

Introduced _____
Public Hearing _____
Council Action _____
Executive Action _____
Effective Date _____

County Council Of Howard County, Maryland

2009 Legislative Session

Legislative Day No. **8**

Bill No. **40** -2009

Introduced by: The Chairperson at the request of the County Executive

AN ACT pursuant to Section 612 of the Howard County Charter, approving a Second Addendum to an Agreement between Howard County, Maryland and the Washington Suburban Sanitary Commission for the purchase of potable water.

Introduced and read first time _____, 2009. Ordered posted and hearing scheduled.

By order _____
Stephen LeGendre, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on _____, 2009.

By order _____
Stephen LeGendre, Administrator

This Bill was read the third time on _____, 2009 and Passed ____, Passed with amendments ____, Failed ____.

By order _____
Stephen LeGendre, Administrator

Sealed with the County Seal and presented to the County Executive for approval this ____ day of _____, 2009 at ____ a.m./p.m.

By order _____
Stephen LeGendre, Administrator

Approved/Vetoed by the County Executive _____, 2009

Ken Ulman, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment

1 **WHEREAS**, Howard County, Maryland (the “County”) and the Washington Suburban
2 Sanitary Commission (“WSSC”) entered into an Agreement dated June 16, 1988 (the
3 “Agreement”), a copy of which is attached as Exhibit A, for the purpose of extending water
4 supply mains and constructing appurtenant works for furnishing water from the WSSC water
5 distribution system to Howard County; and
6

7 **WHEREAS**, the Agreement was approved as a multi-year fiscal obligation under Section
8 612 of the Howard County Charter by passage of Council Bill No. 27-1988; and
9

10 **WHEREAS**, under the Agreement, WSSC agreed to furnish the County with up to 5
11 million gallons of potable water per day; and
12

13 **WHEREAS**, the County has not purchased its full allotment due to the higher cost of
14 WSSC’s water when compared to the cost of Baltimore City’s water, the County’s other main
15 water supplier; and
16

17 **WHEREAS**, pursuant to a First Addendum to the Agreement, dated October 6, 2008, the
18 County conducted a pilot program for a period of 6 months, during which time the County tested
19 the capacity of equipment and facilities to determine what portion of its current water allotment
20 the County could guarantee to use on a daily basis; and
21

22 **WHEREAS**, also during the 6-month pilot program, WSSC charged the County the same
23 wholesale service rate that Baltimore City charges the County; and
24

25 **WHEREAS**, the County and WSSC now wish to enter into a Second Addendum to
26 Agreement for a term of 5 years (the “Second Addendum”) where the County will agree to
27 purchase a minimum of 2.5 million gallons of water per day and no more than 5 million gallons
28 of water per day; and
29

1 **WHEREAS**, WSSC will agree to charge the County a billing rate that is equal to the rate
2 charged by Baltimore City to the County, beginning at \$1,304.80 per million gallons; and
3

4 **WHEREAS**, the Second Addendum requires the payment of funds from appropriations
5 in later fiscal years and therefore requires County Council approval as a multi-year agreement
6 pursuant to Section 612 of the Howard County Charter.
7

8 **NOW, THEREFORE,**
9

10 ***Section 1. Be It Enacted** by the County Council of Howard County, Maryland that in*
11 *accordance with Section 612 of the Howard County Charter, it approves the Second Addendum*
12 *to Agreement between Howard County and the Washington Suburban Sanitary Commission,*
13 *substantially in the form set forth in Exhibit B attached to this Act.*
14

15 ***Section 2. And Be It Further Enacted** by the County Council of Howard County, Maryland that*
16 *the County Executive is hereby authorized to execute the Second Addendum to Agreement in the*
17 *name of and on behalf of the County.*
18

19 ***Section 3. And Be It Further Enacted** by the County Council of Howard County, Maryland that*
20 *this Act shall be effective immediately upon its enactment.*

WSSC - Howard County
1988 Water Agreement

AGREEMENT

THIS AGREEMENT, made this 16 day of June, 1988, by and between the Washington Suburban Sanitary Commission, hereinafter referred to as WSSC; and Howard County, Maryland, a body corporate and politic of the State of Maryland, hereinafter referred to as HOWARD COUNTY.

WHEREAS, the General Assembly of the State of Maryland has established through Legislative Acts, as specified in the Annotated Code of Maryland, Article 29, Title 15, that WSSC may enter into any contract or agreement with the HOWARD COUNTY Department of Public Works to furnish water to HOWARD COUNTY; and

WHEREAS, WSSC and HOWARD COUNTY entered into an agreement dated October 25, 1954, hereinafter referred to as the "1954 Agreement", for the purpose of extending water supply mains and constructing appurtenant works for furnishing water from the WSSC water distribution system to HOWARD COUNTY; and

WHEREAS, both WSSC and HOWARD COUNTY constructed water supply mains and appurtenant works described in the 1954 Agreement; and

WHEREAS, under the terms of the 1954 Agreement, WSSC was to maintain and operate those portions of the water system of HOWARD COUNTY which were supplied from the water system to WSSC; and

WHEREAS, under the terms of the 1954 Agreement, WSSC agreed to furnish HOWARD COUNTY not more than 2.5 million gallons of potable water per day, and HOWARD COUNTY desires to increase this daily flow limitation to accommodate future water demands in HOWARD COUNTY; and

WHEREAS, there have been substantial changes in responsibilities for construction, operation, and maintenance of the portion of HOWARD COUNTY'S water system which is supplied by the WSSC water system, thus rendering the 1954 Agreement obsolete.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH; that in consideration of the covenants, agreements, and payments set forth herein, it is mutually covenanted and agreed as follows:

ARTICLE I - DEFINITION

1. "Party or Parties" shall mean WSSC and/or HOWARD COUNTY, as appropriate, each being a signatory to this Agreement.
2. "Capital Costs" is the net cost involved in the construction of a water supply facility and shall include, but not be limited to, the sum of the following items: Land and/or easements; consultants' fees including those for design and inspection; material; labor; utility relocations; overhead which may include a proportionate allocation of in-house costs associated with design, field engineering, surveys, borings, materials testing, maps and records maintenance, inspection, right-of-way expenses, advertising, administrative services, clerical services, stenographic services, office space use and building operation and maintenance; and all other contributing costs or expenses. Capital cost does not include operation and maintenance costs incurred after the completion and final acceptance of the facility.
3. "12-Inch Water Main" is the proposed 12-inch diameter water main located along Montgomery Street in Laurel from Eleventh Street to Woodview Terrace, a distance of approximately 1,230 linear feet. The general location of this main is shown on the attached map included as Attachment No. 1 to this Agreement.
4. "Public Water System" is the system of water lines, storage tanks, pumping stations and other appurtenant structures for the purpose of distributing potable water to the public.
5. "Maximum Daily Rate" is the maximum volume of water which passes through the interconnection between consecutive midnights.

ARTICLE II - DESIGN, CONSTRUCTION, INSPECTION AND FUNDING OF IMPROVEMENT TO THE WSSC WATER SYSTEM REQUESTED BY HOWARD COUNTY

1. The WSSC shall proceed with design and construction of the 12-inch water main on a schedule to be coordinated with the City of Laurel. The capital cost of the 12-inch water main shall be paid by HOWARD COUNTY.

2. HOWARD COUNTY agrees to advance funds to WSSC equal to 25% of the estimated capital cost of the 12-inch water main. HOWARD COUNTY shall advance these funds prior to the acceptance of construction bids by WSSC. The estimated capital cost is \$80,000.
3. The WSSC shall submit billings and provide updates of the estimated total cost at the following stages of project completion; 25%, 50%, and 75%.
4. WSSC shall, upon completion of construction of the 12-inch water main, prepare a final billing of the total actual capital costs, less the funds previously advanced by HOWARD COUNTY. HOWARD COUNTY shall, upon receipt of the final accounting and final billing from WSSC, pay any balance due for the capital cost. HOWARD COUNTY shall have the right, prior to payment of the final billing, to independently review the statements and accounts of WSSC related to the construction of the 12-inch water main. The review or audit shall be made at the expense of HOWARD COUNTY and shall be made available to WSSC upon completion.
5. HOWARD COUNTY shall make complete payments for all billings within 30 days of receipt.
6. The 12-inch water main shall be designed, constructed and tested in accordance with the applicable codes, rules and regulations of WSSC.
7. HOWARD COUNTY shall have the right to review reports, plans, specifications and bids for the construction of the 12-inch water transmission main. Said documents, including significant revisions, shall not be approved without the consent of HOWARD COUNTY. Any costs incurred for said review shall be borne exclusively by HOWARD COUNTY. The 12-inch water transmission main shall be constructed in accordance with the approved plans and specifications.

ARTICLE III - OWNERSHIP AND MAINTENANCE RESPONSIBILITY

1. WSSC shall own the 12-inch water main constructed under the terms of this Agreement. HOWARD COUNTY shall own all portions of the public water system located in HOWARD COUNTY which are necessary to transport water supplied to HOWARD COUNTY by WSSC. HOWARD COUNTY shall expand and

improve the public water system in HOWARD COUNTY at no cost to WSSC, and in accordance with the applicable codes, rules, and regulations of HOWARD COUNTY.

2. WSSC shall be responsible for and shall supervise the operation and maintenance of the public water system located within the Washington Suburban Sanitary District. In addition, WSSC shall be responsible for and shall supervise the operation and maintenance of the metering facilities located on Summit Avenue in HOWARD COUNTY near the HOWARD COUNTY boundary. Should it become necessary for WSSC to replace the existing meter or related equipment, the replacement meter or equipment shall be approved by HOWARD COUNTY, prior to installation. In the event of failure of the meter or related equipment, WSSC will proceed as promptly as possible with repairs. WSSC shall operate and maintain the public water system in the Washington Suburban Sanitary District, and the metering facilities located in HOWARD COUNTY, at no cost to HOWARD COUNTY other than those costs described in Article IV below.
3. HOWARD COUNTY shall be responsible for and shall supervise the operation and maintenance of the public water system located within HOWARD COUNTY. HOWARD COUNTY shall operate and maintain the public water system in HOWARD COUNTY at no cost to WSSC.

ARTICLE IV - WATER SUPPLY LIMITATIONS & PAYMENT FOR WATER FURNISHED

1. WSSC agrees to furnish potable water to HOWARD COUNTY through the connection between the public water systems of WSSC and HOWARD COUNTY as identified on Attachment No. 1 to this Agreement. Potable water shall be furnished at a maximum daily rate not to exceed 5.0 million gallons per day. The maximum daily rate will be supplied to the interconnection at a minimum hydraulic grade of 330 feet under normal operating conditions. The WSSC will be responsible for identifying and resolving conditions under which the minimum hydraulic grade cannot be maintained. If maintaining the minimum hydraulic grade requires construction of additional water system facilities, the parties will enter into an agreement for sharing the cost of those facilities. HOWARD COUNTY will

be responsible for ensuring that the peak instantaneous flow through the interconnection does not exceed the maximum daily rate, except for a margin attributable to the vagaries of pump operation.

2. HOWARD COUNTY will be responsible for the installation and maintenance of devices which provide effective back flow prevention for the interconnection.
3. In the event of a water supply emergency in the WSSC system, the WSSC may request that Howard County provide a reverse supply through the interconnection at a rate to be determined by Howard County. The WSSC will provide payment for such water in a manner identical to the payments made by Howard County for WSSC water.
4. HOWARD COUNTY shall purchase the potable water supplied by WSSC. The rate of payment shall reflect the cost incurred by WSSC to provide potable water to HOWARD COUNTY, exclusive of costs such as those for meter maintenance, meter reading, and customer billing which are not incurred by WSSC in supplying water to HOWARD COUNTY. The rate of payment will initially be seventy percent (70%) of the prevailing rate WSSC charges a customer having an average daily consumption of 240 gallons. The rate of payment shall be reviewed every five years by the WSSC and shall be adjusted as necessary to conform with the terms of this Agreement. HOWARD COUNTY shall have the right to review or audit the statements and accounts of WSSC related to the setting of the rate of payment. Such a review or audit shall be made at the expense of HOWARD COUNTY and shall be made available to WSSC upon completion.
5. HOWARD COUNTY shall make monthly payments to the WSSC based on the volume of water furnished to HOWARD COUNTY as recorded by the Summit Avenue water meter. WSSC shall bill HOWARD COUNTY monthly, indicating the amount due and the volume of water used. In the absence of an accurate meter reading, the volume of water furnished to HOWARD COUNTY shall be estimated based on previous meter readings.

ARTICLE V - FUTURE ADDITIONAL INTERCONNECTIONS

1. HOWARD COUNTY intends to request additional interconnections with the WSSC in the future. The total supply requested by HOWARD COUNTY from the WSSC may increase to 10 mgd or more. The WSSC will review any such requests according to the precedents established for this Agreement and any appropriate additional considerations.
2. Both parties shall explore, and if mutually agreeable, proceed with projects which provide the ability for increased emergency supply of water to either jurisdiction.

ARTICLE VI - RIGHTS AND LIMITATIONS

1. Nothing in this Agreement shall limit or abrogate any right or rights of any party to enter into other separate agreements for the planning, design and construction of water supply facilities providing such separate agreements do not conflict with this agreement.
2. Nothing contained in this Agreement shall limit or abrogate any right or rights delegated to each party by Acts of the General Assembly of the State of Maryland.
3. Nothing contained in this Agreement shall be construed to abridge or restrict the police, legislative or governmental powers of any party to this agreement.
4. Each party shall recognize all rights and privileges acquired by another party through the acquisition of property and/or rights-of-way.
5. The Agreement dated October 25, 1954 between WSSC and HOWARD COUNTY is hereby replaced by this Agreement.
6. The terms and conditions provided for this Agreement shall continue in full force and effect until the parties amend this Agreement or execute a new replacement agreement.
7. WSSC shall not be responsible for its inability to furnish water to HOWARD COUNTY as provided in this agreement due to an emergency arising from a break in WSSC's public water system or other emergency condition. In such event, however, WSSC will take whatever action may be necessary to restore service as promptly as possible.

8. Should it become necessary for WSSC to impose water use restrictions within the Washington Suburban Sanitary District, the amount of water furnished under this Agreement may be reduced as applicable to other WSSC customers.

ARTICLE VII - AMENDMENT OF THE AGREEMENT

1. Any increases above the maximum daily rate of 5.0 million gallons per day to HOWARD COUNTY or to provide for increased emergency supply of water to either jurisdiction shall be by amendment to this Agreement.

IN WITNESS WHEREOF, the parties hereto have properly executed this Agreement, as of the day, month, and year first above written.

ATTEST:

WASHINGTON SUBURBAN SANITARY COMMISSION

Timothy D. Firrell

By: Richard Stinson
General Manager

ATTEST:

William E. Eakle By: Elizabeth Bolso
County Executive

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

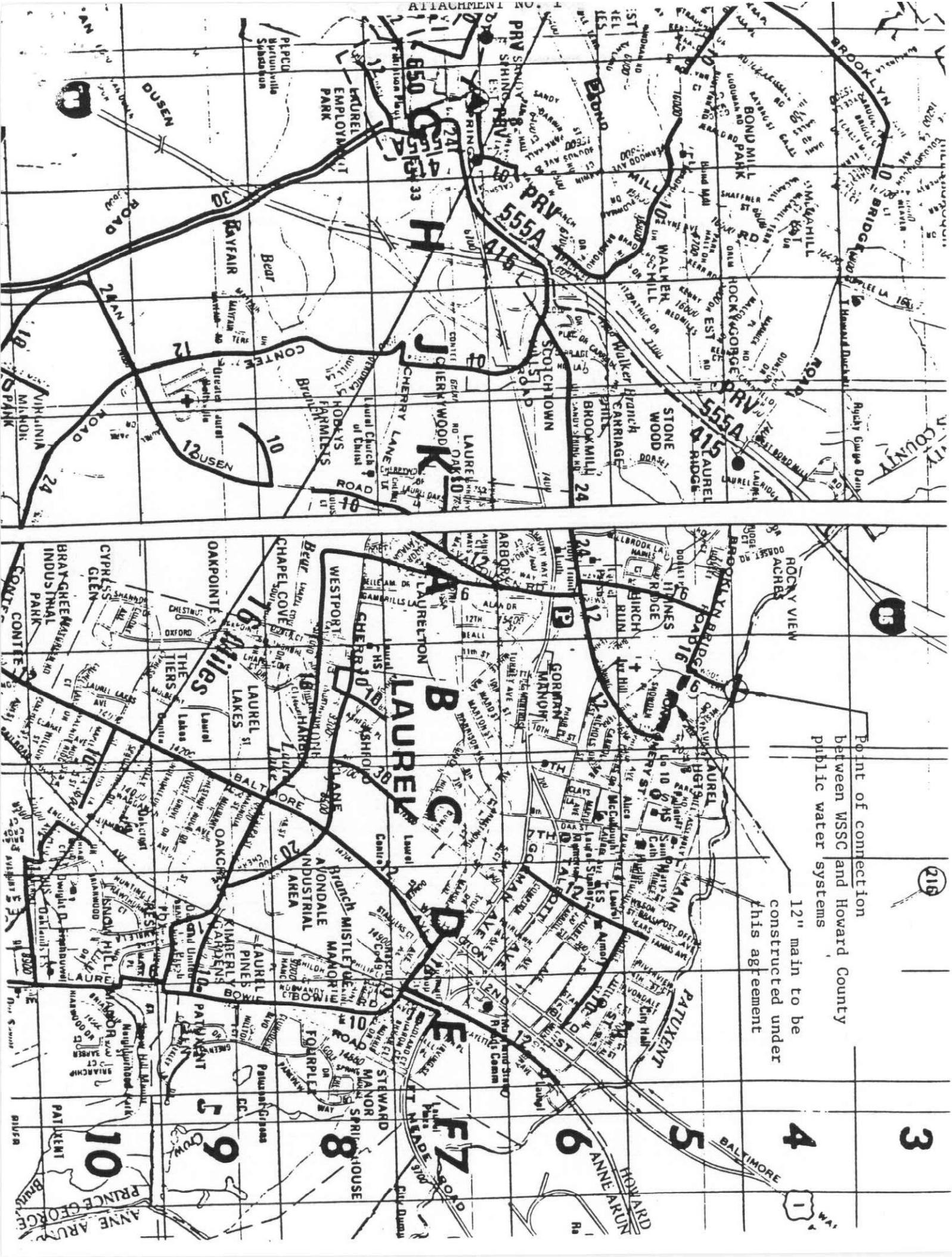
Approved:

Barbara M. Cook 6/15/88
County Solicitor

James H. Lewis 2/14/88
Director of Public Works

Point of connection between WSSC and Howard County public water systems
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12" main to be
constructed under
this agreement



SECOND ADDENDUM TO AGREEMENT

THIS SECOND ADDENDUM (the "Second Addendum") is made this ____ day of _____, 2009, by and between the Washington Suburban Sanitary Commission, hereinafter referred to as "WSSC", and Howard County, Maryland, a body corporate and politic of the State of Maryland, hereinafter referred to as "HOWARD COUNTY".

WHEREAS, WSSC and HOWARD COUNTY entered into an agreement dated June 16, 1988 (the "Agreement") for the purpose of extending water supply mains and constructing appurtenant works for furnishing water from the WSSC water distribution system to HOWARD COUNTY; and

WHEREAS, under the terms of the Agreement, WSSC agreed to furnish HOWARD COUNTY with up to 5.0 million gallons of potable water per day, but HOWARD COUNTY has not been purchasing its full allotment due to the higher cost of WSSC's water compared to that of HOWARD COUNTY'S other main supplier, Baltimore City; and

WHEREAS, pursuant to an addendum to the Agreement, dated October 6, 2008 (the "First Addendum"), HOWARD COUNTY conducted a pilot program for a period of six months, during which time it tested the capacity of its current equipment and facilities to determine what portion of its current allotment it could guarantee to utilize on a daily basis. During this pilot period, WSSC charged HOWARD COUNTY the same wholesale service rate that HOWARD COUNTY pays to Baltimore City; and

WHEREAS, HOWARD COUNTY will agree herein to purchase a Minimum Daily Rate (defined below), if WSSC agrees to charge a billing rate for the water that is comparable to that of Baltimore City's billing rate.

NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set forth herein, the parties agree that the Agreement is amended as follows:

1. All capitalized terms not defined herein shall have the same meaning ascribed to them in the Agreement.
2. The Agreement hereby is amended as follows:
 - a. The First Addendum is superseded by this Second Addendum.
 - b. Section 1 of Article IV of the Agreement is amended by deleting the second and third sentences in said section and inserting the following sentences in their place:

For each full day that WSSC furnishes water, HOWARD COUNTY shall purchase a minimum of 2.5 million gallons per day (the "Minimum Daily Rate"), regardless of its actual draw, but will purchase no greater than the 5.0 million gallons Maximum Daily Rate established in the Agreement. The "Minimum Daily Rate" will be calculated as a monthly daily average beginning at midnight of the 1st day of the month and ending at midnight of the last day of the month. HOWARD COUNTY shall not be required to purchase any minimum amount of water for any day that (i)

WSSC furnishes water for less than a full day, or (ii) WSSC provides a restricted water supply at any time during the same period of time, or (iii) WSSC and HOWARD COUNTY mutually agree to waive the minimum purchase. In such event, the Minimum Daily Rate for that month shall be adjusted by eliminating that day. WSSC shall supply daily at the least the Minimum Daily Rate and all water shall be supplied to the interconnections at a minimum hydraulic grade of 330 feet under normal operating conditions.

c. Section 4 of Article IV of the Agreement is deleted in its entirety and replaced by the following paragraph:

WSSC agrees to set its current billing rate for all potable water supplied to HOWARD COUNTY at the "Wholesale Service Rate" charged HOWARD COUNTY by Baltimore City for each billing period, beginning at \$1304.80 per million gallons. HOWARD COUNTY agrees to promptly notify WSSC of any changes in Baltimore City's billing rate and, annually on June 30, provide certification to WSSC of the current Baltimore City rate. All such changes in Baltimore City's billing rate will be applied retroactively to WSSC's billing rate as of the date of the Baltimore City rate change. HOWARD COUNTY shall have the right to review and audit the statements and accounts of WSSC related to the supply of and billing for the potable water. Such a review or audit shall be made at the expense of HOWARD COUNTY and shall be made available to WSSC upon completion. WSSC shall have the right to review and audit the statements and accounts of HOWARD COUNTY related to the supply of and billing for the potable water, and such a review or audit shall be made at the expense of WSSC and made available to HOWARD COUNTY upon completion.

3. These changes shall be effective as of April 1, 2009. The parties agree to review the Minimum Daily Rate, Maximum Daily Rate and billing rate at least once every five years, or earlier upon request of either party. Any further amendments to the Agreement, as amended hereby, shall be in writing and only effective if signed by all of the parties.

4. All terms and conditions of the Agreement not modified hereby are ratified and confirmed.

IN WITNESS WHEREOF, the parties hereto have properly executed this Agreement, as of the date first above written.

**WASHINGTON SUBURBAN
SANITARY COMMISSION**

**Approved As To Form and
Legal Sufficiency:**

Approval Recommended:

Laura Swisher
Associate Counsel II

Thomas Traber
Chief Financial Officer

[Signatures continue on next page.]

ATTEST:

Approved:

Teresa D. Daniell
Interim General Manager

WITNESS/ATTEST:

HOWARD COUNTY, MARYLAND

Lonnie R. Robbins
Chief Administrative Officer

BY: _____ (SEAL)
Ken Ulman
County Executive

APPROVED:

James M. Irvin, Director
Department of Public Works

APPROVED FOR SUFFICIENCY OF FUNDS:

Sharon F. Greisz, Director
Department of Finance

APPROVED FOR FORM AND LEGAL SUFFICIENCY
this _____ day of _____, 2009:

Margaret Ann Nolan
County Solicitor