

1 **..Title**

2 **Water Service Agreement – Hopkins property** – For the purpose of authorizing a water
3 service agreement providing for the extension of City water service to certain property located in
4 Anne Arundel County, outside of the boundaries of the City of Annapolis; and matters generally
5 relating to said agreement.

6 **..Body**

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

9
10 **Ordinance 33-15**

11
12 **Sponsored by: Mayor Pantelides**

13
14 **Referred to**
15 **Finance**
16 **Economic Matters**

17
18 **AN ORDINANCE** concerning

19
20 **Water Service Agreement – Hopkins property**

21
22 **FOR** the purpose of authorizing a water service agreement providing for the extension of City
23 water service to certain property located in Anne Arundel County, outside of the
24 boundaries of the City of Annapolis; and matters generally relating to said agreement.

25
26 **WHEREAS**, the Property Owner is the fee simple owner of an improved parcel of land located
27 at 963 Old Annapolis Neck Road, Annapolis, Maryland 21403; and

28
29 **WHEREAS**, the Property Owner is subdividing the Property into a total of three lots, one lot
30 with an existing residential home and two lots with new single-family homes; and

31
32 **WHEREAS**, the Property Owner currently draws its water supply for the one lot with the
33 residential home from the City water utility system, but does not currently have a
34 water supply for the two lots with new single-family homes; and

35
36 **WHEREAS**, the Property Owner submitted an application to the City pursuant to Chapter 16.04
37 of the City Code, as may be amended, to obtain a permit to obtain additional
38 water service for the two lots with new single-family homes on the Property from
39 the City water utility system; and

40
41 **WHEREAS**, it is the intention of the City that the Annapolis Public Works Department (the
42 “Department”) shall not grant final approval for this connection to the City water
43 utility system until such time as it shall be satisfied that the proposed connection
44 shall not result in or cause an inadequate water flow to the Property or to other
45 properties served by the affected water utility line and that the proposed
46 connection satisfies other requirements of the Department; and

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WHEREAS, this Agreement and the Permit do not include a request for sanitary sewer service;
and

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

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

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

EXPLANATION

CAPITAL LETTERS indicate matter added to existing law.

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

Underlining indicates amendments

1 **CITY OF ANNAPOLIS WATER SERVICE AGREEMENT**
2
3

4 **THIS WATER SERVICE AGREEMENT** (“Agreement”) is made this _____ day of
5 _____, 2015, by and between the City of Annapolis, a municipal corporation of the State
6 of Maryland (“City”), and JAMES FRED HOPKINS, a Maryland resident (the “Property
7 Owner”).
8

9 **WHEREAS**, the Property Owner is the fee simple owner of an improved parcel of land
10 consisting of approximately one and 16/100 (1.16) acres, more or less, located at 963 Old
11 Annapolis Neck Road, Annapolis, Maryland 21403 and as more accurately described in a deed
12 recorded at Liber 26460, folio 305 among the Land Records of Anne Arundel County
13 (collectively, the “Property”); and
14

15 **WHEREAS**, the Property Owner is subdividing the Property into a total of three (3) lots,
16 one (1) lot with the existing improvements (i.e. residential home) and two (2) lots with new
17 single-family homes; and
18

19 **WHEREAS**, the Property Owner currently draws its water supply for the one (1) lot with
20 the existing improvements (i.e. residential home) from the City water utility system, but does not
21 currently have a water supply for the two (2) lots with new single-family homes; and
22

23 **WHEREAS**, the Property Owner submitted an application to the City pursuant to
24 Chapter 16.04 of the City Code, as may be amended, to obtain a permit (“Permit”) to obtain
25 additional water service for the two (2) lots with new single-family homes on the Property from
26 the City water utility system, which Permit is incorporated herein by reference; and
27

28 **WHEREAS**, it is the intention of the City that the Annapolis Public Works Department
29 (the “Department”) shall not grant final approval for this connection to the City water utility
30 system until such time as it shall be satisfied that the proposed connection shall not result in or
31 cause an inadequate water flow to the Property or to other properties served by the affected water
32 utility line and that the proposed connection satisfies other requirements of the Department; and
33

34 **WHEREAS**, this Agreement and the Permit do not include a request for sanitary sewer
35 service; and
36

37 **WHEREAS**, the parties believe it to be in the public’s interest to permit the Property
38 Owner to further connect to the City water utility system.
39

40 **NOW THEREFORE**, in consideration of these premises and the mutual covenants and
41 promises set forth below, and other good and valuable consideration, the receipt and sufficiency
42 of which the parties acknowledge, the parties agree as follows:
43

44 **1. Design and Construction.**
45

- 46 a. The Property Owner, at its sole cost and expense, shall design and construct,

1 subject to written approval by the City and the Department, a water connection system with all
2 related equipment and work necessary to provide water service to the Property from the City
3 water utility system (collectively, the “Water Connection System”). The Water Connection
4 System shall be constructed by the Property Owner pursuant to the City Code, as may be
5 amended, and all City and Department standards. The approved plans and/or drawings for the
6 Water Connection System, shall be attached hereto as **Attachment A**, upon completion and final
7 approval by the City and the Department.
8

9 b. The Water Connection System shall comply with Section 16.08.050 of the City
10 Code, as may be amended, and all other City and Department requirements.
11

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

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

24 e. The Property Owner, at its sole cost and expense, shall install a back-flow
25 prevention (RPZ) device inside the residence and/or building on the Property to prevent back
26 flow from the Water Connection System into the City water utility system.
27

28 **2. Easements; Provision of Water Service.**

29

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

37 b. The City shall provide water utility service to the Property and its improvements,
38 all as reflected on a site plan to be attached hereto as part of **Attachment A**.
39

40 c. The City shall provide a single water meter for the Property, which shall be
41 installed by the City at the Property Owner's sole cost and expense in such location(s) as shall
42 conform with all City requirements. This water meter shall remain the property of the City.
43

44 d. The water utility service to be provided pursuant to this Agreement shall be for
45 domestic use only and not for fire protection.
46

1 e. The Property Owner shall not extend water utility lines installed under this
2 Agreement to any other property, building and/or structure without the prior approval required
3 by the Charter and Code of the City, as may be amended.
4

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

17 **3. Fees and Other Charges.**

18
19 a. The Property Owner shall pay all connection charges (including meter costs) for
20 the Property, as are customarily charged by the City for customers outside of the City from time
21 to time.
22

23 b. The Property Owner shall pay all capital facility charges and assessments for
24 water utility service to the Property, as are customarily charged by the City for customers outside
25 of the City from time to time.
26

27 c. For any calendar quarter (or any portion thereof) in which the Property remains
28 un-annexed into the City, the City shall charge and the Property Owner shall pay on a per unit
29 basis the same rate for water service as is in effect for customers outside of the City from time to
30 time, and any other charges and fees required by Chapter 16.08 of the City Code, as may be
31 amended.
32

33 d. Breach of any provision of this Paragraph 3, in addition to other remedies
34 provided herein, shall constitute a basis for temporary or permanent water utility service cut-off
35 by the City to the Property.
36

37 **4. Recordation; Binding.**

38
39 a. It is expressly agreed that this Agreement shall be recorded among the Land
40 Records of Anne Arundel County at the sole cost and expense of the Property Owner, and that
41 the duties and responsibilities of this Agreement shall run with the title to the Property.
42

43 b. The parties and their respective successors, assigns and purchasers shall be
44 entitled to all of the rights and privileges of this Agreement and shall be bound by all of its duties
45 and responsibilities. All references to the "Property Owner" herein shall be interpreted to
46 specifically refer to all of the Property Owner's successors, assigns and purchasers, without

1 regard to privity with the City under this Agreement.
2

3 c. The terms of this Agreement shall be binding upon and shall inure to the benefit
4 of the parties, any successor municipal authorities of the City or any successor quasi-
5 governmental authority. Successor owners of record of the Property and/or the successors and
6 assigns of the Property Owner may assign their benefits, rights, duties and obligations hereunder
7 either as part of the conveyance of the Property as an entirety or severally as part of the
8 conveyances of portions of the Property.
9

10 **5. Inspections; Maintenance.**

11 a. The Water Connection System, and any related specific devices installed as part
12 of such System, shall be as approved by the Director of the Department.
13
14

15 b. At any time during normal business hours and upon reasonable notice of the City
16 to the Property Owner, the Property Owner shall make the Property and the Water Connection
17 System, as relates to this Agreement, available to the City, and its officials, officers, employees
18 and agents, for inspection.
19

20 c. The Property Owner shall maintain and test the Water Connection System, at its
21 sole cost and expense, on an annual basis.
22

23 d. Breach of any provision of this Paragraph 5, in addition to other remedies
24 provided herein, shall constitute a basis for temporary or permanent water utility service cut-off
25 by the City to the Property.
26

27 **6. Indemnification.**

28 a. The Property Owner shall forever indemnify, defend and hold harmless the City,
29 its elected officials, appointees, directors, employees, agents, contractors and representatives
30 from and against all liability for injuries to persons, including death, and damage to City property
31 and other property arising from acts or omissions of the Property Owner, its officers, agents,
32 employees, contractors, patrons, volunteers, guests or invitees resulting in connection with this
33 Agreement, the Permit or the Water Connection System.
34
35

36 b. Property Owner indemnification does not limit any immunity which the City, its
37 elected officials, appointed officers, directors, employees, agents, contractors and representatives
38 are entitled to assert, and includes all costs and expenses, including attorney's fees, whether or
39 not related to administrative or judicial proceedings.
40

41 c. The City, in its sole discretion, may participate in handling its own defense or
42 exclusively handle its own defense, and select its own attorneys, including the City Attorney.
43 The indemnification for attorney fees applies whether or not the City Attorney or other attorney
44 handles the defense.
45

46 d. The Property Owner shall reimburse the City, within thirty (30) calendar days

1 after invoicing for such reimbursement, for any damage to the City's water utility system, water
2 mains, facilities, equipment or other property caused by the negligence or willful misconduct of
3 the Property Owner, its officers, agents, employees, contractors, patrons, volunteers, guests or
4 invitees.

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6 **7. Breach/Default.**
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8 a. Upon five (5) calendar days written notice from the City to the Property Owner,
9 the City may temporarily cut-off water utility service to the Property if the Property Owner shall
10 fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the
11 Property Owner shall violate any term of this Agreement. The City shall afford the Property
12 Owner thirty (30) calendar days (or longer as agreed to in writing by the City) to cure any breach
13 or default of this Agreement before permanently cutting-off water utility service to the Property.
14

15 b. The Property Owner shall be liable for any damage to the City resulting from the
16 Property Owner's breach or default of this Agreement, including, but not limited to, any
17 damages incurred by the City or the City water utility system. In such case, the City shall notify
18 the Property Owner of the amount of its liability, which the Property Owner shall pay within
19 thirty (30) calendar days of such notice.
20

21 c. Upon the permanent cut-off of water utility service to the Property for breach or
22 default of this Agreement, the City shall reimburse the Property Owner for any fees or charges
23 paid in advance pursuant to Paragraph 3, prorated as of the date of permanent cut-off, less the
24 amount of damages caused by the breach or default, all as determined by the City in its sole
25 discretion. If the damages exceed any prorated reimbursement, the City shall not be obligated to
26 make any further prorated reimbursements hereunder.
27

28 **8. Waiver.**
29

30 a. No delay or omission of the City to exercise any right, power or remedy accruing
31 upon the happening of an event that would allow the City to terminate this Agreement shall
32 impair any such right, power or remedy or shall constitute a waiver upon the occurrence of
33 another such event or any acquiescence therein. No delay or omission on the part of the City to
34 exercise any option granted to the City under this Agreement, in any one or more instances shall
35 constitute a waiver of the City's rights hereunder and each such option shall remain continuously
36 in full force and effect.
37

38 b. The Property Owner hereby understands and agrees that this Agreement shall not
39 waive any rights, powers or remedies that the City may have pursuant to the City Code and,
40 specifically, Chapter 16.04 and Section 16.08.050 of the City Code, all as may be amended.
41

42 **9. Annexation.**
43

44 At any time that the corporate boundaries of the City are amended such that the Property
45 becomes part of the City and/or the Property Owner successfully petitions the City to annex the
46 Property into the City's corporate boundaries pursuant to the Maryland Annotated Code, water

1 utility service shall be supplied to the Property under such terms and conditions as are
2 customarily imposed for customers located in the City.

3

4 **10. No Partnership.**

5

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

9

10 **11. Severability.**

11

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

17

18 **12. Governing Law.**

19

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

23

24 **13. Captions and Headings.**

25

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

29

30 **14. Integration; Modification.**

31

32 a. This Agreement is the final and entire agreement of the parties concerning all
33 matters having to do with the Permit and the Water Connection System. The parties
34 acknowledge that there are no other understandings or representations, oral or written, regarding
35 the subject or matters having to do with the Permit and/or the Water Connection System.

36

37 b. None of the terms or provisions of this Agreement may be changed, waived, or
38 modified exempt by written instrument executed by both parties hereto.

39

40 **15. Counterparts.**

41

42 This Agreement may be executed in any number of counterparts and by the parties hereto
43 in separate counterparts, each of which when so executed and delivered shall be deemed to be an
44 original and all of which taken together shall constitute but one and the same instrument.

45

46 **16. Notice.**

1
2 Any notice required to be delivered shall be deemed to have been received when the
3 notice has been sent by certified mail, return receipt, overnight carrier, or hand delivered with
4 signed receipt to the following address and individual or such other address and/or such other
5 individual as a party may identify in writing to the other party:

6
7 To the City: Department of Public Works
8 145 Gorman Street, 2nd Floor
9 Annapolis, Maryland 21401
10 Attn: Director

11
12 With a Copy to: City Attorney
13 160 Duke of Gloucester Street
14 Annapolis, Maryland 21401

15
16 To the Property Owner: James Fred Hopkins
17 963 Old Annapolis Neck Road,
18 Annapolis, Maryland 21403
19

20 **17. Authorization:**

21
22 This Water Service Agreement is authorized by the City Council pursuant to Ordinance
23 No. O-33-15, as amended.
24

25
26 **IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed under Seal
27 as of the day and year written below.
28

29
30 JAMES FRED HOPKINS

31
32
33 _____
34 Witness

35
36
37 ATTEST:

CITY OF ANNAPOLIS

38
39
40 _____
41 Regina C. Watkins-Eldridge, MMC,
42 City Clerk

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

43
44
45 APPROVED FOR FINANCIAL SUFFICIENCY: REVIEWED AND APPROVED BY:
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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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**ATTACHMENT A
PLANS, DRAWINGS, SITE PLAN**