

1 **..Title**

2 **Water Service Agreement - 44 Hudson Street, LLC** – For the purpose of authorizing a
3 water service agreement providing for the extension of City water service to 44 Hudson
4 Street, LLC located in Anne Arundel County; and matters generally relating to providing
5 said water service outside the City limits.

6 **..Body**

7
8 **CITY COUNCIL OF THE**
9 **City of Annapolis**

10
11 **Ordinance 2-17**

12
13 **Introduced by: Mayor Pantelides**

14
15 **Referred to**

16 Finance Committee
17 Environmental Matters Committee

18
19
20 **AN ORDINANCE** concerning

21
22
23 **Water Service Agreement - 44 Hudson Street, LLC**

24
25 **FOR** the purpose of authorizing a water service agreement providing for the extension
26 of City water service to 44 Hudson Street, LLC located in Anne Arundel County;
27 and matters generally relating to providing said water service outside the City
28 limits.

29
30 **WHEREAS,** the Property Owner is the fee simple owner of an improved parcel of land
31 consisting of approximately 1.63 acres, more or less, located at 44 Hudson
32 Street, Annapolis, Maryland 21401 and as more accurately described in a
33 deed recorded at Liber 06463, folio 525 among the Land Records of Anne
34 Arundel County (collectively, the “Property”), and with mailing addresses
35 of 45 and 49 Hudson Street; and

36
37 **WHEREAS,** the Property is presently located outside the City limits of the City of
38 Annapolis, and is presently under development pursuant to grading and
39 building permits issued by Anne Arundel County for the construction of
40 two (2) buildings intended for occupancy by commercial tenants; and

41
42 **WHEREAS,** the Property is not currently served by private or public water facilities,
43 and the Property Owner desires to connect to City public water lines to
44 provide public water service to allow completion of development, use and
45 occupancy of the property; and

46

1 **WHEREAS,** the Property Owner will submit an application to the City pursuant to
2 Chapter 16.04 of the City Code, as may be amended, to obtain a permit
3 (“Permit”) to connect with the City water utility system to obtain water
4 service for the Property, which Permit is incorporated herein by reference;
5 and
6

7 **WHEREAS,** it is the intention of the City that the City Department of Public Works
8 (the “Department”) shall not grant final approval for this connection to the
9 City water utility system until such time as it shall be satisfied that the
10 proposed connection shall not result in or cause an inadequate water flow
11 to from the Property or to other properties served by the affected City
12 water utility lines and that the proposed connection satisfies other
13 requirements of the Department; and
14

15 **WHEREAS,** the parties believe it to be in the public’s interest to permit the Property
16 Owner to connect to the City water utility system; and
17

18 **WHEREAS,** Section 16.08.050A of the Code of the City of Annapolis requires the
19 passage of an ordinance before water service may be extended by written
20 agreement outside of the City limits; and
21

22 **WHEREAS,** pursuant to Section 16.08.050A of the Code of the City of Annapolis the
23 Director of Public Works has issued a determination, and upon same, the
24 City Council hereby finds that existing and/or funded facilities, capacity
25 and infrastructure are sufficient to serve 44 Hudson Street, LLC’s property
26 in addition to existing and reasonably foreseeable City users.
27

28
29 **SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS**
30 **CITY COUNCIL** that the Water Service Agreement attached hereto be and the same is
31 hereby approved, adopted and authorized.
32

33 **SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE**
34 **ANNAPOLIS CITY COUNCIL** that this Ordinance shall take effect from the date of its
35 passage.
36

37 **EXPLANATION**

38 CAPITAL LETTERS indicate matter added to existing law.

39 ~~Strikethrough~~ indicates matter stricken from existing law.

40 Underlining indicates amendments
41
42

Tax Acct. No.: 02-020-90039173

**CITY OF ANNAPOLIS
WATER SERVICE AGREEMENT**

THIS WATER SERVICE AGREEMENT (“Agreement”) is made this _____ day of _____, 2017, by and between the City of Annapolis, a municipal corporation of the State of Maryland (“City”), and 44 HUDSON STREET, LLC, a Maryland limited liability company, its successors and assigns (collectively, the “Property Owner”).

WHEREAS, the Property Owner is the fee simple owner of an improved parcel of land consisting of approximately 1.63 acres, more or less, located at 44 Hudson Street, Annapolis, Maryland 21401 and as more accurately described in a deed recorded at Liber 06463, folio 525 among the Land Records of Anne Arundel County (collectively, the “Property”), and with mailing addresses of 45 and 49 Hudson Street; and

WHEREAS, the Property is presently located outside the City limits of the City of Annapolis, and is presently under development pursuant to grading and building permits issued by Anne Arundel County for the construction of two (2) buildings intended for occupancy by commercial tenants; and

WHEREAS, the Property is not currently served by private or public water facilities, and the Property Owner desires to connect to City public water lines to provide public water service to allow completion of development, use and occupancy of the property; and

WHEREAS, the Property Owner will submit an application to the City pursuant to Chapter 16.04 of the City Code, as may be amended, to obtain a permit (“Permit”) to connect with the City water utility system to obtain water service for the Property, which Permit is incorporated herein by reference; and

WHEREAS, it is the intention of the City that the City Department of Public Works (the “Department”) shall not grant final approval for this connection to the City water utility system until such time as it shall be satisfied that the proposed connection shall not result in or cause an inadequate water flow to the Property or to other properties served by the affected City water utility lines and that the proposed connection satisfies other requirements of the Department; and

WHEREAS, the parties believe it to be in the public’s interest to permit the Property Owner to connect to the City water utility system.

NOW THEREFORE, in consideration of these premises and the mutual covenants and promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

1 **1. Design and Construction.**

2
3 a. The Property Owner, at its sole cost and expense, shall design and
4 construct, subject to written approval by the City and the Department, water connection
5 system with all related equipment and work necessary to provide water service to the
6 Property from the City water utility system (collectively, the "Connection System"). The
7 Connection System shall be constructed by the Property Owner pursuant to the City
8 Code, as may be amended, and all City and Department standards. The approved plans
9 and/or drawings for the Connection System, once completed, shall be attached hereto as
10 **Attachment A**, upon completion and approval by the City and the Department.

11
12 b. The Connection System shall comply with both Section 16.08.050 and
13 Chapter 16.16 of the City Code, as may be amended, and all other City and Department
14 requirements.

15
16 c. The Property Owner, at its sole cost and expense, shall submit all
17 applicable applications; obtain all applicable permits and approvals, including, but not
18 limited to, the Permit; enter into all applicable utility agreements; and obtain bonds in
19 form and substance as used by the City to accomplish the design and construction of the
20 Connection System. The Property Owner shall submit copies of all such applications,
21 permits, agreements and bonds to the Department, in such form as the Department in its
22 sole discretion may require.

23
24 d. The Property Owner, at its sole cost and expense, shall obtain from third
25 parties (including, but not limited to, adjacent property owners) such permission as the
26 City, in its sole discretion, may require to accomplish the purposes of this Agreement.
27 Such permission shall be in a form deemed acceptable to the City in its sole discretion.

28
29 e. The Property Owner, at its sole cost and expense, shall install back-flow
30 prevention (RPZ) devices inside the buildings on the Property to prevent back flow from
31 the Connection System into the City water utility system.

32
33 **2. Easements; Provision of Water Service.**

34
35 a. Upon the completion of all of the requirements set forth in Paragraph 1 by
36 the Property Owner, and the approval of the design and construction of the Connection
37 System by the City and the Department, the Property Owner shall convey to the City such
38 easements as the City may in its sole discretion require, including, but not limited to, an
39 access easement to the Connection System and any related water meter(s). Any and all
40 such easements shall be prepared and recorded at the sole cost and expense of the
41 Property Owner.

42
43 b. The City shall provide water utility service to the Property and its
44 improvements, all as reflected on a site plan to be attached hereto as part of **Attachment**
45 **A**.

46

1 c. The City shall provide a water meter(s) for the Property, which shall be
2 installed by the City at the Property Owner's sole cost and expense in such location(s) as
3 shall conform with all City requirements. This water meter(s) shall remain the property of
4 the City.

5
6 d. The water utility service to be provided pursuant to this Agreement shall
7 be for domestic use only and not for fire protection.

8
9 e. The Property Owner shall not extend water utility lines installed under this
10 Agreement to any other property, building and/or structure without the prior approval
11 required by the Charter and Code of the City, as may be amended.

12
13 f. The City shall be obligated to provide water service to the Property on the
14 terms provided in this Agreement, and the Property Owner shall be obligated to purchase
15 all water utility service for the Property from the City. Provided, however, that the City's
16 obligation to provide water service under this Agreement is specifically conditioned upon
17 the Property Owner's performance of all of its duties and responsibilities hereunder and
18 any breach thereof by the Property Owner or any decision by a judicial, quasi-judicial or
19 administrative body invalidating any such duty or responsibility shall relieve the City of
20 its obligations and responsibilities under this Agreement. The City's obligation to provide
21 water utility service under this Agreement is further expressly conditioned upon a finding
22 by the Department that providing water utility service to the Property shall not result in or
23 cause an inadequate water flow to the Property and/or other properties served by any
24 affected water utility lines.

25
26 **3. Fees and Other Charges.**

27
28 a. The Property Owner shall pay all connection charges (including meter
29 costs) for the Property, as are customarily charged by the City for customers outside of
30 the City from time to time.

31
32 b. The Property Owner shall pay all capital facility charges and assessments
33 for water utility service to the Property, as are customarily charged by the City for
34 customers outside of the City from time to time.

35
36 c. For any calendar quarter (or any portion thereof) in which the Property
37 remains un-annexed into the City, the City shall charge and the Property Owner shall pay
38 on a per unit basis the same rate for water service as is in effect for customers outside of
39 the City from time to time, and any other charges and fees required by either Chapter
40 16.08 or Chapter 16.16 of the City Code, as may be amended.

41
42 d. Breach of any provision of this Paragraph 3, in addition to other remedies
43 provided herein, shall constitute a basis for temporary or permanent water utility service
44 cut-off by the City to the Property.

45
46 **4. Recordation; Binding.**

1
2 a. It is expressly agreed that this Agreement shall be recorded among the
3 Land Records of Anne Arundel County at the sole cost and expense of the Property
4 Owner, and that the duties and responsibilities of this Agreement shall run with the title
5 to the Property.

6
7 b. The parties and their respective successors, assigns and purchasers shall be
8 entitled to all of the rights and privileges of this Agreement and shall be bound by all of
9 its duties and responsibilities. All references to the "Property Owner" herein shall be
10 interpreted to specifically refer to all of the Property Owner's successors, assigns and
11 purchasers, without regard to privity with the City under this Agreement.

12
13 c. The terms of this Agreement shall be binding upon and shall inure to the
14 benefit of the parties, any successor municipal authorities of the City or any successor
15 quasi-governmental authority. Successor owners of record of the Property and/or the
16 successors and assigns of the Property Owner may assign their benefits, rights, duties and
17 obligations hereunder either as part of the conveyance of the Property as an entirety or
18 severally as part of the conveyances of portions of the Property.

19
20 **5. Inspections; Maintenance.**

21
22 a. The Connection System, and any related specific devices installed as part
23 of such System, shall be as approved by the Director of the Department.

24
25 b. At any time during normal business hours and upon reasonable notice of
26 the City to the Property Owner, the Property Owner shall make the Property and the
27 Connection System, as relates to this Agreement, available to the City, and its officials,
28 officers, employees and agents, for inspection.

29
30 c. The Property Owner shall maintain and test the Connection System, at its
31 sole cost and expense, on an annual basis.

32
33 d. Breach of any provision of this Paragraph 5, in addition to other remedies
34 provided herein, shall constitute a basis for temporary or permanent water utility service
35 cut-off by the City to the Property.

36
37 **6. Indemnification.**

38
39 a. The Property Owner shall forever indemnify, defend and hold harmless
40 the City, its elected officials, appointees, directors, employees, agents, contractors and
41 representatives from and against all liability for injuries to persons, including death, and
42 damage to City property and other property arising from acts or omissions of the Property
43 Owner, its officers, agents, employees, contractors, patrons, volunteers, guests or invitees
44 resulting in connection with this Agreement, the Permit or the Connection System.

45
46 b. Property Owner indemnification does not limit any immunity which the

1 City, its elected officials, appointed officers, directors, employees, agents, contractors and
2 representatives are entitled to assert, and includes all costs and expenses, including
3 attorney's fees, whether or not related to administrative or judicial proceedings.
4

5 c. The City, in its sole discretion, may participate in handling its own defense
6 or exclusively handle its own defense, and select its own attorneys, including the City
7 Attorney. The indemnification for attorney fees applies whether or not the City Attorney
8 or other attorney handles the defense.
9

10 d. The Property Owner shall reimburse the City, within thirty (30) calendar
11 days after invoicing for such reimbursement, for any damage to the City's water utility
12 system, water mains, facilities, equipment or other property caused by the negligence or
13 willful misconduct of the Property Owner, its officers, agents, employees, contractors,
14 patrons, volunteers, guests or invitees.
15

16 **7. Breach/Default.**

17

18 a. Upon five (5) calendar days written notice from the City to the Property
19 Owner, the City may temporarily cut-off water utility service to the Property if the
20 Property Owner shall fail to fulfill in a timely and proper manner its obligations under
21 this Agreement, or if the Property Owner shall violate any term of this Agreement. The
22 City shall afford the Property Owner thirty (30) calendar days (or longer as agreed to in
23 writing by the City) to cure any breach or default of this Agreement before permanently
24 cutting-off water utility service to the Property.
25

26 b. The Property Owner shall be liable for any damage to the City resulting
27 from the Property Owner's breach or default of this Agreement, including, but not limited
28 to, any damages incurred by the City or the City water utility system. In such case, the
29 City shall notify the Property Owner of the amount of its liability, which the Property
30 Owner shall pay within thirty (30) calendar days of such notice.
31

32 c. Upon the permanent cut-off of water utility service to the Property for
33 breach or default of this Agreement, the City shall reimburse the Property Owner for any
34 fees or charges paid in advance pursuant to Paragraph 3, prorated as of the date of
35 permanent cut-off, less the amount of damages caused by the breach or default, all as
36 determined by the City in its sole discretion. If the damages exceed any prorated
37 reimbursement, the City shall not be obligated to make any further prorated
38 reimbursements hereunder.
39

40 **8. Waiver.**

41

42 a. No delay or omission of the City to exercise any right, power or remedy
43 accruing upon the happening of an event that would allow the City to terminate this
44 Agreement shall impair any such right, power or remedy or shall constitute a waiver upon
45 the occurrence of another such event or any acquiescence therein. No delay or omission
46 on the part of the City to exercise any option granted to the City under this Agreement, in

1 any one or more instances shall constitute a waiver of the City's rights hereunder and
2 each such option shall remain continuously in full force and effect.

3
4 b. The Property Owner hereby understands and agrees that this Agreement
5 shall not waive any rights, powers or remedies that the City may have pursuant to the
6 City Code and, specifically, Chapter 16.04, Section 16.08.050 and Chapter 16.16 of the
7 City Code, all as may be amended.

8
9 **9. Annexation.**

10
11 At any time that the corporate boundaries of the City are amended such that the
12 Property becomes part of the City and/or the Property Owner successfully petitions the
13 City to annex the Property into the City's corporate boundaries pursuant to the Maryland
14 Annotated Code, water utility service shall be supplied to the Property under such terms
15 and conditions as are customarily imposed for customers located in the City.

16
17 **10. No Partnership.**

18
19 Nothing contained in this Agreement shall be construed in a manner to create any
20 relationship between the parties other than expressly specified herein, and the parties
21 shall not be considered partners or co-venturers for any purpose on account of this
22 Agreement.

23
24 **11. Severability.**

25
26 In the event any one or more of the provisions of this Agreement shall for any
27 reason be held by a court or other lawful authority to be invalid, illegal or unenforceable,
28 in whole or in part or in any other respect, the remaining provisions hereof shall not be
29 affected thereby, and the Agreement shall remain operative and in full force and effect
30 and shall in no way be affected, prejudiced or disturbed thereby.

31
32 **12. Governing Law.**

33
34 This Agreement and its interpretation shall be governed by Maryland law. The
35 venue for all actions pursuant to this Agreement shall be the Courts of Anne Arundel
36 County, Maryland. The parties waive trial by jury in all actions brought pursuant to this
37 Agreement.

38
39 **13. Captions and Headings.**

40
41 The captions and headings contained in this Agreement are included herein for
42 convenience of reference only and shall not be considered a part hereof and are not in any
43 way intended to limit or enlarge the terms hereof.

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45 **14. Integration; Modification.**

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Witness

By: _____
Name:
Title:

ATTEST:

CITY OF ANNAPOLIS

Regina C. Watkins-Eldridge, MMC,
City Clerk

By: _____
Michael J. Pantelides, Mayor (Seal)

APPROVED FOR FINANCIAL SUFFICIENCY:

REVIEWED AND APPROVED BY:

Bruce T. Miller, Director
Finance Department

Thomas C. Andrews, City Manager

REVIEWED AND APPROVED BY:

David Jarrell, Director
Department of Public Works

APPROVED FOR FORM AND LEGAL SUFFICIENCY:

OFFICE OF THE CITY ATTORNEY

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2
3

ATTACHMENT A
PLANS, DRAWINGS, SITE PLAN