



Legislation Text

File #: O-2-18, Version: 1

Water Service Agreement - MidAtlantic IRA, LLC - For the purpose of authorizing a water service agreement providing for the extension of City water service to 3032 Arundel on the Bay Road located in Anne Arundel County; and matters generally relating to providing said water service outside the City limits.

**CITY COUNCIL OF THE
City of Annapolis**

Ordinance 2-18

Introduced by: Mayor Buckley

Referred to

Finance Committee

Environmental Matters Committee

AN ORDINANCE concerning

Water Service Agreement - MidAtlantic IRA, LLC

FOR the purpose of authorizing a water service agreement providing for the extension of City water service to 3032 Arundel on the Bay Road located in Anne Arundel County; and matters generally relating to providing said water service outside the City limits.

WHEREAS, the Property Owner is the fee simple owner of an 1.096 acre lot (the "Property"), located in Anne Arundel County, outside of the limits of the City of Annapolis, and known as **3032 Arundel on the Bay Road**, Annapolis, Maryland 21403. The Property is improved by one single family home and is described in Tax Map 57A, Block 21, Parcel 2138. The Property was conveyed to Property Owner in a deed dated December 11, 2007, recorded in Book 19775, Page 510 of the Land Records of Anne Arundel County; and

WHEREAS, the Property Owner, subject to building and grading permits issued by Anne Arundel County, intends to subdivide the Property into two residential lots, remove the existing improvements, and build two new single family homes, one on each lot; and

WHEREAS, the Property is connected to City water mains to draw the water supply for the existing improvements but does not currently have a water supply for the additional house the Property Owner intends to build on the Property after it is subdivided; and

WHEREAS, the Property Owner desires to remove the existing, non-functional water meter and replace it with two functional water meters that will be connected to City public water lines and supply water to each of the two new single family homes the Property Owner intends to build on each lot of the Property after it is subdivided; and

WHEREAS, the Property Owner, has requested water service from City and submitted an Adequate Public Facilities report which includes fire flow test results to the Department of Public Works for review. Based on the report the Department has determined that the City's water infrastructure meets the adequacy requirements for the water service requested by the Property Owner; and

WHEREAS, due to this determination, the Department of Public Works has recommended that the Property Owner's water service request be submitted to City Council, and it is the intention of the City, and the Department of Public Works, with the concurrence of City Council, to approve the Property Owner's request for water service, and subject to the Property Owner's fulfillment of the requirements in City Code Chapter 16.04, issue the permits (Permit) for the requested water service connection; and

WHEREAS, the attached 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 connect to the City water utility system; and

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

WHEREAS, pursuant to Section 16.08.050A of the Code of the City of Annapolis the Director of Public Works has issued a determination, and upon same, the City Council hereby finds that existing and/or funded facilities, capacity and infrastructure are sufficient to serve MidAtlantic IRA, LLC's property in addition to existing and reasonably foreseeable City users.

NOW, THEREFORE,

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

Underlining indicates matter added to existing law.
~~Strikethrough~~ indicates matter stricken from existing law.

TAX ACCOUNT NO: 2000-0026-9100

CITY OF ANNAPOLIS WATER SERVICE AGREEMENT

This **Water Service Agreement** (the "Agreement") is made this ____ day of _____, 2018, by and between the **City of Annapolis**, a municipal corporation of the State of Maryland (the "City"), and **MidAtlantic IRA, LLC**, formerly known as Entrust MidAtlantic, LLC, a Maryland limited liability company owned by Damanhuri Alkaitis and Rohana Alkaitis with a mailing address of 1231 Hillcrest Rd., Arnold, MD 21012, (the "Property Owner").

Whereas, the Property Owner is owner in fee simple of an approximately 1.096 acre lot, (the "Property"), located in Anne Arundel County, outside of the limits of the City of Annapolis, and known as **3032 Arundel on the Bay Road**, Annapolis, Maryland 21403. The Property is improved by one single family home and is described in Tax Map 57A, Block 21, Parcel 2138. The Property was conveyed to Property Owner in a deed dated December 11, 2007, recorded in Book 19775, Page 510 of the Land Records of Anne Arundel County; and

Whereas, the Property Owner, subject to building and grading permits issued by Anne Arundel County, intends to subdivide the Property into two residential lots, remove the existing improvements, and build two new single family homes, one on each lot; and

Whereas, the Property is connected to City water mains to draw the water supply for the existing improvements but does not currently have a water supply for the additional house the Property Owner intends to build on the Property after it is subdivided; and

Whereas, the Property Owner desires to remove the existing, non-functional water meter and replace it with two functional water meters that will be connected to City public water lines and supply water to each of the two new single family homes the Property Owner intends to build on each lot of the Property after it is subdivided; and

Whereas, the Property Owner, has requested water service from City and submitted an Adequate Public Facilities report which includes fire flow test results to the Department of Public Works for review. Based on the report the Department has determined that the City's water infrastructure meets the adequacy requirements for the water service requested by the Property Owner; and

Whereas, due to this determination, the Department of Public Works has recommended that the Property Owner's water service request be submitted to City Council, and it is the intention of the City, and the Department of Public Works, with the concurrence of City Council, to approve the Property Owner's request for water service, and subject to the Property Owner's fulfillment of the requirements in City Code Chapter 16.04, issue the permits (Permit) for the requested water service connection; and

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

Whereas, the parties believe it is 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. Design and Construction

- a. The Property Owner, at its sole cost and expense, shall design and construct, subject to written approval by the City and Public Works, a water connection system with all related equipment and work necessary to provide water service to the Property from the City water utility system ("Water Connection System"). The Water Connection System shall be constructed by the Property Owner pursuant to the City Code, as may be amended, and all City and Public Works standards. The approved plans and drawings for the Water Connection System, are attached hereto as **Attachment A**, and incorporated herein by reference.
- b. The Water Connection System shall comply with Section 16.08.050 of the City Code, as may be amended, and all other City and Public Works requirements.
- c. The Property Owner, at its sole cost and expense, shall submit all applicable applications; obtain all applicable permits and approvals, including, but not limited to, the Permit; enter into all applicable utility agreements; and obtain bonds in form and substance as used by the City to accomplish the design and construction of the Water Connection System. The Property Owner shall submit copies of all such applications, permits, agreements and bonds to Public Works, in such form as Public Works in its sole discretion may require.
- d. The Property Owner, at its own expense, shall obtain from third parties, such permission as the City, in its sole discretion, may require to accomplish the purpose of this Agreement. Such permission shall be in a form deemed acceptable to the City.
- e. The Property Owner, at its sole cost and expense, shall install a back-flow prevention (RPZ) device inside each residence on the Property to prevent back flow from the Water Connection System into the City water utility system.

2. Provision of Water Service

- a. Upon the completion of all the requirements set forth in Paragraph 1 by the Property Owner, and the approval of the design and construction of the Water Connection System by the City and Public Works, the Property Owner shall convey to the City such easements as the City may require, including, but not limited to, an access easement to the Water Connection System and any related water meter. All such easements shall be prepared and recorded at the sole cost and expense of the Property Owner.
- b. The City shall provide water utility service to the Property and its improvements, all as reflected in **Attachment A**.
- c. The City shall provide two water meters for the Property, which shall be installed by the City at the Property Owner's sole cost and expense and in locations that conform to City requirements. The water meters shall remain the property of the City.

- d. The water utility service to be provided under this Agreement shall be for domestic use only and not for fire protection.
- e. The Property Owner shall not extend water utility lines installed under this Agreement to any other property, building or structure without the prior approval required by the Charter and Code of the City, as may be amended.
- f. The City shall be obligated to provide water service to the Property on the terms provided in this Agreement, and the Property Owner shall be obligated to purchase all water utility services for the Property from the City. Provided, however, that the City's obligation to provide water service under this Agreement is specifically conditioned upon the Property Owner's performance of all of its duties and responsibilities hereunder and any breach thereof by the Property Owner or any decision by a judicial, quasi-judicial or administrative body invalidating any such duty or responsibility shall relieve the City of its obligations and responsibilities under this Agreement. The City's obligation to provide water utility service under this Agreement is further expressly conditioned upon a finding by Public Works that providing water utility service to the Property shall not result in or cause an inadequate water flow to the Property or other properties served by any affected water utility line.

3. Fees and Other Charges

- a. The Property Owner will pay all connection charges (including meter costs) for the Property, as are customarily charged by the City for customers outside of the City.
- b. The Property Owner shall pay all capital facility charges and assessments for water utility service to the Property, as are customarily charged by the City for customers outside of the City from time to time.
- c. For any calendar quarter, or any portion thereof, in which the Property remains un-annexed into the City, the City shall charge, and the Property Owner shall pay, the same rate for water service, on a per unit basis as is in effect for customers outside of the City, and any other charges and fees required by Chapter 16.08 of the City Code, as may be amended.
- d. Breach of any provision of this Paragraph, in addition to other remedies provided herein, constitutes a basis for temporary or permanent water utility service cut-off by the City to the Property.

4. Recordation-Binding

- a. This Agreement shall be recorded among the Land Records of Anne Arundel County at the sole cost and expense of the Property Owner.
- b. The duties and responsibilities of this Agreement shall run with the title to the Property and the parties and their successors, assigns and purchasers shall be entitled to all of the rights and

privileges of this Agreement and shall be bound by all of its duties and responsibilities. All references to the Property Owner herein shall be interpreted to specifically refer to all the Property Owner's successors, assigns and purchasers, without regard to privity with the City under this Agreement.

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

5. Inspections-Maintenance

- a. The Water Connection System, and any related specific devices installed as part of such System, shall be as approved by the Director of Public Works.
- b. At any time during normal business hours and upon reasonable notice of the City to the Property Owner, the Property Owner shall make the Property and the Water Connection System, as relates to this Agreement, available to the City, and its officials, officers, employees and agents, for inspection.
- c. The Property Owner shall maintain and test the Water Connection System, at its own expense, on an annual basis.
- d. Breach of any provision of this Paragraph, shall constitute a basis for temporary or permanent water utility service cut-off by the City to the Property.

6. Indemnification

- a. The Property Owner shall forever indemnify, defend and hold harmless the City, its elected officials, directors, employees, agents, and representatives from all liability for injuries to persons, including death, and damage to property arising from acts or omissions of the Property Owner, its officers, agents, employees, contractors, patrons, volunteers, guests or invitees relating to this Agreement, the Permit or the Water Connection System.
- b. Property Owner indemnification does not limit any immunity which the City, its elected officials, appointed officers, directors, employees, agents, and representatives are entitled to assert, and includes all expenses and attorney's fees, whether or not related to administrative or judicial proceedings.
- c. The City, in its sole discretion, may participate in handling its own defense or exclusively handle its own defense, and select its own attorneys, including the City Attorney. The indemnification for attorney fees applies whether or not the City Attorney or other attorney handles the defense.

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

7. Breach-Default

- a. Upon **five calendar days** written notice from the City to the Property Owner, the City may temporarily cut-off water utility service to the Property if the Property Owner shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Property Owner shall violate any term of this Agreement. The City shall afford the Property Owner **thirty calendar days** (or longer as agreed to in writing by the City) to cure any breach or default of this Agreement before permanently cutting-off water utility service to the Property.
- b. The Property Owner shall be liable for any damage to the City resulting from the Property Owner's breach or default of this Agreement, including, but not limited to, any damages incurred by the City or the City water utility system. In such case, the City shall notify the Property Owner of the amount of its liability, which the Property Owner shall pay within **thirty calendar days** of such notice.
- c. Upon permanent cut-off of water utility service to the Property for breach or default of this Agreement, the City shall reimburse the Property Owner for any fees or charges paid in advance under Paragraph 3, prorated as of the date of permanent cut-off, less the amount of damages caused by the breach or default as determined by the City in its sole discretion. If the damages exceed any prorated reimbursement, the City shall not be obligated to make any prorated reimbursements.

8. Waiver

- a. No delay or omission of the City to exercise any right, power or remedy accruing upon the happening of an event that would allow the City to terminate this Agreement shall impair any such right, power or remedy or shall constitute a waiver upon the occurrence of another such event or any acquiescence therein. No delay or omission on the part of the City to exercise any option granted to the City under this Agreement, in any one or more instances shall constitute a waiver of the City's rights hereunder and each such option shall remain continuously in full force and effect.
- b. The Property Owner hereby understands and agrees that this Agreement shall not waive any rights, powers or remedies that the City may have pursuant to the City Code and, specifically, Chapter 16.04 and Section 16.08.050 of the City Code, all as may be amended.

9. Annexation

At any time that the corporate boundaries of the City are amended such that the Property becomes part of the City or the Property Owner successfully petitions the City to annex the Property into the City's

corporate boundaries pursuant to the Maryland Annotated Code, water utility service shall be supplied to the Property under such terms and conditions as are customarily imposed for customers located in the City.

10. No Partnership

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

11. Severability

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

12. Governing Law

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

13. Captions and Headings

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

14. Integration-Modification

- a. This Agreement is the final and entire agreement of the parties concerning all matters having to do with the Permit and the Water Connection System. The parties acknowledge that there are no other understandings or representations, oral or written, regarding the subject or matters having to do with the Permit and the Water Connection System.
- b. None of the terms or provisions of this Agreement may be changed, waived, or modified except by written instrument executed by both parties hereto.

15. Counterparts

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

16. Notice

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

To the City: City of Annapolis, Dept. of Public Works
Attn: Director
145 Gorman St., 2nd Fl.
Annapolis, MD 21401

With a Copy to: City of Annapolis, Office of the City Attorney
Attn: City Attorney
160 Duke of Gloucester St.
Annapolis, MD 21401

To the Property Owner: Damanhuri Alkaitis and Rohana Alkaitis
c/o MidAtlantic IRA, LLC
1231 Hillcrest Rd.
Arnold, MD 21012

17. Authorization

This Agreement is authorized by City Council under Ordinance No. O-2-18.

In witness whereof, the parties have caused this Agreement to be executed under Seal as of the day and year written below.

Mid Atlantic IRA, LLC:

Witness By: _____
Damanhuri Alkaitis
Owner and Authorized Agent

Witness By: _____
Rohana Alkaitis
Owner and Authorized Agent

City of Annapolis:

Attest:

Regina C. Watkins-Eldridge, MMC
City Clerk

Gavin Buckley, 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:

Approved for Form and Legal Sufficiency:

David A. Jarrell, PE, Director
Department of Public Works

Name: _____, Title:
Office of the City Attorney