



Legislation Text

File #: R-20-21, Version: 1

Water Service Agreement - Lidl US Operations, LLC - For the purpose of authorizing a water service agreement providing for the extension of City water service to certain parcels on the Bay Ridge Road located in Anne Arundel County; and generally relating to providing said water service outside the City limits.

**CITY COUNCIL OF THE
City of Annapolis**

Resolution 20-21

**Introduced by: Alderman Savidge
Cosponsored by: Alderwoman Pindell Charles**

**Referred to
Finance Committee**

A **RESOLUTION** concerning

Water Service Agreement - Lidl US Operations, LLC

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

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

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

WHEREAS, the Property does not currently have a water supply for the Property; and

WHEREAS, the Property Owner, has requested water service from the City and submitted an Adequate Public Facilities report which includes fire flow test results to the Department of Public Works

for review, and 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 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 a resolution 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 Lidl US Operations, 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 Resolution shall take effect from the date of its passage.

EXPLANATION

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



Chartered 1708

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

**WATER
SERVICE
AGREEM
ENT
WITH
LIDL US
OPERATI
ONS,
LLC, a
Delaware
limited
liability
company**

THIS WATER SERVICE AGREEMENT (“Agreement”) is made this _____ day of _____, 20__, by and between the City of Annapolis, a municipal corporation of the State of Maryland (“City”), and Lidl US Operations, LLC, a Delaware limited liability company (the “Property Owner” or “Lidl”).

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

WHEREAS, the Property Owner does not currently have a water supply for the Property; and

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

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

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

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

1. 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 the Department, a water connection system with all related equipment and work necessary to provide water service to the Property from the City water utility system (collectively, the “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 Department standards. The approved plans and/or drawings for the Water Connection System, once completed, shall be attached hereto as **Attachment A**, upon completion and approval by the City and the Department.

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 Department 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 the Department, in such form as the Department in its sole discretion may require.

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

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

2. Easements; Provision of Water Service.

a. Upon the completion of all of 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 the Department, the Property Owner shall convey to the City such easements as the City may in its sole discretion require, including, but not limited to, an access easement to the Water Connection System and any related water meter. Any and 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 on a site plan to be attached hereto as part of **Attachment A**.

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

d. The water utility service to be provided pursuant to 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 and/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 utility 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 the Department that providing water utility service to the Property shall not result in or cause an inadequate water flow to the Property and/or other properties served by any affected water utility line.

3. Fees and Other Charges.

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

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 on a per unit basis the same rate for water service as is in effect for customers outside of the City from time to time, 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 3, in addition to other remedies provided herein, shall constitute a basis for temporary or permanent water utility service cut-off by the City to the Property.

4. Recordation; Binding.

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

b. The parties and their respective 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 of 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 and/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 the Department.

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 sole cost and expense, on an annual basis.

d. Breach of any provision of this Paragraph 5, in addition to other remedies provided herein, 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, appointees, directors, employees, agents, and representatives from and against all liability for injuries to persons, including death, and damage to City property and other property arising from acts or omissions of the Property Owner, its officers, agents, employees, contractors, patrons, volunteers, guests or invitees resulting in connection with 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 costs and expenses, including 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 (30) 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 (5) 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 (30) 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 (30) calendar days of such notice.

c. Upon the 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 pursuant to Paragraph 3, prorated as of the date of permanent cut-off, less the amount of damages caused by the breach or

default, all 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 further prorated reimbursements hereunder.

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 and/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 brought pursuant 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/or the Water Connection System.

b. None of the terms or provisions of this Agreement may be changed, waived, or modified exempt 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 the notice has been sent by certified mail, return receipt, overnight carrier, or hand delivered with signed receipt to the following address and individual or such other address and/or such other individual as a party may identify in writing to the other party:

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

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

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

With a Copy to: Lidl US Operations, LLC
Attn: Legal Dept.
3500 S. Clark Street
Arlington, VA 22202

17. Authorization.

This Agreement is authorized by the City Council pursuant to Resolution No. R-20-21.

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

**ATTACHMENT A
PLANS, DRAWINGS, SITE PLAN**