
AGENDA ITEM SUMMARY

Subject: Discuss agreement for Tony Lessin sanitary sewer service

Background Summary:

We have discussed Tony Lessin's request for sanitary sewer service to a new home he is constructing in rural Floyd County east of the City's corporate limits at several past Council meetings. At the January 13th Planning Session we reviewed an agreement to provide sanitary sewer service with the Council. The agreement required Lessins to cooperate with voluntary annexation of the property into city limits upon the request of the City and also designated the City as their 'power of attorney' to sign voluntary annexation documents in the event they (or their successors) declined to voluntarily annex upon request of the City.

John and Brad spoke with the Lessins following the January 13th meeting. The Lessins clarified that they are requesting that the City not annex the property for at least the next ten years. After the 10 year 'moratorium' on annexation, the Lessins would agree to a voluntary annexation upon request of the City. Additionally, the Lessins were not agreeable to language appointing the City as their power of attorney to sign annexation documents.

Brad has prepared a revised agreement incorporating Tony's requested changes. There are two (2) other items that have been revised. Paragraph 3.(d) is revised to clarify that the ownership of the sanitary sewer main remains the City's and Tony will be responsible for cleaning and clearing any plugging that may occur due to flows from his service line. In paragraph 3.i.(vi), the SUDAS specification number has been corrected to reference the appropriate leakage testing procedure.

Initially, Staff was tentatively agreeable to the extension of sewer services provided that the Lessins were agreeable to voluntary annexation upon the request of the City. Based on the additional request of the Lessins (namely, the 10-year moratorium on annexation), the Staff does not support the agreement or extension of municipal sewer services at this time. Staff's position is that annexation is the proper and correct way to extend municipal sewer services.

As an alternative to a written agreement requiring the Lessins voluntary cooperation with annexation, we have also discussed with Tony the possibility of establishing a 10-year tax abatement program if he voluntarily annexes his property into Charles City. This will allow for abatement of the city only portion of taxes over 10 years in a stepped fashion. The Lessins have indicated they are not interested in annexing at this time.

We will discuss the revised agreement and Mr. Lessin's comments at the Planning Session, so we can determine how the Council wants us to proceed on this issue.

Prepared by: Brad Sloter, 200 N. Johnson St., Charles City, Iowa (641) 228-4533
Return to: Trudy O'Donnell, 105 Milwaukee Mall, Charles City, IA 50616

SANITARY SEWER SERVICE AGREEMENT

THIS SANITARY SEWER SERVICE AGREEMENT (hereinafter referred to as this "Agreement") is made between Anthony Ray Lessin and Jennifer Lessin, husband and wife (collectively, "Owner"), and the City of Charles City, Iowa ("City").

RECITALS

- A. The Owner owns property legally described on Exhibit "A" ("Subject Property") located outside, but adjacent to, the City's municipal limits.
- B. The Owner has requested that the City furnish municipal sanitary sewer services to the Subject Property.
- C. The City is under no obligation to furnish sanitary sewer services to property located outside municipal corporate limits but may do so by written agreement with the property owner.
- D. The City is agreeable to furnishing sanitary sewer services to the Subject Property upon the terms, conditions and covenants set forth in this Agreement.
- E. The Owner wishes to obtain Utility Services by contract without the necessity of annexing the Subject Property into the City. The Subject Property is located in an area in which annexation to the City is or may become appropriate in the future.
- F. Owner specifically agrees that, from and after February 1, 2031, he will sign any and every annexation petition which relates to the Subject Property when presented with such petition.
- G. Owner understands that the obligation to execute any and every annexation petition from and after February 1, 2031, relating to the Subject Property, when presented, is a requirement for Utility Service outside the City and that failure to satisfy this obligation may, at the election of the City, cause discontinuance and termination of Utility Services to the Subject Property.

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NOW THEREFORE, in consideration of the foregoing and the promises, undertakings and mutual agreements contained herein, Owner and the City covenant and agree as follows:

1. **Recitals Incorporated.** The above recitals are hereby incorporated in and made a part of this Agreement as fully as if set forth verbatim herein. These recitals are true and correct and the parties are bound thereby. By signing this Agreement, Owner and City acknowledge reading, understanding and agreeing to all of these recitals.

2. **Utility Services.** As used in this Agreement, "Utility Services" means and refers to sanitary sewer services provided by the City.

3. **Connection to City Sewer System.** The City hereby authorizes the Owner to connect a sewer service line from the Subject Property to the sanitary sewer system of the City of Charles City, Iowa, subject to and conditioned upon the following:

(a) Prior to construction, the Owner shall submit design including plan and profile of the service line to the Charles City Engineering Department for review and approval. The Owner agrees that the sewer line and facilities shall be built in accordance with the design submitted to the City of Charles City Engineering Department and in compliance with such specifications, and no changes from the approved plans may be made without the City's prior written approval.

(b) Sewer service lines and other facilities shall be physically connected to City's sanitary sewer system by a licensed contractor approved in writing by City. Company agrees to provide City with access to all sewer facilities throughout their construction for operation, maintenance, inspection and compliance review.

(c) The Owner shall be responsible for all costs of the design and construction of the service line and connection of the service line and facilities to the City sanitary sewer system. The Owner acknowledges and agrees that the City does not take ownership of any sewer lines connected to the City's sewer system, and the repair and maintenance for sewer service lines remain the sole responsibility of the Owner.

(d) The Owner shall own and assume the responsibility for the service line. The City shall own and be responsible for the existing sewer main except the Owner shall be responsible to clear any plugging of the sanitary sewer main from Manhole 676 to the first existing downstream service line connection. The Owner shall assume responsibility for the service line and the existing sewer main from Manhole 676 to the first existing downstream service line connection.

(e) The service line shall be placed below the frost line, or if the service line cannot be placed below the frost line, rigid insulation shall be placed over the service line to prevent freezing.

(f) The Owner shall obtain and record a private utility easement at least fifteen (15) feet in width from the property owners at 3026 Yorkshire Blvd, Charles City, Iowa.

(g) The Owner shall comply with City's sewer policies, ordinances, rules, regulations, rates and fees that now exist or that may later be modified, and City shall provide Utility Services in accordance with those same regulations.

(h) The Owner hereby assumes all risk associated with the connection of the sewer line system to the City sanitary sewer system, and the Owner hereby releases the City from all claims and liability for damages caused to the Subject Property arising from the connection to the sanitary sewer system as provided herein.

(i) The sewer service line shall be design and installed in accordance with the following:

- i. Clean outs shall be provided along the service line at 100 foot intervals and at any bend or change in direction in accordance with the attached detail.
- ii. The service line shall be connected to the sewer main using a factory built saddle connection. The service line shall not be connected to a manhole.
- iii. The service line shall cross the public utility easement only at a right angle to the sewer main.
- iv. Construction of the sewer service line shall not block any existing drainage or cause drainage to accumulate and/or pond.
- v. Service line shall not be covered and backfilled until the City has inspected the construction and obtained coordinates for GIS mapping.

vi. Following backfilling, the service line shall be tested for leaks using the sanitary sewer vacuum testing process outlined in Section [4060.3.03.D](#) ~~[4060.3.04.D](#)~~ of the SUDAS Standard Specifications.

4. **Covenants by Owner.** Owner makes the following covenants, warranties, agreements and representations, each of which shall be deemed material to this Agreement:

(a) Owner covenants and agrees that, from and after February 1, 2031, they will sign any annexation petition which relates to the Subject Property (“Annexation Petition”) upon presentment of such petition. As used in this Agreement, an Annexation Petition shall be construed to relate to the Subject Property if the property to be annexed pursuant to and described in the petition includes the Subject Property or any portion thereof. Owner acknowledges that a purpose of this Agreement is to ensure, as a material benefit and consideration to the City, Owner’s full and complete cooperation with any effort to annex the Subject Property; and Owner agrees, that upon request by the City, Owner will do, execute, acknowledge and deliver, all such further acts, agreements, and assurances as may be requested and reasonably necessary for the full completion and consummation of the purpose contemplated herein.

(b) Owner covenants and warrants that they are the sole owner in fee simple absolute of the Subject Property and that the undersigned has the full right and authority to sign this Agreement.

~~**5. Grant of Power of Attorney.** In the event Owner fails to meet the obligations imposed herein and does not sign any Annexation Petition upon request, Owner hereby irrevocably appoints the City Administrator or his/her designee as Attorneys in Fact for Owner of Subject Property with full power to sign any Annexation Petition when requested by the City.~~

- 56. Default; Remedies.** If Owner fails to perform any of the agreements herein made, then the City may, in addition to any other remedy, terminate municipal sewer service as provided by law.
- 67. Entire Agreement.** The parties acknowledge that no representations or inducements have been made other than those expressed herein; that this Agreement supersedes any and all prior memoranda, correspondence, conversations, negotiations and agreements pertaining to the matters herein expressed; and that this Agreement constitutes the entire agreement between them.
- 78. Modification.** The terms of this Agreement may be modified in whole or in part only by a written instrument signed by Owner and the City. Any oral agreement to modify this Agreement shall be void and of no force and effect.
- 89. No Waiver.** No waiver of a breach of any of the covenants or promises of this Agreement shall be construed as a waiver of any succeeding breach of the same or other covenant or promise.
- 940. Severability.** In the event that any provision or clause of this Agreement conflicts with any applicable law, the other provisions of this Agreement shall be given effect as fully as possible without the conflicting provision, and to this end the provisions of this Agreement are declared to be severable.
- 1044. Successors and Assigns.** The covenants and agreements contained in this Agreement and the obligations created hereunder shall inure to the benefit of and be binding on the City, Owner and all heirs, successors and assigns of Owner to the Subject Property, or any part thereof and shall run with the Subject Property and land.
- 1142. Governing Law and Forum.** The validity, construction and effect of this Agreement shall be governed by the laws of the State of Iowa, and the parties hereby consent to the exclusive jurisdiction of the courts of the state of Iowa for resolution of any dispute arising hereunder
- 1243. Representation.** This Offer was prepared by the City Attorney, who represent only the interests of the City. Owner has been advised and is advised to obtain separate legal representation in this matter in order that the Owner understands the terms of this agreement and all consequences associated with the execution of the agreement. Owner has either obtained independent legal counsel or has intentionally declined to do so.
- 1344. Contingency.** This Agreement is contingent upon approval by the City Council of the City of Charles City, Iowa.
- 1445. Counterparts.** This Agreement may be executed in any number of counterparts and becomes effective when all parties have signed, whether on the same or separate copies of this Agreement.

CITY OF CHARLES CITY

OWNER

Dean Andrews, Mayor

Anthony Ray Lessin

Attest:

Trudy O'Donnell, City Clerk

Jennifer Lessin

STATE OF IOWA, COUNTY OF FLOYD) ss

On this _____ day of _____, 2020, before me, a notary public in and for the state of Iowa, personally appeared Dean Andrews and Trudy O'Donnell, to me personally known, and who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Charles City, Iowa; that the seal affixed to the foregoing instrument is the seal of said municipality of Charles City, Iowa, and that the instrument was signed and sealed on behalf of said City by authority of its City Council, and that Dean Andrews and Trudy O'Donnell acknowledged the execution of the instrument to be the voluntary act and deed of said municipal corporation, by it and by them voluntarily executed.

Notary Public in and for the State of Iowa

STATE OF IOWA, COUNTY OF FLOYD) ss

This record was acknowledged before me on _____, by Anthony Ray Lessin and Jennifer Lessin.

Notary Public in and for the State of Iowa

Exhibit A

A PARCEL OF LAND DESIGNATED AS PARCEL 'E' IN THE SOUTHEAST QUARTER (SE 1/4) SOUTHWEST QUARTER (SW 1/4) OF SECTION 8-T95N-R15W OF THE 5TH P.M. FLOYD COUNTY, IOWA MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING (P.O.B.) AT THE SOUTHWEST CORNER (SW COR.) SOUTHEAST QUARTER (SE 1/4) SOUTHWEST QUARTER (SW 1/4) OF SAID SECTION EIGHT (8); THENCE ON AN IOWA ZONE TWO (2) REGIONAL COORDINATE SYSTEM BEARING OF N00°08'37"W (N0°39'01"W) 513.32 FEET ALONG THE WESTERLY LINE SOUTHEAST QUARTER (SE 1/4) SOUTHWEST QUARTER (SW 1/4) OF SAID SECTION EIGHT (8); THENCE S88°40'00"E 433.70 FEET PARALLEL WITH THE SOUTHERLY LINE SOUTHEAST QUARTER (SE 1/4) SOUTHWEST QUARTER (SW 1/4) OF SAID SECTION EIGHT (8); THENCE S01°55'27"W 513.18 FEET TO SAID SOUTHERLY LINE; THENCE N88°40'00"W (N89°10'23"W) 415.17 FEET ALONG SAID SOUTHERLY LINE TO THE POINT OF BEGINNING (P.O.B.). SAID PARCEL 'E' CONTAINS 5.00 ACRES INCLUDING 0.43 ACRES IN PUBLIC ROAD RIGHT OF WAY (R.O.W.), AND IS SUBJECT TO ANY EASEMENTS WRITTEN OR OTHERWISE.

DRAFT