

Introduced by Buffaloe Council Bill No. R 174-23

A RESOLUTION

authorizing the Faye C. Nowell Trust to pursue access to sanitary sewer services through an annexation agreement for contiguous property located on the south side of Gillespie Bridge Road (5550 W. Gillespie Bridge Road).

WHEREAS, Fay C. Nowell, as Trustee of the Faye C. Nowell Trust ("Owner") owns two (2) tracts of land commonly addressed as 5550 W. Gillespie Bridge Road ("Property") upon which a failing on-site septic system is located ("Property"); and

WHEREAS, the Property is contiguous to the City of Columbia, Missouri ("City") corporate limits along its southern boundary with the Longview Subdivision; and

WHEREAS, there is a City of Columbia sanitary sewer main ("City sewer main") running along Becky's Bluff Court within approximately sixty-five (65) feet of the Property; and

WHEREAS, the existing City sewer main serves approximately eighty (80) homes within the Longview Subdivision, Plat 1; and

WHEREAS, Owner is attempting to sell the Property with a contingency that the failing on-site septic system will be eliminated and the existing home and shop on the Property will be connected to the adjoining City sewer main; and

WHEREAS, such City sewer main has the capacity to provide service to the Property; and

WHEREAS, Policy Resolution No. R115-97A, adopted by the City Council on August 18, 1997, requires parcels pursuing connection to City sanitary service to either annex (for contiguous parcels) or enter into an annexation agreement (non-contiguous parcels); and

WHEREAS, the Property cannot receive a permit to repair the failing on-site septic system given its proximity to City sewer main; and

WHEREAS, City's Code requires the Property to be served by a water main with a flow of eight hundred (800) gallons per minute (GPM) with fire hydrants within six hundred (600) feet of the Property; and

WHEREAS, the Property is currently served by Consolidated Water District No.1 with a water main capable of supporting domestic water service only, which is consistent with other lots located outside the city's corporate limits within this area; and

WHEREAS, the Property and the lot to the east do not have access to a fire hydrant within six hundred (600) feet capable of meeting the required eight hundred (800) gallons per minute (GPM) fire flow necessary to support City fire service; and

WHEREAS, the Property is currently within the Boone County Fire Protection District service area and would become the responsibility of City following annexation with mutual-aid provided by the Boone County Fire Protection District; and

WHEREAS, the Boone County Fire Protection District requires water mains with a flow of five hundred (500) GPM for newly platted developments but such was not required at the time the building permit was issued; and

WHEREAS, Boone County Fire Protection District has tanker vehicles for fire response specifically designed to enhance fire suppression efforts in areas where the water main has a low flow; and

WHEREAS, City's Fire Department does not possess vehicles specifically designed to compensate for less water flow; and

WHEREAS, City's Fire Code compliance analysis does not utilize the fire suppression capacity of the Boone County Fire Protection District when analyzing adequate fire suppression resources and would require that a public water main sufficient of handling a flow of eight hundred (800) GPM be extended to the Property to meet the water flow required for fire suppression; and

WHEREAS, the public water main would be required to be extended a distance of approximately seven hundred (700) feet prior to annexation to meet the increased water flow required for fire suppression for the Property; and

WHEREAS, the Property would be the only property along west Gillespie Bridge Road to bear the cost of extending the water main to meet City Code requirements; and

WHEREAS, it is not feasible for the Property Owner to bear the cost of extending the water main to meet City Code requirements and has sought authorization to repair the failing on-site septic system located on the Property under Boone County regulations without accessing the City sewer main; and

WHEREAS, the Property, given its proximity to the City sewer main, is unable to meet the Boone County Health Department requirements that would permit such repairs to the on-site septic system; and

WHEREAS, although the Property is contiguous to the city limits, the Owner seeks to access the City sewer main under an annexation agreement, which is not contemplated by Policy Resolution No. R115-97A; and

WHEREAS, the Property is a unique situation that could pose a public health risk if allowed to remain on a private on-site septic system because of its proximity to a fully developed subdivision already connected to the City sewer main; and


WHEREAS, City finds it to be in the best interest of the City and the public health to enter into an agreement with the Owner which would allow for the connection to the City sewer main subject to future annexation of the Property at such time as additional City services to support the annexation become available.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. Faye C. Nowell is hereby authorized to pursue access to City of Columbia sanitary sewer services prior to annexation by entering into an annexation agreement setting forth the terms and conditions under which future annexation of the Property may occur. The form and content of the annexation agreement shall be substantially as set forth in "Attachment A" attached hereto and made a part hereof.

ADOPTED this 20th day of November, 2023.

ATTEST:

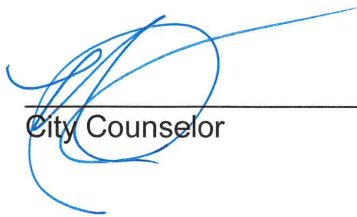


City Clerk



Mayor and Presiding Officer

APPROVED AS TO FORM:



City Counselor

ANNEXATION AGREEMENT

This Agreement between the City of Columbia, Missouri, a municipal corporation (hereinafter “City”) and **CLICK HERE and insert legal name of all owners of the property and type of entity (ie – corporation, limited liability company, single person, married couple, etc.)**, (hereinafter “Owner”) is entered into as of the last date of all of the parties to execute the Agreement (the “Effective Date”). In consideration of the mutual covenants contained herein, the parties agree as follows:

1. Owner hereby represents that Owner is the sole legal owner of the following described real estate located in Boone County, Missouri and has the capacity to enter into this Agreement:

[CLICK HERE and insert legal description OR state “Legal description attached as Exhibit A and incorporated herein by reference”]

(hereinafter the “Property”).

2. City agrees to allow Owner to connect sanitary sewer lines serving the Property to the City’s sanitary sewer system as set forth herein. Owner shall make the connection to the City’s sanitary sewer system at Owner’s sole cost and expense. Owner shall obtain all necessary permits for the sewer construction and connection and shall pay all fees required to connect to the City’s sewer system. Following connection to the City’s sanitary sewer system, Owner shall become a sewer customer of the City and subject to payment of all monthly fees and charges as set forth in the city code.

3. All sewer lines and appurtenances serving the Property shall be located within standard sewer or utility easements dedicated to the public use and constructed in compliance with City regulations and standards. Construction of the sewer lines and appurtenances shall be inspected by the City as though the property were within the City limits and shall be subject to City approval. The sewer lines and appurtenances shall be conveyed to the City following construction and approval.

4. The sewer lines constructed by Owner to serve the Property shall not be connected to any other property or sewer lines without the express written consent of the City.

5. Development and construction on the Property by Owner shall conform to all Boone County ordinances and standards for the duration the property remains outside the city limits. Once annexed into the City, development and construction on the Property shall conform to all City standards, including, but not limited to, the Unified Development Code. Notwithstanding the

foregoing, any phase of development under construction at the time of annexation may be completed under Boone County requirements and inspections provided the construction is completed within two (2) years following the date of annexation. Any construction activities occurring more than two (2) years following the date of annexation shall conform to all City standards and be inspected by the City. Regardless of the date of annexation, in the event of construction and development on the Property prior to annexation, Owner shall construct and maintain public sidewalks, landscaping, lighting, and designate appropriate tree preservation areas as required by the city code as though the Property is located within the City limits. Following construction, all sanitary sewers, storm sewers, streets and sidewalks shall be forever dedicated to the public use.

6. So long as the Property remains outside the City limits, any subdivision of the Property shall be prepared in accordance with the applicable requirements of Boone County. The City shall be provided written notice of the subdivision of the property, but there shall be no requirement that the City approve any plat prior to any action taken on a plat by the Boone County Commission.

7. Prior to annexation, if any irreconcilable conflict exists between a County regulation and a City regulation, the Owner, to the extent required by law, shall follow the County regulation including County storm water standards. Owner acknowledges that no conflict is involved where a City regulation, except City storm water standards, imposes a more stringent minimum requirement than a corresponding County regulation or in any instance where the City imposes a regulation that is not imposed by the County. In such instance, Owner shall be required to follow the more stringent requirement.

8. The City address numbering plan shall be complied with in connection with the development of the Property.

9. The City and Owner acknowledge that the Property is currently contiguous to the corporate limits of the City and are choosing to delay annexation of the Property until such time as the City reasonably and solely determines to be appropriate to annex the Property and provide available municipal services to the Property.

10. To the extent allowed by law, at such time as the City reasonably and solely determines to be appropriate to annex the Property and provide available municipal services to the Property, City may, but shall not be obligated to, annex the Property into the City, without further action of the Owner.

11. Owner irrevocably appoints the City Manager of Columbia, Missouri, as its attorney-in-fact for the sole purpose of presenting a verified petition requesting annexation of the Property to the City Council of Columbia, Missouri. The City Manager may exercise this power of attorney at any time after the City reasonably and solely determines to be appropriate to annex the Property and provide available municipal services to the Property. Any delay in filing such petition shall not be deemed a waiver of any right of the City to file such petition at such time in the future, in the sole discretion of the City, the filing of such petition is deemed advisable.

12. In lieu of the power of attorney granted to the City Manager herein, the City Manager may request the Owner to submit a verified petition requesting annexation. In such event, Owner shall, within such time as specified by the City Manager, submit a verified petition requesting annexation of the Property to the Director of Community Development for presentation to the City

Council of Columbia, Missouri. The provisions of this paragraph shall be enforceable by specific performance.

13. The petition for annexation may request that the Property be placed in Zoning District [\[CLICK HERE and insert zoning district designation\]](#), or equivalent, upon annexation. If the proposed ordinance annexing the Property does not place the Property in the zoning district specified herein, Owner may withdraw the petition for annexation. Such withdrawal shall not affect the parties' obligations under this Agreement, including City's obligation to provide sewer service.

14. Except as expressly set forth in paragraph 13 hereof, Owner agrees not to take any action to oppose any annexation initiated by the City which includes the Property. Owner further agrees not to take any action to oppose any annexation initiated by the City or by any property owner which includes any property lying between the Property and the City limits.

15. Owner shall give a copy of this Agreement to each person who buys all or a portion of the Property.

16. If Owner fails to comply with any of the provisions of this Agreement, City may terminate sewer service to the Property and disconnect the sewer lines serving the Property from the City's sanitary sewer system. City shall give Owner one hundred eighty (180) days prior written notice of its intent to terminate sewer service.

17. This Agreement is not intended to confer any rights or remedies on any person other than the parties.

18. The benefits and burdens of this Agreement are intended to attach to and run with the land and shall be binding on and inure to the benefit of the parties and their respective legal representatives, successors, heirs and assigns. All persons claiming under the parties shall conform to and observe the provisions of this Agreement.

19. Owner, at Owner's sole cost and expense, hereby agrees to indemnify, protect, release, defend (with counsel acceptable to the City) and hold harmless the City, its municipal officials, elected officials, boards, commissions, officers, employees, attorneys, and agents from and against any and all causes of action, claims, demands, contractual damages and losses, economic damages and losses, any and all other damages and losses, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, out of either Owner's breach of this Agreement or any action or inaction of Owner, its agents, representatives, employees, contractors, subcontractors or any other person for whose acts Owner may be liable, occurring during the construction of public improvements related to Owner's development which results in injury to any third party, except to the extent such injury arises from or is caused by the sole or gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents or contractors. The indemnification, duty to defend and hold harmless obligations set forth in this paragraph shall survive for a period of five (5) years from the date of the later of City's acceptance of public improvements or the last day of any warranty work relating to such public improvements.

20. This Agreement shall be construed according to the laws of the State of Missouri. The parties shall comply with all local, state, and federal laws and regulations relating to the performance of this Agreement.

21. Any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of Boone County, Missouri.

22. This Agreement contains the entire and complete agreement between the City and the Owner. The parties agree that this Agreement constitutes a lawful contract between the parties and the Owner hereby acknowledge and agree that this Agreement and the City's ordinances and regulations applicable to this Agreement constitute lawful exercises of the City's authority and police power.

23. The City shall record this Agreement in the office of the Boone County Recorder of Deeds.

[SIGNATURES ON FOLLOWING PAGES.]

IN WITNESS WHEREOF, the parties have executed this Agreement on the day set forth below each of their signatures.

CITY OF COLUMBIA, MISSOURI

By: _____
De'Carlton Seewood, City Manager

ATTEST:

Date: _____

Sheela Amin, City Clerk

APPROVED AS TO FORM:

Nancy Thompson, City Counselor

STATE OF MISSOURI)
) ss
COUNTY OF BOONE)

On this ____ day of _____, 20____, before me appeared De'Carlton Seewood, to me personally known, who, being by me duly sworn, did say that such person is the City Manager of the City of Columbia, Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of the City and that this instrument was signed and sealed on behalf of the City by authority of its City Council and the City Manager acknowledged this instrument to be the free act and deed of the City.

IN TESTIMONY WHEREOF, I have hereunto set by hand and affixed my official seal, at my office in Columbia, Boone County, Missouri, the day and year last above written.

Notary Public

My commission expires: _____.

OWNER

By: _____
[CLICK and type owner, partner, or officer name here]

By: _____
[CLICK and type owner, partner, or officer name here]

Date: _____

STATE OF MISSOURI)
) ss
COUNTY OF _____)

On this ___ day of _____, 20___, before me, a Notary Public in and for said state, personally appeared [CLICK HERE and insert owner name(s), partner name, or officer name], [CLICK HERE and type whether married couple or single person, or insert name of business partnership, or insert title of officer and name of corporation], known to me to be the person(s) described in and who executed the above agreement and acknowledged to me that such agreement was executed as the free act and deed of such person(s).

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and state aforesaid the day and year last above written.

Notary Public

My commission expires: _____.

[Exhibit A is optional - based on length and complexity of legal description. A simple legal description should be inserted on page 1 of the agreement, a more complex lengthy legal description should simply reference the attached Exhibit A on page 1 and be included here. Delete Exhibit A if it is not relevant.]

Exhibit A

Legal Description of the Property