

Amendment # 3
October 4, 2004

THIRD AMENDMENT TO
MEMORANDUM OF UNDERSTANDING
(Contract Number 94CR9880-A, CIP Project No. S-84.21
Hoyles Mill Wastewater Pumping Station

Made this 4th day of October, 2004, by and between the WASHINGTON SUBURBAN SANITARY COMMISSION, a public agency of the State of Maryland (hereinafter referred to as "WSSC"), ARCOLA INVESTMENT ASSOCIATES (hereinafter referred to as "Arcola"), and ARTERY HOYLES MILL, LLC (hereinafter referred to as "Artery").

WHEREAS, Arcola and WSSC entered into a Memorandum of Understanding - Pump Station effective May 17, 2000, as amended by that First Amendment to Memorandum of Understanding dated July 18, 2001 and that Second Amendment to Memorandum of Understanding dated May 23, 2003 (the "Memorandum of Understanding"), relating to the construction of Hoyles Mill Wastewater Pumping Station, a 1.7 MGD wastewater pumping station located in the Kings Crossing subdivision of Montgomery County, Maryland, which pumping station has been substantially completed; and

WHEREAS, the pumping station was constructed to serve the properties of both Arcola and Artery, and design of the pumping station was funded through contributions paid by both Arcola and Artery and construction was funded by contributions paid by Arcola through a joint Development Agreement entered into between the parties in connection with the development of their respective properties; and

WHEREAS, WSSC and Arcola desire to further amend the provisions of said Memorandum of Understanding to add Artery as a party to the Memorandum of Understanding in order that both Arcola and Artery may be awarded System Development Charge (SDC) credits which may be available with respect to the construction of the pumping station, and Artery desires to be added as a party to the Memorandum of Understanding.

NOW, THEREFORE, in consideration of the mutual promises and benefits to be received by the parties hereto which are hereby acknowledged, the parties do hereby agree as follows:

Section 1 is deleted in its entirety and replaced with the following:

"1. WSSC and Arcola agree that design and construction of the Hoyles Mill WWPS is to be completed by or at the direction of Arcola. Cost responsibility for design and construction of these facilities, including those costs incurred by WSSC, for design review, construction, inspection and any or all other related expenses will be that of Arcola together with Artery and cost incurred by both Arcola and Artery shall be eligible for SDC credits. **Arcola and Artery shall receive System Development Charge (SDC) credits in accordance with WSSC's approved SDC credit policy.**"

The last sentence of Section 26 is deleted and replaced with the following:

"Any SDC credits due Arcola and Artery will be made in accordance with Paragraph 1 of this MOU and WSSC's approved SDC credit policy."

Section 27 is deleted in its entirety and replaced with the following:

- "27. As this project is eligible for SDC credits under the WSSC's SDC credit policy, Arcola and Artery and the WSSC will jointly identify, compute and tabulate the estimated total eligible costs for these credits. The estimated eligible costs are included as Attachment A of this Memorandum of Understanding. The eligible costs shall be in conformance with the latest SDC Credit Policy. The final amount will be adjusted to reflect the actual total eligible costs, as determined by the WSSC's Internal Audit Manager. The final audit will take place after the project has been accepted and a Certificate of Final Acceptance has been issued as per Item 17. Arcola and Artery shall submit a written request for audit to WSSC's Internal Audit Manager, along with an itemized listing of eligible project costs, incurred and paid, which supports the total amount of SDC credit claimed. The Internal Audit Manager shall process the request as per the SDC credit policy."

Section 30 is deleted in its entirety and replaced with the following:

- "30. Arcola and Artery each represents that the individual executing this Memorandum of Understanding on its behalf does so as agent of his respective entity and warrants that he has complete authority to enter into this Memorandum of Understanding."

Section 37 is deleted in its entirety and replaced with the following:

- "37. WSSC, Arcola and Artery acknowledge that this Memorandum constitutes a binding agreement, supported by good and valuable consideration, the receipt and sufficiency of which each acknowledges."

As amended hereby, the Memorandum of Understanding shall continue in full force and effect as provided therein.

IN WITNESS WHEREOF, the parties hereto have executed this Third Amendment to Memorandum of Understanding as of the date first written above.

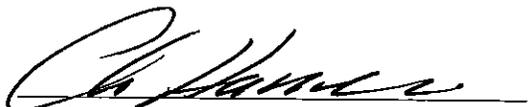
WITNESS:

ARCOLA INVESTMENT ASSOCIATES

By: Cylburn, Inc. general partner



By:


Chris Hanessian, Senior Vice President

Tax ID Number: 52-1379801

STATE OF MARYLAND

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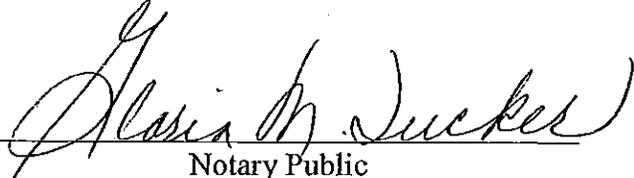
to wit:

COUNTY OF PRINCE GEORGE'S

*

I HEREBY CERTIFY that on this 17th day of OCT., 2004, before me, the subscriber, a Notary Public of the jurisdiction aforesaid, personally appeared Chris Hanessian, known to me (or satisfactorily proven) to be the Senior Vice President of Cylburn, Inc., a general partner of Arcola Investment Associates, and acknowledged that Chris Hanessian executed the same for the purposes therein contained.

WITNESS my hand and Notarial Seal.


Notary Public

Gloria M. Tucker
(Name Printed)

My Commission Expires: 3-1-07

WITNESS:

ARTERY HOYLES MILL, L.L.C.

By: The Artery Group, LLC

Bernard R. Offerty

By: Hayes McCarty

Hayes McCarty, Executive Vice
President

Tax ID Number: 52-2045344

STATE OF MARYLAND

*

*

to wit:

*

COUNTY OF MONTGOMERY

I HEREBY CERTIFY that on this 28 day of July 2004, before me, the subscriber, a Notary Public of the jurisdiction aforesaid, personally appeared Hayes McCarty, known to me (or satisfactorily proven) to be the Executive Vice president of the Artery Group, LLC, the manager of Artery Hoyles Mill, LLC, and acknowledged that Hayes McCarty executed the same for the purposes therein contained.

WITNESS my hand and Notarial Seal.

Kathryn E Baker
Notary Public

Kathryn E. Baker
(Name Printed)

My Commission Expires: 11/20/2007

WITNESS:

Julia Grove

APPROVED BY

Carla R. Joyner
Interim General Manager

STATE OF MARYLAND *
 Calvert *
COUNTY OF ~~PRINCE GEORGE'S~~ *

to wit:

I HEREBY CERTIFY that on this 20th day of Dec., 2004, before me, the undersigned officer, personally appeared Carla R. Joyner, who acknowledged herself to be the Interim General Manager of the Washington Suburban Sanitary Commission, a public corporation, and that she, as such Interim General Manager, being authorized so to do, executed the foregoing instrument for the purposes contained therein, by signing the name of the corporation by herself as Interim General Manager.

WITNESS my hand and Notarial Seal.

Linda M. Turner

Notary Public

Linda M. Turner

(Name Printed)

My Commission Expires: 10/1/08

BUSINESS IDENTIFICATION FORM

I hereby certify that ARTERY HOYLES MILL, LLC is a limited liability company with a principal place of business in the State of Maryland. I further certify that the individual members are as follows:

- | <u>MEMBER NAME</u> | <u>ADDRESS</u> |
|---|---|
| 1. Henry H. Goldberg | <u>Business Address</u>
7200 Wisconsin Avenue, Suite 1000
Bethesda, Maryland 20814
301-961-8300

<u>Home Address</u>
741 Brookville Road
Chevy Chase, Maryland 20815 |
| 2. The Artery Group, LLC
(Managing Member) | 7200 Wisconsin Avenue, Suite 1000
Bethesda, Maryland 20814
301-961-8300 |

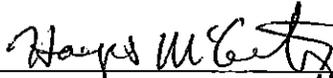
I hereby certify that THE ARTERY GROUP, LLC is a limited liability company with a principal place of business in the State of Maryland. I further certify that the individual members are as follows:

- | <u>MEMBER NAME</u> | <u>ADDRESS</u> |
|----------------------|---|
| 1. Henry H. Goldberg | <u>Business Address</u>
7200 Wisconsin Avenue, Suite 1000
Bethesda, Maryland 20814
301-961-8300

<u>Home Address</u>
741 Brookville Road
Chevy Chase, Maryland 20815 |
| 2. Carol Goldberg | <u>Business Address</u>
7200 Wisconsin Avenue, Suite 1000
Bethesda, Maryland 20814
301-961-8300

<u>Home Address</u>
741 Brookville Road
Chevy Chase, Maryland 20815 |

I HEREBY AFFIRM under the penalties of perjury that the statements made above are true and accurate to the best of my knowledge, information, and belief.

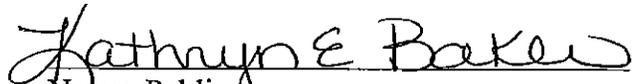


Hayes McCarty, Executive Vice President

STATE OF MARYLAND :
: ss
COUNTY OF MONTGOMERY :

I HEREBY CERTIFY that on this 4th day of October 2004, before me, the subscriber, a Notary Public, in and for the County aforesaid, personally appeared Hayes McCarty who acknowledged himself to be Executive Vice President of The Artery Group, LLC, Managing Member of Artery Hoyles Mill, LLC, who signed the foregoing Document and made oath in due form of law that the facts stated therein are true to the best of his knowledge, belief and information.

WITNESS My Hand and Notarial Seal.



Notary Public

My Commission Expires: 11/20/2007