

PRE-ANNEXATION WATER AND SEWER AGREEMENT

THIS AGREEMENT is entered into this _____ day of _____, 2023, between the City of Monticello, a municipal corporation of Arkansas ("City"), acting on behalf of itself, and _____ ("Owner"), the owner of record of the property ("Property") described in Attachment A.

Article I RECITALS

WHEREAS, Owner desires to receive water and sewer service from the City of Monticello to Owner's Property which is located outside the City limits which may not be contiguous with the existing City limits, and

WHEREAS, the City is not required to extend water and sewer service to the Owner because the Property is outside the present corporate boundaries of the City, and

WHEREAS, the City established a formal policy to support quality growth in the future by approving Ordinance No. _____ which, in part, permits the extension of water and sewer service outside the City limits under certain limited circumstances, and

WHEREAS, the extension of water and sewer service outside the City limits requires a Fair Share Payment based on current water and sewer rates as set by City Council (current water \$500.00, current sewer \$150.00). Payment is due upon the execution of this agreement, and requires an agreement pursuant to the terms herein that the Owner petition to annex his Property to the City at a time deemed appropriate by the City, and

WHEREAS, once the Owner's Property is contiguous with the City it may under Arkansas law be annexed pursuant to a voluntary petition for annexation, although this procedure may be subject to an agreement of Property Owners (or a certain percentage of Property Owners) under the appropriate circumstances, and

WHEREAS, Owner understands that by executing this agreement for water and sewer service, Owner and all future owners of the Property agree to voluntarily petition the City for annexation and waive any right to avail themselves of the referendum voting procedure for annexation as provided by Arkansas law or, in the alternative if an agreement among Property Owners is required Owner will consent to and agree to any such annexation proposal.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS SET FORTH WITHIN THIS AGREEMENT, IT IS AGREED BY THE PARTIES AS FOLLOWS:

Agreement: The terms and conditions set forth in this writing and any attachment to this writing.

City: The City of Monticello, Arkansas, a municipal corporation and city of the first class duly organized under Arkansas law.

Default: The reasons for which this Agreement may be cancelled; these reasons are more fully described in Article III of this Agreement.

Owner: The owner of record of the property that is the subject of this Agreement which is more fully described above or in the legal description attached as Exhibit A to this Agreement.

Article II Consideration

Section 201: Term of the Agreement

The term of this Agreement shall be from the date of its execution to the end of the present calendar year. From that date the term shall automatically be from January 1 to December 31 of the same year. The Agreement shall automatically be renewed on a year-to-year basis and continue in full force and effect unless terminated by reason of default as set forth in Article III, or unless terminated by mutual written agreement of the parties. Notwithstanding the provisions of this Section, nothing shall preclude termination of this Agreement because of Owner's failure to timely pay for water and sewer service as set forth below.

Section 202: Water and Sewer Service Rates

Owner agrees to pay the then current rate for water and sewer service that is charged for service outside the City limits. This charge is in addition to any costs Owner will incur to have connections made with existing water and sewer lines to obtain service to the Property and Owner also agrees to comply with the terms and conditions of all other contracts with the City and to abide by all laws and ordinances pertaining to the use of water and sewer, as well as rules and regulations promulgated by the City or their respective staff.

Section 203: Agreement and rates only a precondition

Owner and the City agree that the execution of this Agreement is solely a precondition to the receipt by the Owner of water and sewer service while the Property is located outside the City limits. Entry into the Agreement by the City does not mean that Owner is excused from having to comply with other applicable City ordinances concerning building permits and subdivision approval and other City approvals required prior to the use of the property currently in existence or which may come into existence in the future.

Section 204: Pre-Annexation

In addition to the service rates and other matters set forth above, Owner agrees that upon written requests from the City to do so, Owner will execute for filing a petition to voluntarily annex the Property to the City. The City will make this request only if Owner's property is contiguous to the corporate boundaries of the City, or is part of a tract of several parcels of property that together are contiguous to the corporate boundaries of the City. This Agreement does not mandate the City to make this request.

Article III Termination of the Agreement

Section 301: Termination of the Agreement

This Agreement may be terminated by the City, at the option of the City upon its obtaining actual knowledge that Owner has committed an act of default as defined in Section 302, TERMINATION OF WATER AND SEWER SERVICE MAY OCCUR AFTER NOTICE OF THE NATURE OF THE DEFAULT TO OWNER BY THE CITY.

Section 302: Default

The following acts shall be deemed reasons to declare the Owner in default of this Agreement:

- (a) The Owner fails to pay the costs incurred in providing water and sewer service connections to this property.
- (b) The Owner fails to pay in full any amounts due and owing for monthly water and sewer service. Disconnection of service under this Section will not occur unless Owner has received notice from the City.
- (c) The Owner is involved in a voluntary or involuntary bankruptcy action or the property in question is involved in a foreclosure action, and the property is not listed as the Owner's homestead interest. It is further agreed that even if the property is listed as homestead in any of the aforementioned actions, the City reserves the right to petition the appropriate Court to approve its request to terminate services.
- (d) The Owner transfers his right, title and interest in the property to any other person and does not include as a part of that transfer actual notice of the terms and conditions of this Agreement and actual notice that the successor in interest is to be bound by the terms of conditions of this Agreement.
- (e) The Owner, or his successor in interest, refuses or resists filing a voluntary petition to annex the Property to the City:

- (i) Once the Property becomes contiguous to the City limits, or
- (ii) The Property would become contiguous to the City limits as a part of voluntary annexation petition, and
- (iii) The City has requested that a petition for voluntary annexation including the Property be listed.

Article IV Miscellaneous Provisions

Section 401: Bill of Assurance

The Owner and the City agree that to assure that the terms of this Agreement shall forever run with this Agreement will be filed of record by the City in the deed records of the Drew County Circuit Clerk. Further, the parties agree that the Bill of Assurance, attached as

Exhibit A to this Agreement, which sets forth the covenant to annex, will also be filled with the Drew County Circuit Clerk.

Section 402 Reservation of Remedies

In addition to terminating this Agreement for the reasons set forth above, the City specifically reserves the right to pursue any other legal or equitable remedies to which it may be entitled as a result of Owner's default.

Section 403: Guaranty of Authority

The City warrants and guarantees that it has full authority to enter into this Agreement. The Owner warrants and represents that it has full authority to sign this Agreement on behalf of the entire property, and that it is, at present, the sole owner of the acreage that would be affected by a future annexation of this property. Further, Owner warrants that it has no knowledge of any actual or threatened legal action involving the Owner that could, in any way, affect his right and authority to enter this Agreement.

Section 404 Assignment of Agreement

This Agreement shall not be assigned to any other party in whole or in part, without the express written approval of the City. Failure to obtain the city council's express written approval shall be deemed another ground for declaring Owner in default and terminating this Agreement.

Section 405: Severability of Provisions

If any provision of this Agreement is ruled invalid by any court of final jurisdiction, the other terms and provisions of this Agreement shall remain in full force and effect. The invalidity of any provision shall not be ground, for terminating this agreement without the express written consent of the City.

Section 406: Modification of the Agreement

This Agreement may not be modified, altered or changed except by a writing signed by all of the parties to the Agreement of their duly authorized representatives or successors in interest, which shall be an attachment to this Agreement. Any oral expression or modification notwithstanding, the entire Agreement is contained within this document and the attachments hereto.

Section 407: Approval of City Council required

The terms and provisions of this Agreement are subject to the approval of the City of Monticello City Council, as indicated below by the signature of the Mayor.

Section 408: Voluntary Agreement

Owner has read and understands the terms and conditions for service as set forth herein; Owner enters into this Agreement knowingly, voluntarily and without coercion on the part of the City of Monticello.

Section 409: Binding Effect

This agreement is binding upon the parties hereto and Owner's successors in title to the Property.

IN WITNESS WHEREOF, the parties have executed this Agreement.

Owner By: _____
Mayor
Date: _____ Date: _____

ACKNOWLEDGEMENT
STATE OF ARKANSAS

COUNTY OF _____

On this _____ day of _____, 2023, before me, a Notary Public personally appeared _____, as Owner of the Property above described, and executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires:

Notary Public

BILL OF ASSURANCE

KNOW ALL MEN BY THESE PRESENTS:

THAT, WHEREAS, _____, (Owner) is the sole owner of the following land situated in Drew County, Arkansas, hereinafter called "Property", to-wit:

Legal Description:

RECITALS

WHEREAS, Owner desires to receive water and sewer service from the City of Monticello (City) to Owner's Property located outside the City limits which may not be contiguous with the existing City limits, and

WHEREAS, the City is not required to extend water and sewer service to the Owner because the Property is outside the present corporate boundaries of the City, and

WHEREAS, the City has established a formal policy to support quality growth in the future as expressed in Ordinance No. _____ which, in part, permits the extension of water and sewer service outside the City limits under certain limited circumstances, and

WHEREAS, the extension of water and sewer service outside the City limits requires at a minimum the payment of a special rate for these services and may, at the City's option, require an agreement that Owner petition to annex its Property to the City at a time deemed appropriate by the City, and

WHEREAS, once the Property is contiguous with the City it may, under Arkansas law, be annexed pursuant to a voluntary petition for annexation although this procedure is subject to a referendum vote under the appropriate circumstances, and

WHEREAS, Owner recognizes the enhanced benefits his land will receive by having City water and sewer service, and

WHEREAS, Owner now desires to freely bind himself and all future owners of the property by agreeing to voluntarily petition the City for annexation at such future time as the City deems appropriate thereby waiving any right for the Owner to avail himself of the referendum voting procedure for annexation as provided by Arkansas law.

NOW THEREFORE, the Owner, for and in consideration of the City benefits which accrue to it, its successors and assigns, which benefit is acknowledged to be of value, hereby covenants with the City of Monticello, Arkansas as follows:

(1) Owner acknowledges that a future annexation of the appraised Property to the City of Monticello is a benefit inuring to the Owner and all future owners of said Property as evidenced by the receipt of City services particularly water and sewer service. The Owner further acknowledges that the City has no obligation to provide water and sewer service to non-resident consumers, and chooses not to extend them except under certain limited circumstances, which further the City's annexation growth plan as evidenced in Ordinance No. _____. Therefore, Owner binds himself and Owner's successors in title of the Property to voluntarily sign any petition for annexation when requested to do so by the City of Monticello.

EXECUTED this ____ day of _____, 2023.

Owner

ACKNOWLEDGEMENT
STATE OF ARKANSAS

COUNTY OF _____

On this ____ day of _____, 2023, before me, a Notary Public personally appeared _____, as Owner of the Property above described, and executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:
