William J. Holtzinger
Mayor

THE City OF Frederick

Aldermen
Marcia A. Hall
President Pro Tem
David "Kip" Koontz
Alan E. Imhoff
C. Paul Smith
Donna Kuzemchak Ramsburg

March 17, 2006

The Honorable John L. Thompson
President Board of County Commissioners
C/O Douglas Browning, County Manager
Winchester Hall
12 E. Church Street
Frederick, MD 21703

RE: PRWSA

Dear Commissioner Thompson,

Please find enclosed a fully executed original of the Potomac River Water Supply Agreement (PRWSA). I executed this document on behalf of the City of Frederick on March 16, 2006.

I want to thank the Board of County Commissioners (BOCC), County Manager Doug Browning and the County Staff who helped bring the negotiation of the PRWSA to a final agreement. We look forward to working with the BOCC on many other regional issues and/or joint projects.

Again, thank you for all of your assistance and cooperation in bringing the PRWSA negotiations to a successful conclusion.

Sincerely,

W. Jeff Holtzinger
Mayor
City of Frederick

POTOMAC RIVER WATER SUPPLY AGREEMENT

BETWEEN

THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND

AND

THE CITY OF FREDERICK

9-28-06
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TABLE OF CONTENTS

1.	Recitals Incorporated	2
2.	1995 Interconnection Agreement	2
3.	2000 Regional Water Supply Agreement	2
4.	Application for WAUP	3
5.	Issuance of WAUP	3
6.	Facility Design/Construction	4
7.	Cost Apportionment	4
8.	Changes in Regulations	4
9.	Ownership of Infrastructure	5
10.	Contingencies	5
11.	Change in WAUP Capacity	5
12.	Identification and Phasing - Potomac River Infrastructure Elements	6
13.	Cost Apportionment for Potomac River Infrastructure	8
14.	Contracts and Change Orders	11
15.	Payment for Potomac River Infrastructure Design and Construction	11
16.	Design and Construction by City	11
17.	Water Supply Conditions and Hydraulic Gradient	12
18.	Continuity of Service	13
19.	Emergency/Maintenance Usage by City	13
20.	Water Quality	13
21.	Metering Equipment	14
22.	Available Capacity	14
23.	Allocation of Capacity	14
24.	Resale to Other Parties	15
25.	Interconnection with Other Systems	15
26.	Agreement to Purchase Water	15
27.	Cost of Water Supply Reservation and Usage	15

28. Invoice and Payment - Commodity and Usage Charges 17
29. Tracking and Reporting Allocation and Usage 17
30. Projected Needs Data 17
31. Fire Protection and Hydrant Flushing & Loss Prevention 18
32. Water Loss and Leakage Prevention Program 19
33. Term of Agreement 19
34. Interim Water Supply for Existing Business Expansion 19
35. Assignability 20
36. Amendments to Agreement 20
37. Miscellaneous Provisions 20
38. Appeals 21

THIS POTOMAC RIVER WATER SUPPLY AGREEMENT ("PRWSA") executed this 17th day of March, 2006, by and between the **BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND**, a body politic and corporate of the State of Maryland, hereinafter called the "County", and the **CITY OF FREDERICK**, a municipal corporation located within Frederick County, hereinafter called the "City", witnesseth the following:

RECITALS

This Agreement contains the terms under which the County's Potomac River Water Supply System will be expanded and improved to provide for the long-term supply of potable water for the City of Frederick and the County. As it becomes available, the County will provide water system capacity to the City for use and allocation subject to terms and conditions of this PRWSA.

The County and City previously executed the "City of Frederick/Frederick County, Maryland Potable Water Supply Interconnection Agreement," dated October 5, 1995, which allows the transfer of water between the City and County during emergency and non-emergency situations. Upon the execution of this PRWSA, the City of Frederick/Frederick County, Maryland Potable Water Supply Interconnection Agreement dated October 5, 1995, shall become null and void and be of no further effect, it being replaced by the provisions of this PRWSA.

On December 14, 2000, the County, City and the Lake Linganore Association, Inc. (LLA) entered into a three-party water supply agreement titled "County, City and Lake Linganore Regional Water System Agreement" (hereinafter referred to as "2000 Regional Water System Agreement" or "2000 Agreement") to address several regional water supply issues. The Regional Water System Agreement included provisions to address the City of Frederick's short-term and long-term water supply needs. Among other things, the 2000 Agreement ensures that the LLA will release adequate quantities of water from Lake Linganore to allow the City to utilize the 6.0 MGD capacity of its Linganore Creek Water Treatment Plant (WTP), subject to permit limits imposed by the State of Maryland. The 2000 Agreement also outlined and confirmed the City's intent to participate financially in the County's expansion of the County's Potomac River Water Supply System and water transmission system to meet the projected long-term water capacity needs of the City. The 2000 Regional Water System Agreement also provided the County with the ability to transfer water through the City's water distribution system to serve the County's Linganore and Waterside Service Areas.

The 2000 Regional Water System Agreement identified a 4.0 MGD initial (12 year) water supply capacity requirement for the City, anticipated to be provided through phased (two increments of 2 MGD each) County infrastructure expansion. The City, after completing the required assessment of its 12 year and ultimate water supply needs, subsequently requested that this volume be increased to 8.0 MGD (5 MGD Average Annual) initially (through 2015), with a

projected future ultimate capacity of 12 MGD, based on the projected build out within its municipal water service area.[1]

On September 19, 2002, the City adopted Sections 25-33 through 25-33.30 of the Code of the City of Frederick, the Water Allocation Ordinance, containing the City's policy regarding allocation of water by the City.

The City has requested the County to develop water supply infrastructure to assist the City in meeting the City's current and projected water supply needs. The City has requested 8.0 MGD max day demand (5 MGD Average Annual) of water system capacity to provide for its projected needs through 2015.

The City of Frederick shall provide funding for its proportionate share of the costs of capital improvements to the Potomac River Water Supply System by direct contribution to the costs incurred by the County, in lieu of purchasing capacity by payment of Frederick County's consolidated Water Capacity Fees. This will allow the City to secure a finite quantity of water treatment and conveyance capacity, while limiting its cost to its proportionate share of the costs incurred for the components of the water supply infrastructure used to deliver system capacity to the connection points identified in this PRWSA.

NOW THEREFORE, in consideration of the mutual benefits and burdens which inure to each, the parties agree as follows:

1. RECITALS INCORPORATED

The Recitals set forth above are incorporated herein by reference and are a part of the PRWSA.

2. 1995 INTERCONNECTION AGREEMENT

The terms of this Potomac River Water Supply Agreement ("PRWSA") replace and supercede in its entirety the City of Frederick/Frederick County, Maryland Potable Water Interconnection Agreement dated October 5, 1995.

3. 2000 REGIONAL WATER SUPPLY AGREEMENT

This Potomac River Water Supply Agreement ("PRWSA") supplements and provides additional details beyond the general provisions set forth in the 2000 Regional Water System Agreement regarding the County and City's responsibilities in the development of additional Potomac River water supply capacity, the necessary expansion of the existing water treatment facility, and the construction of additional transmission systems (hereinafter collectively referred to as Potomac River Water Supply Infrastructure) to supply water to the City of Frederick and for the County's own needs. Therefore, the specific amounts of water capacity to be provided to

[1] The parties acknowledge that the 12 MGD ultimate need value is subject to adjustment when supporting documentation is developed for the next increase in the Water Appropriation and Use Permit (WAUP).

the City, as stated in paragraph number 4 of the 2000 Agreement (i.e. 2 MGD and 4 MGD) shall be included within (and not in addition to) the amounts of water capacity to be provided pursuant to this PRWSA. The terms herein with respect to provisions of water capacity to the City will take precedence over the general understanding memorialized in the 2000 Regional Water System Agreement.

The development of the Potomac River water infrastructure projects and the terms of this PRWSA also modify the provisions set forth in paragraphs 9 and 10 of the 2000 Agreement, as to the transfer of water between the County and City water systems.

Waterside Connection: Following completion of the improvements identified in Section 12 herein, the County will continue to place into the City's water distribution system sufficient water to supply the Waterside development, which will be removed from the City's system at the interconnection which was constructed in accordance with the 2000 Agreement. In the future, the County may choose to supply its Cloverhill III water system in the same manner. As stated in the 2000 Agreement, the City shall guarantee the delivery to the County the amount of the water the County concurrently inputs into the City's system, subject to the limitations of the City's distribution system, unanticipated equipment failure, and acts of God. There shall be no charges for the transfer of water to Waterside or Cloverhill III. Costs for improvements needed to provide water to these areas will be paid by the County.

Linganore Connection: After completion of the improvements identified in Section 12 herein, the County will no longer routinely utilize the City's water distribution system to supply the Linganore Service Area. The existing Spring Ridge interconnection will remain in place for use as needed in emergency situations.

Therefore, paragraphs 9 and 10 of the 2000 Agreement shall be modified and superceded by the terms of this PRWSA.

4. APPLICATION FOR WAUP

In accordance with the terms of the 2000 Regional Water System Agreement, the County applied for an increase of its Potomac River Water Appropriation and Use Permit to secure the additional water resource needed to supply both the County's needs and the City of Frederick's needs, based on the City's estimated 12 year (through 2015) water supply needs assessment having a maximum daily capacity of 8 MGD MDD (5 MGD Average Annual); in addition to the County's needs.

5. ISSUANCE OF WAUP

The County received from the Maryland Department of the Environment (MDE), Water Appropriation and Use Permit ("WAUP") Number FR1968S005(07), effective July 1, 2003, which increased the water appropriation from the Potomac River to the total amount of 26 MGD MDD (16 MGD Average Annual), and the continued validity of that permit or a subsequent permit for equal or greater withdrawal of water from the Potomac River, is a fundamental

necessity for the Potomac River Water infrastructure projects and a prerequisite to the provision of potable water capacity to the City under this Agreement. (See Exhibit 1 WAUP.)[2]

6. FACILITY DESIGN/CONSTRUCTION

In order to supply the requested quantities of water to the City and to provide for the County's needs, the County has agreed to undertake the design and construction of infrastructure, including but not limited to treatment, transmission, storage and pumping facilties necessary to convey, to certain connection points located at the municipal boundary of the City of Frederick, a total of 8.0 MGD Maximum Daily Demand (5 MGD Average Annual) of potable water for use by the City, in addition to the capacity to be utilized by the County.

In addition to the water transmission system, the County will also expand its existing New Design Road (Potomac River) Water Treatment Plant (WTP) to increase its treatment capacity from the current 6.6 MGD capacity to 25 MGD capacity, commensurate with the requisite water appropriation permit. The expansion of the New Design Road WTP will be accomplished in phases to increase the allocable water supply for the City and the County, consistent with the general terms of the 2000 Regional Water System Agreement and the revised (increased) quantities of water to be provided under this Agreement, subject, however, to all applicable laws and regulations that apply to such expansion activities.

The County will also design and construct improvements, including but not limited to, the intake structures, pumps and lines needed to withdraw the water from the Potomac River and convey it to the New Design Road WTP for processing and subsequent transmission, unless otherwise specified in this PRWSA.

7. COST APPORTIONMENT

All project costs (including but not limited to design, construction, and ancillary items) will be apportioned between the City and the County. The first method considered for apportionment will be each entity's proportionate share of the water system capacity provided by the improvements. If that method is not appropriate due to disproportionate benefit received by one entity from certain specific improvements, then the cost apportionment shall be based upon the benefit received by each entity. Specific cost apportionments set forth in this Agreement shall be applied as indicated herein.

8. CHANGES IN REGULATIONS

The County and City understand that changes in state and federal regulations that control or regulate water supplies, as well as natural and unnatural environmental conditions, can precipitate the need for capital improvements beyond those specifically anticipated or identified in this Agreement. In such cases the County and City shall fund such improvements to the

[2] The volume of water referred to in the WAUP Permit is higher than the treatment facility production capacity which shall be provided under this Agreement. The higher WAUP withdrawal value is needed to accommodate normal nominal WTP efficiency of 95%.

Potomac River Water Supply infrastructure, based on each entity's proportionate share of the water system capacity provided under this Agreement, or if greater benefit inures to either party, that party shall bear a greater proportion of the costs based upon benefit received.

9. OWNERSHIP OF INFRASTRUCTURE

Frederick County shall remain the sole owner of all infrastructure and permits relating to the operation of the County's Potomac River Water System Infrastructure. The City's contribution of funds for improvements to the County's infrastructure shall not in any way extend or convey any ownership interest or right to physically control any portion of the County's water supply systems, unless otherwise agreed to within this PRWSA.

10. CONTINGENCIES

The County's obligation to supply water to the City for allocation and consumption is contingent upon: (1) the continued validity of the Water Appropriation and Use Permit from the Maryland Department of the Environment ("MDE") allowing the County to withdraw and use at least 26 MGD as a maximum daily basis (16 MGD as an Annual Average Basis) from the Potomac River; (2) the issuance and continued validity of all permits necessary to construct and operate the infrastructure improvements outlined in this PRWSA; (3) the payment by the City of its apportioned share of the design and construction costs of improvements for each element comprising the Potomac River Water Supply Infrastructure; and (4) continued payment per Sections 28 and 38 by the City of availability/ready to serve charges and commodity charges as specified in this PRWSA.

11. CHANGE IN WAUP CAPACITY

In the event of a reduction in the water allocation under the WAUP (or any renewal thereof), a corresponding capacity reduction will be assessed against the appropriate party to this PRWSA, in accordance with the justification or basis identified by MDE for the reduction in the WAUP water allocation. If the reduction is not attributable to either party, the parties will share proportionately in the reduction, 80% City, 20% County.

Each party shall promptly notify the other party within 10 days of receipt, of any written communication received from MDE concerning a possible reduction in the water allocation under the WAUP (or any renewal thereof).

Following any reduction in the water allocation under the WAUP, the County shall promptly determine whether the reduction will be shared proportionately or assessed against the appropriate party. The County shall promptly notify the City of this determination. If the City disagrees with this determination, both parties will first attempt to resolve the disagreement. If the parties are unable to resolve the disagreement, an appeal pursuant to Section 38 may be requested.

12. IDENTIFICATION AND PHASING - POTOMAC RIVER INFRASTRUCTURE ELEMENTS

The Potomac River Water Supply Infrastructure includes several major elements. Each element has a specific design and construction schedule intended to result in a complementary completion schedule of groups of elements, which will yield incremental increases in water capacity. A basic summary outline of these elements, their construction schedules and the anticipated water supply capacity associated with the completion of the elements is provided below. The milestone dates shown represent **projected early completion dates**.

- **Water Transmission Line Construction Contract No. 1 (26,100 feet of 42- inch diameter transmission line)**
  - o Bid and Award Contract 1 - June 18, 2004
  - o Complete Construction Contract 1 – May 1, 2006
  - o City Cost - 8/32 = 25%

- **Water Transmission Line Construction Contract No. 2 (22,700 feet of 42- inch diameter water transmission line)**
  - o Bid and Award Contract 2 -August 17, 2004
  - o Complete Construction Contract 2 – May 30, 2006
  - o City Cost - 8/32 = 25%[3]

WTP Contract 1.

- **New Design Road Water Treatment Plant (WTP) Contract 1**
  - o Begin construction improvements for WTP - 120 days after MDE permits issued
  - o Complete improvements - 260 calendar days after Notice to Proceed issued (assuming there are no change orders that extend the contract)
  - o City Cost - 43.5%

Completion of the construction of all three project elements identified above are needed to provide allocable capacity to the City of Frederick through the existing 12-inch interconnection at Evergreen Point (Maryland Route 85 and Interstate 70) and a new interconnection between the County and City along Ballenger Creek Pike.[4]

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[3] Contract 2 includes an additional approximately 9,800 feet of 42-inch diameter wastewater outfall line, which in part facilitates the deployment of the McKinney Outfall Line. It was included as a part of the Water Transmission Line construction project because of its proximity to the water transmission line construction and to obtain the maximum economies of scale for the two projects. The 17% cost share assigned to the City is based on the Capital Funding Agreement between Frederick City and Frederick County dated April 19, 1990.

[4] The City of Frederick is responsible for design and construction of the Ballenger Creek Pike interconnection which will be comprised of approximately 1,400 feet of 24-inch diameter line. The actual hydraulic gradient available at the Evergreen Point connection is not known.

If the Maryland Department of the Environment (MDE) approves the re-rating of the WTP capacity to 8.8 MGD after WTP Contract 1 improvements have been completed, additional capacity realized above the present 6.6 MGD capacity will be apportioned 2/3 for use by the City and 1/3 for use by the County, with a maximum of 1.5 MGD (max day) for use by the City, until the completion of the improvements under WTP Contract 2.

- **Water Transmission Line Construction Contract No. 3 (5,300 feet of 42-inch diameter, 5,400 feet of 36-inch transmission line, 7,200 feet of 30-inch transmission line, and 7,400 feet of 24-inch transmission line)**
  - o Bid and Award Contract 3 - January 31, 2005
  - o Complete Construction Contract 3 – May 1, 2006
  - o City Cost - 25%, 35%, 0%, 90% respectively

- **Water Transmission Line/Booster Pump Station Construction Contract No. 4 (Booster Pump Station and 2.5 MG Water Storage tank near Reich's Ford Road)**
  - o Bid and Award Contract 4 - January 27, 2005
  - o Complete Construction Contract 4 – July 27, 2006
  - o City Cost - pump station 50%, storage tank 50%

- **Raw Water Transmission Line/McKinney Outfall Construction Contract No. 5 (3,100 feet of 42-inch diameter raw water line, 4,500 feet of 42-inch Outfall line & other miscellaneous connections/extensions)**
  - o Bid and Award Contract 5 – June 2006
  - o Complete Construction Contract 5 - TBD
  - o City Cost - 25%, 17%, 17% respectively

- **New Design Road Water Treatment Plant (WTP) Contract 2 Expansion (25 MGD Capacity Expansion Construction)**
  - o Begin construction improvements - 95 days after MDE permits issued
  - o Complete construction of 25 MGD capacity improvements – 724 Days after Notice to Proceed issued (assuming there are no changes orders that extend the contract)
  - o City Cost - 43.5%

Completion of the construction of all seven project elements identified above are needed to provide 8 MGD of MDD[5] (5 MGD average daily) capacity to the City of Frederick through the interconnections established along Ballenger Creek Pike and Reich's Ford Road.

[5] The 8.0 MGD (5 MGD average daily) is a cumulative total which includes the amount available from WTP Contract 1.

The project milestone dates shown herein represent the current estimate of when the various elements of the project may be completed. There are numerous issues that could affect the completion of any or all of these projects, including but not limited to federal, state and local permitting, approvals, rights of way acquisitions/condemnations, and special permits required to construct the water lines through National Park Service Property and, of course, construction delays. Although the schedule allocates time to satisfy these issues, it is always possible that unanticipated delays will occur on a project of this scope and complexity.

13. COST APPORTIONMENT FOR POTOMAC RIVER INFRASTRUCTURE

The City is responsible for payment of its apportioned share of all costs relating to the design and construction (including procurement of permits and rights of way) of the New Design Water Supply Infrastructure, including any debt or carrying costs incurred by the City.

A. Water Transmission System

(1) Design and Engineering

The County entered into a negotiated engineering contract with Whitman Requardt and Associates, LLP ("WRA") which was executed on June 17, 2002. The percentages reflecting the City's share of the engineering and services during construction costs associated with various components of the Water Transmission Improvements (including lines, storage tank, and pump stations) have been established under the County's contract with WRA, as amended from time to time by change order, and are shown on Exhibit 2.

Included in the scope of services under the WRA contract were design, bid, permitting, and services relating to the effluent outfall, raw water transmission main, electrical feed and communication system, and environmental services. Construction management services and inspection services were added to the WRA contract scope of services via change order.

At the City's request, WRA performed hydraulic modeling, including emergency and drought scenarios, under Change Order No. 1, which are to be funded 100% by the City.

(2) Construction

The percentages used to apportion construction costs for the transmission lines, raw water lines, outfall lines, storage tank, and pumping systems are as follows:

	City's Cost Share
Phase I	
Contract 1	
26,100' of 42" water line	8/32 or 25%

Contract 2	
22,700' of 42" water line	8/32 or 25%
9,800' of 42" outfall line	17%

Phase II

Contract 3	
5,300' of 42" water line	8/32 or 25%
5,400' of 36" water line	35%
7,200' of 30" water line	0%
7,400' of 24" water line	90%
Contract 4	
Water Storage Tank	50%
Booster Pump Station	50%
Contract 5	
3,100' of 42" raw water line	8/32 or 25%
4,500' of 42" outfall line	17%
Other Misc. Connections	17%

B. Water Intake Improvements

(1) Design and Engineering Cost

The calculation of the City of Frederick's share of the engineering costs associated with the Water Intake is based on the amount of water supply capacity reserved for the City (8 MGD) out of the total Water Supply capacity provided through the programmed intake facility expansion to 25 MGD, 8/25 or 32% of the total capacity related design cost.

$$32\% = \frac{\text{8 MGD Capacity Reserved for City}}{\text{25 MGD Proposed Capacity}}$$

The engineering phase of the water intake portion of the project includes the following elements:

- Applying for and securing the increase to 26 MGD of the County's Potomac River Water Appropriation and Use Permit,
- Preliminary and final engineering and design of the improvements to the County's Potomac River Intake Raw Water Transmission System,
- Procurement of rights-of-way and permits associated with the work described above,
- Project management associated with the work described above, and
- Construction engineering services and inspection services associated with the work described above.

(2) Construction Costs

The calculation of the City of Frederick's share of the construction costs associated with the necessary Water Intake elements listed above is based on the amount of water supply that is reserved for the City (8 MGD MDD) out of the total increase in system capacity (18.4 MGD), beyond the systems existing production capacity of 6.6 MGD.

$$43.5\% = \frac{\text{8 MGD Capacity Reserved for City}}{\text{25 MGD Proposed Capacity} - \text{6.6 MGD Existing Capacity}}$$

C. Treatment System (WTP) Expansions

(1) Design and Engineering Cost

The calculation of the City of Frederick's share of the engineering costs associated with the Treatment System (WTP) permanent expansion improvements, (Contract 1 and Contract 2) will be based on the amount of water treatment capacity requested by the City out of the increase in Water Treatment System production capacity provided by each expansion phase, beyond the system's existing production capacity.

The engineering phase of the treatment system expansions of the project includes the following elements:

- Preliminary and final engineering of the New Design Road WTP permanent expansions (Contracts 1 and 2),
- Procurement of rights-of-way and permits associated with the work described above,
- Project management associated with the work described above, and
- Construction engineering services and inspection services associated with the work described above.

(2) Construction

The calculation of the City of Frederick's share of the construction costs associated with the necessary Water Treatment System permanent expansion elements listed above is based on the amount of water supply and treatment capacity that is requested by the City out of the increase in system capacity, beyond the system's existing production capacity.

14. CONTRACTS AND CHANGE ORDERS

The County will contract for design and construction of the Potomac River Infrastructure and will acquire appropriate property interests as needed for construction, except for the Western Low Zone connection to be constructed by the City as set forth in Section 16.

For contracts and change orders executed by the County prior to the execution of this PRWSA, the City will provide purchase order(s) to the County for its portion of the costs, within 60 days of the execution of this PRWSA. For contracts and change orders executed by the County after the execution of this PRWSA, the City will provide purchase order(s) for its portion of the costs within 15 days of the request from the County.

All change orders will be executed by the County, with any additional costs to be shared by the parties in the same ratio as the original costs for the work being changed.

15. PAYMENT FOR POTOMAC RIVER INFRASTRUCTURE DESIGN AND CONSTRUCTION

The County shall invoice the City, for the City's share of costs for work performed or services provided under the County's contracts. Copies of the contractors' bills will accompany the invoices to the City. Additional documentation will be provided upon request.

The County will invoice the City for other costs incurred that relate to the infrastructure being constructed by the County, including but not limited to, rights-of-way, permits, studies, etc. The invoice will be accompanied by supporting documents and identify the percentages to be paid by the City.

The City shall remit payment to the County within 30 days of the invoice date, unless within the 30-day period the City provides written notice to the County of its specific objections or concerns relating to the invoice. In such circumstances, the parties will work diligently to resolve issues, within 45 days of the date of the invoice, and interest on the unpaid balance will not be assessed during the 45-day period.

16. DESIGN AND CONSTRUCTION BY CITY

The City of Frederick shall be responsible for the design and construction of the Western Low Zone interconnection, approximately 1,400 feet of 24-inch line, along Ballenger Creek Pike between Farmbrook Drive and the City of Frederick's municipal boundary. This connection shall include metering facilities and any treatment facilities necessary to satisfy any additional water quality control issues determined to be needed by the City after receipt of potable water at the stated connection points. The water line and metering facilities shall be owned and operated by the County. The water line and metering facilities shall be configured so that the City will only be charged for water use attributable to the City or its customers.

The City shall also be responsible for any water distribution system improvements located within the City necessary to ensure adequate hydraulic capacity to allow the conveyance of water consistent with the conditions detailed in Exhibit 3, including the proposed parallel 16" and 20" waterlines inside the City, downstream of the Eastern Low Zone Connection.

17. WATER SUPPLY CONDITIONS AND HYDRAULIC GRADIENT

The County will use its best efforts to supply water to the City at the hydraulic gradients and points of connection identified in the Conditions of Water Supply Exhibit, attached hereto as Exhibit 3. It is understood by the both parties that circumstances may prevent the County from providing, at all times, the required flow at the hydraulic gradient shown on Exhibit 3. Should distribution system problems cause a reduction in the delivery of water to one of the connection points, the County shall use its best efforts to compensate for any reduction at the one connection point by increasing the flow at another connection point.

The water system capacity provided at each of the defined connection points shall be based on a specified volume of water at hydraulic gradient or head. These hydraulic gradients have been established based on the composite hydraulic model of the City and County water supply system operating under various capacity and demand conditions. To ensure that the delivery of water at these points of connection remains adequate, based on the volumetric capacity provided in this agreement, the County and the City shall annually update the hydraulic models of their respective water systems and make any necessary improvements to their water systems to maintain the specified volume at the prescribed hydraulic gradients. Improvements to the individual water systems shall be at the sole expense of the owner of the infrastructure.

At an interval not greater than every five (5) years the County and the City shall jointly secure the services of a competent engineering consultant to review and consolidate the County and City hydraulic models to validate the adequacy of the infrastructure to meet to the average and maximum water supply capacity provided for in this agreement. The cost of this periodic evaluation shall be shared equally between the City and County.

EASTERN LOW ZONE

In accordance with provisions of this agreement and the transmission system design, the County shall provide a primary connection for the City's Eastern Low Pressure Zone at a point near Reichs Ford Road. Supply to this zone shall be by gravity and supplemental pumping for periods of high demand. The pumping system for the City's Eastern Low Zone shall provide up to 8 MGD MDD of capacity. The County shall own and operate the all of the water transmission system up to the City's municipal boundary, where a master meter shall be deployed.

WESTERN LOW ZONE

Downstream of the Western Low Zone connection, the City will provide pumping facilities, as may be necessary, which shall be owned and operated by the City, to satisfy any additional capacity above the gravity capacity conditions of this Western Low Zone connection, as reflected in the Conditions of Water Supply Exhibit. However, at no time shall the City

withdraw more than a total of 3.0 MGD MDD at this connection at the hydraulic gradient shown on the Conditions of Water Supply Exhibit 3.

18. CONTINUITY OF SERVICE

To the extent feasible, the County shall maintain water transmission service to the City, at the volumes and gradient detailed on Exhibit 3 in the same manner as service to the County's water system customers. The County shall provide oral notice to the City, and may temporarily interrupt or reduce deliveries of water to the City, if the County determines that such interruption or reduction is reasonable or necessary in case of system emergencies, or in order to troubleshoot, repair or install equipment or to complete inspections, replacements, investigations or perform other maintenance work on the County's water system, or those parts of the system supplying the City. Except in cases of emergency, and in order that the City's water supply operations will not be unreasonably interfered with, the County shall provide the City with reasonable written notice of any such interruption or reduction, the reason therefore, and the probable duration of service outage. Routine maintenance activities will be planned so they will have minimal impact on the City's customers.

In the event of a regional water supply emergency, including water shortages, that affect both the City and County Water Supply Systems, the County and City shall cooperate to the fullest extent possible to maintain the supply integrity of the combined County and City water systems. Should such emergencies require restrictions on the delivery or use of water, the County and City shall cooperate fully to take appropriate action, including any required legislative action, to authorize the implementation of water use restrictions as well as any necessary enforcement action ensure customer compliance with the restrictions.

19. EMERGENCY/MAINTENANCE USAGE BY CITY

The City may receive water over the amount certified as available to the City if there is: 1) an emergency situation, which includes, but is not limited to, plant failures, droughts in excess of droughts of record, and water main breaks, or 2) a planned water treatment plant shut-down in non-emergency situations, with at least 48 hours notice. The amount to be made available will be dependent on the amount of water then reasonably available for the County to provide to the City and requires the mutual consent of the City and County, which consent will not be unreasonably withheld. The City agrees to assist the County for emergency and planned water treatment plant-shut down circumstances under the same conditions applicable to the City in this Section.

20. WATER QUALITY

The County's water supply will be un-softened. The water supply shall have an optimized fluoride level based on the recommendations of the MDE and the EPA.

Water delivered under this Contract by the County, shall comply with all applicable provisions of the State and Federal law governing drinking water quality. However, the City and County agree that exceptions, albeit rare, can occur and require a coordinated response and

public notification. When such events occur, the County and City will work cooperatively to insure that its aggregate customers are properly informed of any Safe Drinking Water Act Violations.

21. METERING EQUIPMENT

The County shall own and maintain appropriate metering devices to measure the water flowing from the County's Regional Water Supply System to the City water system at the designated connection points. At the City's request and expense, the County will install peripheral devices that will allow the City to receive real-time flow information from the metering systems. All metering systems shall be maintained by the County. At least once per year, the County and City shall pay for an independent testing and calibration of the metering systems. The County shall select and secure the testing company services with the City's concurrence, and the costs of the testing and calibration shall be shared equally between the City and the County. The City shall have the right to participate in the selection process, to witness the meter testing and calibration, to receive copies of the test results, and if necessary to get an independent verification of the meter calibration.

22. AVAILABLE CAPACITY

As elements of the Potomac River Water Supply Infrastructure are constructed and deemed operational by the County, resulting in the availability of capacity, the County shall notify the City, in writing, of the volume of water available to the City for allocation by the City.

The capacity certified by the County as available for use by the City under this Agreement is defined as the maximum volume of water that the County will transfer into the City's water distribution system in any 24-hour period, for use within the City's municipal boundaries, expressed in million gallons per day (MGD) and is intended to meet the Maximum Day Demands of City users. The amounts certified as available for use by the City will increase incrementally as the phases of the proposed source, treatment and transmission system infrastructure improvements and expansions are constructed and deemed operational, subject however to all permit conditions.

23. ALLOCATION OF CAPACITY

The City will allocate to its customers water system capacity provided to it by the County under the terms of this PRWSA. Both the City and the County shall allocate capacity with consideration of Maximum Day Demand, to ensure that adequate water is available at all times to all customers. Each party's Maximum Day Demand usage shall not exceed its proportionate share of the system's capacity certified as available by the County.

Any allocation of capacity without reservation for Maximum Day Demand is prohibited, and shall constitute a material breach of this PRWSA.

Except as provided in Section 19, use of water above the capacity certified as available is prohibited, and shall constitute a material breach of this PRWSA.

The City may allocate capacity provided to it under this PRWSA only to properties within the municipal boundaries, provided those properties are not supplied water directly from the County's water system or other public or governmental water supply system.

24. RESALE TO OTHER PARTIES

The City may sell water (but not allocate capacity) supplied to it by the County under this PRWSA to others not inside the municipal boundaries of the City, provided that such sales are temporary in nature. This provision shall apply to temporary emergency situations or for the occasional seasonal sale of water in bulk to commercial water haulers, which may use that water outside of the City.

25. INTERCONNECTION WITH OTHER SYSTEMS

Prior to installation of any new interconnection between any non-City owned public water system and the City's potable water supply system, the City shall provide to the County, for the County's review and approval, the hydraulic modeling and engineer drawings (plans) and specifications for the proposed interconnection. The proposed interconnection plans and specifications shall comply with the applicable design and construction standards endorsed by the American Water Works Association and all applicable federal, state, or local laws and regulations, and be designed to prevent backflow from the non-City owned system into the City's potable water system.

This provision does not apply to connections to the City's non-potable raw water supply system.

26. AGREEMENT TO PURCHASE WATER

The County agrees to supply and the City agrees to purchase treated water provided by the County, as it becomes available.

27. COST OF WATER SUPPLY RESERVATION AND USAGE

The City and County agree that monthly billing to the City for water supplied from the County's Potomac River Water Supply will include: (1) a ready to serve or availability charge, and (2) a commodity charge for the water. Each monthly bill will utilize the then prevailing County adopted Water and Sewer System User Rates, and be calculated as set forth below.

A. Ready to Serve Charge: (Availability Charge)

The monthly Ready to Serve Charge will be based upon the number of Equivalent Dwelling Units of capacity available for use by the City.[6]

[6] Per Section 22 of this PRWSA, the County will notify the City of the available capacity.

The number of EDUs of available capacity shall be determined by dividing the maximum volume of water available for transfer into the City's water system for use by the City in any 24-hour period (maximum day capacity) by 400 gallons per day.

The Ready to Serve Charge will be calculated by multiplying the number of EDUs of available capacity by the County's Residential Ready to Serve rate.

B. Commodity Charges (User Rates)

The County uses an inverted block rate structure, which currently has six Rate Blocks. The water commodity charge per 1,000 gallons, is the rate per unit of the third Rate Block (16,001 - 24,000), the block which most closely approximates the costs to treat and convey the commodity. Rate Block 3 is also the block within which most County water customers' total quarterly consumption value falls. Every year, before the anniversary date of this agreement, the County will analyze its revenue requirements and customer's water use. The results of that analysis will be the basis for any recommendation to change the Rate Block used to bill the City.

C. Metering, Adjustments, and Billing

(1) The County shall calculate the City's monthly water commodity charges by applying the rate set forth in B. above to the total number of gallons that pass through the water supply connection meters, less any amounts transferred through the City system by the County into other County water systems.

(2) The County will add the ready to serve charge to the commodity charge and transmit the monthly invoice to the City.

D. Emergency Surcharge

In the event a drought in excess of a drought of record, major catastrophe, or other extraordinary conditions which require emergency expenditures by the County for the New Design Water Treatment Plant and its related infrastructure to maintain a safe and adequate water supply, it may become necessary for the County to impose, by Ordinance, an emergency surcharge in order to pay for such unanticipated expenditures. The County may include in that ordinance an equivalent surcharge to the City based on the City's proportionate use of the New Design water supply. The City shall have the right to comment on any proposed surcharge during the public hearing held prior to the adoption of any such ordinance.

28. INVOICE AND PAYMENT - COMMODITY AND USAGE CHARGES

The City shall be billed by the County on a monthly basis (1) for the commodity charge for the supply of water delivered by the County; and (2) the ready to serve/availability charge. The City shall remit payment for these bills within thirty (30) days of the billing dates.

Penalties for Late Payment

The County may assess a late charge on any outstanding charges for which full and timely payment has not been made within thirty (30) days of the billing date. This late charge shall be as established by the County for all delinquent accounts, as a percentage of the late portion of the water charges owed, provided that the percentage rate shall not exceed the maximum amount permissible by law. The City shall not withhold payment of commodity fees for water supplied by the County to offset any actual or perceived outstanding debt with the County or the DUSWM.

29. TRACKING AND REPORTING ALLOCATION AND USAGE

The City shall submit one and five year growth projections to the County.

The City shall, on a semi-annual basis, provide to the County detailed water capacity allocation information that identifies the amount of water system capacity allocated. The City shall monitor the actual consumption of water by users and compare it to projected maximum day demand consumption, and provide that data to the County. In the event actual consumption (usage) exceeds projected values, the City shall take immediate action to reallocate the remaining water system capacity, which may include, but not be limited to, reduction of future planned service areas, so as avoid and prevent any possible over allocation of its available aggregate water supplies.

30. PROJECTED NEEDS DATA

The attached Exhibit 4 shows the future service areas planned to be served by the City from the water capacity as it becomes available under this agreement. The delineated service area is the basis for the demand projections submitted to Frederick County for the City's water supply needs for the 12 year planning period and for future water supply needs.

The scope and extent of water system infrastructure capacity improvements to be undertaken by the County under this agreement to provide water capacity to the City has been based on the City's projection of its future water supply needs. The City's 12 year planning period referenced herein corresponds to the WAUP permit period, which is through 2015. To the extent the City, in projecting its water supply needs, included land it anticipated annexing into the City which will be served by water capacity provided under this agreement from the County's Potomac River supply, those projected areas are shown on Exhibit 4. The parties recognize and acknowledge the limitations placed on annexations and subdivisions by Consent Order CO-02-01-WS, paragraph 11, dated June 28, 2002, effective until December 31, 2006, or until adequate water supply becomes available. After the terms of the Consent Order no longer

apply, the City agrees that it shall analyze and evaluate all annexation requests and Water and Sewerage Plan amendment requests for conformity to the City's future needs assessment and avoid premature annexation of, or request Water and Sewerage Plan reclassification below a W-5 for land beyond that which is contemplated within the area projections shown on Exhibit 4. Any expansion of the service area delineated on Exhibit 4, which relies upon City water supply sources contemplated under this agreement, shall require an amendment to this agreement and shall be based on documented ability of the City to serve the proposed expanded service area with adequate water supply. Approval of such amendment shall not be unreasonably withheld. This amendment provision shall not apply to any expansion of the service area delineated on Exhibit 4 which does not rely upon City water supply sources contemplated under this agreement.

Reporting of Data

The City agrees to provide to the County:

A. Its combined average annual and peak day total system demand for each year during the term of the agreement, as of December 31st of that year.

B. Its forecast of water requirements including estimates of annual and maximum 24 hour requirements for the ensuing calendar year, for the fifth, tenth, and fifteenth year in the future. Such forecasts shall reflect the best judgment of the City. Such information shall be furnished to the County no later than the following April 1st of each year.

The City also agrees to provide other data relating to water supply as may be requested by the County for water planning purposes, provided that acquiring such data shall be reasonably within the means of the City.

Water and Sewerage Planning

The County shall continue to administer the Water and Sewerage Plan (W&S Plan). The City and property owners therein shall continue to submit proposed W&S Plan amendments to the County for consideration, in accordance with the procedures of the Water and Sewerage Plan amendment process. The City engineer shall provide for inclusion with each amendment application current (within thirty (30) days) accounting of water allocation and usage, and identify available resources for each application.

31. FIRE PROTECTION AND HYDRANT FLUSHING & LOSS PREVENTION

The specified volumes of water provided under this agreement represent the total volume of water that the County shall provide to the City for use within its water service area. This volume includes water that may be used for fire protection and hydrant flushing. There shall be no special allowance for fire protection or hydrant flushing.

32. WATER LOSS AND LEAKAGE PREVENTION PROGRAM

The County and City will seek, as a goal, to implement new and/or maintain the ongoing policies and procedures to achieve a loss reduction goal of 10% or less. The County and City recognize their responsibility to comply with the Maryland Department of the Environment (MDE) regulations and permit requirements.

33. TERM OF AGREEMENT

A. It is intended that this agreement will partially address the water capacity needs of the City through July 1, 2015 (the expiration date of the County's WAUP).

B. To the extent the contingencies set forth in Section 10 have been satisfied, resulting in the allocation of water capacity from the County to the City under Section 22, and the actual use of the allocated water capacity, such allocations made to the City and utilized under the terms of this Agreement shall be permanent, provided the MDE or other regulatory agency does not alter the terms of the County's Water Use and Appropriation Permit, or other permits necessary for operation and maintenance of the Potomac River Water Supply Infrastructure.

C. This Agreement shall become effective on the later of the dates that the City and County execute this document; and the provisions of the contract, other than the allocation already addressed in subsection B above, shall remain in effect until July 1, 2015. Thereafter, the Agreement may be extended for additional twelve (12) year increment(s), unless one or both parties desires to modify the Agreement.[7] A party wanting to modify the Agreement shall notify the other party of the item(s) (other than the allocation amount) it wishes to modify and of its intent not to renew the Agreement at least one year prior to current or future expiration date. Notice of a request to modify the allocation amount, shall be expressed in writing at least three (3) years prior to the end of the contract term or extension thereof.

D. To the extent the City or County have taken actions in anticipation of the execution of this PRWSA, which are or were in furtherance of the improvements identified in this Agreement, each party shall be entitled to rely on those actions as if it had occurred subsequent to the execution of this document.

E. The parties understand and agree that future agreements to apportion costs for infrastructure replacement will be required as facilities deteriorate or otherwise require major repair, replacement or renovation.

34. INTERIM WATER SUPPLY FOR EXISTING BUSINESS EXPANSION

The County and City recognize that planned expansions of existing manufacturing/production facilities located within the City of Frederick represent important economic development. To ensure that planned expansions of manufacturing/ production

[7] The length of the extension period is intended to coincide with the length of time the WAUP is issued for.

facilities can occur in a timely manner, the City may request that the County allocate water system capacity, on an interim basis, directly to specific City water system customers engaged in manufacturing/production activities.

The County may in its discretion, provide interim allocations, to specific properties within the City from capacity available in the County's water supply system. The City shall replace any interim allocations made by the County. The 8 MGD Maximum Daily Capacity available through the completion of WTP Contract 2 improvements, and provided to the City under this agreement, shall be reduced by any interim water system allocation provided by this section.

The aggregate interim water system allocations shall not exceed 600,000 GPD based on maximum daily demand.

A separate Memorandum of Understanding (MOU) will be executed to establish details as to appropriate charges, terms, conditions, and fees related to any interim water system allocation.

35. ASSIGNABILITY

This Contract shall be binding upon the parties. The interests and obligations created in this PRWSA are not assignable or transferable.

36. AMENDMENTS TO AGREEMENT

Either party may request in writing that the other consider a change to existing provisions or the addition of new provisions to this Agreement. If the proposed revision is mutually acceptable to the County and the City, the written amendment to this Contract shall be finalized by the County and become effective upon execution by both parties. Amendments that affect the system capacity or other potentially regulated aspects of this agreement shall be submitted to the appropriate State regulatory officials for their review and concurrence before such amendments may become effective and binding upon the parties.

37. MISCELLANEOUS PROVISIONS

Severability

If any provision of this Contract or its application is held by a court of competent jurisdiction to be illegal, invalid, or void, the validity of the remaining provisions of this Contract or its application to other entities, Municipal Government or circumstances shall not be affected. The remaining provisions shall continue in full force and effect, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular invalid provision, provided, however, if the invalid provision or its application is found by a court of competent jurisdiction to be substantive and to render performance of the remaining provisions unworkable and infeasible and is found to seriously affect the consideration and is inseparably connected to the remainder of the contract, the entire Contract shall be invalid.

Consent

Whenever it is provided in this Contract that the prior written consent or approval of the County or City is required as a condition precedent to any actions, in each such instance, unless otherwise specified, said consent or approval shall be within the other parties' sole discretion. In each such instance where prior consent is sought, failure of the party to respond in writing within sixty (60) days of the request shall be deemed as that party's denial of consent or denial of approval.

Performance

Neither party shall be relieved of their obligations under this PRWSA except where fulfillment may be prevented by force majure, Acts of God, or catastrophe of such scope and effect that both parties agree render performance useless or impossible. The City shall have an equal and corresponding right to receive documentation or information from the County where within this PRWSA the City has agreed to provide documentation or information to the County.

Initial Implementation

Both parties agree to take such actions as are necessary to implement full compliance with this Contract in as expeditious a manner as possible.

No Joint Venture

This is not an agreement of joint venture or partnership, and no provision of this Contract shall be construed so as to make the City and other government entities or private corporations individually or collectively partners or joint ventures with each other or with the County. Neither party is an agent of the other. Neither the County nor the City shall be liable for the acts of the other in any representative capacity whatsoever.

38. APPEALS

The City has the right to notice and an opportunity to be heard by the Board of County Commissioners if an appeal is taken to the Board. The City and the County shall have the right to use mediation to resolve disputes and shall have the right to appeal to a Court of competent jurisdiction in the event the parties cannot resolve any dispute.

IN WITNESS WHEREOF, the parties hereby execute this contract.

BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MARYLAND

By: _____
John L. Thompson, Jr., President

THE CITY OF FREDERICK,
MARYLAND

By: _____
William J. Holtzinger, Mayor

LIST OF EXHIBITS

1. Water Appropriation and Use Permit

2. Whitman Requardt and Associates, LLP Costs and Apportionment

3. Conditions of Water Supply

4. Projected Needs Data

NOTE: All exhibits attached hereto and referenced in this Contract are a part of this Contract.

MARYLAND DEPARTMENT OF THE ENVIRONMENT
1800 Washington Boulevard • Baltimore MD 21230
MDE 410-537-3000 • 1-800-633-6101

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor

Kendl P. Philbrick
Acting Secretary

July 24, 2003

CERTIFIED MAIL - 7001 2510 0002 9976 5592
Return Receipt Requested

FREDERICK COUNTY COMMISSIONERS
DIVISION OF UTILITIES &
SOLID WASTE MANAGEMENT
118 NORTH MARKET ST.
FREDERICK, MD 21701

RE: State Water Appropriation
Permit No. FR1968S005(07)
Revision 07

Dear Permittee:

Enclosed is your State Water Appropriation Permit. The permittee is responsible for complying with all permit conditions. Accordingly, you are advised to carefully read the Permit and become thoroughly familiar with its requirements.

AN ANNUAL WATER AUDIT IS NOW REQUIRED FOR WATER SYSTEMS SERVING GREATER THAN 10,000 PEOPLE. Requirements are explained in conditions 17 & 18 of this permit.

Semi-annual Water Withdrawal Reports are required by this permit. Forms for making these reports will be mailed to you in June and December of each year.

If you have any questions, please contact this office at (410)537-3590.

Sincerely,

MARK T. FILAR
Water Rights Division

cc: FREDERICK COUNTY HEALTH DEPARTMENT

Exhibit 1

STATE OF MARYLAND
DEPARTMENT OF THE ENVIRONMENT
WATER MANAGEMENT ADMINISTRATION

WATER APPROPRIATION AND USE PERMIT

PERMIT NUMBER: FR1968S005(07)

EFFECTIVE DATE: JULY 1, 2003

EXPIRATION DATE: JULY 1, 2015

FIRST APPROPRIATION: JANUARY 1, 1968

FREDERICK COUNTY COMMISSIONERS

HEREINAFTER REFERRED TO AS THE "PERMITTEE", IS AUTHORIZED BY THE WATER MANAGEMENT ADMINISTRATION, HEREINAFTER REFERRED TO AS THE "ADMINISTRATION" PURSUANT TO THE PROVISIONS OF TITLE 5 OF THE ENVIRONMENT ARTICLE, ANNOTATED CODE OF MARYLAND (1996 REPLACEMENT VOLUME) AS AMENDED, TO APPROPRIATE AND USE WATERS OF THE STATE SUBJECT TO THE FOLLOWING CONDITIONS:

1. ALLOCATION - THE WATER WITHDRAWAL GRANTED BY THIS PERMIT IS LIMITED TO:
   A DAILY AVERAGE OF 16,000,000 GALLONS ON A YEARLY BASIS AND A MAXIMUM DAILY WITHDRAWAL OF 26,000,000 GALLONS.

2. USE - THE WATER IS TO BE USED FOR A MUNICIPAL WATER SUPPLY, IN ACCORDANCE WITH THE NOTICE OF APPLICATIONS RECEIVED FOR STATE PERMITS AND OPPORTUNITY FOR HEARING ISSUED MAY 28, 2003 AND PUBLISHED IN THE FREDERICK NEWS POST, AND INCORPORATED BY REFERENCE HEREIN.

3. SOURCE - THE WATER SHALL BE TAKEN FROM THE POTOMAC RIVER.

4. LOCATION - THE POINT(S) OF WITHDRAWAL SHALL BE LOCATED AT THE SOUTHWEST END OF NEW DESIGN ROAD, 0.2 MILE SOUTHWEST OF MD ROUTE 28, FOUR MILES SOUTHEAST OF POINT OF ROCKS, FREDERICK COUNTY, MARYLAND.

CONTINUED ON PAGE 2

Exhibit 1

5. RIGHT OF ENTRY - THE PERMITTEE SHALL ALLOW AUTHORIZED REPRESENTATIVES OF THE ADMINISTRATION ACCESS TO THE PERMITTEE'S FACILITY TO CONDUCT INSPECTIONS AND EVALUATIONS NECESSARY TO ASSURE COMPLIANCE WITH THE CONDITIONS OF THIS PERMIT. THE PERMITTEE SHALL PROVIDE SUCH ASSISTANCE AS MAY BE NECESSARY TO EFFECTIVELY AND SAFELY CONDUCT SUCH INSPECTIONS AND EVALUATIONS.

6. PERMIT REVIEW - THE PERMITTEE WILL BE QUERIED EVERY THREE YEARS (TRIENNIAL REVIEW) REGARDING WATER USE UNDER THE TERMS AND CONDITIONS OF THIS PERMIT. FAILURE TO RETURN THE TRIENNIAL REVIEW QUERY WILL RESULT IN SUSPENSION OR REVOCATION OF THIS PERMIT.

7. PERMIT RENEWAL - THIS PERMIT WILL EXPIRE ON THE DATE INDICATED ON THE FIRST PAGE OF THIS PERMIT. IN ORDER TO RENEW THE PERMIT THE PERMITTEE SHALL FILE A RENEWAL APPLICATION WITH THE ADMINISTRATION NO LATER THAN 45 DAYS PRIOR TO THE EXPIRATION.

8. PERMIT SUSPENSION OR REVOCATION - THIS PERMIT MAY BE SUSPENDED OR REVOKED BY THE ADMINISTRATION UPON VIOLATION OF THE CONDITIONS OF THIS PERMIT, OR UPON VIOLATION OF ANY REGULATION PROMULGATED PURSUANT TO TITLE 5 OF THE ENVIRONMENT ARTICLE, ANNOTATED CODE OF MARYLAND (1996 REPLACEMENT VOLUME) AS AMENDED.

9. CHANGE OF OPERATIONS - ANY ANTICIPATED CHANGE IN APPROPRIATION WHICH MAY RESULT IN A NEW OR DIFFERENT USE, QUANTITY, SOURCE, OR PLACE OF USE OF WATER SHALL BE REPORTED TO THE ADMINISTRATION BY THE PERMITTEE BY SUBMISSION OF A NEW APPLICATION.

10. ADDITIONAL PERMIT CONDITIONS - THE ADMINISTRATION MAY AT ANYTIME (INCLUDING TRIENNIAL PERMIT REVIEW OR WHEN A CHANGE APPLICATION IS SUBMITTED) REVISE ANY CONDITION OF THIS PERMIT OR ADD ADDITIONAL CONDITIONS CONCERNING THE CHARACTER, AMOUNT, MEANS AND MANNER OF THE APPROPRIATION OR USE, WHICH MAY BE NECESSARY TO PROPERLY PROTECT, CONTROL AND MANAGE THE WATER RESOURCES OF THE STATE. CONDITION REVISIONS AND ADDITIONS WILL BE ACCOMPLISHED BY ISSUANCE OF A REVISED PERMIT.

CONTINUED ON PAGE 3

11. DROUGHT PERIOD EMERGENCY RESTRICTIONS - IF THE DEPARTMENT DETERMINES THAT A DROUGHT PERIOD OR EMERGENCY EXISTS, THE PERMITTEE MAY BE REQUIRED UNDER THE DEPARTMENT'S DIRECTION TO STOP OR REDUCE WATER USE. ANY CESSATION OR REDUCTION OF WATER USE MUST CONTINUE FOR THE DURATION OF THE DROUGHT PERIOD OR EMERGENCY, OR UNTIL THE DEPARTMENT DIRECTS THE PERMITTEE THAT WATER USE UNDER STANDARD PERMIT CONDITIONS MAY BE RESUMED.

12. NON-TRANSFERRABLE - THIS PERMIT IS NON-TRANSFERRABLE. A NEW OWNER MAY ACQUIRE AUTHORIZATION TO CONTINUE THIS APPROPRIATION BY FILING A NEW APPLICATION WITH THE ADMINISTRATION. AUTHORIZATION WILL BE ACCOMPLISHED BY ISSUANCE OF A NEW PERMIT.

13. FLOW MEASUREMENT - THE PERMITTEE SHALL MEASURE ALL WATER USED UNDER THIS PERMIT BY A METHOD WHICH SHALL BE APPROVED BY THE ADMINISTRATION.

14. WITHDRAWAL REPORTS - THE PERMITTEE SHALL SUBMIT TO THE ADMINISTRATION, SEMI-ANNUALLY (JULY-DECEMBER, NO LATER THAN JANUARY 31 AND JANUARY-JUNE, NO LATER THAN JULY 31), PUMPING RECORDS. THESE RECORDS SHALL SHOW THE TOTAL QUANTITY OF WATER PUMPED EACH MONTH UNDER THIS PERMIT.

15. PERMIT SUPERSESSION - THIS PERMIT HAS BEEN REVIEWED AND REVISED AND SUPERSEDES THE APPROPRIATION AND USE GRANTED BY THE FOLLOWING PRIOR PERMIT ISSUED TO:
FREDERICK COUNTY COMMISSIONERS ON JULY 1, 2003
(FR1968S005(06))

16. LOW FLOW WATER USE RESTRICTIONS - THE PERMITTEE MAY BE REQUIRED BY THE ADMINISTRATION TO REDUCE WITHDRAWALS FROM THE POTOMAC RIVER WHEN THE RESTRICTION STAGE IS DECLARED IN THE WASHINGTON METROPOLITAN AREA (WMA) UNDER PROVISIONS OF THE POTOMAC LOW FLOW ALLOCATION AGREEMENT. WHEN NOTIFIED BY THE ADMINISTRATION THAT THE RESTRICTION STAGE HAS BEEN DECLARED IN THE WMA, AND THAT THE PERMITTEE IS REQUIRED TO REDUCE WITHDRAWALSFROM THE POTOMAC RIVER, SUCH WITHDRAWALS SHALL BE REDUCED TO A LEVEL THAT COORESPONDS TO THE AVERAGE DAILY WITHDRAWAL BY THE PERMITTEE DURING THE PREVIOUS JANUARY, FEBRUARY AND MARCH.

CONTINUED ON PAGE 4

17. WATER AUDIT - THE PERMITTEE SHALL CONDUCT A YEARLY WATER USE AUDIT OF THE WATER SYSTEM, TO DETERMINE THE AMOUNT OF UNACCOUNTED WATER. UNACCOUNTED WATER IS THE DIFFERENCE BETWEEN WATER PRODUCED AT THE PLANTS AND WATER SOLD TO METERED CUSTOMERS, WHICH COULD BE DUE TO UNAUTHORIZED USE, AUTHORIZED UNMETERED USE, OR WATER LOST THROUGH LEAKS IN THE DISTRIBUTION SYSTEM. THE PERMITTEE MUST REPORT THE RESULTS OF THE WATER AUDIT FOR THE PREVIOUS CALENDAR YEAR TO THE ADMINISTRATION NO LATER THAN JULY 1 OF EACH YEAR.

18. WATER LOSS REDUCTION PLAN - IF THE AMOUNT OF UNACCOUNTED WATER REPORTED IN THE ANNUAL WATER AUDIT IS GREATER THAN 10% OF THE TOTAL WATER SYSTEM USE, THE PERMITTEE MUST SUBMIT A PLAN TO IDENTIFY AND REDUCE WATER LOSSES. THE PLAN SHOULD INCLUDE BUT NOT BE LIMITED TO BETTER WATER ACCOUNTING, ELIMINATING UNMETERED CONNECTIONS, DISTRIBUTION IMPROVEMENTS AND OTHER RELATED IMPROVEMENTS TO REDUCE LEAKAGE.

BY AUTHORITY OF THE DIRECTOR
WATER MANAGEMENT ADMINISTRATION

Matthew G. Pajerowski 7/24/03
Matthew G. Pajerowski, Chief
WATER RIGHTS DIVISION
PGH

Exhibit 1

New Design Water Transmission System / Phase 1 - McKinney Wastewater Treatment Plant Effluent Outfall
Engineering Cost-Sharing

Part A - Water Main

Task		Total	Percentage	Basis	City of Frederick's Cost Allocated Cost
1	Project Management	$105,775.00	23%	Note 1	$24,328.25
2	Preliminary Design	$136,090.00	23%	Note 1	$31,300.70
3	Preparation of Base Mapping	$149,715.00	23%	Note 1	$34,434.45
4	Part 1 - Final Design	$391,985.00	25%	Note 2	$97,996.25
5	Part 1 - Advertise and Bidding Phase	$5,600.00	25%	Note 2	$1,400.00
6	Part 2 - Final Design	$577,435.00	25%	Note 2	$144,358.75
7	Part 2 - Advertise and Bidding Phase	$5,975.00	25%	Note 2	$1,493.75
8	Part 3 - Final Design	$138,920.00	25%	Note 2	$34,730.00
9	Part 3 - Advertise and Bidding Phase	$5,600.00	25%	Note 2	$1,400.00
10	Part 4 - Final Design	$183,670.00	0%		$0.00
11	Part 4 - Advertise and Bidding Phase	$5,700.00	0%		$0.00
	TOTAL PART A:	***$1,706,465.00***			
				CITY'S SHARE:	**$371,442.15**

Part B - Tank and Pumping Station

Task		Total	Percentage	Basis	City of Frederick's Cost Allocated Cost
1	Project Management Plan	$37,460.00	25%	Note 3	$9,365.00
2	Preliminary Design	$62,765.00	25%	Note 3	$15,691.25
3	Final Design	$181,750.00	25%	Note 3	$45,437.50
4	Advertise and Bidding Phase	$10,460.00	25%	Note 3	$2,615.00
	TOTAL OF PART B:	***$292,435.00***			
				CITY'S SHARE:	**$73,108.75**

Part C - Effluent Outfall

Task		Total	Percentage	Basis	City of Frederick's Cost Allocated Cost
1	Project Management Plan	$41,440.00	17%	Note 4	$7,044.80
2	Preliminary Design	$52,595.00	17%	Note 4	$8,941.15
3	Preparation of Base Mapping	$54,935.00	17%	Note 4	$9,338.95
4	Final Design	$235,848.00	17%	Note 4	$40,094.16
5	Advertise and Bidding Phase	$5,700.00	17%	Note 4	$969.00
CO 8	McKinney Study/Facility Plan	($105,000.00)	17%	Note 4,13	($17,850.00)
	TOTAL PART C:	***$285,518.00***			
				CITY'S SHARE:	**$48,538.06**

Part D - Services During Construction

Task		Total	Percentage	Basis	City of Frederick's Cost Allocated Cost
1	Project A, Part 1 - Water Transmission Main	$210,012.00	25%	Note 2	$52,503.00
2	Project A, Part 2 - Water Transmission Main	$227,563.00	25%	Note 2	$56,890.75
3	Project A, Part 3 - Water Transmission Main	$117,650.00	25%	Note 2	$29,412.50
4	Project A, Part 4 - Water Transmission Main	$123,963.00	0%		$0.00
5	Project B, Elevated Storage Tank & Booster Pumping Station	$147,593.00	25%	Note 2	$36,898.25
6	Project C, Phase 1 McKinney Outfall	$138,180.00	17%	Note 4	$23,490.60
	TOTAL PART D:	***$964,961.00***			
				CITY'S SHARE:	**$199,195.10**

Part A - Bid Alternative, East Alignment

Task		Total	Percentage	Basis	City of Frederick's Cost Allocated Cost
12	Part A - Bid Alternate - East Alignment Around Buckeystown	$154,225.00	25%	Note 2	$38,556.25
	TOTAL PART A:	***$154,225.00***			
				CITY'S SHARE:	**$38,556.25**

Change Order No. 1 (Executed September 27, 2002 by the BOCC)

Task		Total	Percentage	Basis	City of Frederick's Cost Allocated Cost
A	Engineering proposal to City dated July 17, 2002 including County and City hyrdaulic models	$32,996.20	100%	Note 5	$32,996.20
B	Emergency supply/drought scenarios to provide temporary water to the City at several locations	$14,000.00	100%	Note 5	$14,000.00
C	Modeling of Fort Detrick water system under emergency/drought conditions	$8,000.00	0%		$0.00
D	Source water mixing and water quality modeling	$9,000.00	0%		$0.00
	TOTAL CHANGE ORDER 1:	***$63,996.20***			
				CITY'S SHARE:	**$46,996.20**

Change Order No. 2 (Executed July 10, 2003 by the BOCC)

Task		Total	Percentage	Basis	City of Frederick's Cost Allocated Cost
	Part A: Preliminary and final design of the raw water transmission main	$129,489.00	25%	Note 2	$32,372.25
	Part B: Preliminary and final design of wastewater effluent outfall (originally Phase 2 of the outfall program)	$121,573.00	17%	Note 4	$20,667.41
	Part C: Preliminary and final design of second electrical feed and communication system duct banks	$71,772.00	32%	Note 6	$22,967.04
	Part D: Envrionmental services for design work associated with Parts A, B & C of this change order	$188,101.00	21%	Note 7	$39,501.21
	Part E: Services during construction for Parts A, B & C of this change order	$92,470.00	21%	Note 7	$19,418.70

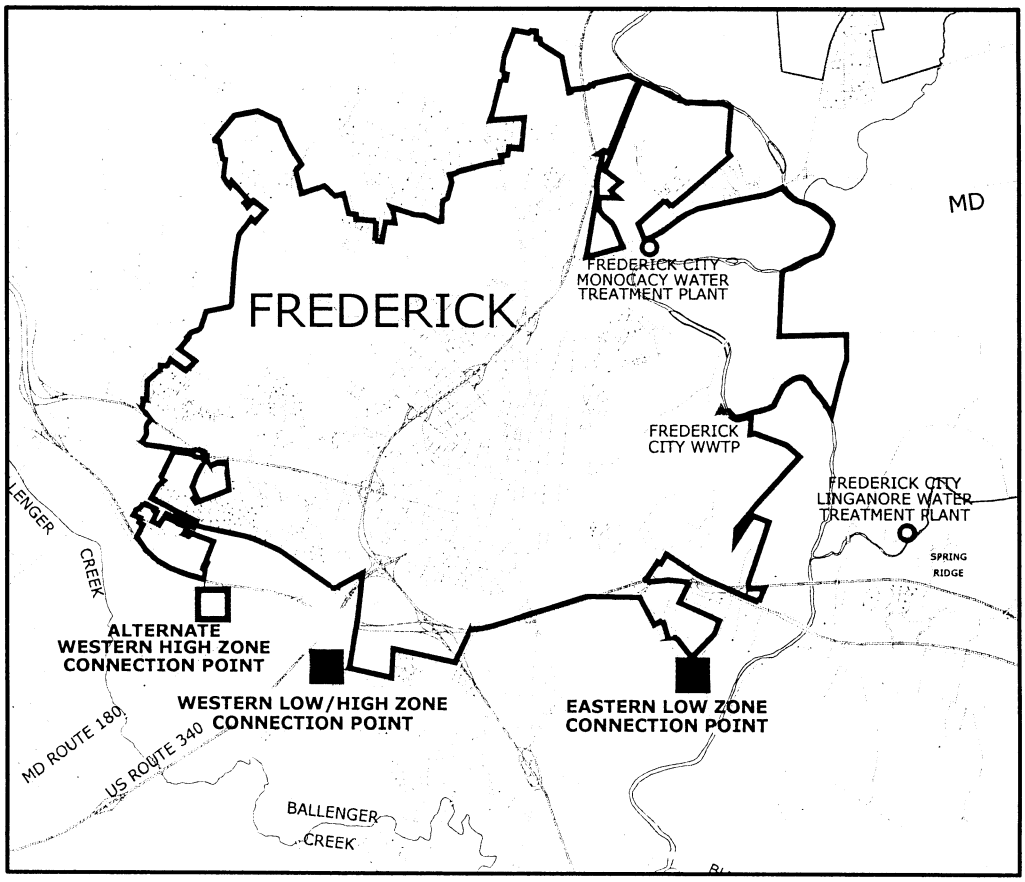
Exhibit 2

New Design Water Transmission System / Phase 1 - McKinney Wastewater Treatment Plant Effluent Outfall
Engineering Cost-Sharing

	TOTAL CHANGE ORDER 2:	***$603,405.00***		*Note 8*	
				CITY'S SHARE:	**$134,926.61**
Change Order No. 3 (Executed July 10, 2003 by the BOCC)				**City of Frederick's Cost**	
Task		Total	*Percentage*	*Basis*	*Allocated Cost*
	Includes Parts a, B, C-1 through C-4 for the preliminary and final design of a 24-inch watermain along Reichs Ford Road to the City and a stand-alone pumping station and ground level water storage tank (including storm water management and access road) and sevices during construction.	$535,702.88	*Varies*	*Note 9*	$492,561.70
	TOTAL CHANGE ORDER 3:	***$535,702.88***			
				CITY'S SHARE:	**$492,561.70**
Change Order No. 6 (Executed July 29, 2004 by the BOCC) (See Note 12)				**City of Frederick's Cost**	
Task		Total	*Percentage*	*Basis*	*Allocated Cost*
	Construction Management and Inspection services for the New Design Water Transmission Main, East County Booster Pumping Station, Ballenger Water Storage Tank 3 and Related Projects.	$1,161,710.00	25%	*Note 11*	$290,427.50
	TOTAL CHANGE ORDER 6:	***$1,161,710.00***			
				CITY'S SHARE:	**$290,427.50**
Change Order No. 7 (Executed September 17, 2004 by Director of DUSWM)				**City of Frederick's Cost**	
Task		Total	*Percentage*	*Basis*	*Allocated Cost*
	Raw wastewater flow analysis to Ballenger Creek/McKinney; created treated effluent outfall hydraulic model for potential users of the effluent; determine pump requirements at the Ballenger Creek WWTP for effluent flow.	$14,925.00	17%	*Note 14*	$2,537.25
	TOTAL CHANGE ORDER 7:	***$14,925.00***			
				CITY'S SHARE:	**$2,537.25**
Change Order No. 8 (Executed January 27, 2005 by BOCC)				**City of Frederick's Cost**	
Task		Total	*Percentage*	*Basis*	*Allocated Cost*
	McKinney WWTP Planning and Concept Study	$105,000.00	0%	*Note 13*	$0.00
	TOTAL CHANGE ORDER 8:	***$105,000.00***			
				CITY'S SHARE:	**$0.00**
Change Order No. 10 (Executed September 27, 2005 by Director of DUSWM)				**City of Frederick's Cost**	
Task		Total	*Percentage*	*Basis*	*Allocated Cost*
	Engineering services to redesign water transmission main alignments in conjuction with the acquisition of easements on Part 1 and Part 2	$14,970.00	25%	*Note 14*	$3,742.50
	TOTAL CHANGE ORDER 10:	***$14,970.00***			
				CITY'S SHARE:	**$3,742.50**
	TOTAL DESIGN CONTRACT:	***$5,903,313.08***	*Note 10*		
				TOTAL CITY SHARE:	**$1,702,032.07**
				TOTAL CITY SHARE PAID TO DATE:	**($800,000.00)**
				TOTAL CITY SHARE REMAINING:	**$902,032.07**

Cost Allocation Basis Notes:

1. Project management, Preliminary Design and Preparation of Base Mapping percentage adjusted based on (72,000/79,000) {0.91 x 25 = 22.78 percent}
2. Based on 8 MGD out of 32 MGD (8/32 = 25%) {42" pipe capacity at 5 ft/sec velocity}
3. Based on 50% of tank design cost. Tank is needed to stabilize hydraulic grade line for part of City's 8 MGD flow.
4. Based on 17 percent cost sharing identified in 1990 City/County/MDE Flow Allocation Agreement.
5. Requested by the City to be included in WR&A contract with County (Ref: Eva Rosvold e-mail dated September 25, 2002)
6. Based on 8 MGD out of 25 MGD (8/25 = 32%)
7. Based on an average of 25% and 17% = 21%
8. The value shown in the executed Change Order is $603,404.31. WR&A's arithmetic total is shown, which corresponds to the City's share as shown and in Paul Lee's letter to Michael Marschner dated Mary 28, 2003.
9. See detailed accounting of Change Order 3 on separate attachment. Reference is made to the May 27, 2003 memorandum from Michael Marschner to the Board of County Commissioners regarding the recommendation to approve Change Orders 2 and 3; and executed Change Order No. 3.
10. The value shown in the executed Change Order is $5,907,146.76.
11. For discussion purposes, the percentage is **assumed** to be 25%.
12. Change Order No. 4 was not executed (voided). Change Order No. 5 involves hydraulic analysis associated with Fort Detrick and is **not** subject to shared costs by the City and is **not** included herewith.
13. Change Order No. 8 was approved as a "Zero Dollar" change order by the BOCC on January 27, 2005, which acknowledges efficiencies in the design of this portion of the project and subsequently reallocated the Scope of Services for this effort.
14. Change Order No. 9 involved hydraulic analysis associated with the Jefferson Technology Park development and was funded entirely by the developer and is not subject to shared costs by the City and is **not** included herewith..

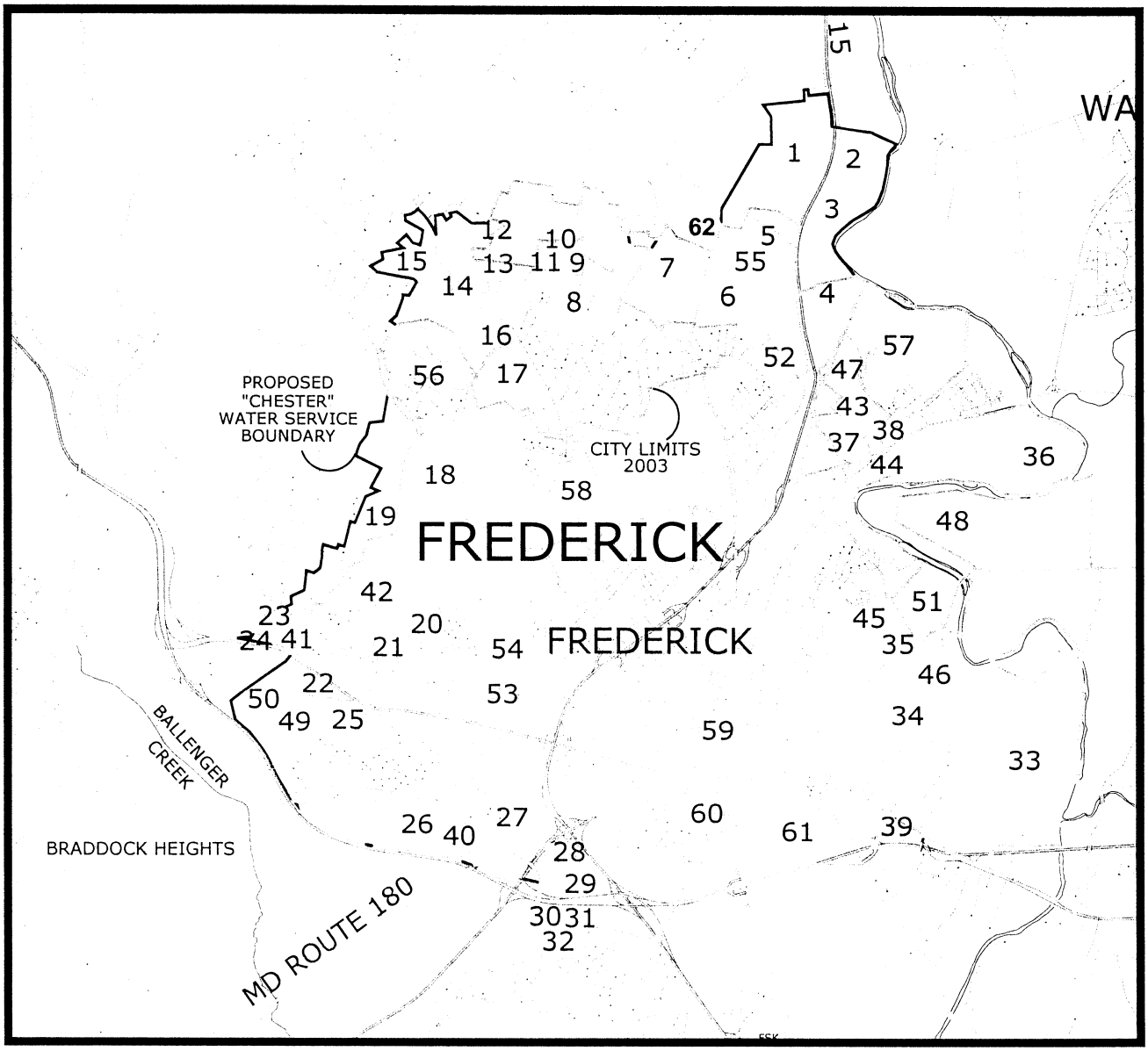


Maximum Water Supply Conditions (MGD and Gradient)[1]			
Connection Point	**Condition**	**Flow (MGD)**	**Gradient at City Connection Point (Elevation Above Sea Level)**
Eastern Low Zone (Ray Smith Road)	Reich's Ford Road Tank at 456' AMSL Carroll Tank ½ full No City Improvements[2]	5.0	529
	Reich's Ford Road Tank at 456' AMSL Carroll Tank ½ full With City Improvements	5.0	453
	Reich's Ford Road Tank at 473' AMSL Carroll Tank ½ full With City Improvements	8.0	466
Western Low/High Zone (Ballenger Creek Pike)	Hannover Tank at 453' AMSL Linden Tank ½ Full	3.0	447
	Hannover Tank at 473' AMSL Linden Tank Full	3.0	467

[1] Based on 24 hour day (12:00 Midnight to 12:00 Midnight).
[2] City Improvement needed include 16" and 20" parallel mains at Eastern Low Zone Connection.

Exhibit 3

Potomac River Water Supply Agreement Between Frederick County and the City of Frederick



See Page 2 and 3 of this Exhibit (4) for property descriptions of the number references shown on map above.

Exhibit 4

Potomac River Water Supply Agreement Between Frederick County and the City of Frederick

Number	Project	Acres	Units/Type	Unit Demand	Avg. Daily Demand (GPD)
1	Crum - Denny (Willow Road) Joli LLLP	362		1,400 GPD/Acre	506,800
2	Thatcher (Rt 15 N)	108		1,400 GPD/Acre	151,200
3	Ritchfield Farm (Rt 15 N)	139		1,400 GPD/Acre	194,600
4	Nathan (Rt 15 & Trading Lane)	96		1,400 GPD/Acre	134,400
5	Homewood	65	325 / Res	200 GPD/Unit	65,000
6	North Crossing		115 / Res	200 GPD/Unit	23,000
7	Garst - Clover Ridge (Opposumtown Pike)	177.2	396 / Res	250 GPD/Unit	99,000
8	Sanner (Walter Martz Rd)	64	192 / Res	250 GPD/Unit	48,000
9	Bartgis (Walter Martz Rd)	48	144 / Res	250 GPD/Unit	36,000
10	Rice	37	111 / Res	250 GPD/Unit	27,750
11	Rothenhoeffer	11	33 / Res	250 GPD/Unit	8,250
12	Desando	4	12 / Res	250 GPD/Unit	3,000
13	Albaugh Property (Walter Martz Rd.)	67	201 / Res	250 GPD/Unit	50,250
14	Keller (Yellow Springs Rd)	206	618 / Res	250 GPD/Unit	154,500
15	Staley (Rocky Springs Rd)	72	216 / Res	250 GPD/Unit	54,000
16	Clover Ridge LLC (Yellow Springs Road)	62	186 / Res	250 GPD/Unit	46,500
17	Hooper (Yellow Springs Rd)	124	372 / Res	250 GPD/Unit	93,000
18	Barrick / Crum / Ramsburg (Rocky Springs Rd)	102	306 / Res	250 GPD/Unit	76,500
19	Oden (Kemp Lane)	80	240 / Res	250 GPD/Unit	60,000
20	Lake Coventry (Shookstown		40 / Res	250 GPD/Unit	10,000
21	Avalon (Schaffer Drive)		133 / Res	200 GPD/Unit	26,600
22	Blentinger Road Properties	28	84 / Res	250 GPD/Unit	21,000
23	Bowers - Birdseye View		37 / Res	250 GPD/Unit	9,250
24	Dutrow (Route 40 West)	3	45,738 sq. ft. / Comm.	0.2 GPD/sq. ft.	9,148
25	VFW (Rt 40 Alt)	60	180 / Res	250 GPD/Unit	45,000
26	Hargett (Butterfly Lane)	148	/ Res & Comm.		143,048
27	OverLook (Himes Avenue)		92 / Res	200 GPD/Unit	18,400
28	Medimmune - Expansion	33	/ Comm.		62,000
29	Solarex Expansion	23	/ Comm.		300,000
30	Ballenger Creek PND Comm.	4.8	52,272 sq. ft. / Comm.	0.2 GPD/sq. ft.	10,454
31	Ballenger Creek PND	32.82	476.7 / Res	200 GPD/Unit	95,349
32	Ballenger Creek PND M-O	62.1	676,269 sq. ft. / Comm.	0.2 GPD/sq. ft.	135,254
33	Airport Park "FAPA"	131.46	/ Comm.	2,270 GPD/Acre	298,414
34	Renn (Hughes Ford)	220	/ Comm.	1,400 GPD/Acre	308,000
35	Great Southern / Nicodemus (Gas House Pike)	76	228 / Res	250 GPD/Unit	57,000
36	Dearbought		/ Res		29,900
37	Bowers, Lee, Nallin,	220	/ Comm.	1,400 GPD/Acre	308,000
38	Frederick Trading	21	/ Comm.	1,400 GPD/Acre	29,400
39	Gladhill (Route 70 East)	76	/ Comm.	2,000 GPD/Acre	152,000
40	Emerald Farm Not Annexed	34	109 / Res	250 GPD/Unit	52,750
41	Klein (Bowers Rd)	12	36 / Res	250 GPD/Unit	30,750

Potomac River Water Supply Agreement Between Frederick County and the City of Frederick

42	Krantz PND (Shookstown Rd)		896 / Res	200 GPD/Unit	179,200
43	Main (Rt 26)	12	130,680 sq. ft. / Comm.	0.2 GPD/sq. ft.	26,136
44	Riverside Center (Rt 26)	12	130,680 sq. ft. / Comm.	0.2 GPD/sq. ft.	26,136
45	Rivercrest (Schifferstadt Blvd)		100 / Res	250 GPD/Unit	25,000
46	Schley (Gas House Pike)	124	/ Comm.	1,400 GPD/Acre	173,600
47	San Miguel - Gateway (Rt 15 & Trading Lane)	45	490,050 sq. ft. / Comm.	0.2 GPD/sq. ft.	98,010
48	Riverside Corp Park (Monocacy Blvd & G.H. Pike)	440	/ Comm.	1,400 GPD/Acre	616,000
49	Summers Res Comm (Route 40 Alt & Mt. Phillip)	100	/ Res & Comm.		86,424
50	Summers - Adjacent Properties (Rt 40 Alt)	55	110 / Res	250 GPD/Unit	27,500
51	Umberger (Gas House Pike)	125	/ Comm.	1,400 GPD/Acre	175,000
52	Governor's Choice	20	/ Comm.	1,400 GPD/Acre	28,000
53	Taskers Chance PND (Key Parkway)		/ Res		64,700
54	Tuscarora Creek PND Res Comm		/ Res & Comm.		187,404
55	Willow Brook		/ Res		28,800
56	Whittier PND		/ Res		62,300
57	Worman's Mill PND		/ Res		141,250
58	Walnut Ridge - PND		/ Res		74,050
59	City Downtown In-Fill Development	60	/ Comm.	1,400 GPD/Acre	84,000
60	Carroll Creek Project	20	/ Comm.	2,000 GPD/Acre	40,000
61	Frederick Brick Works & South Street Properties	230	/ Comm.	1,400 GPD/Acre	322,000
62	Crum, Staley (Willowbrook Road)		/ Res		33,500

Notes/Disclaimers:

1. Projections for individual properties shall not be construed as an entitlement to a certain amount of water supply for any individual property, but rather is intended for the purpose of determination of City of Frederick future water supply demands.
2. Total of the demand projects in the table provided is based on serving the area shown as future water service area in the City of Frederick *Water and Sewer Master Plan* prepared by Chester Engineers.
3. The 8.0 MGD specified in the body of the PRWSA is the City's projected maximum daily demand for the 12-year planning period coinciding with the *WAUP* contained in the body of the PRWSA.
4. The total of the projections on pages 2 and 3 of this Exhibit constitute the projected average daily demand to serve the entire future Water Service Area on Plate V-1 of the referenced Chester Report for the 12-year planning period and beyond. See the September 17, 2001 correspondence from the City to the DUSWM for water supply projections needed to address maximum daily demand for existing City customers.