

AMENDMENT # 1
TO THE GRANT AGREEMENT BETWEEN
THE MARYLAND DEPARTMENT OF THE ENVIRONMENT
AND QUEEN ANNE'S COUNTY
REGARDING

ENTITIES CONNECTING SEPTIC SYSTEMS LOCATED OUTSIDE THE COUNTY PRIORITY FUNDING AREA TO A WASTEWATER FACILITY USING BAY RESTORATION FUND SEPTIC REVENUES

WHEREAS, the Maryland Department of the Environment (the "Department"), the Maryland Water Quality Financing Administration (the "Administration") and the County Commissioners of Queen Anne's County (the "County") entered into a Grant Agreement, dated October 1, 2014 (the "Agreement"), pursuant to which the Department, by and through the Administration, agreed to provide grant funding to the County to finance the connection of certain septic systems located in Queen Anne's County, Maryland to the Kent Narrows Stevensville and Grasonville wastewater treatment plant; and

WHEREAS, the Department, the Administration and the County wish to amend the Agreement as provided herein to increase the amount of grant funding available under the Agreement and to extend the term of the Agreement.

THEREFORE, in consideration of the foregoing and the mutual promises and covenants contained herein, the Department, the Administration and the County hereby agree as follows:

1. The Agreement is hereby amended as follows:

A. The first sentence of SECTION I.4 of the Agreement is deleted and replaced with the following:

I.4 The County agrees to use an amount not to exceed Fifteen Million Two Hundred and Sixty Thousand Dollars (\$15,260,000) of grant funds to be given to the County by the Administration over a period of up to 50 years to be used to connect a maximum of 1,518 existing homes and 8 existing non-residential properties, that were in existence and on septic systems as of October 1, 2008, to the SKI sewerage system that will be connected to the KN/S/G wastewater treatment plant, at a maximum amount of \$10,000 per connection per home/per property.

B. SECTION II.2 of the Agreement is deleted in its entirety and replaced with the following:

II.2. Subject to State budget appropriation and approvals, the Administration will provide the eligible costs of the Project not to exceed Fifteen Million Two Hundred and Sixty Thousand Dollars (\$15,260,000). To facilitate this funding, the Administration shall provide annual grants to the County at no less than the present levels of 6.7% of the annual BRF septic fee appropriation to be given over a period of fifty (50) years.

C. The first sentence of SECTION IV.1 of the Agreement is deleted and replaced with the following:

IV.1 This agreement is valid for a period of 50 years, starting September 23, 2014, and terminating on September 22, 2064.

2. All other terms and conditions of the Agreement shall remain unchanged and in full force and effect.

3. This Amendment #1 shall be effective on the date that it is signed by the Department.

IN WITNESS WHEREOF, the parties have executed this Amendment #1 to the Agreement by causing the same to be signed by their duly authorized officials.

ATTEST:

Jerry R. Kanner
WITNESS

MARYLAND DEPARTMENT OF THE ENVIRONMENT

Terri Wilson
Terri Wilson, Director, Office of Budget and Financing

9/23/14
DATE

MARYLAND WATER QUALITY FINANCING
ADMINISTRATION

Jerry R. Kanner
WITNESS

Jag Khuman
Jag Khuman, Director

9/22/16
DATE

COUNTY COMMISSIONERS OF QUEEN ANNE'S COUNTY

ATTEST:

Margie Houck
WITNESS

Mark A. Anderson

Mark A. Anderson, President

Robert Charles Buckey, Vice President

James J. Moran

James J. Moran

Jack N. Wilson
Jack N. Wilson

Stephen Wilson

9/13/16

DATE

**MARYLAND DEPARTMENT OF THE ENVIRONMENT
AND
QUEEN ANNE'S COUNTY**

**GRANT AGREEMENT FOR ENTITIES CONNECTING SEPTIC SYSTEMS LOCATED
OUTSIDE THE COUNTY PRIORITY FUNDING AREA TO A WASTEWATER FACILITY
USING BAY RESTORATION FUND SEPTIC REVENUES**

To help achieve Maryland's nutrient loading goals for the Chesapeake Bay, the Maryland Department of the Environment (the "Department") is providing financial assistance in the form of grants to undertake additional nitrogen reduction from septic systems that contribute nutrient loading to the Chesapeake Bay.

In accordance with the Bay Restoration Fund ("BRF") Act codified at 9-1605.2 of the Environment Article of the Annotated Code of Maryland, the Maryland Water Quality Financing Administration, a unit of the Maryland Department of the Environment (the "Administration") can provide a grant or grants from certain Bay Restoration Fees to an entity, under certain conditions, for construction of a sewerage system to connect existing septic systems to a wastewater treatment plant achieving biological nutrient removal ("BNR") or enhanced nutrient removal ("ENR") level treatment.

To further the purpose of the Act, enhance nitrogen reduction and address public health concerns, the Department by and through the Administration, desires to provide funding for a Project (hereinafter defined) to secure the connection of One Thousand Five Hundred and Eighteen (1,518) existing homes and eight (8) existing non-residential properties on South Kent Island (the "Project") now generally served by failing septic systems to a planned Southern Kent Island Sewage System ("SKI system") that will transport sewage effluent to the County's existing Kent Narrow Stevensville and Grasonville (KN/S/G) wastewater treatment plant ("plant") that is achieving Enhanced Nutrient Removal (ENR) treatment levels.

THEREFORE, in consideration of the foregoing and the mutual promises and covenants contained herein, the Maryland Department of the Environment, the Maryland Water Quality Financing Administration, and the County Commissioners of Queen Anne's County hereby agree as follows:

OBLIGATIONS OF QUEEN ANNE'S COUNTY

I.1 The County shall use the grant funds provided by the Administration and authorized for the Project solely for eligible costs of financing the connection of certain approved existing homes and existing non-residential properties to the Southern Kent Island sewerage system ("SKI system") and onto the County's KN/S/G wastewater treatment plant. Eligible Project costs shall consist solely of new debt issued to construct the sewerage collection and transmission system serving the SKI service area attributable to the Project and connection fees to the County's ENR wastewater treatment plant attributable to the Project.

I.2 The County may use the grant funds authorized for the Project for the payment of principal, but not interest, of debt issued by the County for the eligible Project costs.

I.3 So as not to unduly impede access to funding for other systems in the County, in consultation with the Department, the County shall set aside funds, from the overall annual grant it receives from the Administration each year, to be used to upgrade individual septic systems, outside of the South Kent Island service area, to best available technology.

I.4 The County agrees to use an amount not to exceed Eleven Million Eight Hundred Twenty-Six Thousand and Five Hundred Dollars (11,826,500) of grant funds to be given to the County by the Administration over a period of up to 40 years to be used to connect a maximum of 1,518 existing homes and 8 existing non-residential properties, that were in existence and on septic systems as of October 1, 2008, to the SKI sewerage system that will be connected to the KN/S/G wastewater treatment plant, at a maximum amount of \$7,750 per connection per home/per property. Cumulative grant payments cannot exceed the cumulative eligible grant amount calculated based on the total number of septic systems that have been connected to the SKI system.

I.5 The County shall secure other sources of financing and shall enter into binding financing commitments for the balance of the costs of design and construction of the Project prior to drawing down grants from the Administration.

I.6 The County shall not seek to or receive grant payments until an existing home on a septic system is connected to the SKI sewerage system and connected to the KN/S/G wastewater treatment plant (“WWTP”).

I.7 The County shall comply with all the conditions and restrictions required by the Smart Growth Coordinating Committee (“SGCC”) as part of their Priority Funding Area exception approval letter dated July 17, 2014, included herein as Appendix A and incorporated herein by reference.

I.8 The County shall not seek to or receive grant payments until the Department has approved the amendments to the County’s Comprehensive Water and Sewerage Plan, which includes the SGCC restrictions requiring denied access to all areas outside the SKI sewerage service area, limiting the maximum permitted in-fill development to 632 single family residential homes within the SKI sewerage service area, and limiting the maximum WWTP capacity allocation for the SKI sewerage service area to 500,000 gallons per day.

I.9 The County acknowledges that any violation of the conditions and restrictions of the attached Appendix A shall result in cancellation of the grant, and a repayment in full of the grant funds received by the County shall be due and payable within ninety (90) days of demand.

I.10 The County shall certify that this Project is consistent with a public health area of concern which shall be subsequently added to the County’s Comprehensive Water and Sewerage Plan.

OBLIGATIONS OF THE DEPARTMENT

II. 1. The Department and the Administration covenant and agree to use their best efforts to obtain adequate State funding for the eligible costs of the Project through legislative budget appropriations and approval from the Maryland Board of Public Works.

II.2. Subject to State budget appropriation and approvals, the Administration will provide the eligible costs of the project not to exceed Eleven Million Eight Hundred Twenty-Six Thousand and Five Hundred Dollars (\$11,826,500). To facilitate this funding, the Administration shall provide annual grants to the County at no less than the present levels of 6.7% of the annual BRF septic fee appropriation to be given over a period of forty (40) years.

GENERAL CONDITIONS

III.1 The State grant assistance provided for under this agreement is subject to the continued existence of the Bay Restoration Fee and availability of State funds and is contingent upon approval by the Maryland Board of Public Works.

III.2 The State grant assistance provided for under this agreement is limited to eligible Project costs as determined by the Department in its sole discretion.

VALIDITY OF THIS AGREEMENT

IV.1 This agreement is valid for a period of 40-years, starting September 23, 2014, and terminating on September 22, 2054. This Agreement may be amended in writing by mutual consent of the parties.

ATTEST:


WITNESS

MARYLAND DEPARTMENT OF THE ENVIRONMENT


Terri Wilson, Director, Office of Budget and Financing

10/1/14
DATE

MARYLAND WATER QUALITY FINANCING
ADMINISTRATION


Jag Khuman, Director

9/30/14
DATE

ATTEST:

Margie A. Houch
WITNESS

COUNTY COMMISSIONERS OF
QUEEN ANNE'S COUNTY

Phillip L. Dumenil
Phillip L. Dumenil, President

David L. Dunmyer
David L. Dunmyer, Vice President

David Olds
David Olds

James J. Moran
James J. Moran

Bob Simmons
Bob Simmons

9/23/14
DATE



Maryland Department of Planning

Sustainable _____ Attainable

July 17, 2014

Virginia Kearney
Deputy Director
Water Management Administration
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, MD 21230

Dear Ms. Kearney:

The Smart Growth and Neighborhood Conservation Coordinating Committee (SGCC) met on July 9, 2014, to review a request by the Maryland Department of the Environment for a Priority Funding Area (PFA) exception for a sanitary sewer project in Southern Kent Island in Queen Anne's County.

Queen Anne's County is requesting a Priority Funding Area (PFA) exception to provide public sewer to 1,518 existing homes and a maximum of 632 vacant lots on Southern Kent Island (SKI) in an area that is not in the PFA. This project will provide public sewer to nine communities on SKI bordering the Chesapeake Bay and the Eastern Bay.

The Program /Funding Source for the project includes \$ 37.4 million in State Revolving Loan (SRF) funds for four phases of construction and \$ 11.76 million in Bay Restoration Funds (BRF) to cover the WWTP fee of \$7,750 for each of the existing 1,518 homes.

MDE presented information to the SGCC that this area is of significant public health and environmental concern due to the large number of septic systems penetrating groundwater. Currently, almost all of the septic systems in the SKI service area discharge directly into groundwater and 70% are in the Critical Area, which means that they are within 1,000 feet of the Chesapeake Bay or Eastern Bay. The SKI region has a high groundwater table and soils with poor permeability. These two characteristics are unsuitable for on-site sewage disposal systems (OSDS). The high groundwater results in insufficient treatment of pathogens found in sewage. The poor surficial soil permeability limits the utilization of alternative systems that do not penetrate groundwater, such as mound systems. These site characteristics also facilitate the delivery of nitrogen to the Chesapeake Bay. In addition, most of the lots are too small for replacement OSDS systems. However, even if the lots were larger, innovative systems at this location would not

Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor

Richard Eberhart Hall, AICP, Secretary
Amanda Stakem Conn, Esq., Deputy Secretary

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eliminate the liquid component of sewage, treat pathogens, or reduce nitrogen loads adequately to alleviate the public health and environmental concerns.

The replacement of OSDS systems on SKI is not a feasible alternative according to MDE. The County's proposal to provide public sewer will overcome the site limitations of the region by segregating the sewage effluent from the high groundwater and will provide superior treatment of the effluent at the existing Kent Narrows / Stevensville / Grasonville (KNSG) wastewater treatment plant (WWTP) by eliminating pathogens as well as reducing the nitrogen loads to Enhanced Nutrient Removal (ENR) levels.

The SKI Sanitary Project proposes to serve 1,518 existing homes and a maximum of 632 vacant lots out of a potential of 1,600 vacant lots in the proposed SKI service area. As to the 632 vacant lots in the proposed SKI service area, the 2005 Opinion of the Attorney General indicates that service should generally be provided to vacant lots adjacent to a sewer line (with certain exceptions). To minimize infill while complying with the Attorney General's Opinion, the County is implementing several measures. First, the County purposely did not increase the density in the SKI area (by not designating this area as a growth area) and did not seek a PFA designation. Second, the County designed the sewer service area to exclude large blocks of vacant lots from the service area and to only include vacant lots interspersed among existing homes. Third, the County reduced the number of potential vacant lots through adoption of a Lot Consolidation Ordinance. Fourth, the County allocated a limited amount of capacity (500,000 gpd) at the KNSG WWTP to serve just the existing homes and vacant (consolidated) lots in the service area. Fifth, the County included a "denied-access" designation on the main sewer line in its draft Water & Sewer Plan to prevent additional sewer connections. Finally, the County will further acknowledge the location of the service area and the maximum number of sewer connections allowed when it signs agreements with MDE for grants. (The grant conditions considered necessary to alleviate a significant health hazard have been upheld by the Maryland courts.) Although the County proposes to serve a maximum of 632 vacant lots, the County anticipates that only 560 vacant lots will ultimately be served due to environmental site constraints and historical build-out patterns. The County's actions have thus reduced the amount of infill development in the SKI service area from a potential of 1,600 lots to a maximum of 632 lots, a reduction of almost 1,000 lots.

MDE estimates that 30,400 pounds per year of nitrogen are currently being discharged into the Bay from the SKI service area. Once connected to the KNSG wastewater treatment, MDE estimates that 13,100 pounds per year of nitrogen will be discharged from the SKI service area. This is a reduction of 17,300 pounds per year of nitrogen, which far exceeds the nitrogen reduction from alternative OSDS systems. This reduction in nitrogen loads will also help the County reach about 33 percent of its septic system goal for the Chesapeake Bay Watershed Implementation Plan (WIP).

The SKI Sanitary Project strikes a balance between solving a significant public health problem and allowing a limited amount of infill development. Almost all of the septic systems in the proposed service area are discharging untreated sewage into groundwater. Because of high groundwater, poor soil permeability and small lot sizes, the replacement of

OSDS systems on SKI is not a feasible alternative. On the other hand, the proposed SKI Sanitary Project will provide superior treatment of sewage at the KNSG wastewater treatment plant by eliminating pathogens as well as reducing the nitrogen loads to ENR levels. Given the constraints of State law concerning the provision of sewer service to vacant lots and the ability of the SKI residents to afford an effective solution to this significant public health problem, the SKI Sanitary Project is the best alternative.

The Committee voted to approve this as an exception for the provision of sewer service outside of the PFA based on the applicable criteria of the PFA law: that the project is necessary to protect public health or safety. As approved by the Committee, the PFA exception is subject to the following conditions and failure by the County to implement or comply with any one or more of these conditions may result in revocation of the approval:

1. The provision of sewer service under this PFA exception shall be limited to 1,518 existing single family homes and to no more than 632 currently vacant lots, as shown on the attached sewer service area maps. Service to the vacant lots is to be for single family residential use only. Sewer Service Area maps, clearly delineating the sewer service area boundary, shall be submitted to MDE for approval as an amendment to the county's Master Water and Sewer Plan and referenced in the county's comprehensive plan.
2. The county shall report on the status of the provision of sewer service and compliance with these conditions annually through its annual report submission to MDP. The report should include the number and location of new connections.
3. The sewerage capacity to be provided within the sewer service area as shown on the attached maps shall not exceed 500,000 gpd. Except for certain non-residential properties as discussed below, each of the lots to be served shall be assigned one EDU which shall not be transferable to another lot. This allocation of maximum capacity shall be submitted to MDE for approval as an amendment to the county's Master Water and Sewer Plan.
4. Sewer service to the Kentmorr marina property and other non-residential uses in the service area shall be allocated based upon the existing uses or to the equivalent amount of capacity should an existing use change before service is provided.
5. The project must ensure denial of access for any future connections that are not included in the project's service area. This provision must also be incorporated into the county's Master Water and Sewer Plan.
6. The county shall adopt provisions in its floodplain ordinance in conformance with the 2013 model Maryland Floodplain Ordinance, requiring all new, substantially improved, and reconstruction of substantially damaged structures as meeting or exceeding the requirements of the 2013 model Maryland Floodplain Ordinance, that are located within a mapped Special Flood Hazard Area, to be constructed with a minimum of two (2) feet of freeboard above the 100-year base flood elevation, as defined by the National Flood Insurance program.

7. Queen Anne's County, with the technical assistance of the Maryland DNR, shall more thoroughly assess climate change impact vulnerability and outline specific strategies for enhancing resilience to the impacts of climate change (i.e., sea level rise, coastal storm surge, drought, and extreme precipitation related events).

Additionally, though not a condition of approval, Queen Anne's County is encouraged to work with the Maryland Department of Housing and Community Development to identify opportunities and resources that can be directed toward the provision of affordable housing within the service area.

Should you have any questions, please don't hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Josephson". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Richard Josephson, AICP
Director of Planning Services
Chair, Smart Growth Coordinating Committee

CC: Richard E. Hall, Secretary, MDP
Todd Mohn, Queen Anne's County
Steve Cohoon, Queen Anne's County