which are incorporated into the Proposal by reference (the "Contract Documents"), as
prepared by GWIN, DOBSON & FOREMAN, INC., CONSULTING ENGINEERS, ALTOONA,
PENNSYLVANIA; and

WHEREAS, the Owner is a "Contracting Body" under the provisions of Act No. 385 of the
General Assembly of the Commonwealth of Pennsylvania, approved by the Governor on December 20,
1967, known and cited as the "Public Works Contractors' Bond Law of 1967" (the "Act"); and

WHEREAS, the Act, in Section 3(a), requires that, before an award shall be made to the
Contractor by the Owner in accordance with the Proposal, the Contractor shall furnish this Bond to the
Owner, with this Bond to become binding upon the award of a Construction Contract to the Contractor
by the Owner in accordance with the Proposal; and

WHEREAS, it also is a condition of the Contract Documents that this Bond shall be furnished by the Contractor to the Owner; and

WHEREAS, under the Contract Documents, it is provided, inter alia, that if the Contractor shall furnish this Bond to the Owner, and if the Owner shall make an award to the Contractor in accordance with the Proposal, then the Contractor and the Owner shall enter into a Construction Contract with respect to performance of such Construction Contract, the form of which said Construction Contract is set forth in the Contract Documents.

NOW, THEREFORE, the terms and conditions of this Bond are and shall be that:

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract for a period of two (2) years from the date of final payment from the Owner to the Contractor for work performed under the Agreement and performed in accordance with the Contract Documents, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3. If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below, that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and

3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and

3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

4. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or

4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

1. After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefore to the Owner; or

2. Deny liability in whole or in part and notify the Owner citing reasons therefore.

5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4 and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6. After the Owner terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2 or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract:

6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and

6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

7. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall

EXTRACT FROM BY-LAWS OF FIDELITY AND DEPOSIT COMPANY OF MARYLAND

"Article VI, Section 2. The Chairman of the Board, or the President, or any Executive Vice-President, or any of the Senior Vice-Presidents or Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Assistant Vice-Presidents and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertakings, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgements, decrees, mortgages and instruments in the nature of mortgages, . . . and to affix the seal of the Company thereto."

KNOW ALL MEN BY THESE PRESENTS, that we, _____

_____D&M Contracting, Inc., as Contractor (the "Contractor"), and _____Fidelity and Deposit Company of Maryland, a corporation organized and existing under laws of the State _____ of Maryland; as Surety (the "Surety"), are held and firmly bound unto the SANDY TOWNSHIP WATER AND SEWER AUTHORITY and SANDY TOWNSHIP SUPERVISORS, as Owner (the "Owner"), as hereinafter set forth, in the full and just sum of Five Hundred Forty-Six Thousand, One Hundred Seventy Five and 50/100 Dollars (\$ 546,175.50), lawful money of the United States of America, for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WITNESSETH THAT:

WHEREAS, the Contractor heretofore has submitted to the Owner a certain proposal, dated September 4, 2001 (the "Proposal"), to perform the West Sandy Township Waterline Replacement Project (the "Construction Contract") by agreement dated September 19, 2001 for the Owner, in connection with the above Construction Contract, pursuant to plans, specifications and other related documents, which are incorporated into the Proposal by reference (the "Contract Documents"), as prepared by GWIN, DOBSON & FOREMAN, INC., CONSULTING ENGINEERS, ALTOONA, PENNSYLVANIA; and

WHEREAS, the Owner is a "Contracting Body" under the provisions of Act No. 385 of the General Assembly of the Commonwealth of Pennsylvania, approved by the Governor on December 20, 1967, known and cited as the "Public Works Contractors' Bond Law of 1967" (the "Act"); and

WHEREAS, the Act, in Section 3(a), requires that, before an award shall be made to the Contractor by the Owner in accordance with the Proposal, the Contractor shall furnish this Bond to the Owner, with this Bond to become binding upon the award of a Construction Contract to the Contractor by the Owner in accordance with the Proposal; and

WHEREAS, it also is a condition of the Contract Documents that this Bond shall be furnished by the Contractor to the Owner; and

WHEREAS, under the Contract Documents, it is provided, inter alia, that if the Contractor shall furnish this Bond to the Owner, and if the Owner shall make an award to the Contractor in accordance with the Proposal, then the Contractor and the Owner shall enter into an a Construction Contract with respect to performance of such Construction Contract, the form of which said Construction Contract is set forth in the Contract Documents.

NOW, THEREFORE, the terms and conditions of this Bond are and shall be that:

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract (see Performance Bond), which is incorporated herein by reference.

2. With respect to the Owner, this obligation shall be null and void if the Contractor:

2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2 Defends, indemnifies and holds harmless the Owner from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.

3. With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

4. The Surety shall have no obligation to Claimants under this Bond until:

4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that claim is being made under this Bond, and with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with the Contractor:

1. Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and

2. Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and

3. Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

5. If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

6. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2 Pay or arrange for payment of any undisputed amounts.

IN WITNESS WHEREOF, the Principal and the Surety cause this Bond to be signed, sealed and delivered this 19th day of September, 2001.

(Individual Principal)

(Name of Business)

(Address)

Witness:

By: _____ (SEAL)

(Partnership Principal)

(Name of Business)

(Address)

Witness:

By: _____ (SEAL)
(Partner)

PAYMENT BOND PRF 08348167

KNOW ALL MEN BY THESE PRESENTS, that we, _____

D&M Contracting, Inc., as Contractor (the "Contractor"), and Fidelity and Deposit Company of Maryland, a corporation organized and existing under laws of the State of Maryland; as Surety (the "Surety"), are held and firmly bound unto the SANDY TOWNSHIP WATER AND SEWER AUTHORITY and SANDY TOWNSHIP SUPERVISORS, as Owner (the "Owner"), as hereinafter set forth, in the full and just sum of Five Hundred Forty-Six Thousand, One Hundred Seventy Five and 50/100 Dollars (\$ 546,175 . 50), lawful money of the United States of America, for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WITNESSETH THAT:

WHEREAS, the Contractor heretofore has submitted to the Owner a certain proposal, dated September 4, 2001 (the "Proposal"), to perform the West Sandy Township Waterline Replacement Project (the "Construction Contract") by agreement dated September 19, 2001 for the Owner, in connection with the above Construction Contract, pursuant to plans, specifications and other related documents, which are incorporated into the Proposal by reference (the "Contract Documents"), as prepared by GWIN, DOBSON & FOREMAN, INC., CONSULTING ENGINEERS, ALTOONA, PENNSYLVANIA; and

WHEREAS, the Owner is a "Contracting Body" under the provisions of Act No. 385 of the General Assembly of the Commonwealth of Pennsylvania, approved by the Governor on December 20, 1967, known and cited as the "Public Works Contractors' Bond Law of 1967" (the "Act"); and

WHEREAS, the Act, in Section 3(a), requires that, before an award shall be made to the Contractor by the Owner in accordance with the Proposal, the Contractor shall furnish this Bond to the Owner, with this Bond to become binding upon the award of a Construction Contract to the Contractor by the Owner in accordance with the Proposal; and

WHEREAS, it also is a condition of the Contract Documents that this Bond shall be furnished by the Contractor to the Owner; and

WHEREAS, under the Contract Documents, it is provided, inter alia, that if the Contractor shall furnish this Bond to the Owner, and if the Owner shall make an award to the Contractor in accordance with the Proposal, then the Contractor and the Owner shall enter into an a Construction Contract with respect to performance of such Construction Contract, the form of which said Construction Contract is set forth in the Contract Documents.

NOW, THEREFORE, the terms and conditions of this Bond are and shall be that:

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract (see Performance Bond), which is incorporated herein by reference.

2. With respect to the Owner, this obligation shall be null and void if the Contractor:

2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2 Defends, indemnifies and holds harmless the Owner from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.

3. With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

4. The Surety shall have no obligation to Claimants under this Bond until:

4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that claim is being made under this Bond, and with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with the Contractor:

1. Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and

2. Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and

3. Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

5. If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

6. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2 Pay or arrange for payment of any undisputed amounts.

7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

9. The Surety shall not be liable to the Owner, claimants or others, or obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2 (iii) or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contact, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown in the Construction Contract. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the Construction Contract.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory bond and not as a common law bond.

14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15. Definitions

15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the first recitation page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contractor or to perform and complete or comply with the other terms thereof.

IN WITNESS WHEREOF, the Principal and the Surety cause this Bond to be signed, sealed and delivered this 19th day of September, 2001.

(Individual Principal)

(Name of Business)

(Address)

Witness:

By: _____ (SEAL)

(Partnership Principal)

(Name of Business)

(Address)

Witness:

By: _____ (SEAL)
(Partner)

(Corporation Principal)

D&M Contracting, Inc.

(Name of Corporation)

R.D. #3, Box 374, New Alexandria, PA 15670

(Address)

Attest:

Audrey A Nowicki
(Assistant) Secretary

By: Martin J Costello
(Vice) President

(CORPORATE SEAL)

(Corporate Surety)

Fidelity and Deposit Company of Maryland.

(Name of Corporation)

720 Grant Building
Pittsburgh PA 15219

(Address)

Witness:

Bevda M Keen

**By: William H. Tomlinson
(Attorney-in-Fact)

(CORPORATE SEAL)

**Attach an appropriate power of attorney, dated as of the same date as the Bond, evidencing the authority of the Attorney-in-Fact to act in behalf of the corporation.

(FOR INFORMATION ONLY - Name, Address and Telephone)

AGENT OR BROKER:

OWNER'S REPRESENTATIVE:

Gwin, Dobson & Foreman, Inc.

3121 Fairway Drive

Altoona, PA 16602-4475

Phone: (814)943-5214

Fax: (814)943-8494

Email: mail@gdfengineers.com

Power of Attorney
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

HOME OFFICE: P.O. BOX 1227, BALTIMORE, MD 21203-1227

Know ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by W. B. WALBRECHER, Vice-President, and T. E. SMITH, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, does hereby nominate, constitute and appoint **Boyd M. Kean, Debra L. Kean, William H. Tomlinson and William K. Tomlinson, all of Oakmont, Pennsylvania**, EACH its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings** and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and apply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md. in their own proper persons. This power of attorney revokes that issued on behalf of Boyd M. Kean, et al, dated January 4, 1998.

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 2nd day of February, A.D. 1998.

ATTEST:

FIDELITY AND DEPOSIT COMPANY OF MARYLAND



T. E. Smith

Assistant Secretary

By: *W. B. Walbrecher*

Vice-President

State of Maryland } ss:
County of Baltimore }

On this 2nd day of February, A.D. 1998, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came W. B. WALBRECHER, Vice-President and T. E. SMITH, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself deposeth and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



Carol J. Fader

Notary Public

My Commission Expires: August 1, 2000

CERTIFICATE

I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the original Power of Attorney of which the foregoing is a full, true and correct copy, is in full force and effect on the date of this certificate; and I do further certify that the Vice-President who executed the said Power of Attorney was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2, of the By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said Company, this

19th day of September, 2001.

S. D. Matis

Assistant Secretary

EXTRACT FROM BY-LAWS OF FIDELITY AND DEPOSIT COMPANY OF MARYLAND

"Article VI, Section 2. The Chairman of the Board, or the President, or any Executive Vice-President, or any of the Senior Vice-Presidents or Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Assistant Vice-Presidents and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertakings, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgements, decrees, mortgages and instruments in the nature of mortgages, . . . and to affix the seal of the Company thereto."

FILED

OCT 02 2001
NOV 2 04
William A. Shaw P.M.
Prothonotary

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