

WATER SERVICE AREA AGREEMENT

 **COPY**

THIS AGREEMENT, made and entered into this 27th day of April, 2003, by and between the Board of County Commissioners of Frederick County, a body politic and corporate of the State of Maryland (hereinafter the "County") and the Town of New Market, Maryland, a body politic and corporate of the State of Maryland (hereinafter the "Town")

WITNESSETH:

WHEREAS, the County and Town have deemed it necessary to provide a public water supply for the properties located within the municipal boundary of New Market, including a future growth area, and the County is prepared to construct a portion of the water distribution system in Town to pursue a programmed connection between the New Market West Subdivision and the Woodspring Subdivision (hereinafter referred to as the "Connection"); and

WHEREAS, the Connection will be constructed by the County within the Town along part of Maryland Route 144, and the County needs certain easements for the construction of the Connection; and

WHEREAS, the Mayor and Council of the Town have determined that it is in the best interest of the Town and the inhabitants thereof to enter into this Agreement for the purpose of obtaining a County water supply for the inhabitants of the Town of New Market through the execution of this Water Service Area Agreement (WSAA); and

WHEREAS, the Developer of the Royal Oaks subdivision will need to construct an additional connection to the County's water distribution system to serve its development, and the Town and the County have agreed it is in the best interests of the Town and the County to facilitate this second connection ("second connection"); and

WHEREAS, in order to protect and promote the health, safety and welfare of the inhabitants of the Town, the Town desires to enter into this WSAA with the County to allow for the efficient provision of water to residents and properties within the Town and for its future growth; and

WHEREAS, these recitals form a part of this Agreement;

NOW THEREFORE, the parties agree as follows:

1. **Connection Line.** The Town agrees to the construction by the County of a Connection through the Town, in the area approximately shown on Exhibit A. The actual eastern and western extent of the line will be based on the available funds to connect to the water line already constructed under Frederick County Contract 116W and mutually agreed to by the Town and County. The County shall not be responsible for the cost of any future expansion or extension of the water distribution system beyond the connection provided for in this paragraph and identified conceptually in Exhibit A. The Town will grant or cause to be granted by the property owners, without charge to the County, easements needed by the County, the County to pay the costs of preparation of the easement documents.

2. **Second Connection.** The Town and the County agree to allow the Developer of the Royal Oaks subdivision within the Town, to construct a second connection to the County's water distribution system in the area approximately shown on Exhibit A hereto.

3. **Extensions of the System Within Town.** The County shall provide potable water to serve properties within the Town as provided in this WSAA, to the extent such properties abut a distribution line. The Town shall direct when and in what areas the water supply infrastructure may be extended inside its municipal boundaries, consistent with the programmed allocation of water capacity detailed in paragraphs 8 and 9 of this WSAA. All additions to, or extensions of, the water system infrastructure shall be done in accordance with County specifications and procedures.

The County shall own and operate the public water supply system infrastructure located within the Town. The County will notify the Town in advance of non-emergency maintenance activities that may disrupt vehicular traffic through the Town.

Any expansion of the water distribution system shall be subject to County approval and the availability of water supply capacity. Water provided to properties within the Town shall be metered through the use of individual water meters for each property as outlined in Section 7 of this WSAA.

In no event shall this WSAA provide to the Town water capacity in excess of the sewer capacity available to properties within the Town.

4. **Water Service Fees.** Properties within the Town that are connected to the public water system shall be billed the prevailing charges for water supply based on the County's prevailing water rate structure. All properties, whether improved or unimproved, that have water distribution lines along the front, back or side of the parcel, or any combination thereof, shall be charged the prevailing Ready-to-Serve Charge respectively. These charges provide for infrastructure maintenance and shall not be construed to reserve water system

capacity beyond that identified in paragraph 6 and 8 of this agreement.

Ready-to-Serve Charges:

(a) Each improved property within the Town that has a County water supply line in the front, side or rear (or a combination thereof) of the property shall pay the prevailing quarterly Ready-to-Serve Charge based on the size of the service lateral or meter yoke, whichever is smaller.

(b) Each unimproved lot within the Town that has a County water supply line in the front, side or rear (or a combination thereof) of the property shall pay the prevailing quarterly Ready-to-Serve Charge based on one (1) Equivalent Dwelling Unit (EDU).

Notwithstanding the water service charges identified above, sewer service fees for all customers within the Town shall be assessed in accordance with Frederick County water and sewer rate structure as amended from time to time.

5. **Extensions of the Water Distribution System.** All extensions of the water distribution system within the Municipal boundaries of the Town, beyond the Connection Line identified in Exhibit A of this WSAA, shall be approved by amendments to the County's Water and Sewerage Plan funded by the Town or others, and designed and constructed as prescribed in the County's Water and Sewer Rules and Regulations and Design Guidelines.

6. **Capacity Reservation.** The County hereby agrees to provide for use within Town of a total of 500 water taps over the next ten (10) year period in accordance with the schedule set forth in paragraph 8 and the special provisions in paragraph 9, below. The reservation or allocation of these 500 water taps, or any additional future water taps is subject to any requirement by the County for a public need (e.g. public schools) or to respond to a health emergency. In such circumstances the County shall have the right, upon notice to the Town, to take priority over the Town as to any such water taps so required, in which event the balance of water taps due the Town shall be provided immediately after they become available. The calculation of capacity usage shall be based upon the County's Rules and Regulations as they may be amended from time to time.

7. **Connection to the System.** Property owners shall obtain written authorization from the Town to connect to the system, have the appropriate Water and Sewerage Plan classification, and shall pay the County's prevailing capacity fees prior to the installation of a water meter or the issuance of a building permit, or within thirty (30) days of plat

recordation, whichever occurs first. No buildings shall connect to the public water system until all existing private wells have been disconnected from the building plumbing.¹ There will be no exceptions to this requirement.

Each property the Town authorizes to connect to the water system must have a corresponding sewer capacity allocation from the County.

Each connection to the County's water system shall be metered. Meters shall be installed in outside underground vaults as required by the Frederick County's General Conditions and Standard Specifications and Standard Details for Water Mains Sanitary Sewers and Related Structures. The County shall determine the size of each meter and each customer shall pay the prevailing meter and drop in fee to the County.

8. **Initial Allocation Schedule.** Taps reserved under this Agreement shall be allocated to Town by the County and may be purchased in accordance with the following schedule. Water and sewer taps for Royal Oaks and Marley Gate listed in the Allocation Schedule must be secured by separate Multi Year Tap Agreements with the County, unless such taps have already been purchased outright.²

Year 1 - Dec 01 - 2001

Period of Allocation	Water & Sewer Capacity		Town of New Market		Royal Oaks		Marley Gate	
	Water Taps	Sewer Taps	Water Taps	Sewer Taps	Water Taps	Sewer Taps ³	Water Taps	Sewer Taps ⁴
Existing	0	244	0	244	0	0	0	0
Year 1	40	22	5	2	20	20	0	0
Year 2	40	50	10	5	25	25	20	20
Year 3	60	55	10	5	25	25	25	25
Year 4	70	59	10	9	25	25	35	35
Years 5 through 10	290	60	240	10	25	25	25	25
Total	500	500	275	275	120	120	105	105

Year 1 is defined as the one (1) year period commencing after the completion of the construction of the Connection or the Second Connection within the Town's existing municipal boundary. Water capacity ("Taps") shall not be purchased until water line construction has been conditionally accepted and approved for operation by the County. Any taps not purchased in the year set forth above will remain available for purchase through the remaining term of this agreement. To the extent the capacity is available, the County may allow acceleration of the purchase of taps allocated for purchase in subsequent years.

1 Existing properties must simultaneously disconnect wells when establishing connection to the County's Water Distribution system. Water service will not be established until County staff verifies that any well(s) supplying the property have been disconnected from the building's plumbing system.

2 Multi Year Tap Agreements for Royal Oaks and Marley Gate must be executed before any lots on the subject properties are recorded, but not later than December 1, 2003 after which time the taps identified in the Allocation Schedule will be returned to the County's water and sewer tap allocation pool.

3 Includes 72 sewer taps previously purchased for Royal Oaks.

4 Includes 10 sewer taps previously purchased on 4/1/81 for Marley Gate.

The 500 water taps reserved under this WSAA include 244 water taps to serve properties presently provided sewer service by the County. The properties presently receiving sewer service are set forth in Exhibit B. Only the 140 water taps shown in years 1 through 3 in the Allocation Schedule identified above are available from existing water system capacity. The 360 water taps shown in years 4 through 10 (shaded area on table) will not be available until specific capital projects detailed in paragraph 9 are completed and operational.

All taps to be provided by the County under this WSAA shall be purchased within ten (10) years from the date the Connection or Second Connection is installed, tested, and placed in service. At the expiration of the 10-year period, the County shall have no obligation under this contract to reserve taps not purchased for use within the Town.

Owners of existing structures within the municipal boundaries of the Town that connect to the County's water system prior to the end of year 6, shall have the option to pay the capacity fee due to the County over a ten (10) year period, with interest*, payable in full upon transfer of the property, provided the property owners execute the necessary documents with the County which are to be recorded among the Land Records.

9. Special Provisions Regarding the Allocation of Water and Sewer Capacity.

This agreement provides a programmed schedule for the allocation of water and wastewater capacity (taps) inside the Town of New Market. However, such increase in water and sewer capacity available to the Town is contingent on the completion of several major water and sewer infrastructure capital projects. The Town understands that additional water system capacity beyond the 140 taps shown in years 1 through 3 in the Allocation Schedule will only be available after the County secures its requested increase in water appropriation for the Potomac River, completes the Potomac River water transmission line and expands the New Design Road Water Treatment Plant to 26 MGD. Additional wastewater capacity beyond the 256 taps identified for new construction shown in the Allocation Schedule will not be available until the Bush Creek interceptor is completed and the first phase of the McKinney Wastewater Treatment Plant is completed, including its Potomac River Effluent conveyance lines. The Town understands that the number of water and sewer taps available for new construction, in Year 1 through 3, will be limited to the 140 taps shown, minus the number of water taps used for existing properties within the Town, until the water system improvements identified above are completed and operational.

When the 500 water taps identified in the Allocation Schedule are ultimately

* 1% above the County's cost of borrowing
4/23/2003 FINAL

purchased, in accordance with the schedule identified in Paragraph 8 and the Special Provisions identified in paragraph 9, and upon the consent of both parties, this WSAA may be amended or a separate agreement drafted to increase the number of water and sewer taps (capacity) allocated in paragraph 8 for use within the Town.

10. **Sole Provider.** The Town acknowledges and agrees that the County shall be the sole provider of water service within the boundaries of the Town, as shown on Exhibit A. To the extent the boundaries may, from time to time, be modified through annexation, the Town and County will amend this WSAA or enter into a new agreement for water service to additional areas.

Since the County shall be the sole provider of water and sewer service, the Town shall be required to submit all subdivision plats for properties within the Town to the County to verify the adequacy of water and sewer capacity, prior to recordation, in accordance with the Environment Article 9-512 of the Annotated Code of Maryland.

11. **Infrastructure Sizing for Provision of Water for Fire Protection.** The water distribution system shall be designed and constructed to provide adequate amounts of water for the suppression of fire. The sizing of all water mains and the location and spacing of fire hydrants shall be approved by the County, and be consistent with the County's Design Manual for Water and Sewer Facilities. Hydrants will be required with all line extensions.

12. **Duration.** It is intended that this Agreement provide an ongoing relationship between the County and the Town with respect to the provision of water supply to properly classified properties within the Town. The parties agree to consider and negotiate, in good faith, such modifications of this Agreement as may be in the interest of each party. The County's obligation to reserve the taps identified in this agreement shall terminate ten (10) years from the date the Connection or the Second Connection is placed in service, whichever occurs first. In the event the Connection or Second Connection have not been installed and there have been no taps purchased by the seventh anniversary of the date of the execution of this agreement, then this agreement shall automatically terminate and be of no force or effect.

13. **Projected Usage.** The Town shall keep the County informed with regard to proposed subdivision, development and further annexation which will require a request to increase the allocation by amendment to this Agreement. Water and Sewerage Plan amendments for properties within the Town will be processed in accordance with the County's Water and Sewerage Plan. The Town will not maintain a separate subsidiary water and sewerage plan. The Town and the County will cooperate in the processing of Water and Sewerage Plan Amendments.

It is anticipated that future annexations of properties into the Town will be consistent with the twenty (20) year service area contained in the County's New Market Regional Plan.

14. **Protracted Deployment of the Water Distribution System.** The Town of New Market has determined that it is in the best interest of the Town and its residents to plan and construct the incremental extension of the public water supply system within the boundaries of the Town. The limits on the number of water system connections during the first five (5) years of this agreement, control the incremental deployment of water lines within the Town. Therefore, the Town shall control which properties may receive service from the County's public water supply and in what priority.

New subdivisions may receive priority for use of water connections provided the new subdivisions have secured a sewer capacity allocation.

Existing improved properties may remain on individual well systems until the Town determines that these properties can be served through planned water line extensions and as additional programmed water system capacity becomes available as outlined in paragraph 9. The Town will initiate applications to amend the County's Water and Sewerage Plan to reflect infrastructure or service area changes. The Town and the property owners will initiate applications to amend the County's Water and Sewerage Plan to designate as W-4 or lower those properties to be served by the County water system. Properties having a Water Classification of W-5 or higher that are contiguous to the County's water mains will not be required to connect to the County's water system until the Town and the property owner initiate changes of such classifications to W-4 or lower. However, all properties, contiguous to the County's water system, including those with a W-5 or higher water classification shall be assessed a quarterly Ready to Serve Charge in accordance with Paragraph 4 of this WSAA.

15. **Notices.** Any notices provided hereunder shall be delivered either in person or sent by certified mail, return receipt requested, to the following addresses:

as to Town: Town of New Market
 Attention: Mayor
 Box 27
 New Market, MD 21774

as to County: Board of County Commissioners
 of Frederick County, MD
 12 East Church Street
 Frederick, MD 21701
 Attention: County Manager

The addresses above may be modified by notice complying with the provisions of this section.

16. **Entire Agreement.** This Agreement contains the entire understanding of the parties. No amendments, modifications, or revisions to this Agreement shall be effective unless in writing and signed by both parties.

17. **Severability.** If any term or condition of this Agreement is deemed to be invalid or unenforceable, such invalidity shall not affect the remaining terms, conditions or provisions of this Agreement, which shall remain in full force and effect.

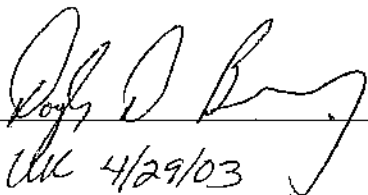
18. **No Waiver.** A waiver of any one or more terms or conditions of this Agreement on any occasion shall not constitute a subsequent waiver of such term or condition or of any other term or condition of this Agreement.

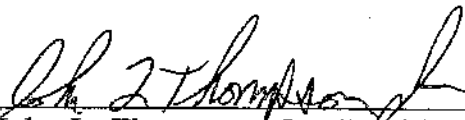
19. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Witness the execution of this Agreement, as of the day and year first above written.

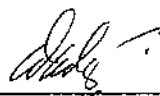

WITNESS/ATTEST:

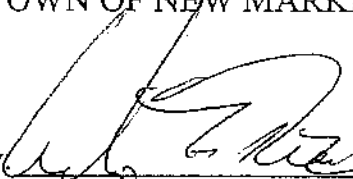
BOARD OF COUNTY COMMISSIONERS OF
FREDERICK COUNTY, MARYLAND


UK 4/29/03

By:  (SEAL)
John L. Thompson, Jr., President

TOWN OF NEW MARKET, Maryland


Town Clerk 

By:  (SEAL)
Winslow Burhans, Mayor

EXHIBITS A AND B ARE A PART OF THIS AGREEMENT

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