

**ORDINANCE NO. 2008-05-8**

**AN ORDINANCE PROVIDING A PROCEDURE FOR APPLICATIONS AND AGREEMENTS FOR SEWER SERVICE TO UNINCORPORATED AREAS**

WHEREAS, there currently exist tremendous subsidies flowing from taxpayers in incorporated areas to taxpayers in unincorporated areas as a result of the property tax system in Indiana.

WHEREAS, the subsidies are exacerbated when a municipality provides services to nearby unincorporated suburban areas.

WHEREAS, the current statutory framework at I.C. 36-4-3-21 allows cities flexibility to address and mitigate these subsidies in contracts with persons receiving such services.

WHEREAS, the provision of sanitary sewer services to entities outside the corporate limits of the City of Greensburg should only be provided in a manner that is equitable to City taxpayers.

WHEREAS, this Council has determined that the methodology set forth herein is equitable to City taxpayers.

WHEREAS, while this Council could require sewer customers existing as of the date of this Ordinance to execute Applications and Agreements for Sewer Service as described herein, this Council has determined to implement the equitable method set forth herein on a gradual basis by only requiring new customer accounts to comply.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF GREENSBURG, INDIANA THAT:

Section 1. Definitions. The following definitions shall apply:

“contiguous” is defined as stated at I.C. 36-4-3-1.5, as amended.

“new customer” shall mean any person opening an account for sanitary sewer service from the City after the effective date of this Ordinance, whether the service address was already being served as of the date of this Ordinance or not. A “new customer” shall include a person who acquires real estate after the effective date of this Ordinance which was already connected to the City’s sanitary sewer system as of the effective date of this Ordinance.

“existing customer” shall include all persons with financial responsibility for a sanitary sewer service account as of the date of this Ordinance.

Section 2. Contiguous Real Estate: The City of Greensburg shall not provide sanitary sewer service to new customers if the service address to be served is outside the corporate limits and contiguous to the City of Greensburg unless such new customer petitions the City to annex the subject real estate, and commits to pursue such petition until the subject real estate is annexed into the City of Greensburg. After the petition to annex is filed, and before the annexation is finalized, the entity shall pay the charges described at Subsection 3(b).

Section 3. Non-Contiguous Real Estate.

a. Requirements. The City of Greensburg shall not provide sanitary sewer service to new customers if the service address to be served is outside the corporate limits but not contiguous to Greensburg unless and until:

(1) the new customer executes and submits to the City in a form acceptable to the Council an Application and Agreement for Sewer Service as described in Subsection b. of this Section; and

(2) the Board of Public Works and the Mayor execute as accepting the Application and Agreement for Sewer Service.

b. Application and Agreement for Sewer Service. The Application and Agreement for Sewer Service shall state that it constitutes a petition for annexation. It shall further state that the new customer commits and agrees, within sixty (60) days of notification by the City, to execute and file a renewed voluntarily petition to annex the subject real estate and pursue such petition until such real estate is annexed by the City. Failure to submit the requested renewed petition or withdrawing or contesting the petition for annexation shall result in termination of sewer service. The Application and Agreement for Sewer Service shall further require the new customer to pay to the City an amount equal to 55% of the amount of each annual assessment of Greensburg City taxes that would be assessed on the subject real estate if the subject real estate was located within the City without regard to any statutory or constitutional limits that might reduce the City taxes in such event. The Application and Agreement for Sewer Service shall contain terms that state any amount not paid by the due date shall be considered delinquent. The delinquent charge shall be ten (10%) percent of the delinquent amount

and shall be added to the total amount due. The Application and Agreement for Sewer Service shall also state that the delinquent amount together with any delinquent penalties, costs, and other expenses of collection may be collected by the City by any lawful remedy including the placing and foreclosure of real estate liens for the delinquent amount. The Application and Agreement for Sewer Service shall also provide that if, at the expiration of the term, the new customer does not wish to renew under the same terms and conditions, then the new customer must disconnect the property from the City's sewer system. It is the intention of this Council that for so long as the property remains connected to the City's sanitary sewer system, the terms of the Application and Agreement for Sewer Service shall apply. Further, if such terms do not apply for any reason, then it is the intention of this Council that sanitary sewer service to the property should cease.

d. Consent to Agreements. The Council hereby consents to any and all present and future agreements entered into by the Board of Public Works and the Mayor that contain terms described in this Section 3 of this Ordinance. The Council shall be apprised of all executed agreements pertaining hereto.

Section 4. Water Service. This section shall apply to all properties outside the corporate limits which are connected to the City's sanitary sewer system and which are also connected to the City's water utility. If the property remains connected to the City's sanitary sewer system even though this Ordinance prohibits the provision of or requires the termination of sanitary sewer service, the City shall terminate water service to the property.

Section 5. Every Application and Agreement for Sewer Service to unincorporated areas after the effective date of this Ordinance must be signed and submitted by the owner or owners of the real estate to be served.

Section 6. This Ordinance shall go into effect immediately upon its execution.

**PASSED** by the Common Council of the City of Greensburg, Indiana, this  
\_\_\_\_ day of \_\_\_\_\_, 2008, by a vote of \_\_\_\_\_ ayes and \_\_\_\_\_ nays.

**COMMON COUNCIL FOR THE CITY OF GREENSBURG**

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ATTEST:

\_\_\_\_\_  
L. June Ryle, Clerk-Treasurer

Presented by me to the Mayor of the City of Greensburg, Indiana the  
\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
L. June Ryle, Clerk-Treasurer

Approved by me, the Mayor of the City of Greensburg, Indiana, this \_\_ day  
of \_\_\_\_, 2008.

\_\_\_\_\_  
Gary Herbert, Mayor

ATTEST:

\_\_\_\_\_  
L. June Ryle, Clerk-Treasurer

APPLICATION AND AGREEMENT FOR SEWER SERVICE INCLUDING  
PETITION FOR ANNEXATION AND PREANNEXATION PAYMENTS

THIS APPLICATION AND AGREEMENT ("Agreement"), is made and entered into in return for sanitary sewer service outside the corporate limits of the CITY OF GREENSBURG, INDIANA (the "City"). The undersigned hereby applies to the City to establish an account for and to receive sanitary sewer service. The commitments made by the undersigned in this Agreement shall be effective upon the execution by the Board of Public Works and the Mayor and the establishment of the sanitary sewer service account and commencement of sanitary sewer service thereunder. The undersigned applicant shall be referred to herein as the "Sewer Petitioner."

A. Application is made to establish an account for sanitary sewer service to the following address, which is outside the corporate limits of the City: \_\_\_\_\_.

B. The parcel identification number as maintained by the Decatur County Recorder for the above-referenced property, which property is owned by the Sewer Petitioner is the following:

\_\_\_\_\_  
\_\_\_\_\_ (the "Real Estate)."

C. Pursuant to IC 36-4-3-21, the Mayor and the City Board of Public Works, with the consent of the City Council, may enter contracts with owners of property in the vicinity of the City, providing for the payment or contribution of money to the City for municipal purposes that are related to or in consideration of municipal services, in lieu of taxes that might be levied on annexation, or wholly unrelated to municipal services or taxes.

D. Sewer Petitioner acknowledges, as consideration for receiving the sewer service described herein, that this agreement constitutes **A PETITION AND REQUEST FOR ANNEXATION BY THE CITY** when the City is ready, willing and able to annex, that Sewer Petitioner expressly **WAIVES ITS RIGHT TO REMONSTRATE AGAINST OR OTHERWISE OPPOSE FUTURE ANNEXATION** of the Real Estate by the City, and that, prior to annexation as described herein, Sewer Petitioner further acknowledges that he/she shall be **OBLIGATED TO PAY A FEE EQUAL TO 55% OF THE CITY TAXES THAT WOULD BE ASSESSED ON THE REAL ESTATE IF IT WAS LOCATED IN THE CITY WITHOUT REGARD TO ANY STATUTORY OR CONSTITUTIONAL LIMITS THAT MIGHT REDUCE THE CITY TAXES IN SUCH EVENT.**

NOW, THEREFORE, in consideration of the City's provision of sanitary sewer service to the Real Estate, the Sewer Petitioner hereby agrees as follows:

1. User Fees and Pre-annexation Payments.

a. Sewer Petitioner shall pay regular monthly sewer user fees and delinquency penalties pursuant to City ordinance then in effect and as may be amended from time to time. The fees and delinquency amounts may be collected by the City through any lawful remedy, including, where applicable, the placing of and foreclosure of liens on real estate as provided by law and the termination of water service for failure to pay fees and delinquencies.

Sewer Petitioner's Initials \_\_\_\_\_

b. **PREANNEXATION FEES.** For so long as sanitary sewer service is provided to the Real Estate from the effective date of this Agreement and until the date the Real Estate is annexed into the City, Sewer Petitioner **SHALL PAY TO THE CITY A PREANNEXATION FEE EQUAL TO 55% OF THE CITY TAXES THAT WOULD BE ASSESSED ON THE REAL ESTATE IF THE REAL ESTATE WAS LOCATED IN THE CITY** on March 1 of the year in which the sewer connection is deemed acceptable by the City, and each March 1 thereafter (or corresponding assessment date, should the current applicable statute be amended), on the dates such taxes are due for City taxpayers. The calculation of the Preannexation Fee shall be without consideration of any statutory or constitutional limits that might reduce the City taxes in the event the Real Estate were in the City. The due dates, pursuant to IC 6-1.1-22-9, are currently each May 10 and each November 10. Such preannexation fee is 55% of the City taxes Sewer Petitioner would pay if the Real Estate were included in the City. The City Clerk-Treasurer will determine such amounts. Such payments shall be made to \_\_\_\_\_. The preannexation fee shall be paid into the City's General Fund and shall be used to mitigate subsidies that are paid by City taxpayers for the benefit of unincorporated areas. After the Real Estate is annexed into the City, payments required pursuant to this Subparagraph (b) of this Paragraph will cease the first calendar year in which taxes are owed to the City on the Real Estate as being within the City.

c. **Partial payments.** It is expressly acknowledged hereunder that if Sewer Petitioner shall make partial payments of the amounts due pursuant to this Agreement for preannexation fees and/or sewer user fees and delinquency amounts, such **PARTIAL PAYMENTS SHALL BE APPLIED FIRST TO THE PREANNEXATION FEES, THEN TO DELINQUENCY AMOUNTS, THEN TO SEWER USER FEES.** The provisions of this Subparagraph and any other terms of this Agreement cannot be modified unilaterally by Sewer Petitioner.

2. **Term.** The Term of this Agreement shall not exceed four (4) years from the effective date of this Agreement. **IF AT THE EXPIRATION OF ANY TERM, THE REAL ESTATE REMAINS CONNECTED TO THE CITY'S SEWER SYSTEM, THE TERM SHALL BE DEEMED RENEWED AT SEWER PETITIONER'S REQUEST FOR AN ADDITIONAL FOUR (4) YEARS.** If Sewer Petitioner wishes to terminate this Agreement at the conclusion of any Term, it shall be Sewer Petitioner's obligation to **DISCONNECT THE REAL ESTATE FROM THE CITY'S SEWER SYSTEM** at the conclusion of the Term and to so notify the City.

3. **ANNEXATION REMONSTRANCE/OPPOSITION WAIVER.** Sewer Petitioner **SHALL NOT:**

- a. **OPPOSE,**
  - b. **OBJECT TO,**
  - c. **FILE A REMONSTRANCE AGAINST, OR**
  - d. **APPEAL FROM AN ORDER OR JUDGMENT REGARDING**
- THE FUTURE ANNEXATION of any or all of the Real Estate into the City.**

4. PETITION FOR ANNEXATION. This Agreement shall, for so long as sanitary sewer service is provided to the Real Estate by the City, constitute **A PETITION FOR ANNEXATION** of the Real Estate, upon which the City may proceed to act to annex at the City's discretion when it is ready, willing, and able to do so. When the City determines to proceed to annex the Real Estate, it may present further documentation in the form of a renewed petition for annexation for execution by Sewer Petitioner or Sewer Petitioner's successors and assigns. Within sixty (60) days of such a request, Sewer Petitioner or Sewer Petitioner's successors and assigns shall execute and submit to City such renewed petition and shall pursue such petition until such Real Estate is annexed into the City. **FAILURE TO SUBMIT THE REQUIRED RENEWED PETITION TO ANNEX UPON NOTIFICATION FROM THE CITY OR ANY EFFORT TO CHALLENGE OR WITHDRAW THIS OR ANY RENEWED PETITION SHALL RESULT IN TERMINATION OF SANITARY SEWER SERVICE.**

6. Compliance With Zoning and Subdivision Ordinances. Sewer Petitioner and Sewer Petitioner's successors and assigns shall, at all times comply with such zoning, subdivision control and other land use ordinances as may be adopted by the City, whether the Real Estate is subject to the land use regulation of the City or not.

7. Default.  
a. Should Sewer Petitioner fail to comply with any of the terms of this Agreement, such failure to comply shall be deemed a default. Should Sewer Petitioner fail to cure a default the City shall have the option, in its sole discretion, to **DISCONTINUE AND/OR WITHHOLD ANY OR ALL FURTHER SANITARY SEWER SERVICE BY THE CITY.**

b. (1) Should Sewer Petitioner not pay any amount required at Paragraph 1, on or before the date same is due, Sewer Petitioner shall pay a delinquency fee of ten percent (10%) of the amount due that was unpaid on the due date.

(2) Any and all amounts and delinquency fees that are not paid within one hundred (100) days of the due date, shall, to the extent allowed by applicable law, become a lien on the real estate. To the extent allowed by applicable law, such lien may be foreclosed by the City and/or collected by any other means.

(3) Sewer Petitioner shall pay the City all costs, including attorney fees, incurred by the City to collect the amounts and delinquency fee amounts due by foreclosure or any other means.

c. Should the City not avail itself of any right or remedy in this Agreement, same shall not constitute a waiver as to any future or prior default or breach by Sewer Petitioner.

8. Assignment. This Agreement is not Assignable. **SHOULD SEWER PETITIONER SELL OR OTHERWISE TRANSFER THE REAL ESTATE TO ANOTHER PERSON OR ENTITY, THE CITY WILL HAVE NO OBLIGATION TO PROVIDE SANITARY SEWER SERVICE TO THE REAL ESTATE AFTER THE TRANSFER UNLESS THE TRANSFEREES EXECUTE AN APPLICATION FOR SANITARY SEWER SERVICE IN SUBSTANTIALLY THE SAME FORM AS THIS AGREEMENT.**

Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CITY OF GREENSBURG BOARD OF  
PUBLIC WORKS

Date: \_\_\_\_\_

\_\_\_\_\_  
Mayor, City of Greensburg

PETITION FOR ANNEXATION INTO THE CITY OF GREENSBURG

I am the owner of the Real Estate (as described in the foregoing document), and I hereby agree to the terms of the foregoing document, make application for sewer service from the City of Greensburg pursuant thereto, and petition the City of Greensburg for annexation of the Real Estate into the City of Greensburg

Date: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Second Owner, if applicable)

STATE OF INDIANA            )  
  ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and acknowledged the execution of the foregoing Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

My Commission Expires:

\_\_\_\_\_  
Notary Public  
Resident of \_\_\_\_\_ County

This Instrument prepared by: Nicholas Kile, 11 South Meridian Street, Indianapolis, IN 46204  
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