

PAYSON HEIGHTS ANNEXATION AGREEMENT

This Annexation Agreement ("Agreement") is entered into this ____ day of _____, 2019 by and among the City of Payson, a municipal corporation, hereafter referred to as "**City**", and _____ hereafter referred to as "**Annexation Sponsor**" to set forth the terms and conditions under which Payson City will annex certain real property, consisting of approximately 216.57 acres located in unincorporated Utah County, Utah, as further defined below, and known herein as the Payson Heights Annexation, The City and Annexation Sponsor are sometimes collectively referred to in this Agreement as the "**Parties**" or individually as a "**Party**".

RECITALS

A. Payson City, acting pursuant to its authority under Utah Code Annotated §10-2-401, *et seq.* and 10-9a-101, *et seq.* of the Utah Code, Annotated 1953, and in furtherance of its land use policies, goals, objectives, ordinances, resolutions, and regulations, has made certain determinations with respect to the Payson Heights Annexation and, in exercise of its legislative discretion, has elected to enter into this Agreement.

B. This Agreement is prepared pursuant to Chapter 19.12 of the Payson City Zoning Ordinance to specifically describe the rights, obligations and duties of the Parties and to address zoning designation, infrastructure and utility systems, existing and future land uses, compliance with City land use and development ordinances and regulations, and other matters related to the improvement and development of property as shown in **Exhibit "A"** and further described in **Exhibit "C"**.

C. The annexation and the content of this Annexation Agreement are intended to be consistent with the Payson City General Plan and the Payson City Annexation Policy Plan.

D. The Payson City Council has authorized the negotiation of and adoption of an annexation agreement that advances the policies, goals, and objectives of the Payson City General Plan, and preserve and maintain the atmosphere desired by the citizens of Payson, Utah. Moreover, the Annexation Sponsor has voluntarily agreed to the terms of this Agreement and hereby acknowledges the obligations to complete the annexation and improve the property in a manner consistent with the approval of the city council and the applicable regulations of the Payson City Municipal Code.

E. Consistent with the foregoing authorization and the provisions of Utah State law, the City's governing body has authorized execution of this Agreement by Resolution No. _____, a copy of which is attached to this Agreement as **Exhibit "B"**.

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, CONDITIONS AND CONSIDERATIONS THAT ARE MORE FULLY SET FORTH BELOW, CITY AND ANNEXATION SPONSOR HEREBY AGREE AS FOLLOWS:

I. Recitals. The recitals set forth above are incorporated herein by this reference.

II. Exhibits. The exhibits and attachments are intended to be included as if in the body of this Agreement and regulated as such:

Exhibit “A” – Annexation Plat: Payson Heights Annexation

Exhibit “B” – Adopting Ordinance

Exhibit “C” – Legal Description: Payson Heights Annexation

III. Definitions

1. **Annexation** shall mean the process by which unincorporated property, the subject property of this Agreement, is brought into the municipal boundaries of Payson, Utah.
2. **Annexation Area** shall mean the total amount of real property being annexed into the municipal boundaries of Payson, Utah.
3. **Petition of Annexation** is the formal written application requesting Payson City to incorporate the petitioners’ unincorporated real property into the corporate limits of Payson, Utah County, Utah.
4. **Annexation Sponsor** is _____ also representing the petitioners/property owners of the Petition of Annexation.
5. **Applicant** is the Corporation, LLC, individual, or group of individuals or entities seeking approval of an activity regulated by the Payson City Municipal Code, including, but not limited to, the annexation of real property into the municipal boundaries of the Payson, Utah.
6. **City** means the City of Payson, Utah, a municipal corporation.
7. **Development** shall mean approval of a land use application, issuance of a building permit, or approval of any other land use and development related activity regulated by Payson City. Development does not mean the construction of ancillary agricultural facilities built to support agricultural uses.
8. **Petitioners** are the Corporation, LLC and individuals representing, via signature, the petition for annexation.
9. **Property Owner(s)** shall mean a holder, proprietor of land, or group of owners of real property within the annexation area.

IV. Existing Uses

The Parties agree the annexation area consists of 216.57 acres and has historically been used for agricultural uses, primarily animal grazing. The annexation area also includes a portion of the High Line Canal irrigation facility, a water tank owned by Payson City, high-pressure gas lines, and a broadband services site. For documentation purposes, there is an area within the annexation that has been used to extract gravel and sand in the past, but is not an approved or active gravel and mining facility. The Parties agree there are no authorized or approved gravel or mining operations on the site.

Following annexation, all land uses must comply with the ordinances, resolutions and policies of Payson City. If there are uses in the annexation area that are not consistent with the Payson City Municipal Code, the Property Owner must demonstrate the use legally existed prior to annexation in order to continue the use after annexation. Upon receipt of acceptable proof, the city council may, but is not obligated to, allow the use to continue as a non-conforming use until the property is further developed.

Following annexation, animals must be kept in accordance with Title 6, Animal Control Ordinance and the Property Owner is responsible to maintain the animals in a manner that does not create a nuisance as defined in Utah Code and the Payson Municipal Code. The Animal Control Ordinance addresses pre-existing animal rights and allowable animal units following annexation.

V. Zoning Designation

At the time of annexation, the city council must assign a zoning designation for the parcel(s) in the annexation area. The Parties agree the Payson City Council has approved and adopted the Payson Heights Annexation with a zoning designation of R-1-12, Residential and land preservation area. Assignment of zoning is in no way an indication of approval of any land use application. Each land use application shall satisfy the requirements of the land use and development ordinances in effect at the time of filing a complete land use application.

VI. Future Land Use and Development

The property in the annexation area is intended to be used for residential development and preservation purposes. Following annexation, the Annexation Sponsor intends to prepare a land use plan and engineering for a single-family residential development on a portion of the property. The project layout and design and the type of housing will be compatible and similar to the development in the immediate area. At a minimum, Applicant agrees to provide dwellings similar in size, design, and quality as those included in the Payson View Estates Subdivision located north of the annexation area.

All development must satisfy the applicable requirements of federal, state, and local law, the Payson City Municipal Code, including the Zoning Ordinance, Subdivision Ordinance, Sensitive Lands Ordinance, and the Development Guidelines of Payson City enacted at the time of submission of a land use application.

Land Preservation and Hillside Protection

The majority of the property contains steep slopes and hillside vegetation. These areas are designated as Sensitive Lands on the Land Use Map of the Payson City General Plan and should not be developed. The property includes steep slopes, geotechnical hazards (i.e. fault line), ravines, and other geological features that make this area unsuitable for development. To further the land use goals of the Payson City General Plan, protect the sensitive nature of hillsides, and prevent development on steep slopes, Applicant will dedicate, as a condition of annexation, approximately 146 acres of hillside property to Payson City.

Applicant agrees to work with Payson City to protect, in perpetuity, the dedicated property from future development. The property may be protected by a perpetual conservation easement with a qualified conservation organization, or deed restriction to prevent development with the sensitive lands area. If a conservation easement is enacted, Applicant agrees to pay the costs associated with the application process and any required stewardship fund. If the property is protected by deed restriction or other legal measure, the Applicant agrees to use an equitable amount to improve the trail system within the annexation area.

Payson City Utility Services and Connections

Development within the annexation area will require the installation and connection to the Payson City utility systems including, but not limited to, drinking water, irrigation water, wastewater, and power facilities. The Parties agree that all Payson City utility services required at the time of development shall be installed by Applicant and all impact, connection and related development fees shall be paid when development occurs.

Development within the annexation area will be served by the water tank on Utah County Parcel 30:072:0088. Payson City and Autumn View Properties L.P. own capacity in the water tank. The Applicant agrees to prepare an analysis for the proposed drinking water system and demonstrate there is enough capacity in the system to provide both indoor and outdoor use. Any use of the water tank must satisfy the terms of the Water Line and Storage Tank Construction Agreement, recorded with the Utah County Recorder as Entry #79099:2001. If additional water resources and facilities are necessary to provide water to the development, the Applicant will be responsible to secure the required resources and/or facilities.

Electrical Considerations

Following annexation, and as a condition of annexation, Payson City shall provide all electrical service to the annexed area, unless otherwise agreed to in writing by Payson. Applicants will take all steps necessary to effect a transfer of electrical service to Payson City at such time as Payson City shall direct upon or after annexation. No development, as defined in Section III herein, will be approved until such transfer of electrical service has been completed. Applicant agrees to reimburse Payson City for all amounts paid by Payson City to South Utah Valley Electric Service District (dba SEDS) pursuant to Section 10-2-421 Utah Code Annotated, which may include payment to SEDS for existing customers and facilities in the annexed area. Provision of electrical service for existing and future electrical customers must satisfy the regulations of federal, state and local law or ordinance, and any other service provider obligations. Applicants and City will work together to secure easements or needed land dedication to provide connection to the Payson Power electrical system.

Water Transfers

Applicants for development approval must transfer to the City adequate water to serve any development within the annexation area consistent with the regulations of Title 10, Water Ordinance. Although applicants are not required to transfer water at the time of annexation, no development, as defined in Section III herein, will be approved until the transfer of water has been completed. City recognizes the Property Owner may be utilizing different sources of water to serve existing uses in the annexation area. The Property Owner may continue utilizing such sources of water until the property is further developed. At the time of development, Applicants will be required to dedicate sufficient water to satisfy City's water dedication requirements.

Conditions of Annexation

By its legislative authority, the Payson City Council made certain determinations and imposed various conditions to ensure the annexation would further the land use, development, and economic goals of the Payson City General Plan. In addition to minimum requirements of the land use and development ordinances, the Annexation Sponsor, Property Owner, and/or Applicant shall satisfy the following conditions:

1. *Additional ingress/egress.* An additional crossing of the High Line Canal is necessary to provide adequate ingress/egress to the Payson View Estates Subdivision. The Applicant will acquire the necessary right-of-way and obtain the necessary approvals and permits to construct a road that will connect the development to 1900 South, west of the High Line Canal.

2. *Fire protection.* The property is located in the Wildland Urban Interface Zone. New development shall satisfy the requirements of the adopted fire code and Title 14, Fire Protection of the Payson City Municipal Code. At a minimum, the fire protection plan will include internal fire sprinkling systems, fire breaks, and defensible space.
3. *Non-motorized trail system.* Applicant agrees to design and install trails within the development that connect to existing and future trails in the area.
4. *Design street layout to support grid-network.* Applicant agrees to design the transportation system to support proper connectivity through a grid-network, to the extent possible.
5. *Extend and loop the municipal utility services.* Applicant agrees to submit payment for the utility systems modeling and to complete any necessary upgrades to the system(s) to support new development. These upgrades may be on-site or off-site.
6. *Coordinate with irrigation users.* Applicant agrees to contact and coordinate with the High Line Canal Company and downstream users to ensure development of the property will not inhibit the delivery of irrigation water to downstream users.
7. *Coordinate with natural gas companies.* There are two high-pressure gas lines that traverse the annexation area. Improvement of the property must be completed in manner that accommodates these facilities.
8. *Submit a soils analysis, geotechnical report, and geologic hazard study.* Analysis is necessary to ensure proper improvement of the property and to provide direction on building placement and foundation design. At a minimum, the analysis/report/study must include information on geologic hazards, soil composition, areas of instability, percolation tests to calculate the storm water infiltration and a calculated CBR to determine the roadway cross-section and building footings, among other things.
9. *Grading and slope stabilization.* Applicant agrees to provide a slope stabilization analysis that includes a detailed analysis of mass grading and precise grading (lot to lot). The analysis will include best management practices for erosion control, limits of disturbance areas, restoration methods for cut and fill areas, etc. The grading and restorations methods should provide extra precautions to avoid erosion, mudslides, debris flow, etc.

VII. Compliance with Land Use and Development Ordinances and Regulations

Nothing in this Annexation Agreement shall be deemed to relieve Annexation Sponsor, Petitioners, Property Owners, or Applicants from the obligation to comply with all applicable federal, state, and local law and requirements of City necessary for approval of future development proposals. Development approval shall include the payment of applicable fees and be in compliance with all other applicable ordinances, resolutions, regulations, policies and procedures of Payson City, including but not limited to, the Payson City Zoning Ordinance, Subdivision Ordinance, and the Development Guidelines.

VIII. Entire Agreement

This Annexation Agreement and the documents incorporated into it by reference shall constitute the entire agreement among the Parties. Any prior discussions, understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.

IX. Reserved Legislative Powers

Nothing in this Annexation Agreement shall limit the future exercise of the police power by City in enacting zoning, subdivision, development, transportation, environmental, open space, and related land use plans, policies, ordinances and regulations after the date of this Agreement.

X. Agreement to Run With the Land

This Annexation Agreement shall be recorded against the land included in the annexation to Payson City and shall run with the land and shall be binding on all successors and/or assigns of the land or development of any portion or phase of the property.

XI. Assignment

Neither this Annexation Agreement nor any of the provisions, terms or conditions hereof can be assigned to any other party, individual or entity without assigning the rights as well as the responsibilities under this Agreement and without the prior written consent of City, which shall not be unreasonably withheld.

XII. No Joint Venture, Partnership or Third Party Rights

This Annexation Agreement does not create any joint venture, partnership, undertaking or business arrangement between the parties hereto, nor any rights or benefits to third parties.

XIII. Amendment

This Annexation Agreement cannot be amended, altered, or modified in any manner except by a written amendment signed by each of the Parties.

XIV. Severability

If any part or provision of this Annexation Agreement shall be determined to be unconstitutional, invalid or unenforceable by a court of competent jurisdiction, then such a decision shall not affect any other part or provision of this Agreement, except that specific provision determined to be unconstitutional, invalid or unenforceable. If any condition, covenant or other provision of this Agreement shall be deemed invalid due its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

XV. Default

Should the proponent of an annexation default on any provisions of the agreement, the City may pursue appropriate legal action to enforce the provisions of the agreement, including revocation of the annexation and disconnection from the City.

XVI. Dispute Resolution

Any dispute regarding the construction or interpretation of any provision of this Agreement, or regarding any determination of an issue of fact, shall be referred for resolution to a committee consisting of two individuals selected by each party.

If the dispute is not resolved by such committee, within thirty (30) days after the dispute is referred to such committee, then the parties shall refer the dispute for resolution to a single mediator, agreed upon by the parties.

If the parties are unable to agree upon a single mediator, the matter shall be referred to a three-member mediation panel. Each party shall select a mediator, and the two mediators so selected shall select a third mediator. Mediators shall be independent of the parties and shall be recognized and approved by State and/or federal courts as qualified and experienced mediators/arbitrators, or otherwise satisfactory to the parties. Each party shall pay its own costs and fees. The parties shall jointly pay for the costs and fees of the selected mediator(s).

If the dispute cannot be resolved by the mediator or mediation panel within ninety (90) days from the date of a final determination by the committee, the dispute may be brought before a court or other tribunal on the basis of a de novo review. A matter may only proceed to court after exhausting the above procedures.

XVII. Effective Date

This Agreement is effective upon filing and recordation of the annexation ordinance, annexation plat, and this Annexation Agreement in compliance with state annexation filing requirements, pursuant to the Utah Code Annotated Section 10-2-425.

(Signature Pages to Follow)

ACKNOWLEDGEMENT BY ANNEXATION SPONSOR

[Name], [Title]
[Ownership – Company, LLC, etc.]

STATE OF UTAH)
 : ss
COUNTY OF UTAH)

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

NOTARY PUBLIC

ACKNOWLEDGMENT BY PAYSON CITY

William R. Wright, Mayor
Payson City Corporation

Attest:

Kim E. Holindrake,
Payson City Deputy Recorder

STATE OF UTAH)
 : ss
COUNTY OF UTAH)

On this ____ day of _____, 2019, before me _____, a Notary Public, personally appeared WILLIAM R. WRIGHT, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

NOTARY PUBLIC

**Exhibit “A”
Annexation Plat: Payson Heights Annexation**

**Exhibit “B”
Adopting Resolution**

Exhibit “C”

Legal Description: Payson Heights Annexation