

BILL NO. 05-18

ORDINANCE NO. 2386

AN ORDINANCE AUTHORIZING EXECUTION OF AN INTERGOVERNMENTAL COOPERATIVE DEVELOPMENT AGREEMENT BETWEEN MONTGOMERY COUNTY PUBLIC WATER SUPPLY DISTRICT #1 AND THE CITY OF WARRENTON, MISSOURI

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF WARRENTON, MISSOURI, AS FOLLOWS:

SECTION I. The City of Warrenton, Missouri does hereby enter into a Intergovernmental Cooperative Development Agreement with the Montgomery County Public Water Supply District #1, a political subdivision of the State of Missouri as set forth in the agreement attached hereto and made a part of this Ordinance by reference.

SECTION II. That the Mayor is hereby authorized and directed to execute on behalf of the City an agreement and to do all things necessary to complete this agreement.

SECTION III. All Ordinances or parts of ordinances in conflict with the Ordinance are hereby repealed.


SECTION IV. This Ordinance shall take effect and be in full force from and after the passage and approval thereof.

READ TWO TIMES AND PASSED by the Board of Alderman of the City of Warrenton, Missouri, this 6th day of February, 2018.



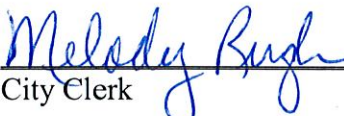
President of the Board of Aldermen

APPROVED BY THE MAYOR of the City of Warrenton, Missouri, this 6th day of February, 2018.



Mayor

ATTEST:



City Clerk

**INTERGOVERNMENTAL COOPERATIVE
DEVELOPMENT AGREEMENT**

THIS AGREEMENT is made and entered into this 6th day of February, 2018 between Montgomery County Public Water Supply District #1, a political subdivision of the State of Missouri (the "District") and the City of Warrenton, Missouri a city of the fourth class located in Warren County, Missouri (the "City"), (collectively, the "parties").

RECITALS

WHEREAS, The citizens of the City have made a significant economic development investment by approving two sales tax measures to construct a new overpass over Interstate 70. one of the areas targeted for economic development is located within the City of Warrenton, Warren County, Missouri and is adjacent to the new overpass and currently owned and/or being developed by Ashfield, LLC, a Missouri Limited Liability Company, as shown in Attachment "A" which is incorporated herein by reference (the "Property");

WHEREAS, The City has entered into a Development Agreement, attached hereto as Exhibit "B" and incorporated herein by reference that sets forth the City's obligation to provide sewer and water service to the Property; and,

WHEREAS, The Development Agreement provides for the reimbursement of the City's costs in providing utilities to the Property from the PILOTS and EATS generated from the Ashfield Property Tax Increment Financing; and,

WHEREAS, the Ashfield Property is located completely within the boundary of the District; and,

WHEREAS, the current water line identified to service the Property may be inadequate for the full commercial development of the Property; and,

WHEREAS, The City and the District have determined that it is in the best interest of the health, safety, welfare and economic development of their respective political subdivisions to enter into this cooperative Agreement to provide future water service capacity to the Property.

WHEREAS, the City and the District have the statutory authority to enter into this cooperative agreement pursuant to §70.220 RSMo.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties agree as follows:

**ARTICLE I
GENERAL PROVISIONS**

- A. **Recitals.** The Recitals set forth above are true and correct and incorporated as if fully set forth herein.

- B. Water Line Extension.** The District will provide all necessary engineering, design, boring and installation of a 10-12 inch water line from the District's nearest water tower to the west end of the Property (the "Water Line"). The District may allow connections to the Water line only to the extent that the capacity necessary to serve the Property is reserved by the District for the Property. The District hereby warrants and represents that they shall have the capacity to meet the City's obligations to the Developer under the Development Agreement for water utility service to the Property. The District further warrants and represents that they will not release the Property from the District.
- C. Reimbursement by the City.** The City agrees to provide an amount not to exceed One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00) (the "Maximum Reimbursement") as reimbursement to the District for the Water Line. The District will submit all necessary documents to the Department of Natural Resources within thirty (30) days of execution of this Agreement and complete construction of the Water Line within sixty days of approval from the Department of Natural Resources (the "Completion Date"). These deadlines may be extended for reasonable delays due to weather conditions.
- D. Additional Consideration.** The District hereby agrees to provide free potable water service to the City at no charge for landscape irrigation for the new Highway 70 overpass, for the areas shown on attached Exhibit C (the "Irrigation Area"). The City shall incur no fee, charge, surcharge or tap charge for present and future water service to the Irrigation Area. The City shall be treated as a customer of the District for all purposes related to water conversation, drought and capacity.
- E. Representations by the District.** The District hereby covenants and represents that they will comply with all applicable Federal, State and local laws and regulations in installing and servicing the Water Line. The District shall be solely responsible for all water service to the Property and hereby warrants and represents that this Agreement will provide adequate water service to the Property to reasonably meet the obligation that the City may have to provide water service to the Property. The District will cooperate fully to provide any records and testimony necessary for the City to be reimbursed under the Development Agreement and any subsequent TIF Agreement covering the Property. These obligations shall survive termination of this Agreement.
- F. Force Majeure Event.** The District shall not be liable for any damages, direct, indirect or consequential, resulting from its inability or failure to provide water service on a temporary or emergency basis due to a Force Majeure event. The District will at all times use its best efforts to restore water service the Property.

ARTICLE II **TERM OF AGREEMENT**

This Agreement shall be for an initial term of thirty (30) years, unless the parties mutually agree to an earlier termination date. Thereafter, this Agreement may be renewed for another thirty (30) year term upon mutual agreement of the parties.

ARTICLE III **NOTICES**

All notices required or provided pursuant to this Agreement shall be in writing and either sent certified mail, return receipt requested, or hand delivered to:

The City of Warrenton, Missouri: Public Works Director
City of Warrenton
200 West Booneslick Road
Warrenton, MO 63383

With a copy to: Director of Operation
City of Warrenton
200 West Booneslick Road
Warrenton, MO 63383

With a copy to: Christopher B. Graville
City Attorney
130 S. Bemiston, Suite 700
Clayton, MO 63105

Montgomery County Public Water Supply District #2:

With a copy to: Joel Brett
211 N. 3rd St.
St. Charles, MO 63301

ARTICLE IV **MISCELANOUS PROVISIONS**

- A. **Non-Assignability.** This Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns. This Agreement may not be assigned, delegated, or transferred by a party without the written consent of the other party.
- B. **Governing Law, Jurisdiction and Venue.** This Agreement shall be construed and enforced according to the laws of the State of Missouri. Personal jurisdiction and venue for any civil action commenced by either party to this Agreement shall be deemed to be proper only if such action is commenced in the Circuit Court of Warren County, Missouri. The District and City expressly waive any rights to bring such action in or to remove such action to any other court whether state or federal.
- C. **Third Party Beneficiary.** This Agreement is solely for the benefit of the parties hereto and no right or cause of action will accrue upon or by reason hereunder to or for the benefit of any third parties who are not signatories to this Agreement.
- D. **Waiver of Rights.** The failure of either party to enforce the provisions of this Agreement shall not be construed as a general waiver or relinquishment of the right to demand strict performance of this Agreement.
- E. **Severability.** This Agreement constitutes the entire Agreement between the parties and

may not be amended, modified, or rescinded except in writing and signed by both Parties. If a provision of this Agreement is declared illegal, invalid, unenforceable, unconstitutional, or in violation of the bond covenants of the City by a Court of competent jurisdiction, the remaining provisions of this Agreement will remain in full force and effect.

F. **Modification.** Except as herein provided, this Agreement may be changed or modified only upon mutual consent. Such changes or modifications may be requested by either party, in which event a meeting of the representatives of both parties shall be held within ninety (90) days after giving them a written notice, at which meetings the requested changes or modifications shall be considered and discussed.

G. **Specific Performance.** The City and the District hereby acknowledge that they are aware that money damages may not be sufficient to remedy a violation or threatened violation of the terms of this Agreement and that either the District or City shall be entitled to specific performance or other equitable relief for any such violation or threatened violation.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year first written above.

**MONTGOMERY COUNTY PUBLIC
WATER SUPPLY DISTRICT #1**

By: _____

Date: _____

WITNESS:

APPROVED BY RESOLUTION # _____ (As required pursuant to §70.230 RSMo)

CITY OF WARRENTON, MO

By: Eric Schleuter
Eric Schleuter, Mayor

Date: 2/6/2018

ATTEST:

By: Melody Rugh
City Clerk

APPROVED BY ORDINANCE # 2386 (As required pursuant to §70.230 RSMo)