

## VOLUNTARY PRE-ANNEXATION AGREEMENT

This Agreement is entered into by and between the City of Marshalltown, Iowa (the "City") and Glenn and Lorraine Ash (jointly "Owner").

WHEREAS, Owner is the owner of property located in Marshall County, not within the city limits of Marshalltown Iowa, the address for the property is 2236 Highland Acres Road, Marshalltown, Iowa 50158, legal described as

Parcel "E" in the Northwest Quarter of the Southwest Quarter, Lot 1 of the Southwest Quarter of the Southwest Quarter and Lot 2 of the Southeast Quarter of the Southwest Quarter of Section 4, Township 83 North, Range 18 West of the 5<sup>th</sup> P.M., Marshall County, Iowa, as shown in Plat of Survey Recorded in Document No. 2020-00005867, records of the Auditor/Recorder's Office of Marshall County, Iowa.

WHEREAS, Owner desires to connect to the City's water utility;

WHEREAS, Owner desires to voluntarily annex its Property into the City of Marshalltown, Iowa;

WHEREAS, the City and Owner agree that it is not feasible at the current time to proceed with an annexation of the above-described property;

WHEREAS, Owner and the City both desire to enter into this Agreement to clarify and define its respective rights and responsibilities.

NOW, THEREFORE, in consideration of the foregoing and mutual agreements set forth below, the parties hereto agree as follows:

1. Annexation. The parties agree to annex the Property into the City upon the terms and conditions set forth in this Agreement.
2. Requirement to Annex. Owner does hereby agree to immediately and voluntarily annex the Property out of Marshall County and into the City at such time as the City in its sole and absolute discretion is prepared to move the voluntary annexation forward.
3. Code Compliance. Owner agrees to comply with all existing or amended zoning and building codes at the time of annexation.
4. Fees and Costs of Annexation. The City agrees to pay all costs of an annexation, including the cost to draft necessary documents and the cost of customary filings and recording fees, but Owner shall pay its own attorney fees incurred, if any.
5. Owner Obligations. Owner shall assume the following obligations under this Agreement:

- a. Assist in the voluntary annexation process by providing a plat, legal description of the Property, names and addresses of owners, and any other information that might be needed by the City to process the voluntary annexation.
  - b. Owner agrees, if required by the City, to disconnect all private sewer disposal systems and promptly connect to any existing or newly constructed public sewer at the expense of Owner, which would include any applicable permit and connection fees. Owner further agrees that all private sanitary systems will be removed from service in accordance with local and state law.
6. City Obligations. The City shall assume the following obligations under this Agreement:
  - a. The City has no objection to Marshalltown Water Works providing water service prior to the annexation.
7. Assignment. Except as provided below, this Agreement may not be assigned by any party without the express written permission of the other parties.
8. Successors and Assigns. The rights, duties, and obligations of the parties as contained in this Agreement shall run with the Property and be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, legal representatives, and permitted assigns. Nothing in this Agreement, express or implied is intended to confer upon any party other than the parties hereto, and their respective heirs, successors, legal representatives and permitted assigns, any rights, remedies, liabilities, or obligations under or by reason of this Agreement. In order to ensure proper notice to all successors and assigns, a copy of this Agreement shall be filed with the Marshall County Recorder.
9. Governing Law. All rights and obligations arising out of or related to this Agreement, and the application and interpretation hereof, shall be governed by and construed in accordance with the laws of the State of Iowa.
10. Dispute Resolution.
  - a. All disputes, controversies, and questions directly or indirectly arising under, out of, in connection with, or in relation to this Agreement or its subject matter, including without limitation, all disputes, controversies and questions relating to the validity, negotiation, interpretation, construction, performance, termination, and enforcement of the Agreement shall be resolved finally and conclusively in accordance with this section, which shall be the sole and exclusive procedure for the resolution of any dispute.
  - b. The parties shall promptly attempt in good faith to resolve any dispute by negotiation. If the matter has not been resolved within twenty (20) days after receipt of a party's written request for negotiation, any party may initiate arbitration as provided herein.
  - c. If this good-faith twenty-day (20-day) period does not resolve the dispute, the disputing parties will agree on an independent arbitrator within ten (10) days of

written notification by either party of request for formal arbitration. An arbitrator will be selected by agreement of the parties and an arbitration meeting will be set within thirty (30) days, with all remaining disputes submitted to the arbitrator. If the parties fail to agree upon an arbitrator, each party shall select their own who shall in turn select a third and final arbitrator. All disputes will be finalized by the decision of the arbitrator and based upon the rules of the American Arbitration Association.

11. Recitals Inclusive. The above listed recitals are incorporated into this Agreement.
12. Execution of Documents. All parties agree to execute and deliver whatever documents or assurances as may be reasonably necessary to implement the terms and conditions of this Agreement and effectuate the intent thereof. The parties hereto will cooperate fully.
13. Entire Agreement. This Agreement, the exhibits attached and the documents delivered and recorded pursuant hereto constitute the entire agreement and understanding among the parties and supersede and revoke any prior agreements or understandings relating to the subject matter of this Agreement.
14. Amendments. No change, amendment, termination, or attempted waiver or variation of the terms and conditions of this Agreement shall be valid unless the same follow applicable statutes.
15. Captions. The headings, captions, or titles of articles, sections, and paragraphs of this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement, and such titles or captions do not define, limit, extend, explain, or describe the scope or extent of this Agreement or any of its terms or conditions.
16. Severability. In the event any provision of this Agreement is held invalid, illegal, or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid, legal, and enforceable. In the event any provision of this Agreement is held to be invalid, illegal, or unenforceable as written, but valid, legal, and enforceable if modified, then such provision shall be deemed to be amended to such extent as shall be necessary for such provision to be valid, legal, and enforceable and it shall be enforced to that extent. Any finding of invalidity, illegality, or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
17. Attorney Fees and Court Costs. Should legal action be required to enforce the terms of this Agreement, the prevailing party shall be entitled to recover all costs, including reasonable attorney, paralegal, and expert fees.
18. Counterparts. This Agreement may be executed by one or more of the parties hereto on any number of separate counterparts (including by facsimile transmission), and all of

said counterparts taken together shall be deemed to constitute one and the same Agreement.

Dated this \_\_\_ day of \_\_\_\_\_, 2022.

Owner

City of

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

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

Mayor

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

Attested to:

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

City Clerk