

FOURTH AMENDMENT TO WATER SERVICE AREA AGREEMENT

This Fourth Amendment to Water Service Area Agreement (the "Fourth Amendment"), made and entered into this 12th day of December 2012, by and between the Board of County Commissioners of Frederick County, a body politic and corporate of the State of Maryland (herein after, the "County") and the Town of New Market, Maryland, a body politic and corporate of the State of Maryland (hereinafter, the "Town").

RECITALS

WHEREAS, the County and the Town entered into a Water Service Area Agreement, dated April 29, 2003 ("Original WSAA"), and the First Amendment to Water Service Agreement, dated November 25, 2003 ("First Amendment"), for the purpose of obtaining a County water supply for the properties located within the municipal boundary of the Town (hereinafter, "Municipal Limits").

WHEREAS, the County and the Town entered into the Second Amendment to Water Service Area Agreement, dated May 5, 2005, ("Second Amendment") to allocate a total of 120 additional water and sewer taps to the Town, and to expand the area to be served under the WSAA by the addition of newly annexed property owned by Seawright Corporation.

WHEREAS, the County and the Town entered into the Third Amendment to Water Service Area Agreement, dated July 29, 2009 ("Third Amendment") to clarify what wastewater infrastructure improvements must be completed before additional wastewater capacity, beyond that reserved for the Town, can be allocated to properties within the WSAA service area. The Third Amendment also modified the date by which owners of existing structures may elect to pay water capacity fees over a Ten (10) year period and it established a revised capacity Allocation Schedule.

WHEREAS, the County's Division of Utilities and Solid Waste Management (DUSWM) has completed a capacity analysis of the existing New Market Wastewater Treatment Plant, and the analysis indicates that up to 61 additional sewer taps, beyond the taps reserved to the Town and/or under separate Multi-year Tap Agreements (MYTA) for Royal Oaks and Marley Gate (AKA Brinkley Manor), are available to be set aside for use within the Town of New Market from the New Market WWTP.

WHEREAS, upon the execution of this Fourth Amendment to the WSAA, twenty two (22) sewer taps used by the New Market Elementary School and the New Market Fire Company fire station shall be allocated from the County's public facilities reserve capacity and seven (7) sewer taps used for the New Market Professional Center shall be reallocated from capacity provided by the County's Monrovia WWTP.

WHEREAS, complementing water system capacity (for the 61 additional sewer taps) is available as a result of the completion of the County's Potomac River water transmission line and expansion of the New Design Road Water Treatment Plant (WTP).

WHEREAS, water and sewer taps that are set aside for the Town by the County under the WSAA and the amendments thereto, are not secured and therefore not allocated to the Town or individual properties within the Town until the DUSWM receives payment for the taps. The County shall maintain this tap set aside for the Town until all of the set aside taps have been allocated by the DUSWM to specific properties within the Town or until the sewer system infrastructure improvements detailed in Paragraph 9 of the original WSAA have been completed and placed into operation.

WHEREAS, once the infrastructure improvements detailed in Paragraph 9 of the original WSAA have been completed and placed into operation, water and sewer taps (system capacity) shall be provided to properties within the Town's Municipal Limits by the County on a first come first served basis, or as provided under the then-current Water and Sewer Rules and Regulations. This includes water and sewer taps referred to as "Future" taps in Table 1 of the Third Amendment to the WSAA.

WHEREAS, the parties want to further modify the WSAA to reconcile certain capacity allocation issues, increase the amount of water and wastewater capacity set aside for the Town, and to clarify the process and authority under which the County water and sewer capacity allocations, under the WSAA, are made to properties within the Town's Municipal Limits.

Now therefore, the parties agree as follows:

1. Paragraph 1 relating to the Allocation Schedule of the Third Amendment shall be of no further force or effect and is hereby rescinded and replaced with the following:

Water and Sewer Tap Set aside: The County through the execution of the Original WSAA and subsequent amendments, including this Fourth Amendment, set aside a total of 681 water and sewer taps for use within the Town's Municipal Limits. The sewer taps included in this set aside rely on a sewage treatment capacity provided by the County's New Market and Monrovia WWTPs. Complementing water system capacity is available as a result of the completion of the County's Potomac River water transmission line and expansion of the New Design Road Water Treatment Plant (WTP). All of the 225 water and sewer taps for the Royal Oaks and Marley Gate subdivisions within the Town have been purchased under their respective MYTAs. Therefore Taps designated in Table 1(4th Amendment) below for the Town of New Market include water taps to serve properties presently provided with public sewer service, which have not yet connected to the County's water system, and for additional development/ increased capacity needs of existing properties located within the Town that are tributary to the New Market WWTP. The properties provided with public sewer service when the Original Agreement was executed in April 2003 are set

forth in Exhibit B of the Original Agreement. Water taps reserved for these properties may not be used for other parcels or for new development. Development of new properties within the Town shall rely on infrastructure extensions of Frederick County's water and sewer systems; individual well and septic systems shall not be permitted.

Table 1- (4th Amendment)								
	Total Water and Sewer Taps		Town of New Market (Not Under MYTA)		Royal Oaks (Under MYTA)		Marley Gate (Under MYTA)	
	Water	Sewer	Water	Sewer	Water	Sewer	Water	Sewer
	Taps	Taps	Taps	Taps	Taps	Taps	Taps	Taps
Original	500	500	275	275	120	120	105	105
2 nd Amendment	120	120	120	120	0	0	0	0
3 rd Amendment	0	0	0	0	0	0	0	0
Totals	620	620	395	395	120	120	105	105
4th Amendment Reservations	61	61	61	61	0	0	0	0
Total Allocated or Reserved	681	681	456	456	120	120	105	105

The Allocation Schedule shown in the Third Amendment to WSAA is modified as provided in Table 1-(4th Amendment) of this Fourth Amendment.

- Paragraph 10 of the Original Agreement is amended as follows. The original language remains in full force and effect and the following additional language is added:

The formal action of allocating capacity from the County's water and sewer systems, including capacity provided for under this WSAA, is solely under the purview and authority of the County and specifically the DUSWM. The Town is not authorized to allocate water and sewer capacity under this Agreement. The process which the Town shall follow to request the DUSWM to allocate water and sewer capacity to existing and future properties located within the Town is detailed below. Any deviation from this process shall be considered a material breach of the WSAA and shall result in the loss of any remaining, unallocated water and sewer capacity set aside under the WSAA, as amended. These procedures are necessary to ensure that the DUSWM is complying with the provisions of the Environment Article §9-512 of Annotated Code of Maryland and §1-16-106 of the Frederick County Subdivision Regulations.

- a. Before the Town makes any formal commitments regarding the provision of water and sewer capacity to any properties located within the Municipal Limits, including existing structures that require additional capacity due to a change in use or expansion, the Town shall submit a formal request to the DUSWM for water and sewer capacity, in a form approved by the DUSWM. A request shall be submitted for each individual property or subdivision.
- b. After receiving the request, the DUSWM shall evaluate the remaining capacity available under the WSAA and provide the Town with a written response that provides a tentative determination of the available capacity.
- c. The Town may use the information in the tentative determination to have additional communication or negotiation with the owners or representatives of the subject properties for which the capacity is being requested.
- d. After reviewing the tentative determination of capacity provided by the DUSWM and finalizing their decision on the potential use of the capacity, the Town shall formally request the DUSWM to reserve capacity for the subject property, or the Town shall notify the DUSWM in writing that they have rescinded the request.
- e. If the Town formally requests the reservation of capacity for a subject property, the request shall remain in effect until the capacity is purchased, until the Town formally requests the DUSWM to rescind the reservation, or until two years from the date the County received the formal reservation request from the Town, whichever occurs first. If a request is rescinded or the two year period lapses, the water and sewer capacity related to the request shall be considered available and may be used for any future capacity reservation request.
- f. The Town shall not enter into any agreements with property owners regarding the allocation of water and sewer taps without the express (prior) written approval of the County.
- g. The approval of subdivisions within the Town and the issuance of building permits shall require the approval of the DUSWM to ensure compliance with §9-512 of the Environmental Article and §1-16-106 of the County's Subdivision Regulations. The DUSWM's approval of the recordation of plats within the Town shall be contingent upon the payment of water and sewer capacity fees for the subject property. In the case of non-residential properties, for which exact fixture unit values are not yet known, the property shall be required to purchase a minimum of two water and sewer taps.
- h. If the Town fails to seek and obtain the DUSWM's approval for subdivision plats or if the Town withdraws its authorization for the DUSWM to be an approving agency on any building permits for properties that are within the Town's Municipal Limits, either of these actions shall be considered a material breach of the WSAA, resulting in the immediate loss of any remaining water and sewer capacity provided by this Agreement. For certain subdivision plats, which do not require or impact water and/or sewer system capacity, the Town may, with the DUSWM's consent, develop procedures for the approval of such subdivision plats, without the need to obtain DUSWM approval for each such subdivision plat.
- i. Water and sewer allocations are not finalized until all required (then-current) capacity fees have been paid to the DUSWM at which point they cannot be unallocated.

3. Paragraph 13 of the Original Agreement is amended as follows. The original language remains in full force and effect and the following additional language is added:

Properties in areas of the Town that do not rely on the New Market WWTP for sewage disposal capacity and are properly classified in the County Water and Sewerage Plan, may obtain water and sewer capacity beyond the capacity provided for in this WSAA directly from the County, under separate agreements between the County and the Town. This additional water and sewer capacity will be allocated by the County, subject to the requirements of the County Water and Sewerage Plan, the Water and Sewer Rules and Regulations, §9-512 of the Environment Article of the Annotated Code of Maryland, and §1-16-106 of the Frederick County Subdivision Regulations.

4. The recitals set forth above are incorporated herein by reference as a material part of this Fourth Amendment.

5. This Fourth Amendment contains the entire understanding of the parties and no amendments or modifications hereto shall be effective unless in writing signed by both parties. In the event of any conflict between the terms of this Fourth Amendment and any provision of the WSAA, the terms of this Fourth Amendment shall control.

6. Except as modified by the First, Second, Third, and Fourth Amendments, all other terms of the WSAA remain in full force and effect.

WITNESS the execution of this Fourth Amendment, as of the day and year set forth above.

WITNESS:

BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MARYLAND

DT Smith

By: Blaine R. Young
Blaine R. Young, President

Kam
12/13/12

TOWN OF NEW MARKET, MARYLAND

Burhan

By: Winslow Burhan
Winslow Burhan, Mayor