

07-1170-CD
DT Construction vs Graham Township et al

DT Const vs Graham Twp Supervisors
2007-1170-CD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION-LAW

D.T. CONSTRUCTION, INC.
1107 UNIVERSITY DRIVE
DUNBAR, PENNSYLVANIA 15431

Plaintiff,
vs.
HAM TOWNSHIP SUPERVISORS
DEER CREEK ROAD
RISDALE, PENNSYLVANIA 16858
Defendants.

) Date Filed:
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)
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)
)
No. of 2007 - 1170-CJ

) Jury Trial X)
) Arbitration _____ William A. Shaw
) Equity _____ Prothonotary/Clerk of Courts

) TYPE OF PLEADING:
)) COMPLAINT IN CIVIL ACTION

) Filed on behalf of: PLAINTIFF

Donald J. Snyder, Jr.

) McDonald, Snyder & Lightcap, P.C.
) 1004 Ligonier Street
) P.O. Box 758
) Latrobe, PA 15650
) (724) 539-3511

Donald J. Snyder, Jr.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION-LAW

D.T. CONSTRUCTION, INC.,

Plaintiff

vs.

) No. of 2007

GRAHAM TOWNSHIP SUPERVISORS,

Defendants

)

)

)

)

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint: or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF
YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR
TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE
YOU CAN GET LEGAL HELP:**

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
SECOND & MARKET STREETS
CLEARFIELD, PA 16830
(814) 765-2641, EXT. 50-51

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION-LAW

D.T. CONSTRUCTION, INC.,)
)
)
 Plaintiff)
)
)
 vs.) No. of 2007
)
)
GRAHAM TOWNSHIP SUPERVISORS,)
)
)
 Defendants)

COMPLAINT IN CIVIL ACTION

COMES NOW, the Plaintiff, D.T. Construction, Inc, by and through its counsel, McDonald, Snyder & Lightcap, P.C. and files the within Complaint in Civil Action and in support thereof alleges and avers the following:

1. The Plaintiff, D.T. Construction, Inc., is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its address at 1107 University Drive, Dunbar, Fayette County, Pennsylvania 15431.
2. The Defendants, the Graham Township Supervisors, are an instrumentality of the Commonwealth of Pennsylvania with an address of 3395 Deer Creek Road, Morrisdale, Clearfield County, Pennsylvania 16858.
3. At all times relevant hereto, the Plaintiff was engaged in the general construction business, including the installation of water lines.

COUNT I

4. Plaintiff incorporates by reference the allegations in Paragraph 1 through 3 as if set forth at length herein.

5. On or about July 1, 2006, Plaintiff and Defendants entered into an Agreement for the installation of water lines and appurtenances pursuant to Contract Number Section 00500, entitled Waterline Extension, Phase IV, which contract was prepared by Gwin Dobson & Foreman, Inc. as the consulting engineer for the Defendants. The total amount due to the Plaintiff under the Contract was FOUR HUNDRED SIXTY-TWO THOUSAND FORTY-TWO AND 00/100 (\$462,042.00) DOLLARS. Section 00500 of the Agreement is attached hereto, made a part hereof, and labeled Exhibit "A" but the entire contract is not attached because it is unwieldy and in the possession of the Defendants.

6. The contract is a contract as defined under 62 Pa. C.S.A. §3902 and the Plaintiff is a contractor as defined under 62 Pa. C.S.A. §3902.

7. On or about mid-November, 2007, Plaintiff sent Defendants Periodic Estimate for Payment No. #1 in the amount of \$183,238.47 for services rendered pursuant to the Contract. A true and correct copy of that invoice is attached hereto, made a part hereof and labeled Exhibit "B".

8. The Defendants made payments to Plaintiff on Payment No. #1 in the following manner:

- a. Check No. 108 in the amount of \$90,714.97 on 12/28/06;
- b. Check No. 109 in the amount of \$66,529.70 on 1/9/07;
- c. Check No. 111 in the amount of \$25,993.80 on 1/31/07

for a total of \$183,238.47.

9. On or about December 29, 2006, Plaintiff sent Defendants Periodic Estimate for Payment No. #2 in the amount of \$251,705.35 for services rendered pursuant to the Contract. A true and correct copy of that invoice is attached hereto, made a part hereof and labeled Exhibit "C".

10. Payment on Payment No. #2 in the amount of \$251,705.35 was due on February 12, 2007.

11. The Defendants made payments to Plaintiff on Payment No. #2 in the following manner:

- a. Check No. 112 in the amount of \$34,579.03 on 2/5/07; and
- b. Check No. 113 in the amount of \$122,440.00 on 3/8/07

for a total of \$157,019.03, leaving a balance due of \$94,686.32.

12. On or about April 2, 2007, the Defendants sent a payment to Plaintiff, Check No. 115 in the amount of \$94,686.32, which payment constituted the balance due on Payment No. #2. A true and correct copy of Check No. 115 is attached hereto, made a part hereof and labeled Exhibit "D".

13. After receiving the check and depositing same in its bank account, Plaintiff was notified by the Defendants that Defendants did not have enough funds in its account to cover Check No. 115 and that the Plaintiff could not use it.

14. In the interim, in reliance upon the Defendant's payment, Plaintiff wrote checks on its account which resulted in additional bank charges to Plaintiff.

15. Defendants sent Plaintiff an additional payment, Check No. 116, in the amount of \$50,000.00 on April 19, 2007.

16. To date, no additional payments have been made by the Defendants.

17. Plaintiff performed all of the work required under the Contract with respect to each request for periodic payment in a timely and workmanlike manner and the payments were due as stated.

18. The total amount due on Payment No. #1 and Payment No. #2 was \$434,943.82.

To date, Plaintiff has received the following payments from the Defendants:

- a. Check No. 108 in the amount of \$90,714.97 on 12/28/06;
- b. Check No. 109 in the amount of \$66,529.70 on 1/9/07;
- c. Check No. 111 in the amount of \$25,993.80 on 1/31/07;
- d. Check No. 112 in the amount of \$34,579.03 on 2/5/07;
- e. Check No. 113 in the amount of \$122,440.00 on 3/8/07; and
- f. Check No. 116 in the amount of \$50,000.00 on 4/19/07

for a total of \$390,257.50. True and correct copies of these checks are attached hereto, made a part hereof, and labeled Exhibit "E", collectively.

19. The payments made by the Defendants to the Plaintiff for Payments No. 1 and 2 total \$390,257.50, leaving a principal balance due of \$44,686.32.

20. Plaintiff has performed all of the work required under Section 00500 of the Agreement for Waterline Extension, Phase IV in a timely and workmanlike manner and has fulfilled all of the provisions of the Agreement in accordance with its terms.

21. Plaintiff's recovery of monies owed by Defendants is subject to the provisions of the Commonwealth Procurement Code, 62 Pa. C.S. §§101-4509.

22. Plaintiff has made demand upon the Defendants for payment and the Defendants have, in breach of the contract between the parties, in bad faith and in an arbitrary or vexatious manner, refused, neglected or otherwise failed to pay Plaintiff for services rendered in a timely manner.

23. Pursuant to the Commonwealth Procurement Code, the Defendants' failure to make prompt payment to Plaintiff constitutes a violation of 62 Pa. C.S.A. §3932(c) for which the Defendants are liable to Plaintiff for interest at the rate of 8% per annum, and a violation of 62 Pa. C.S.A. §3935 (a) and (b) for which the Defendants are liable to Plaintiff for a penalty equal to one (1%) percent per month of the amount owed Plaintiff as well as reasonable attorney's fees.

24. Plaintiff is therefore due the following amounts:

- a. the principal remainder sum of \$44,686.32;
- b. interest in the amount of \$1,142.14 from 2/12/07 through 3/8/07;
- c. penalty in the amount of \$1,737.01 from 2/12/07 through 3/8/07;
- d. interest in the amount to \$871.63 from 3/8/07 through 4/19/07;
- e. penalty in the amount of \$1,325.61 from 3/8/07 through 4/19/07;
- f. interest in the amount of \$861.90 from 4/19/07 through 7/16/07 and continuing thereafter;
- g. penalty in the amount of \$1,310.80 from 4/19/07 through 7/16/07 and continuing thereafter,

for a total of \$51,935.41 which the Defendants have refused, neglected or otherwise failed to pay.

25. Pursuant to the provisions of 62 Pa. C.S.A. §3935(b), the Defendants are also liable for reasonable attorney fees due to withholding of funds in an arbitrary and vexatious manner.

WHEREFORE, Plaintiff demands judgment against the Defendants in the principal amount of \$44,686.32, interest in the amount of \$2,875.67 and penalty in the amount of \$4,373.42 for a grand total sum of \$51,935.41 together with continuing interest at the rate of 8% per annum, continuing penalty at the rate of 1% per month, and reasonable attorney's fees as provided by statute.

COUNT II

26. Plaintiff incorporates by reference the allegations of Paragraphs 1 through 25 as if set forth at length herein.

27. The project known as Waterline Extension, Phase IV has been substantially completed by the Plaintiff, but the Defendants continue to hold back \$22,891.78 in retainage.

28. Plaintiff's recovery of monies owed by Defendants is subject to the provisions of the Commonwealth Procurement Code, 62 Pa. C.S. §§101-4509.

29. Pursuant to 62 Pa.C.S.A. §3941(a) of the Commonwealth Procurement Code, once a contract is substantially completed, the Defendants may only hold back retainage in the amount of one and one-half times the amount required to complete any then-remaining uncompleted items.

30. Plaintiff has performed all of the work required under Section 00500 of the Agreement for Waterline Extension, Phase IV in a timely and workmanlike manner and has fulfilled all of the provisions of the Agreement in accordance with its terms.

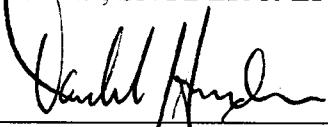
31. Plaintiff has made demand upon the Defendants for payment and the Defendants have, in breach of the contract between the parties, in bad faith and in an arbitrary or vexatious manner, refused, neglected or otherwise failed to pay Plaintiff for services rendered in a timely manner.

32. Pursuant to the Commonwealth Procurement Code, the Defendants' failure to release the retainage in the amount of \$22,891.78 constitutes a violation of 62 Pa.C.S.A. §3941 for which the Defendants are liable to Plaintiff for interest at the rate of 10% per annum.

WHEREFORE, Plaintiff demands judgment against the Defendants for retainage in the amount of \$22,891.78, together with continuing interest at the rate of 10% per annum.

Respectfully submitted,

McDONALD, SNYDER & LIGHTCAP, P.C.

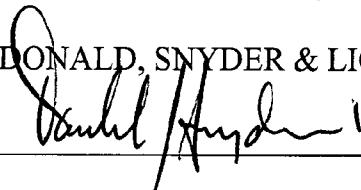
BY: 

Donald J. Snyder, Jr.
PA I.D. #22025
1004 Ligonier Street
P.O. Box 758
Latrobe, Pennsylvania 15650
(724) 539-3511

TO THE WITHIN DEFENDANTS

You are hereby notified to file a written response to the enclosed Complaint twenty (20) days from service hereof or a judgment may be entered against you.

McDONALD, SNYDER & LIGHTCAP, P.C.

By 

SECTION 00500
AGREEMENT

THIS AGREEMENT is dated as of the 1st day of July in the year 2006 by and between the

GRAHAM TOWNSHIP SUPERVISORS
3395 DEER CREEK ROAD
MORRISDALE, PA 16658

hereinafter called OWNER, and

DT CONSTRUCTION, INC.
1107 UNIVERSITY DRIVE
DUNBAR, PA 15431

OK

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 Waterline Extension, Phase IV and consists of approximately 15,200 linear feet of 8" 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.

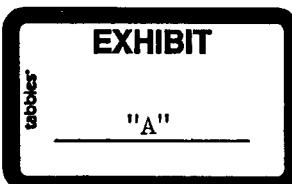
ARTICLE 3 - CONTRACT TIME

- 3.1 The Work will be substantially completed within 150 days after the date when the Contract Times commence to run as provided in Paragraph 2.3 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.13 of the General Conditions within 180 days after the date when the Contract Times commence to run.
- 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

03035/sec00500

00500-1

Waterline Extension, Phase IV
Graham Township



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 \$1000 for each day that expires after the time specified in Paragraph 2.1 above the Substantial Completion until the Work is substantially complete. After Substantial Completion, If CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the time specified in Paragraph 2.1 above for completion and readiness for final payment or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER \$1000 for each day that expires after the time specified in Paragraph 2.1 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 An amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in the Bid Form.

TOTAL BASE BID CONTRACT AMOUNT \$ Four Hundred Sixty Two Thousand,
Forty Two and 00/100 Dollars (\$ 462.042.00)
(use words) (numerals)

- 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 $\frac{1}{2}$ 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 or 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-4.2 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.

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, Contractor and Pennsylvania Infrastructure Investment Authority) 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, Contractor and Pennsylvania Infrastructure Investment Authority); 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, Contractor and Pennsylvania Infrastructure Investment Authority) 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.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in triplicate. 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 July 1, 2006 (which is the Effective Date of the Agreement).

OWNER: GRAHAM TOWNSHIP SUPERVISORS

By: _____

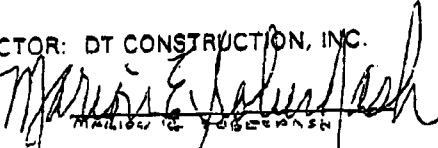
(CORPORATE SEAL)

Attest: _____

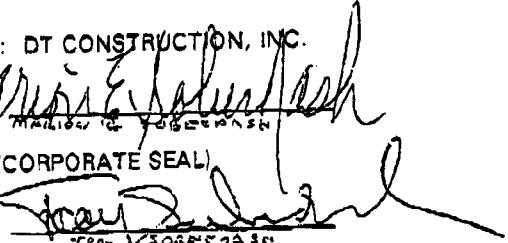
Address for giving notices:

3395 Deer Creek Road
Morrisdale, PA 16658

CONTRACTOR: DT CONSTRUCTION, INC.

By: 

(CORPORATE SEAL)

Attest: 

Address for giving notices:

1107 University Drive
Dunbar, PA 15431

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.

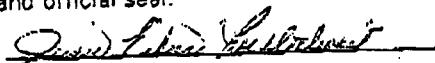
AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA :
: SS

COUNTY OF Fayette :

On this, the 100 day of July, 2006, before me, a Notary Public in and for the Commonwealth of Pennsylvania, personally appeared Heidi E. Sauer, who acknowledged herself to be the President of DT Construction, Inc., a 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: Oct. 26, 2009

END OF SECTION

Notary Public
NOTARY SEAL
JESSIE EILEEN POSTLETHWAIT, Notary Public
DUNBAR TWP., FAYETTE COUNTY, PA
My Commission Expires October 26, 2009

Estimate for Payment #1

Graham Twp. Supervisors, 3395 Deer Creek Road, Morrisdale, Pa 16858

ENGINEER

Gwin Dobson & Foreman Inc., 3121 Fairway Drive, Altoona, Pa 16602

Contractor

DT Construction Inc 1107 University Drive Dunbar Pa 15431

#	DESCRIPTION	QTY.	UT	UT PRICE	TOTAL	This Period		Total to Date	
						QTY.	TOTAL	QTY.	TOTAL
1a	Waterline Pipe 8" Dia Class 52 Ductile Iron push on joint pipe	15530	lf	\$25.05	\$389,026.50	0	\$0.00	0	\$0.00
2a	8" x 8" x 8" x 8" Cross, DIMJ	1	ea	\$400.00	\$400.00	0	\$0.00	0	\$0.00
2b	8" x 8" x 8" Tee, DIMJ	1	ea	\$300.00	\$300.00	0	\$0.00	0	\$0.00
2c	8" - 45 degree Bend, DIMJ	5	ea	\$150.00	\$750.00	0	\$0.00	0	\$0.00
2d	8" - 22 1/2 degree Bend, DIMJ	15	ea	\$150.00	\$2,250.00	0	\$0.00	0	\$0.00
2e	8" - 11 1/4 degree Bend, DIMJ	8	ea	\$150.00	\$1,200.00	0	\$0.00	0	\$0.00
2f	8" Cap, DIMJ	5	ea	\$100.00	\$500.00	0	\$0.00	0	\$0.00
3a	8" Diamerer Coupling (size & type as required)	2	ea	\$200.00	\$400.00	0	\$0.00	0	\$0.00
4a	8" Dia, M.J. AWWA C-515 Wedge Gate Valve w/Roadway Valve E	16	ea	\$900.00	\$14,400.00	0	\$0.00	0	\$0.00
5a	1" Air Release/Air Vacuum Valve Assemblies, Complete in place	5	ea	\$1,000.00	\$5,000.00	0	\$0.00	0	\$0.00
6a	2" Blowoff Assemblies, Complete in place	7	ea	\$800.00	\$5,600.00	0	\$0.00	0	\$0.00
7.	Dead End Asssemblies, complete in place	4	ea	\$500.00	\$2,000.00	0	\$0.00	0	\$0.00
8.	Concrete Encasement 8" Pipe Stream Crossing	10	lf	\$100.00	\$1,000.00	0	\$0.00	0	\$0.00
9.	Concrete Thrust Blocking	25	cy	\$100.00	\$2,500.00	0	\$0.00	0	\$0.00
10a	Restore Trenched Area 4-1/2" PADOT Bit. Concrete Base Coarse	25	sy	\$50.00	\$1,250.00	0	\$0.00	0	\$0.00
10b	1 - 1/2" PennDOT Wearing Course, ID-2	25	sy	\$20.00	\$500.00	0	\$0.00	0	\$0.00
10c	Stabilization 6" Compacted Thickness PADOT # 2RC Coarse Agg	450	sy	\$5.00	\$2,250.00	0	\$0.00	0	\$0.00
10d	Tar and Chip, Double Seal Coat	1350	lf	\$5.00	\$6,750.00	0	\$0.00	0	\$0.00
10e	Topsoil, Seeding & Mulching	14500	lf	\$0.75	\$10,875.00	0	\$0.00	0	\$0.00
10f	Municipal Roads/Driveways Bituminous Paving	115	sy	\$50.00	\$5,750.00	0	\$0.00	0	\$0.00
11	PennDOT inspection (Allowance)	1	ls	\$2,000.00	\$2,000.00	0	\$0.00	0	\$0.00
12	Maintenance and protection of traffic	1	ls	\$1,740.50	\$1,740.50	0	\$0.00	0	\$0.00
13	Special Bed. Matl. PADOT #57 (PincheyRD:Sta0+00 to Sta. 53+00	280	cy	\$20.00	\$5,600.00	0	\$0.00	0	\$0.00
						TOTAL	\$462,042.00		\$0.00
									\$0.00

PIPE MATERIALS

1	8" CL 52 Ductile Iron Waterline	15530	LF	\$12.42	\$192,882.60
---	---------------------------------	-------	----	---------	--------------

TOTAL COMPLETE TO DATE	\$0.00
PIPE MATERIAL	\$192,882.60
CHANGE ORDERS	\$0.00
SUBTOTAL	\$192,882.60
5.00% RETAINAGE	\$9,644.13
TOTAL LESS RETAINAGE	\$183,238.47
PREVIOUS PAYMENTS	\$0.00
CURRENT PAYMENT DUE	\$183,238.47

Recommended by: GWIN DOBSON & FOREMAN, Inc.

DATE

Accepted by: DT Construction, Inc.

DATE

Approved by: GRAHAM TOWNSHIP SUPERVISORS

DATE

EXHIBIT

"B"

Periodic Estimate for Payment # 2

Estimate period

09/13/2006

to

12/29/2006

OWNER

Graham Twp. Supervisors, 3395 Deer Creek Road, Morrisdale, Pa 16858

ENGINEER

Gwin Dobson & Foreman Inc., 3121 Fairway Drive, Altoona, Pa 16602

Contractor

DT Construction Inc 1107 University Drive Dunbar Pa 15431

#	DESCRIPTION	QTY.	UT	UT PRICE	TOTAL	This Period		Total to Date	
						QTY.	TOTAL	QTY.	TOTAL
1a	Waterline Pipe 8" Dia Class 52 Ductile Iron push on joint pipe	15530	lf	\$25.05	\$389,026.50	15611	\$391,055.55	15611	\$391,055.55
2a	8" x 8" x 8" x 8" Cross, DIMJ	1	ea	\$400.00	\$400.00	0	\$0.00	0	\$0.00
2b	8" x 8" x 8" Tee, DIMJ	1	ea	\$300.00	\$300.00	2	\$600.00	2	\$600.00
2c	8" - 45 degree Bend, DIMJ	5	ea	\$150.00	\$750.00	4	\$600.00	4	\$600.00
2d	8" - 22 1/2 degree Bend, DIMJ	15	ea	\$150.00	\$2,250.00	4	\$590.00	4	\$590.00
2e	8" - 11 1/4 degree Bend, DIMJ	8	ea	\$150.00	\$1,200.00	0	\$0.00	0	\$0.00
2f	8" Cap, DIMJ	5	ea	\$100.00	\$500.00	4	\$400.00	4	\$400.00
3a	8" Diamerter Coupling (size & type as required)	2	ea	\$200.00	\$400.00	3	\$600.00	3	\$600.00
4a	8" Dia, M.J. AWWA C-515 Wedge Gate Valve w/Roadway Valve	16	ea	\$900.00	\$14,400.00	17	\$15,300.00	17	\$15,300.00
5a	1" Air Release/Air Vacuum Valve Assemblies, Complete in place	5	ea	\$1,000.00	\$5,000.00	4	\$4,000.00	4	\$4,000.00
6a	2" Blowoff Assemblies, Complete in place	7	ea	\$800.00	\$5,600.00	5	\$4,000.00	5	\$4,000.00
7	Dead End Asssemblies, complete in place	4	ea	\$500.00	\$2,000.00	4	\$2,000.00	4	\$2,000.00
8	Concrete Encasement 8" Pipe Stream Crossing	10	lf	\$100.00	\$1,000.00	21	\$2,100.00	21	\$2,100.00
9	Concrete Thrust Blocking	25	cy	\$100.00	\$2,500.00	14	\$1,400.00	14	\$1,400.00
10a	Restore Trenched Area 4-1/2" PADOT Bit, Concrete Base Coarse	25	sy	\$50.00	\$1,250.00	0	\$0.00	0	\$0.00
10b	1 - 1/2" PennDOT Wearing Course, ID-2	25	sy	\$20.00	\$500.00	0	\$0.00	0	\$0.00
10c	Stabilization 6" Compacted Thickness PADOT # 2RC Coarse Agg	450	sy	\$5.00	\$2,250.00	151.22	\$756.10	151.22	\$756.10
10d	Tar and Chip, Double Seal Coat	1350	lf	\$5.00	\$6,750.00	0	\$0.00	0	\$0.00
10e	Topsoil, Seeding & Mulching	14500	lf	\$0.75	\$10,875.00	15611	\$11,708.25	15611	\$11,708.25
10f	Municipal Roads/Driveways Bituminous Paving	115	sy	\$50.00	\$5,750.00	0	\$0.00	0	\$0.00
11	PennDOT Inspection (Allowance)	1	ls	\$2,000.00	\$2,000.00	0	\$0.00	0	\$0.00
12	Maintenance and protection of traffic	1	ls	\$1,740.50	\$1,740.50	1	\$1,740.50	1	\$1,740.50
13	Special Bed. Matl. PADOT #57 (PincheyRD:Sta0+00 to Sta. 53+01)	280	cy	\$20.00	\$5,600.00	1048.76	\$20,975.20	1048.76	\$20,975.20
					TOTAL	\$452,042.00	TOTAL	\$457,835.60	\$457,835.60

TOTAL COMPLETE TO DATE	\$457,835.60
PIPE MATERIAL	\$0.00
CHANGE ORDERS	\$0.00
SUBTOTAL	\$457,835.60
5.00% RETAINAGE	\$22,891.76
TOTAL LESS RETAINAGE	\$434,943.82
PREVIOUS PAYMENTS	\$183,238.47
CURRENT PAYMENT DUE	\$251,705.35

Recommended by: GWIN DOBSON & FOREMAN, Inc.

Accepted by: DT Construction, Inc.

DATE

DATE

DATE

EXHIBIT

"C"

Approved by: GRAHAM TOWNSHIP SUPERVISORS

DATE



GRAHAM TOWNSHIP
WATERLINE FUND
3395 DEER CREEK ROAD
MORRISDALE, PA 16858

DRAFT PAYABLE THROUGH
WACHOVIA BANK, N.A.
WILMINGTON, DE 19803

115

62-22/311

4/2/2007

PAY TO THE D. T. Contracting
ORDER OF

\$ **94,686.32

DOLLARS

D. T. Contracting
1107 University Drive
Dunbar, PA 15431

B. J. Enush
Shady J. Straw

MEMO

THIS DOCUMENT CONTAINS HEAT-SENSITIVE INK. TOUCH OR PRESS HERE: RED IMAGE DISAPPEARS WITH HEAT.

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Denis on back

Security Features Included



GRAHAM TOWNSHIP/WATERLINE FUND

D. T. Contracting

115

4/2/2007

Date	Type	Reference	Original Amt.	Balance Due	Discount	Payment
4/2/2007	Bill		94,686.32	94,686.32		94,686.32
					Check Amount	94,686.32

PLGIT

94,686.32

EXHIBIT

"D"



GRAHAM TOWNSHIP
WATERLINE FUND
3395 DEER CREEK ROAD
MORRISDALE, PA 16858

DRAFT PAYABLE THROUGH
WACHOVIA BANK, N.A.
WILMINGTON, DE 19803

108

62-22/311

12/28/2006

PAY TO THE
ORDER OF D. T. Contracting

\$ 90,714.97

DOLLARS

Ninety Thousand Seven Hundred Fourteen and 97/100

D. T. Contracting
1107 University Drive
Dunbar, PA 15431

Gladys J. Straub
Sue Mathews

MEMO

1st Draw

THIS DOCUMENT CONTAINS HEAT SENSITIVE INK. IF TOUCHED OR SCRATCHED, THE DAMAGE IS APPARENT IN THE HEAT.

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GRAHAM TOWNSHIP/WATERLINE FUND

108

D. T. Contracting

Date	Type	Reference	Original Amt.	Balance Due	Discount	Payment
12/28/2006	Bill		90,714.97	90,714.97		90,714.97
					Check Amount	90,714.97

PLGIT

1st Draw

90,714.97

EXHIBIT

"E"

tab
tab



GRAHAM TOWNSHIP
WATERLINE FUND
3395 DEEP CREEK ROAD
MORRISDALE, PA 16858

DRAFT PAYABLE THROUGH
WACHOVIA BANK, N.A.
WILMINGTON, DE 19803

109

62-22311

1/9/2007

PAY TO THE
ORDER OF D. T. Contracting

\$ 66,529.70

DOLLARS

Sixty-Six Thousand Five Hundred Twenty-Nine and 70/100

D. T. Contracting
1107 University Drive
Dunbar, PA 15431

Gladys Straub
Lee Mathews

MEMO

0000109 1031100225190200033341030

GRAHAM TOWNSHIP/WATERLINE FUND

109

D. T. Contracting

Date	Type	Reference
1/9/2007	Bill	

1/9/2007

Original Amt.	Balance Due	Discount	Payment
66,529.70	66,529.70		66,529.70
		Check Amount	66,529.70

PLGIT

66,529.70



GRAHAM TOWNSHIP
WATERLINE FUND
3395 DEER CREEK ROAD
MORRISDALE, PA 16858

DRAFT PAYABLE THROUGH
WACHOVIA BANK, N.A.
WILMINGTON, DE 19803

111

62-22311

1/31/2007

PAY TO THE: D. T. Contracting
ORDER OF:

\$ 25,993.80

DOLLARS

Twenty-Five Thousand Nine Hundred Ninety-Three and 80/100

D. T. Contracting
1107 University Drive
Dunbar, PA 15431

Glenda Strain
Sue Mathews

MEMO

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GRAHAM TOWNSHIP/WATERLINE FUND

111

D. T. Contracting

Date	Type	Reference
1/31/2007	Bill	

Original Amt.	Balance Due	Discount	Payment
25,993.80	25,993.80		25,993.80
		Check Amount	25,993.80

1/31/2007

PLGIT 25,993.80



GRAHAM TOWNSHIP
WATERLINE FUND
3395 DEER CREEK ROAD
MORRISDALE, PA 16858

DRAFT PAYABLE THROUGH
WACHOVIA BANK, N.A.
WILMINGTON, DE 19803

112

62-22/311

2/5/2007

PAY TO THE D T Contracting

\$ 34,579.03

DOLLARS

Thirty-Four Thousand Five Hundred Seventy-Nine and 03/100

D. T. Contracting
1107 University Drive
Dunbar, PA 15431

Gladys C. Strain
Lee Mathews

MEMO

00001121 031100225190200033341030

GRAHAM TOWNSHIP/WATERLINE FUND

112

D. T. Contracting

2/5/2007

Date	Type	Reference	Original Amt.	Balance Due	Discount	Payment
2/5/2007	Bill		34,579.03	34,579.03		34,579.03
					Check Amount	34,579.03

PLGIT

34,579.03



GRAHAM TOWNSHIP
WATERLINE FUND
4395 DEER CREEK ROAD
MORRISDALE, PA 16868

DRAFT PAYABLE THROUGH
WACHOVIA BANK, N.A.
WILMINGTON, DE 19801

116

4/19/2007

PAY TO THE
ORDER OF D. T. Contracting

\$ 50,000.00

DOLLARS

Fifty Thousand and 00/100

D. T. Contracting
1107 University Drive
Dunbar, PA 15434

MEMO

THIS DOCUMENT IS FOR INTERNAL SUPERVISION ONLY. IT HAS BEEN REDUCED IN SIZE. RED IMAGE DISAPPEARS WHEN PRINTED.

00001161 103110022590 2000333410 00

GRAHAM TOWNSHIP/WATERLINE FUND

D. T. Contracting

116

Date	Type	Reference	Original Amt.	Balance Due	Discount	4/19/2007	Payment
4/19/2007	Bill		50,000.00	50,000.00			50,000.00
							50,000.00

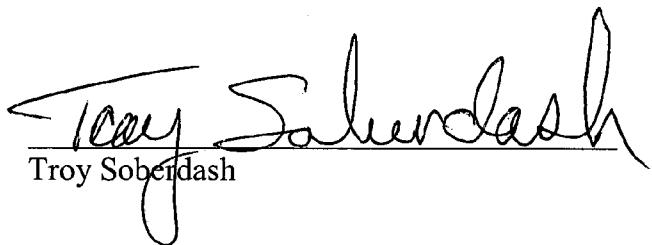
PLGIT

Final invoice

\$ 50,000.00

VERIFICATION

I, TROY SOBERDASH, of D.T. CONSTRUCTION, INC., verify that the facts set forth in the foregoing COMPLAINT are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.


Troy Soberdash

Dated: 7/16/07

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

D.T. CONSTRUCTION, INC.,)
Plaintiff)
vs.) No. 1170 of 2007 CD
GRAHAM TOWNSHIP SUPERVISORS,)
Defendants)

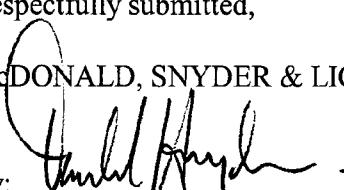
PRAECIPE TO SETTLE, DISCONTINUE & END

TO THE PROTHONOTARY:

Please settle, discontinue and end the above matter on the docket.

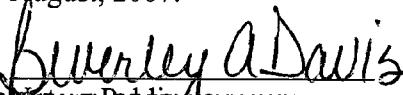
Respectfully submitted,

McDONALD, SNYDER & LIGHTCAP, P.C.

By: 

Donald J. Snyder, Jr., Esquire
Pa. I.D. #22025
1004 Ligonier Street
P.O. Box 758
Latrobe, Pennsylvania 15650
(724) 539-3511

SWORN to and subscribed
before me this 13th day of
August, 2007.



COMMON NOTARY PUBLIC PENNSYLVANIA

Notarial Seal

Beverley A. Davis, Notary Public
City Of Latrobe, Westmoreland County
My Commission Expires April 10, 2011

Member, Pennsylvania Association of Notaries

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

D. T. Construction, Inc.

Vs.
Graham Township Supervisors

No. 2007-01170-CD

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on August 16, 2007, marked:

Settled, discontinued and ended

Record costs in the sum of \$85.00 have been paid in full by McDonald, Snyder & Lightcap P.C..

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 16th day of August A.D. 2007.



lm

William A. Shaw, Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 103021
NO: 07-1170-CD
SERVICE # 1 OF 1
COMPLAINT

PLAINTIFF: D.T. CONSTRUCTION, INC.
vs.
DEFENDANT: GRAHAM TOWNSHIP SUPERVISORS

SHERIFF RETURN

FILED
03:00
DEC 05 2007
Shaw

Prothonotary/Clerk of Courts

NOW, July 26, 2007 AT 8:50 AM SERVED THE WITHIN COMPLAINT ON GRAHAM TOWNSHIP SUPERVISORS DEFENDANT AT SHERIFF'S OFFICE, 1 N. 2ND ST., SUITE 116, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO STEVEN CONDO, SUPERVISOR A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: SNYDER /

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	MCDONALD	1248	10.00
SHERIFF HAWKINS	MCDONALD	1248	32.02

Sworn to Before Me This

____ Day of _____ 2007

So Answers,

Chester A. Hawkins
by Marilyn Baker
Chester A. Hawkins
Sheriff