

RS-2022-06

**RESOLUTION OF  
THE BOARD OF COUNTY COMMISSIONERS  
OF WASHINGTON COUNTY, MARYLAND,  
APPROVING THE  
JOINT SEWER SERVICE AREA AGREEMENT  
WITH THE MAYOR AND COUNCIL OF THE CITY OF HAGERSTOWN  
FOR THE PURPOSE OF ESTABLISHING  
THE GENERAL TERMS AND RESPONSIBILITIES  
FOR THE PROVISION OF SANITARY SEWER SERVICE  
TO THOSE GEOGRAPHIC AREAS DELINEATED IN THE  
JOINT SEWER SERVICE AREA TO BE SERVED BY THE  
RESPECTIVE SEWERAGE FACILITIES OF THE COUNTY AND THE CITY**

- WHEREAS,** the Board of County Commissioners of Washington County, Maryland, a body corporate and politic and a political subdivision of the State of Maryland, is the duly constituted legislative body of Washington County, Maryland (the “County”); and the Mayor and Council of the City of Hagerstown, a municipal corporation, is the duly constituted legislative body of the City of Hagerstown, Maryland (the “City”). The County and the City are hereinafter referred to individually as the “Party” and collectively as the “Parties”; and
- WHEREAS,** the Parties own, operate, and maintain respective facilities for the treatment of wastewaters within their respective boundaries; and
- WHEREAS,** the Parties, recognizing the importance of providing Joint Sewer Service (defined as sewer service provided jointly by the County and the City where one party agrees to own and maintain a sewer collection system through sewer lines owned by that party and treatment may be provided at a sewage treatment plant owned by the other party), have determined that it is in the best interests of their respective jurisdictions and citizenry thereof to approve the Joint Sewer Service Area Agreement (the “Agreement”) for the purpose of establishing the general terms and responsibilities for the provision of sanitary sewer service to the Joint Sewer Service Area defined as that area depicted in gold, blue, and red on Exhibit A of the said Agreement, a copy of which is attached hereto and made a part hereof by reference; and
- WHEREAS,** the Agreement consolidates terms for the provision of sewer service to the present and future service areas within the Joint Sewer Service Area; and
- WHEREAS,** the Agreement governs the terms by which the Parties shall accept the wastewaters generated in the Joint Sewer Service Area for transport, treatment, and disposal, provided, however, that the accepting Party’s facility has adequate capacity to accept additional sewage flow; and

**WHEREAS,** the Agreement provides that the provision of sanitary sewer service to the Joint Sewer Service Area shall be pursued by the Parties in a cooperative and non-competitive manner. The Parties agree that they will continue their present practice of providing sanitary sewer service to areas outside the Joint Sewer Service Area and other such joint sewer service areas approved under Paragraph 16 of the Agreement by negotiating individual service agreements with each property owner who requests sanitary sewer service; and

**WHEREAS,** the Agreement shall replace and revoke all prior County/City sewer service agreements in their entirety, including, but not limited to, the following:

- ♦ Consolidate General Service Agreement, effective September 16, 1997, and amended several times as follows:
- ♦ Amendment #1, effective October 31, 1997;
- ♦ Amendment #2, effective April 27, 1999;
- ♦ Amendment #3, effective April 27, 1999;
- ♦ Amendment #4, effective September 26, 2000;
- ♦ Amendment #5, drafted but never approved;
- ♦ Amendment #6, effective September 24, 2002;
- ♦ Amendment #7, effective June 13, 2006;
- ♦ Amendment #8, drafted but never approved;
- ♦ Amendment #9, effective June 19, 2007;
- ♦ Amendment #10, effective April 12, 2011;
- ♦ Amendment #11, drafted but never approved;
- ♦ Amendment #12, effective February 23, 2021; and

**WHEREAS,** the Agreement incorporates the Parties' Flow Transfer Agreement, effective August 5, 2013, except that Paragraph VII., Agreement Terms, of said Flow Transfer Agreement is amended to reflect that the term is no longer twenty (20) years, as set forth therein; and

**WHEREAS,** the Parties deem said Agreement to be mutually beneficial to provide sewer service to the Joint Sewer Service Area in accordance with the terms set forth in said Agreement; and

**WHEREAS,** the Board of County Commissioners believes it to be in the best interest of the citizens of Washington County to enter into said Agreement.

**NOW, THEREFORE, BE IT RESOLVED,** by the County as follows:

1. That the foregoing Recitals be and are hereby incorporated herein as if set forth verbatim; and

2. That the Agreement is hereby accepted, approved, and ratified; and
3. That Jeffrey A. Cline, President of the Board of County Commissioners, or his successor, is hereby authorized, empowered, and directed to execute and deliver to the City the Agreement, together with any other documents necessary to effectuate the purposes hereof.

**BE IT FURTHER RESOLVED**, by the County that this Resolution shall become effective immediately effective upon its approval.

ATTTEST:

BOARD OF COUNTY COMMISSIONERS OF  
WASHINGTON COUNTY, MARYLAND

  
Krista L. Hart, County Clerk

By:  (SEAL)  
Jeffrey A. Cline, President

Date signed: 1/25/22

Approved as to form and legal sufficiency  
for execution by the County:

  
Kirk C. Downey  
County Attorney

Mail to:  
Office of the County Attorney  
100 W. Washington Street, Suite 1101  
Hagerstown, MD 21740

**JOINT SEWER SERVICE AREA AGREEMENT  
FOR THE PROVISION OF SEWER SERVICE  
BY AND BETWEEN  
THE MAYOR AND COUNCIL OF  
THE CITY OF HAGERSTOWN, MARYLAND,  
AND  
THE BOARD OF COUNTY COMMISSIONERS  
OF WASHINGTON COUNTY, MARYLAND**

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## INTRODUCTION

This Joint Sewer Service Area Agreement (*Agreement*) dated February 4, 2022, by and between the Mayor and Council of the City of Hagerstown, a municipal corporation (*City*), and the Board of County Commissioners of Washington County, Maryland, a body corporate and politic and a political subdivision of the State of Maryland (*County*), establishes the general terms and responsibilities for the provision of sanitary sewer service to those geographic areas delineated in the Joint Sewer Service Area (defined herein) to be served by the sewerage facilities of the City and the County. The City and the County are sometimes referred to herein as "party," individually, and "parties," collectively.

This Agreement replaces and revokes all prior City/County sewer service agreements in their entirety, including, but not limited to, the following:

- Consolidated General Service Agreement, effective September 16, 1997, and amended several times as follows:
- Amendment #1, effective October 31, 1997;
- Amendment #2, effective April 27, 1999;
- Amendment #3, effective April 27, 1999;
- Amendment #4, effective September 26, 2000;
- Amendment #5, drafted but never approved;
- Amendment #6, effective September 24, 2002;
- Amendment #7, effective June 13, 2006;
- Amendment #8, drafted but never approved;
- Amendment #9, effective June 19, 2007;
- Amendment #10, effective April 12, 2011;
- Amendment #11, drafted but never approved; and
- Amendment #12, effective February 23, 2021.

All of the geographic areas included in this Agreement constitute the Joint Sewer Service Area and are depicted on the map attached hereto as Exhibit A and incorporated by reference herein.

This Agreement also incorporates the Flow Transfer Agreement, effective through August 5, 2023. The Flow Transfer Agreement is attached hereto as Exhibit B and incorporated by reference herein, except that Paragraph VII AGREEMENT TERMS is hereby amended to reflect that the term is no longer twenty (20) years; rather, the Flow Service Agreement shall remain in place until the improvements to the City's Pump Station 13 and all associated infrastructure required to transfer the flow back to the City are completed and placed into service. This area is indicated as Area "B" on Exhibit A. Area "A" on Exhibit A shall remain in place until the improvements to the Maugansville Pump Station and all associated infrastructure required to transfer the flow back to the County are completed and placed into service. Upon the completion of a party's respective improvements and infrastructure, **and** upon six (6) months' written notice to the other party, the County may remove Area "A" in its entirety and/or the City may remove Area "B" in its entirety from the Agreement, in which case there shall be no need to execute an amendment to this Agreement. The parties agree that the provisions of this paragraph incorporating the Flow Transfer Agreement shall be satisfied no later than five (5) years from the execution date of the last party to sign this Agreement, meaning that all improvements to the City's Pump Station 13 will have been completed and placed into service thereby transferring the flow back to the City pursuant to Area "B" on Exhibit A within said five (5) years, and also meaning that all improvements to the County's Maugansville Pump Station will have been completed and placed into service thereby transferring the flow back to the County pursuant to Area "A" on Exhibit A within said five (5) years. The County or the City may remove a service area from the Joint Sewer Service Area to the County's or the City's exclusive responsibility, so as to transfer the County's or the City's collection system and accept sole responsibility for the same, in accordance with Paragraph 15 below.

The City and the County recognize the importance for providing sewer service to the Joint Sewer Service Area. This Agreement consolidates terms for the provision of sanitary sewerage services to the present and future service areas within the Joint Sewer Service Area.

1. City and County Provision for Service: The City and the County shall accept the wastewaters generated in the Joint Sewer Service Area for transport,

treatment, and disposal, provided that the accepting party's facility has adequate capacity to accept additional sewage flow.

2. City and County Service Priorities: The provision of sanitary sewer service to the Joint Sewer Service Area shall be pursued by the City and the County in a cooperative and non-competitive manner. The City and the County understand and mutually agree that they will continue their present practice of providing sanitary sewer service to areas outside the Joint Sewer Service Area and other such joint sewer service areas approved under Paragraph 16 of this Agreement by negotiating individual service agreements with each property owner who requests sanitary sewer service.
3. New and Existing Construction: In areas where sewer service is to be provided under the County's jurisdiction, the City and the County shall cooperate in a joint pursuit of maintaining existing interconnection between the County's and the City's respective wastewater systems, and the design and construction effort as to any necessary new wastewater systems. The interconnection will be designed and maintained to allow for the transfer of sewage flow in accordance with the terms and conditions of this Agreement. All new construction shall be designed to the standards and specification of the party that owns and operates the system. The primary work effort and responsibility for design and construction shall be with the party that will own and operate the system. Construction contracts shall be awarded and managed by the County with appropriate assistance by the City. Construction inspection shall be under the County's management with full authority to issue change orders and other construction procedures, utilizing the County's inspection personnel. Upon completion of construction, the County shall retain ownership of all sewerage facilities constructed under the County's jurisdiction. The City shall be under no obligation to be the applicant, grantee, or financing agent for funds to construct systems to be owned by the County.
4. City Service Responsibilities: The City shall operate and maintain all City-owned sewerage facilities in accordance with all applicable rules, regulations, ordinances, permits, guidelines, and other criteria of any federal, state, and

local agencies and jurisdictions. The City shall have the authority to monitor water and waste flows to determine volume, flow delivery rate, and/or strength of same. Furthermore, all sewerage facilities in the Joint Sewer Service Area shall be monitored to ensure compliance with the applicable inflow/infiltration requirements. The City shall include in its bill to City/County Joint Sewer Service Customers the applicable County charge. These funds shall be forwarded promptly to the County after receipt in accordance with a schedule mutually acceptable to the County's Director of Finance and the City's Director of Finance.

5. County Service Responsibilities: The County shall operate and maintain all County-owned sewerage facilities in accordance with all applicable rules, regulations, ordinances, permits, guidelines, and other criteria of any federal, state, and local agencies and jurisdictions. The County shall have the authority to monitor water and waste flows to determine volume, flow delivery rate, and/or strength of same. Furthermore, all sewerage facilities in the Joint Sewer Service Area shall be monitored to ensure compliance with the applicable inflow/infiltration requirements. The County shall include in its bill to City/County Joint Sewer Service Customers the applicable City charge. These funds shall be forwarded promptly to the City after receipt in accordance with a schedule mutually acceptable to the City's Director of Finance and the County's Director of Finance. Furthermore, the County shall operate and maintain the interconnection facilities, including periodic adjustments to diverted flow, to achieve the purposes of the Flow Transfer Agreement until such time that the improvements to the City's Pump Station 13 and associated infrastructure are complete and placed into full service and the flow is transferred back to the City.
6. Industrial Waste Pretreatment Program: All industries in the Joint Sewer Service Area will be subject to the provisions of federal law, state law, and the respective codes, regulations, ordinances, policies, or other requirements of the City and the County, regarding industrial waste discharge limitations, permits, user charges, fines, testing, monitoring, pretreatment requirements, or other ordinance provision, all as may be amended from time to time. Any business or industry in the Joint Sewer Service Area shall obtain any required

industrial waste discharge permit(s) from the party who will be providing sewage treatment for that business or industry, regardless of its geographic location within or outside the corporate boundaries of the City. Likewise, the governing entity providing sewage treatment for a business shall have the full authority to enforce any conditions of any industrial waste discharge permit(s), regardless of the location of such business within or outside the corporate boundaries of the City. The parties agree to cooperate fully in such enforcement.

7. City Service Charges: The charge to Joint Sewer Service Customers by the City for transporting and treating the sewage emanating from the Joint Sewer Service Areas through the City-owned sewerage facilities shall be based on metered water consumption and shall be in accordance with the provisions of the City Code for such services. The City shall bill the County's sewer customers in the Joint Sewer Service Areas unless otherwise specified by written agreement. The user charge rates to be charged to all users of the system located within the Joint Sewer Service Areas shall be established in compliance with all applicable federal, state, and local regulations. The City shall recover the actual cost of service through the City rates charged to Joint Sewer Service Customers. Cost of service shall include operating expenses, depreciation, return on investment, and cash flow requirements. A commercial and industrial rate system meeting all applicable requirements of federal, state, and local regulations shall establish the surcharges and other additional rates to be charged to all commercial and industrial users of the system. The City shall apprise the County of any proposed changes in the City Code or any other policy affecting such charges so that the County may have the opportunity to comment on same. The City shall assist the County with official representation at any public hearing to be held to the extent necessary to present and to explain the charges being levied by the City for sewerage services that the City provides to Joint Sewer Service Customers.
8. County Service Charges: The County's charge to Joint Sewer Service Customers for transporting and treating the sewage emanating from the Joint Sewer Service Areas through the County-owned sewerage facilities shall be

based on metered water consumption and shall be in accordance with the provisions of the County's applicable Ordinances, Resolutions, and policies for such services. The County shall bill the City's sewer customers in the Joint Sewer Service Areas unless otherwise specified by written agreement. The user charge rates to be charged to all users of the system located within the Joint Sewer Service Areas shall be established in compliance with all applicable federal, state, and local regulations. The County shall recover the actual cost of service through the County rates charged to Joint Sewer Service Customers. Cost of service shall include operating expenses, depreciation, return on investment, and cash flow requirements. A commercial and industrial rate system meeting all applicable requirements of federal, state, and local regulations shall establish the surcharges and other additional rates to be charged to all commercial and industrial users of the system. The County shall apprise the City of any proposed changes in the County Code or any other policy affecting such charges so that the City may have the opportunity to comment on same. The County shall assist the City with official representation at any public hearing to be held to the extent necessary to present and to explain the charges being levied by the County for sewerage services that the County provides to Joint Sewer Service Customers.

9. Connection Fee and/or Benefit Assessment: In addition to the charges described in Paragraph 7 and Paragraph 8, there shall be a Connection Fee per connection to users who are creating new connections to the system. Said Connection Fee shall be established by each party as to its respective accounts pertaining to parcels located within the Joint Sewer Service Area, and shall be collected by the City from users of the system located in the corporate limits of the City, and shall be collected by the County to users of the system located outside the corporate limits of the City. The collecting party shall promptly remit to the non-collecting party those Connection Fees collected on behalf of the non-collecting party. There may also be a Benefit Assessment imposed by either party as permitted by Maryland law. The amount of the Connection Fee and/or Benefit Assessment shall be established by each party by ordinance, resolution, or other appropriate enactment.

10. County Charges: The County shall charge that amount determined to be equal to the County's cost of providing sewer collection service to City/County Joint Sewer Service Customers. Costs shall be calculated based on generally accepted class cost of service methodology. For County rate-setting purposes, City/County Joint Sewer Service Customers shall be classified geographically in one of the following three ways: 1) original service area, 2) total City/County Joint Sewer Service Area, or 3) as a part of the entire County sewer collection service area.
11. Reallocations: The City and the County will evaluate all commercial users annually for any allocation increase over and above the previously established allocation base. The City and the County shall assess and collect any allocation increase fees due the City or the County. All fees collected for the City or County shall be forwarded to the City or the County in accordance with a schedule mutually acceptable to the County's Director of Finance and the City's Director of Finance.
12. Delinquent Accounts: The City and the County shall provide each other with a list of accounts carrying delinquent balances at least quarterly for Joint Sewer Service Customers. The City and the County shall assist each other in the collection of these delinquent accounts through discontinuance of water service or any other lawful means. If these means of collection fail, then the County and/or the City shall exercise its/their statutory rights and enter suit against all offenders in accordance with prevailing collection policies. Likewise, the County shall by suit seek to enforce connection against all property owners who fail to connect to the sewer system in the time allowed therefor.
13. Upgrades to Facilities: The cost of any future upgrades or other alterations made to the County's system or the City's system, constructed to meet future applicable rules, regulations, ordinances, permits, guidelines, and other criteria of any federal, state, and local agencies and jurisdictions, shall be borne by all users of the system in accordance with a system of charges. The cost of any future expansions of or extensions to the system, constructed to

provide sewer service to the Joint Sewer Service Area, shall be borne by the users of the system for whom such expansions or extensions are constructed.

14. New Joint Sewer Service Areas: Neither the City nor the County shall make any expansions or other alterations to the boundaries of any Joint Sewer Service Area, nor establish any new Joint Sewer Service Area, without obtaining the other party's prior written approval. Neither the City nor the County shall commence any design work for sewer extensions into any proposed service area in the Joint Sewer Service Area until prior written approval is obtained from the other party. Joint Sewer Service Areas may be modified, clarified, or added to this Agreement by formal amendment pursuant to Paragraph 16. Unless agreed otherwise in writing, the terms and conditions for providing sewer service to Joint Sewer Service Areas presently approved shall apply to all Joint Sewer Service Areas formally approved in the future.
15. Joint Sewer Service Areas: The terms and provisions of this Agreement apply to the Joint Sewer Service Areas that are designated on Exhibit A. The parties agree that, except for the removal of Area "A" and/or Area "B" in accordance with the provisions set forth on Page 3 hereof, any amendment to said Joint Sewer Service Area will be created by entering into a revised joint service agreement containing and/or referencing a new comprehensive map. The parties agree that any amendment shall be made only after due consideration of capacity for wastewater contributions to the City's and/or the County's respective plants and that no property shall be added to the Joint Sewer Service Area unless adequate capacity exists for treatment and conveyance of sewage from said property.
16. Amendments: Any modification or revision to this Agreement shall be made by formal writing and adopted by resolution or other formal enactment by the City and the County. Amendments shall be effective for, and consistently applied to, all Joint Sewer Service Areas as originally approved in Paragraph 15 of this Agreement and to all Joint Sewer Service Areas subsequently



approved by the parties in future amendments to Paragraph 15 of this Agreement.

17. Severability: The conditions and requirements of this Agreement are subject to modification by acts, orders, or directives of regulatory agencies or courts of competent jurisdiction. Should any paragraph, section, or provision of this Agreement be annulled by acts, orders, or directives of regulatory agencies or courts of competent jurisdiction, the remaining portions of this Agreement shall remain in full force and effect.
18. Due Authorization: The parties agree and represent to each other that this Agreement has been approved by each respective governing body at a duly constituted public meeting and that each undersigned has been designated as the duly authorized signatory and representative of said governing body.

(SIGNATURES APPEAR ON NEXT PAGE.)

In witness whereof, the parties hereto have executed this Agreement by their respective duly authorized signatories and representatives.

ATTEST:

Kristall Hart  
Krista L. Hart, County Clerk

BOARD OF COUNTY COMMISSIONERS  
OF WASHINGTON COUNTY, MARYLAND

By: Jeff Cline  
Jeff Cline, President

Date: 2/14/2022

ATTEST:

Donna K. Spickler  
Donna Spickler, City Clerk

MAYOR AND COUNCIL OF THE  
CITY OF HAGERSTOWN

By: Emily Keller  
Emily Keller, Mayor

Date: January 25, 2022

## DEFINITIONS

**Joint Sewer Service:** Sewer service provided jointly by the City and the County where one party agrees to own and maintain a sewer collection system through sewer lines owned by that party and treatment may be provided at a sewage treatment plant owned by the other party.

**Joint Sewer Service Area:** That area depicted in gold, blue, and red on Exhibit A attached hereto, in which the City and the County have agreed to provide Joint Sewer Service.

**Joint Sewer Service Customer:** A sewer customer whose sewer service is provided by collection systems, conveyance systems, and/or treatment facilities owned and operated by a combination of the County and the City. The customer is considered a customer of both the City and the County and receives charges from both the City and the County for the sewage service each party provides.

**FLOW TRANSFER AGREEMENT  
BY AND BETWEEN  
THE CITY OF HAGERSTOWN, MARYLAND AND  
THE BOARD OF COUNTY COMMISSIONERS OF WASHINGTON COUNTY**

For the Transfer of Flows  
from the City of Hagerstown's Wastewater System  
to Washington County's Wastewater System

**I. INTRODUCTION**

This Flow Transfer Agreement, hereafter called the "Agreement," dated this ~~5<sup>th</sup>~~<sup>August</sup> of ~~2003~~<sup>2003</sup>, by and between the **Mayor and Council of the City of Hagerstown**, as the duly-constituted legislative body of the City of Hagerstown, Maryland, a municipal corporation (hereinafter called the "City") and the **Board of County Commissioners of Washington County**, a body corporate and politic and a subdivision of the State of Maryland (hereinafter called the "County") is to define certain terms, conditions, and responsibilities for the transfer of wastewater flow from the City wastewater system to the County wastewater system.

The City and County agree that it would be mutually advantageous for both wastewater agencies and their customers to transfer wastewater flows from the City's service area to the County's service area for collection and treatment services. This Agreement provides for the transfer of this wastewater flow during a specified period of time and at an interconnection described herein.

The City and County agree to transfer flows from the City system to the County system in an amount equivalent to actual, additional customer contributions originating from new allocations to the City's wastewater system from accounts located outside the corporate boundaries of the City. The total amount of flow to be transferred under this Agreement will include the flows allocated to customers outside the City corporate boundaries during the term of this agreement hereinafter described. This flow will consist of new customer flows, and incremental flows from allocation increases to existing customers. It will be limited by the maximum amount of representative flow that is physically available to transfer at the interconnection, or the maximum amount of flow that can be physically transported by the interconnection to be constructed under this Agreement.

The equivalent amount of these additional flows will be transferred from the City's system at the interconnection described in Section II of this Agreement. It is agreed by both parties that these transferred flows represent the sewage contributions from outside City customers regardless of the source of these flows, and it is recognized that the actual flows transferred may originate from customers located inside the City's corporate boundaries. The cost of service for treating transferred flows will be included in the City's calculation of rates for customers located outside City limits as they currently exist or as they are modified in the future. It is the intent of this Agreement to provide the physical and administrative mechanisms to enable the Washington County Department of Water Quality to serve outside City customers on the Hagerstown wastewater system at no cost or financial obligation to those wastewater customers located inside the City corporate boundaries.

This Agreement also provides for a Construction Reserve Fund for the design and construction of additional, future interconnections. The Construction Reserve Fund is established by this Agreement as a financing source only and does not obligate the City or County to the transfer of any additional flows in excess of the amounts specifically defined in this Agreement. The transfer of any additional flows beyond those defined herein shall require formal written agreement by the City and County.

## II. PHYSICAL INTERCONNECTION

In order to fulfill the purpose of this Agreement, it is agreed that an interconnection between the City and County wastewater systems will be designed and constructed. This interconnection will allow for diversion of sewage flow flowing to existing City Pump Station #13 to the County owned interceptor which is generally located or planned to be situated along Hopewell Road on the west side of Interstate Route 81. A conceptual drawing of this interconnection is attached to this Agreement and identified as Exhibit A. This interconnection and its appurtenances will be designed to allow for the transfer of sewage flow in accordance with the terms and conditions of this Agreement.

## III. AMOUNT OF FLOW TO BE TRANSFERRED

The City and County agree that the amount of flow to be transferred under this Agreement shall be determined as follows:

A. Transferred flows will be limited to an amount representing new wastewater contributions as defined herein that are located outside of the City corporate boundaries. These wastewater contributions will be based on actual metered water consumption, or metered sewage discharge for commercial or industrial accounts if such a meter has been approved for use by the appropriate service provider.

B. The total amount of flows transferred under this Agreement will be based on those flows (as described under III-A) that cumulatively accrue over the five (5) year period prescribed in Section VII hereof. The first year accrual for flow transfer and billing purposes will begin 90 days after the Agreement is signed by both parties.

C. The County and City agree that the amount of flow to be transferred shall be limited to the amount of wastewater contributions generated in the service area of existing City pumping station 13. The County and City also agree that the amount of flow to be transferred shall be limited to the maximum amount of hydraulic capacity of the physical interconnection described in Section II of this Agreement.

D. The County and City recognize that a component of inflow/infiltration could be transferred to the County's system and agree to cooperate on monitoring and correcting infiltration if it should become excessive. The County shall have the authority to monitor flows to determine volume, flow delivery rate and/or strength of same. Furthermore, all sewerage facilities shall be monitored to assure compliance with any applicable inflow/infiltration requirements. Upon request from the County, The City shall permit the County to examine and make copies of all records necessary to effectuate the purpose of this Agreement. The parties agree that each shall operate their respective facilities in accordance with all applicable rules, regulations, ordinances, permits, guidelines, and other criteria of any federal, state, and local agencies and jurisdictions.

#### IV. COUNTY RESPONSIBILITIES

County responsibilities under this Agreement include but are not limited to the following:

A. Secure the financing needed to design and construct the interconnection and assume liability for repayment of any indebtedness as needed.

B. Assume primary responsibility for design and construction of the interconnection including consulting and coordinating with the City as needed.

C. Operate and maintain the interconnection facilities including periodic adjustments to diverted flow to achieve the purposes of this Agreement. If mutually agreeable to both wastewater agencies, it is understood that all flow may be diverted from Pump Station 13 at one time for ease of management, although billing would still occur as stated in Section VI-C. This would allow for immediate decommissioning of the pumping station with associated savings.

D. In accordance with all applicable local, state and federal requirements, regulations and laws, provide wastewater collection and treatment services to the Hagerstown Water Pollution Control Department for all flows transferred under this Agreement and submit monthly invoices to the City for these wastewater services.

E. Maintain records of new outside-City Joint Service wastewater contributions as defined herein, and provide said records to the City to assist in preparation of information to be submitted for billing of transferred flows.

F. Remit to the City any appropriate fees and charges collected on their behalf in accordance with the

provisions of Section 6, Financial Arrangements of this Agreement.

G. Establish and maintain a Construction Reserve Fund as established under Section 6, Financial Arrangements, of this Agreement. At least annually, provide the City a complete audit of the Construction Reserve Fund.

H. Maintain a reasonably current cost of service calculation to serve as a basis for the rate charged for collection and treatment services billable to the City.

## V. CITY RESPONSIBILITIES

City responsibilities under this Agreement include but are not limited to the following:

A. As needed, assist the County in the design and construction of the interconnection.

B. Operate Pump Station 13 as needed.

C. Supply metered consumption data from the customers as defined herein to allow the County to bill for transferred flows.

D. Maintain records for total amount of flow being diverted.

E. Remit to the County any appropriate fees and charges collected on behalf of the County in accordance with the provisions of Section 6, Financial Arrangements of this Agreement.

F. Make payments to the County for collection and treatment services related to transferred flows.

## VI. FINANCIAL ARRANGEMENTS

### A. Initial Financing for Capital Improvements

The County will secure the financing for the design and construction of the interconnection. It is anticipated that grant financing will be available for interconnection. If the County does not, or chooses not to consummate the financing needed for the interconnection, then this agreement may be terminated at the sole discretion of the County by issuance of a letter of notification to the City. The City shall not be liable for any capital financing related to the design and construction of the interconnection

### B. Collection and Distribution of Customer Allocation / Benefit Charges

Regarding new customers outside the City corporate boundaries, the City and County will assess and collect uniform initial customer charges at the time of approval for sanitary sewer service. For those

customers applying for connection directly to a County owned sewer line, the County will collect charges on behalf of the City. For those customers applying for connection directly to a City owned sewer line, the City will collect charges on behalf of the County. The charges referred to in this section are currently identified as a Benefit Charge for the City and an Allocation Fee for the County. Upon collection of these charges on behalf of each other party, the amounts collected will be transferred to the appropriate receiving agency in a timely manner and in accordance with a schedule and procedure as mutually agreed by the City and County Directors of Finance, respectively. In addition, both the City and County will collect amounts to be deposited in the construction reserve fund, and all amounts collected will be transferred to the reserve fund that will be managed by the County in accordance with this Agreement.

The customer charges to be collected at the time of approval of application for sewer service or reassessment will hereinafter be collectively referred to as Allocation Fees. The City and County agree that the prevailing Allocation Fees, per equivalent dwelling unit or 200 gallons per day of domestic strength waste, at the time of acceptance of this Agreement will be as follows:

City Benefit Charge	\$1,800
County Connection Charge	\$1,800
Construction Reserve Charge	<u>\$ 300</u>
Total Allocation Fees	\$3,900

These fees apply to the prospective new customers or annual reassessments to existing customers for the first five years of assessments pursuant to this Agreement.

After this first five-year period and for the next five years, the Allocation Fees are anticipated to be as follows:

City Benefit Charge	\$2,100
County Connection Charge	\$1,500
Construction Reserve Charge	<u>\$ 300</u>
Total Allocation Fees	\$3,900

There will be a minimum initial assessment for each customer based on 200 gallons per day.

The City or County may change or alter their respective component of these Allocation Charges at any time when duly authorized and after providing adequate written notice to the other party. Any change to the construction reserve charges will require the formal agreement and approval of the Hagerstown Mayor and City Council and the County Commissioners of Washington County. If neither the City nor County exercises their right to change the Allocation Fees as stipulated in this agreement, then these Allocation Fees shall remain in full force and effect for both the first and second



five-year periods or ten years in total.

#### C. Service Charges

Service charges for the collection and treatment of flows transferred to the County will be billed to the City based on thousands of gallons of wastewater accepted and treated based on metered consumption of new customers as defined in Section III.A. Such service charges shall be based on generally accepted, utility rate making methods. The City will insure that these service charges shall be included in the calculation of rates for all classifications of outside City customers receiving benefit of County treatment of transferred wastewater flows (Note: At this time, these customer classes are referred to as Outside City and Joint). Service charges for County treatment of transferred flows shall not be included in the calculation of rates for City Water and Sewer Department customers located within the City corporate boundaries. Future calculations of rates for City Water and Sewer Department customers shall also be subject to the provisions of this section.

#### D. Construction Reserve Fund

The County shall establish and maintain, as primary custodian, a construction reserve fund to escrow the portion of the Allocation Fees that are designated for the construction reserve fund. This fund shall be used to finance future improvements to the City and County wastewater systems. The City and County will meet periodically to identify and prioritize specific projects. Expenditures, withdrawals, or disbursements from the construction reserve fund shall require the formal approval of both the Hagerstown Mayor and City Council and the County Commissioners of Washington County.

The construction reserve fund shall be held in an interest bearing account with all interest income accruing to the fund balance for use in accordance with the purpose of the fund.

The County will make records available to the City upon request and provide an audited financial statement of the fund at least annually.

If after 10 years from the date of this Agreement the City and County mutually agree that there will be no future uses for the construction reserve fund, then any unexpended proceeds shall be divided equally between the parties. These proceeds shall be used for capital improvements to the respective sewer systems, without the necessity for the consent or approval of the other party.

### **VII. AGREEMENT TERMS**

Unless otherwise formally agreed in writing by both the City and County, the following terms shall apply to this Agreement :

The term for the provision of treatment services for flows transferred to the County wastewater system is twenty (20) years.

The term for Section III-B of this Agreement is five (5) years.

The term for Section VI-B of this Agreement is ten (10) years.

#### VIII. CONTINGENCY CLAUSES

The City and County agree that this Agreement is contingent upon consummation of capital financing for the design and construction of the interconnection.

Neither the City nor the County shall be penalized or bear any unreasonable financial burden for delays or other matters arising from Force Majeure.

#### IX. SEVERABILITY

The conditions and requirements of this Agreement are subject to modification by acts, orders or directives of regulatory agencies or courts of competent jurisdiction.

Should any sections or provisions of this agreement be annulled by acts, orders or directives of regulatory agencies or courts of competent jurisdiction, the remaining portions of this Agreement shall remain in full force and effect.

#### X. DISPUTE RESOLUTION

Any dispute between the parties arising from or in connection with this Agreement shall be resolved by arbitration. Either party may demand arbitration by written notice within ninety (90) days after the dispute arises, and the notice shall include the designation of an arbitrator. Within thirty (30) days after receipt of the notice of demand for arbitration, the other party shall designate by written notice to the party demanding arbitration a second arbitrator. The two arbitrators shall within twenty (20) days of the designation of the second arbitrator designate a third. The three (3) arbitrators shall:

- a. designate a time and place for hearing;
- b. specify the evidentiary and procedural rules to be followed in the arbitration; and
- c. pass a written award or decision within thirty (30) days of the date of the hearing.

An award or decision rendered by a majority of the arbitrators shall be final and binding on all parties, and judgment on the award or decision may be entered by any court of competent jurisdiction. Arbitration shall be the sole and exclusive remedy under this Agreement. The arbitration costs and expenses of each party shall be borne by that party.

## XI. INTEGRATION

This Agreement constitutes the entire agreement of the parties. There are no promises, covenants, representations, or undertakings other than those expressly set forth herein.

## XII. COUNTERPARTS

This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized signatories and representatives.

Witness and Attest  
As to Corporate Seal

Joni L. Bittner  
Joni L. Bittner, County Clerk

Board of County Commissioners  
of Washington County, Maryland

By: Gregory I. Snook  
Gregory I. Snook, President

Date: July 22, 2003

Witness and Attest  
As to Corporate Seal

Donna K. Spickler  
Donna K. Spickler, City Clerk

Mayor and City Council of Hagerstown

By: William M. Breichner  
William M. Breichner, Mayor

Date: August 5, 2003





