

1
2 **..Title**

3 **Sewer Service Agreement – Lidl US Operations, LLC** – For the purpose of authorizing a sewer
4 service agreement providing for the extension of City sewer service to certain parcels on Bay Ridge
5 Road located in Anne Arundel County; and generally relating to providing said sewer service
6 outside the City limits.

7 **..Body**

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

10 **Ordinance 24-21**

11 **Introduced by: Alderman Savidge**

12
13
14
15 **Referred to**
16 **Finance Committee**

17
18
19 **AN ORDINANCE** concerning

20
21 **Sewer Service Agreement – Lidl US Operations, LLC**

22
23 **FOR** the purpose of authorizing a sewer service agreement providing for the extension of City
24 sewer service to certain parcels on Bay Ridge Road located in Anne Arundel County; and
25 generally relating to providing said sewer service outside the City limits.

26
27 **WHEREAS,** the Lidl US Operations, LLC (“Property Owner”) is the contract purchaser and will
28 be the fee simple owner of unimproved parcels of land consisting of approximately
29 five (5) acres, more or less, located along Bay Ridge Road, Annapolis, Maryland
30 21403 and as more accurately identified with tax account nos. 200010316600,
31 200010166100, 200010166300, 200010166400, 200010166440, 200090035408,
32 200007269740, 200090035409, and 200010165800 and identified on tax map nos.
33 57A, Grid 08, Parcels 861,862, 863, 864, 867, 868; Grid 07, parcels 762 and 765;
34 and Grid 14, parcel 1405 all contained in the deed recorded among the Land
35 Records of Anne Arundel County (“Property”); and

36
37 **WHEREAS,** the Property Owner, subject to building and grading permits issued by Anne
38 Arundel County, intends to develop a single-story grocery store/food market with
39 attendant parking on the Property; and

40
41 **WHEREAS,** the Property does not currently have a sewer supply for the Property; and

42
43 **WHEREAS,** the Property Owner, has requested sewer service from City and submitted an
44 Adequate Public Facilities report to the Department of Public Works for review,
45 and based on the report the Department has determined that the City’s sewer
46 infrastructure meets the adequacy requirements for the sewer service requested by

1 the Property Owner; and
2

3 **WHEREAS,** due to this determination, the Department of Public Works has recommended that
4 the Property Owner’s sewer service request be submitted to City Council, and it is
5 the intention of the City, and the Department of Public Works, with the concurrence
6 of City Council, to approve the Property Owner’s request for sewer service, and
7 subject to the Property Owner’s fulfillment of the requirements in City Code
8 Chapter 16.04, issue the permits (“Permit”) for the requested sewer service
9 connection; and
10

11 **WHEREAS,** the parties believe it to be in the public’s interest to permit the Property Owner to
12 connect to the City sewer utility system; and
13

14 **WHEREAS,** Section 16.16.010C of the Code of the City of Annapolis requires the passage of an
15 ordinance before sewer service may be extended by written agreement outside of
16 the City limits; and
17

18 **WHEREAS,** pursuant to Section 16.16.010C of the Code of the City of Annapolis the Director
19 of Public Works has issued a determination, and upon same, the City Council
20 hereby finds that existing and/or funded facilities, capacity and infrastructure are
21 sufficient to serve Lidl US Operations, LLC’s Property in addition to existing and
22 reasonably foreseeable City users.
23

24 **NOW, THEREFORE,**
25

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

30 **SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE**
31 **ANNAPOLIS CITY COUNCIL** that this Ordinance shall take effect from the date of its passage.
32

33 **EXPLANATION**

34 Underlining indicates matter added to existing law.
35 ~~Strikethrough~~ indicates matter stricken from existing law.
36
37

1



City of Annapolis
160 Duke of Gloucester Street
Annapolis, MD 21401

**SEWER SERVICE AGREEMENT
WITH
LIDL US OPERATIONS, LLC,
a Delaware limited liability company**

2 **THIS SEWER SERVICE AGREEMENT** (“Agreement”) is made this _____ day of
3 _____, 20___, by and between the City of Annapolis, a municipal corporation of the State of
4 Maryland (“City”), and Lidl US Operations, LLC, a Delaware limited liability company (the
5 “Property Owner”).

6 **WHEREAS**, Lidl is the contract purchaser and will be the fee simple owner of unimproved
7 parcels of land consisting of approximately five (5) acres, more or less, located at Bay Ridge Road,
8 Annapolis, Maryland 21403 and as more accurately identified with tax account nos.
9 200010316600, 200010166100, 200010166300, 2000101166400, 200010166440, 200090035408,
10 200007269740, 200990035409, and 200010165800 and identified on tax map nos.57A, Grid 08,
11 parcels 861, 862, 863, 864, 867, 868; Grid 07, parcels 762 and 765; and Grid 14, parcel1405 all
12 contained in deeds recorded among the Land Records of Anne Arundel County (collectively, the
13 “Property”); and

14 **WHEREAS**, the Property Owner does not currently have sewer service for the Property;
15 and

16 **WHEREAS**, the Property Owner submitted an application to the City pursuant to Chapter
17 16.04 of the City Code, as may be amended, to obtain a permit (“Permit”) to connect with the City
18 sewage system to obtain sewer service for the Property, which Permit is incorporated herein by
19 reference; and

20 **WHEREAS**, it is the intention of the City that the City Department of Public Works (the
21 “Department”) shall not grant final approval for this connection to the City sewage system until
22 such time as it shall be satisfied that the proposed connection shall not result in or cause an
23 inadequate sewer service to the Property or to other properties served by the affected City sewage
24 line and that the proposed connection satisfies other requirements of the Department; and

25 **WHEREAS**, the parties believe it to be in the public’s interest to permit the Property
26 Owner to connect to the City sewage system.

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

30 **1. Design and Construction.**

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

9 b. The Sewer Connection System shall comply with Section 16.16.010 of the City
10 Code, as may be amended, and all other City and Department requirements.

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

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

21 **2. Easements; Provision of Sewer Service.**

22 a. Upon the completion of all of the requirements set forth in Paragraph 1 by the
23 Property Owner, and the approval of the design and construction of the Sewer Connection System
24 by the City and the Department, the Property Owner shall convey to the City such easements as
25 the City may in its sole discretion require, including, but not limited to, an access easement to the
26 Sewer Connection System. Any and all such easements shall be prepared and recorded at the sole
27 cost and expense of the Property Owner.

28 b. The City shall provide sewer service to the Property and its improvements, all as
29 reflected on a site plan to be attached hereto as part of **Attachment A**.

30 c. The sewer service to be provided pursuant to this Agreement shall be for domestic
31 use only.

32 d. The Property Owner shall not extend sewer lines installed under this Agreement to
33 any other property, building and/or structure without the prior approval required by the Charter
34 and Code of the City, as may be amended.

35 e. The City shall be obligated to provide sewer service to the Property on the terms
36 provided in this Agreement, and the Property Owner shall be obligated to purchase all sewer
37 services for the Property from the City. Provided, however, that the City's obligation to provide
38 sewer service under this Agreement is specifically conditioned upon the Property Owner's
39 performance of all of its duties and responsibilities hereunder and any breach thereof by the
40 Property Owner or any decision by a judicial, quasi-judicial or administrative body invalidating

1 any such duty or responsibility shall relieve the City of its obligations and responsibilities under
2 this Agreement. The City's obligation to provide sewer service under this Agreement is further
3 expressly conditioned upon a finding by the Department that providing sewer service to the
4 Property shall not result in or cause inadequate sewer service to the Property or to other properties
5 served by the affected City sewage line.

6 **3. Fees and Other Charges.**

7 a. The Property Owner shall pay all connection charges for the Property, as are
8 customarily charged by the City for customers outside of the City from time to time.

9 b. The Property Owner shall pay all capital facility charges and assessments for sewer
10 service to the Property, as are customarily charged by the City for customers outside of the City
11 from time to time.

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

16 **4. Recordation; Binding.**

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

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

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

31 **5. Inspections; Maintenance.**

32 a. The Sewer Connection System, and any related specific devices installed as part of
33 such System, shall be as approved by the Director of the Department.

34 b. At any time during normal business hours and upon reasonable notice of the City
35 to the Property Owner, the Property Owner shall make the Property and the Sewer Connection
36 System, as relates to this Agreement, available to the City, and its officials, officers, employees
37 and agents, for inspection.

1 c. The Property Owner shall maintain and test the Sewer Connection System, at its
2 sole cost and expense, on an annual basis.

3 **6. Indemnification.**

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

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

14 c. The City, in its sole discretion, may participate in handling its own defense or
15 exclusively handle its own defense, and select its own attorneys, including the City Attorney. The
16 indemnification for attorney fees applies whether or not the City Attorney or other attorney handles
17 the defense.

18 d. The Property Owner shall reimburse the City, within thirty (30) calendar days after
19 invoicing for such reimbursement, for any damage to the City's sewage system, sewer lines,
20 facilities, equipment or other property caused by the negligence or willful misconduct of the
21 Property Owner, its officers, agents, employees, contractors, patrons, volunteers, guests or
22 invitees.

23 **7. Breach/Default.**

24 a. Upon five (5) calendar days written notice from the City to the Property Owner, the
25 City may notify the Property Owner of a breach or default of this Agreement if the Property Owner
26 shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the
27 Property Owner shall violate any term of this Agreement. The City shall afford the Property Owner
28 thirty (30) calendar days (or longer as agreed to in writing by the City) to cure any breach or default
29 of this Agreement before permanently cutting-off sewer service to the Property.

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

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

1 **8. Waiver.**

2 a. No delay or omission of the City to exercise any right, power or remedy accruing
3 upon the happening of an event that would allow the City to terminate this Agreement shall impair
4 any such right, power or remedy or shall constitute a waiver upon the occurrence of another such
5 event or any acquiescence therein. No delay or omission on the part of the City to exercise any
6 option granted to the City under this Agreement, in any one or more instances shall constitute a
7 waiver of the City's rights hereunder and each such option shall remain continuously in full force
8 and effect.

9 b. The Property Owner hereby understands and agrees that this Agreement shall not
10 waive any rights, powers or remedies that the City may have pursuant to the City Code and,
11 specifically, Chapter 16.04 and Section 16.16.010 of the City Code, all as may be amended.

12 **9. Annexation.**

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

18 **10. No Partnership.**

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 shall not be
21 considered partners or co-venturers for any purpose on account of this Agreement.

22 **11. Severability.**

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

28 **12. Governing Law.**

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

32 **13. Captions and Headings.**

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

1 **14. Integration; Modification.**

2 a. This Agreement is the final and entire agreement of the parties concerning all
3 matters having to do with the Permit and the Sewer Connection System. The parties acknowledge
4 that there are no other understandings or representations, oral or written, regarding the subject or
5 matters having to do with the Permit and/or the Sewer Connection System.

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

8 **15. Counterparts.**

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

12 **16. Notice.**

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

17
18 To the City: Department of Public Works
19 145 Gorman Street, 2nd Floor
20 Annapolis, Maryland 21401
21 Attn: Director

22
23 With a Copy to: City Attorney
24 160 Duke of Gloucester Street
25 Annapolis, Maryland 21401

26
27 To the Property Owner: Lidl US Operations, LLC
28 Attn: Real Estate Dept.
29 3500 S. Clark Street
30 Arlington, VA 22202

31
32 With a Copy to: Lidl US Operations, LLC
33 Attn: Legal Dept.
34 3500 S. Clark Street
35 Arlington, VA 22202
36

37 **17. Authorization.**

38 This Agreement is authorized by the City Council pursuant to Ordinance No. O-24-21.
39
40

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

LIDL US OPERATIONS, LLC

Witness

By: _____
Name:
Title:

Witness

By: _____
Name:
Title:

ATTEST:

CITY OF ANNAPOLIS

Regina C. Watkins-Eldridge, MMC,
City Clerk

By: _____
Gavin Buckley, Mayor (Seal)

APPROVED FOR SUFFICIENT APPROPRIATIONS
AND AVAILABILITY OF FUNDS:

Joanna D. Dickinson, Director
Finance Department
Source of Funds: _____

APPROVED FOR FORM AND LEGAL SUFFICIENCY:

Office of Law
D. Michael Lyles, City Attorney

1
2

ATTACHMENT A
PLANS, DRAWINGS, SITE PLAN