

Midway City Council
17 March 2020
Regular Meeting

Ordinance 2020-09 /
Wasatch Mountain State Park
Annexation



CITY COUNCIL MEETING STAFF REPORT

DATE OF MEETING: February 17, 2020

NAME OF PROJECT: Wasatch Mountain State Park Annexation

NAME OF APPLICANT: Utah Department of Natural Resources, Division of Parks and Recreation, a political subdivision of the State of Utah

AGENDA ITEM: Annexation

ACRES: 349.719 acres

LOCATION OF ITEM: Property is located along Warm Springs Road and Pine Canyon Road and includes the Wasatch Mountain State Park Visitor's Center, campground, and part of the golf course

POTENTIAL ZONING: P-160

ITEM: 8

The State of Utah is petitioning for annexation of 349.7 acres that is part of the Wasatch Mountain State Park. The property is located along Warm Springs Road and Pine Canyon Road and includes the Wasatch Mountain State Park Visitor's Center, campground, and part of the golf course. The proposed zoning for the property is P-160 (Preservation 160 acres).

BACKGROUND:

Wasatch Mountain State Park, in cooperation with Midway, is petitioning the City for annexation of a relatively small portion of the State Park. The area that is included in the petition is a section of the golf course, campground area, and some undeveloped sloped areas. The reason for the proposal is for the communal benefit of continuing to have the

ability to collect resort tax. The area proposed for annexation includes the campground area which would greatly benefit the City regarding complying with State Code requirements to collect resort tax. The addition of the camp spaces in the City limits would allow the City to continue to collect the resort tax which is worth hundreds of thousands of dollars to the City each year.

The proposed zoning for the property P-160 which is a very low-density zone. If the State Park property is annexed into the City, it appears the City would not have much control over future development in the park much like the County currently does not have much control over current development. The property is owned by the State and the State has land use authority over the property even if the property is in the City limits. The City does need to assign a zone to the property so staff has determined that the best zone would be one very similar to what the current County zoning is. It is unlikely that the zoning will ever be used on the future development conducted by the State Park but there is the remote possibility that the land may become private in the future. In times past, the State Park has traded park property with private owners. If the property is ever owned by a private individual, then the zoning would determine the allowed land uses and regulations for the property.

The City has discussed annexation with the State Park and both parties agree that annexation is a possibility. The City cannot force the State Park to annex any of its property because, in this situation, the State Park is petitioning the City for annexation.

The annexation will leave an unincorporated island in Wasatch County. This area is between Warm Spring Road and Pine Canyon Road and north of the City's current boundary. Staff feels it is important to not annex this area now but to wait for the property owners to petition the City in the future for annexation. If the owners petition the City, then a development plan is required along with any other items the City Council would like addressed. If the properties were forced into the City without the property owners being petitioners then the City could not ask for a development plan, annexation agreement, or any other items. For the State Park area to annex, and to leave the unincorporated island in the County, Wasatch County Council has approved leaving the unincorporated island in the County. Staff has been working with Wasatch County on this issue and has solution that is agreeable to both parties. Basically, the City would take the responsibilities of maintain any of the roads the County is currently maintaining in the annexation area and island area from the County.

The annexation contains two parcels (see attached). Both parcels are owned by the petitioner. The following is a list of the properties as stated in the petition with accompanying information:

Property Owner	Tax ID#	Signed Petition	Acres	Taxable Value
Utah State Parks and Recreation	OWC-3246-0	Yes	21.5	\$ N/A
	OWC-0230-0	Yes	328.2	\$ N/A

The petition does comply with State Code which requires the owners of most of the land sign the petition and that the signers also own at least 1/3 of the taxable value of land in the annexation area. State Code also requires a survey of the area which has been completed. There are other requirements listed in State Code and all seem to be met.

Annexations fall under the category of a legislative action. Therefore, the City Council has broad discretion regarding the petition. It may be approved or denied based on the discretion of the Council members. There is no obligation by the City to annex the property. If the Council feels that the area will contribute to the community and will help promote the goals and policies of the General Plan, then the annexation should be considered. The City Council may consider any issue, included in the staff report or not, as a discussion item. Also, the City may require items from the petitioner that normally would not be allowed if a developer's property was already located and zoned in the City. In the past, petitioners of annexations have donated to the parks fund as part of their annexations. Since the action is legislative it is not bound to the same rules that an administrative process is bound to.

This item has been noticed in the local newspaper for two weeks and on the State's website for the Planning Commission meeting. Public notices have also been posted in three public locations in Midway advertising the meeting and agenda.

ANALYSIS:

The comments in italicized represent Planning Staff's comments pertaining to compliance or lack of compliance with the findings the Planning Commission must make in considering this request. Section 9.05.020 requires specifically the Staff address the following issues:

- A. The ability to meet the general annexation requirements set forth in this Title; *Planning staff believes that the proposal does comply with the general requirements of this Title.*
- B. An accurate map of the proposed annexation area showing the boundaries and property ownership within the area, the topography of the area and major natural features, e.g. drainage, channels, streams, wooded areas, areas of high water table, very steep slopes, sensitive ridgeline areas, wildfire/wild land interface areas, and other environmentally sensitive lands: *The proposed annexation does include an annexation plat. There are sensitive lands on the property that include stream corridors, floodplains, slopes greater than 25%, and wildlife habitat.*
- C. Identification of current and potential population of the area and the current residential densities: *Currently the Wasatch county zoning is P-160 (preservation 160 acres). The proposed zoning for the City is also a very similar zone that is also P-160. The State Park does have rights to develop the property and it appears the City would not have much control over future development in the*

park much like the County currently does not have much control over current development. The property is owned by the State and the State has land use authority over the property even if the property is in the City limits. What this means is the State could develop their property and density could be included in that development regardless of whether the property is in the County or in the City. If the State were ever to sale or trade property in the annexation area to a private individual, any development by that individual would need to comply the City's land use laws and zoning.

- D. Land uses presently existing and those proposed: *Currently the land use recreational. It is anticipated that the State Park will continue to operate the golf course and the campground in the annexation area.*
- E. Character and development of adjacent properties and neighborhoods: *The property to the north and west are also State Park properties. To the east is the Town of Interlaken. To the south is the current City boundary which has been developed as residential.*
- F. Present zoning and proposed zoning: *The current County zoning is P-160 which is a 160-acre zone. The planned zoning that midway has proposed is P-160 which is also a 160-acre zone.*
- G. A statement as to how the proposed area, and/or its potential land use will contribute to the achievement of the goals and policies of the Midway City General Plan and the Midway City Vision: *The General Plan promotes economic development and recreation. The proposed annexation will benefit both of those goals. Annexing the campground will allow the City to still collect the resort tax. Also, the State Park provides recreational opportunities to residents and will continue to develop other recreational opportunities in the future.*
- H. Assessed valuation of properties within the annexation area: *The State of Utah, like Midway City, is not required to pay taxes on property it owns, therefore the County assessor does not have a valuation for the property.*
- I. Potential demands for various municipal services and the need for land use regulation in the area, e.g. consideration of the distance from the existing utility lines, special requirements for sensitive land review and fire protection in wildfire or wild land areas, location within hazardous soils area, and feasibility of snow removal from public streets: *If the property is annexed then the City will be required to provide services that the Wasatch County has been provided to the area. The City will plow and maintain the roads that the County has plowed and maintained. It appears there will be no extra services required for the water system since the State Park owns their own water system. There may be some services from staff required but it appears that demand will be limited.*

- J. The effect the annexation will have upon City boundaries and whether the annexation will ultimately create potential for future islands, undesirable boundaries, and difficult service areas: *The annexation will increase the City's boundaries. It appears that servicing the area will not create any unmanageable complications except that the City. The annexation will leave an unincorporated island in Wasatch County. This area is between Warm Spring Road and Pine Canyon Road and north of the City's current boundary. Staff feels it is important to not annex this area now but to wait for the property owners to petition the City in the future for annexation. If the owners petition the City, then a development plan is required along with any other items the City Council would like addressed. If the properties were forced into the City without the property owners being petitioners then the City could not ask for a development plan, annexation agreement, or any other items. For the State Park area to annex, and to leave the unincorporated island in the County, Wasatch County Council has approved leaving the unincorporated island in the County. Staff has been working with Wasatch County on this issue and has solution that is agreeable to both parties. Basically, the City would take the responsibilities of maintain any of the roads the County is currently maintaining in the annexation area and island area from the County.*
- K. A proposed timetable for extending municipal services to the area and recommendation on how the cost thereof will be paid: *City services are up to the boundary of the annexation. It is not anticipated that the City will extend water into the annexation area since the State park has its own water system.*
- L. Comparison of potential revenue from the annexed properties with the cost of providing services thereto: *The City will spend money to maintain roads in the annexation. The City will also continue to collect the resort tax which has a major positive impact on the City's revenue. In 2006 the City imposed the Resort Communities Tax (UCA 59-12-401). This tax can be levied if a communities' "transient room capacity" is greater than 66% of its census population. In Fiscal Year 2019 this tax provided almost \$685,877 or 15% of the City's general fund revenue. Since 2006 the City has received almost \$6.13 million in revenue from the tax. The additional revenue from the Resort Tax has been valuable to the City. It allowed the City to implement a ten-year plan to replace, repair and maintain the infrastructure that is in part impacted by tourism. This infrastructure includes roads, water, parks, sidewalks, and trails. The extra revenue also allows the City to purchase additional equipment, such as snowplows, to better maintain this infrastructure.*
- M. An estimate of the tax consequences and other potential economic impacts to residents of the area to be annexed: *There are no residents that live in the annexation area.*

- N. Recommendations or comments of other local government jurisdictions regarding the annexation proposal and the potential impact of the annexation on the general county economic needs, goals, or objectives: *No government jurisdiction or agency has objected to the proposed annexation. The City has worked closely with Wasatch County and they have agreed to the annexation.*
- O. Location and description of any historic or cultural resources: *None have been identified*

PLANNING COMMISSION RECOMMENDATION:

Motion: Commissioner Ream: I make a motion to recommend approval of annexation of 349.7 acres that is part of the Wasatch Mountain State Park. The property is located along Warm Springs Road and Pine Canyon Road and includes the Wasatch Mountain State Park Visitor’s Center, campground, and part of the golf course. The proposed zoning for the property is P-160 (Preservation 160 acres). And that we approve the staff report and staff findings

Seconded: Commissioner ---Streeter

Chairman Kohler: Any discussion the motion?

There was none

Chairman Kohler: All in favor.

Ayes: Commissioners: Streeter, Ream, Nicholas, McKeon, Bouwhuis

Nays: None

Motion: Passed

POSSIBLE FINDINGS:

- Annexing the campground into the City limits will help the City to continue to collect the resort tax which is beneficial to all residents of Midway.
- The State is agreeable to the proposal and has worked with the City so that annexation can occur.
- Wasatch County Council has agreed to the annexation.
- The proposal is a legislative action.

ALTERNATIVE ACTIONS:

1. Approval (conditional). This action can be taken if the City Council finds that the annexation is in the best interest of the community.
 - a. Accept staff report
 - b. List accepted findings
 - c. Place condition(s)

2. Continuance. This action can be taken if the City Council finds that there are unresolved issues.
 - a. Accept staff report
 - b. List accepted findings
 - c. Reasons for continuance
 - i. Unresolved issues that must be addressed
 - d. Date when the item will be heard again

3. Denial. This action can be taken if the City Council finds that the request is not in the best interest of the community.
 - a. Accept staff report
 - b. List accepted findings
 - c. Reasons for denial

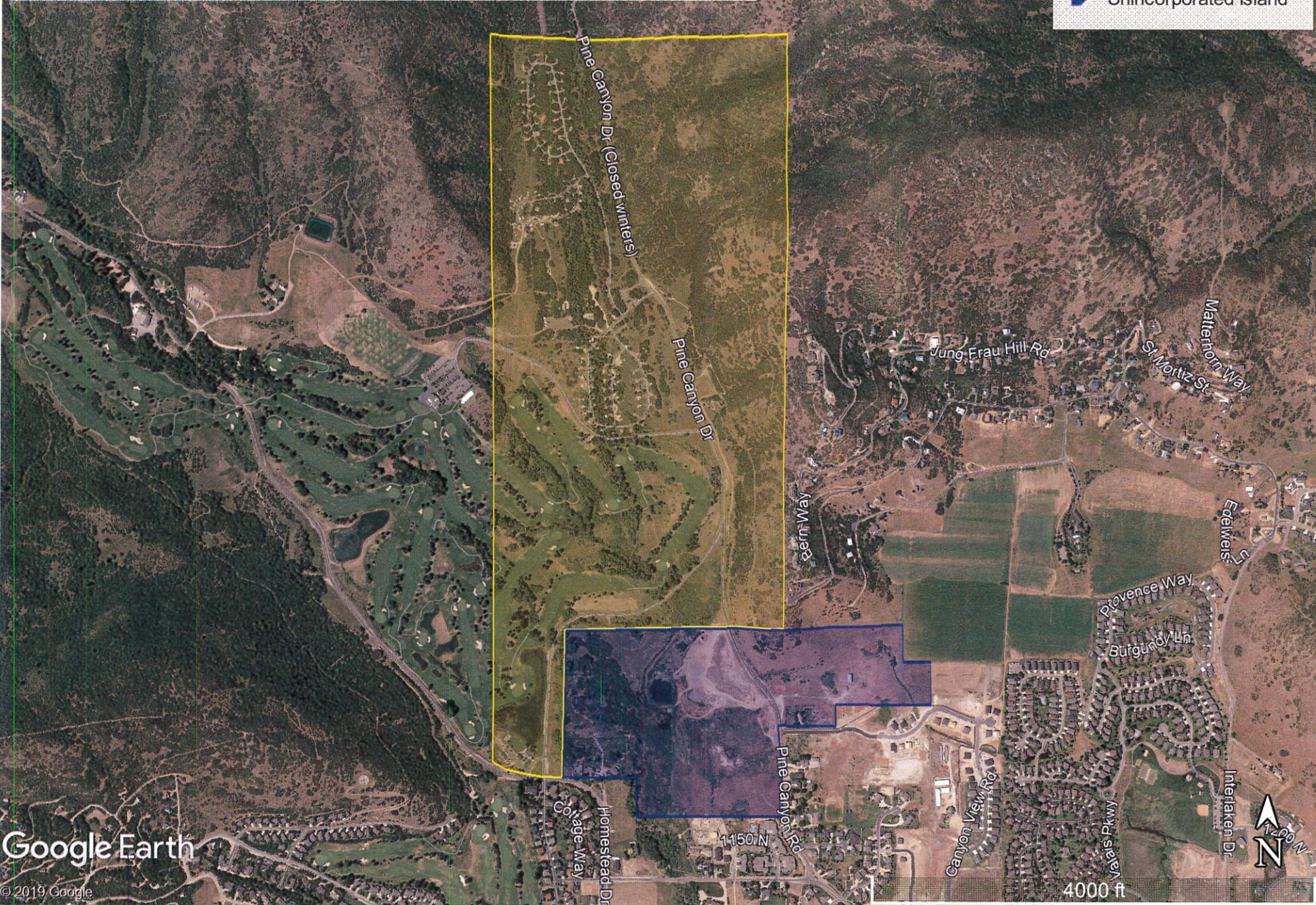
PROPOSED CONDITIONS:

- Approval is granted if no protests are filed from any affected entities within the 30-day protest period.

State Park Annexation and Unincorporated Island

Legend

-  State Park Annexation
-  Unincorporated Island



**ANNEXATION AGREEMENT FOR THE
WASATCH MOUNTAIN STATE PARK ANNEXATION
MIDWAY CITY, UTAH**

This Annexation Agreement (“Agreement”) is made and entered into by and between Midway City, a political subdivision of the State of Utah, (hereinafter referred to as the “City”), and Utah Department of Natural Resources, Division of Parks and Recreation, a political subdivision of the State of Utah (hereinafter referred to as the “Applicant” or “Division”). The property which is included in the Annexation Petition, and which is the subject of this Agreement, is part of Wasatch Mountain State Park (“WMSP”), which is owned, managed or operated by the Applicant. Applicant, therefore, represents all of the parcels of land located in Wasatch County, Utah, as further described herein, which parcels are proposed for Annexation into the City. The Applicant and the City are, from time to time, hereinafter referred to individually as a “Party” and collectively as the “Parties.” Unless otherwise noted herein, this Agreement supersedes and replaces any previous Annexation agreements entered into by and between the Applicants and the City involving the same Annexation Property (defined below) and is the entire, complete Agreement between the Parties.

RECITALS

- A. Midway City, acting pursuant to its authority under Utah Code Annotated (UCA) §10-9a-101 *et seq.*, and UCA § 10-2-401 *et seq.*, in furtherance of its land use policies, goals, objectives, ordinances, resolutions, and regulations, has made certain determinations with respect to the proposed annexation and, in the exercise of its legislative discretion, has elected to enter into this Agreement.
- B. The Applicant is the owner of certain real property which is described in Exhibit “A”, the Annexation Petition, attached hereto and incorporated herein by this reference. All of the real property described in Exhibit A is proposed for annexation into Midway City. Hereinafter, the entire parcel described in the Annexation Petition is referred to as the “Annexation Property.”
- C. Regarding zoning, the Applicant and the City both recognize that the Division is not subject to zoning or land use codes passed by Midway City, and as such, will be annexed in under the new zone “State Park” that establishes the limitation of municipal control in regards to land use.
- D. The Applicant and the City acknowledge and agree that the development and improvement of the Annexation Property pursuant to this Agreement will result in planning and economic benefits to the City and its residents, and will provide

certainty useful to the Annexation Property and the City in ongoing future communications and relations with the community.

- E. The City's governing body has authorized the execution of this Agreement by Resolution 2020-____, to which this Agreement is attached.
- F. The Utah legislature authorized Applicant to enter into mutually beneficial agreements with governmental entities to improve park facilities and secure equipment. (UTAH CODE ANN. § 79-4-204).
- G. The Applicant may enter into an agreement for Midway City to annex a portion of Wasatch Mountain State Park ("WMSP"), as long as such activity does not jeopardize or unduly interfere with the Board's legislative mandate "to protect state parks and their natural and cultural resources from misuse or damage, including watersheds, plants, wildlife, and park amenities." (UTAH CODE ANN. § 79-4-304(2)(a)(ii)).
- H. Applicant's state park system is open and available to the public for multiple use(s), "such as grazing, fishing, hunting, camping, mining, and the development and utilization of water and other natural resources." (UTAH CODE ANN. § 79-4-203(9)(a)).

DEFINITIONS

- A. The "Division" or "Applicant" means the Division of Parks and Recreation, the designated "parks and recreation authority" for the State of Utah under "(a) the administration and general supervision of the executive director; and (b) the policy direction of the board." (UTAH CODE ANN. § 79-4-201(2)-(3)).
- B. The Division's "main office address" is at 1594 West North Temple, Suite 116, P.O. Box 146001, Salt Lake City, Utah, 84114-6001.
- C. Wasatch Mountain State Park or "WMSP" means all facilities, improvements, and land "under water, upland, and all other property commonly or legally defined as real property" dedicated as a state park or under the control of the Division for multiple public use(s), "such as grazing, fishing, hunting, camping, mining, and the development and utilization of water and other natural resources." (UTAH CODE ANN. § 79-4-203(1), (3)).

- D. The "Parks Board" or "Board" is the Division's "policy-making body" authorized to "make rules: (i) governing the use of the state park system; (ii) to protect state parks and their natural and cultural resources from misuse or damage, including watersheds, plants, wildlife, and park amenities; and (iii) to provide for public safety and preserve the peace within state parks. (b) To accomplish the purposes stated in Subsection (2)(a), the board may enact rules that: (i) close or partially close state parks; or (ii) establish use or access restrictions within state parks." (UTAH CODE ANN. § 79-4-301, -304(2)(a)-(b)).
- E. The "Director" is the Division's "executive and administrative head," and charged with "(a) enforce[ing] the policies and rules of the board; and (b) perform[ing] the duties necessary to: (i) properly care for and maintain any property under the jurisdiction of the division and (ii) carry out this chapter." (UTAH CODE ANN. § 79-4-202(1) and -(3)). To carry out the Board's plans or goals for the park system, the Director "shall protect, develop, operate, use and maintain park area and facilities in accordance with the policies and rules of the board." (UTAH CODE ANN. § 79-4-202(4)).

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. **Recitals:** The preamble and recitals set forth above are incorporated herein as part of the Agreement.
2. **Purpose of Agreement:** The purpose of this Agreement is to provide for the annexation of real property into the City and to provide for future development of the Annexation Property, in accordance with this Agreement and the laws of the State of Utah, as they may be from time to time amended.
3. **Conditions Precedent:** The City and the Applicant agree, understand and acknowledge that this Agreement is for the annexation of the Annexation Property. Further, the City and the Applicant agree and understand that this Agreement shall be a covenant running with the Annexation Property, and shall bind any future owners, heirs or assigns.
4. **Waiver of all Zoning and Land Use Control Within the Annexation Area.** Midway City recognizes and acknowledges that the area being annexed is owned by the State of Utah, is controlled by State statute, and is not subject to local zoning or land use ordinances. Midway City expressly waives any right it has or may have to impose zoning or land use restrictions on the area annexed. The Division shall retain full power and control over its own land use decisions within the Annexation Property.

5. **Term:** This Agreement shall become effective as of the date of annexation of the Annexation Property into the City and shall continue in full force and effect from that time onward.

6. **Annexation:** The City, pursuant to the Annexation Petition filed by the requisite number of land owners and land area within the area proposed for annexation, and in accordance with the authority granted by statute, hereby agrees to adopt an Ordinance of Annexation, and thereby to annex into the City the Annexation Property described in the attached Exhibits. The Annexation Property shall be subject to the terms and conditions of this Agreement. It is further agreed that this Annexation Property meets all the requirements for annexation, including but not limited to the following:
 - A. **Contiguity:** The Annexation Property is contiguous to the existing boundaries of the City, as shown on Exhibit "B", attached hereto and incorporated herein by this reference.
 - B. **Within Declaration Area:** The Annexation Property is within the area identified by the City in its Annexation Policy Declaration Statement for possible annexation into the City.
 - C. **Not Within Another City:** The Annexation Property is not included within the boundaries of any other incorporated municipality.
 - D. **No Pending Incorporation:** There are no pending annexation petitions to incorporate any of the Annexation Property into any other municipality.
 - E. **No Unincorporated Islands:** The annexation of the Annexation Property will create or leave one island of unincorporated property, which Wasatch County has agreed to.
 - F. **Not Solely for Revenue Purposes:** The proposed annexation is not being pursued by the City solely for the purpose of gaining revenues or to gain a jurisdictional advantage over another municipality or to restrict annexation by some other municipality.
 - G. **Services Available:** The City intends to provide the same level of municipal services within the Annexation Property as it provides in all other areas within its boundaries, except as otherwise provided for in this Agreement.
 - H. **Petition:** The Petition for Annexation was properly signed by the requisite number of landowners of the land area within the proposed Annexation Property. The petition for annexation of this property has met all the requirements of the Utah Code. Public notices and other requirements have been met.
 - I. **No Fiscal Burden Created:** The City has determined that annexation of this area will not create a fiscal burden on the City that will not be offset by the revenues expected to be generated by virtue of this annexation.

- J. Compatibility: The proposed annexation is a compatible land use within the community.
- K. Illegal Peninsulas: The proposed annexation does not create any illegal peninsulas of unincorporated property projecting into or out of the City.

7. **General Character of Land to Be Annexed.** Description of the Annexation Property. The Annexation Property consists of approximately 348.719 acres of land which is currently within the WMSP and used as a public recreation area, including campgrounds and other amenities. It is expected that the Division will continue to develop additional facilities and improvements in the area. The location of the property is set forth in Exhibit A. The annexation contains the following parcels: 00-0012-5489 and 00-0020-8244.

- A. The Applicant owns 100% of the land included and 100% of the taxable value. The petition does comply with State Code that requires the owners of most of the land sign the petition and that the signers also own at least 1/3 of the taxable value of land in the annexation area.
- B. The Annexation Property is currently zoned Preservation (P-160) by Wasatch County.
- C. The existing boundaries of the City border the Annexation Property on two sides.

8. **Conditions of Annexation.**

A. **Tax Neutral:** The parties agree that this annexation will be tax neutral on the Division. Midway City shall reimburse the Division for any tax liability that exceeds what the Division is currently paying by being in the County. Taxes that will be an increase over what the Division is currently paying, thus requiring a refund from the City, include the following:

1. Full refund of 1.1% Resort Communities Tax
2. Full refund of 0.30% City Highway Tax
3. Full refund of 1% City Transient Room Tax (Wasatch County charges 4.25%, the State of Utah charges .32%, and Midway City charges 1%. Both the County and State taxes will remain the same, so only the municipal portion of the Transient Room Tax will be refunded).
4. Full refund of the 3.5% Municipal Telecommunications Tax
5. Full refund of the 6% Municipal Energy Tax.

The City is unaware of any provision that would expressly prohibit the aforementioned refunds. To the extent that any statute, policy or rule prohibits or prevents the refunds, Midway City agrees to pay to the Division the equivalent amount of any such tax.

Midway City shall have the obligation to pay the refund or equivalent amounts biannually and shall also provide a detailed accounting of how the amounts were calculated. This provision is only applicable to the Division itself, and does not apply to any vendors, licensees or contractors that work within WMSP.

B. Water Sampling/Water System:

1. Midway City agrees to perform all work related to taking water samples from the State Park culinary system and reporting these to the State Division of Drinking Water according to the health and safety standards set by the Division of Water Quality and Wasatch County Health. This service shall be provided free of charge to the State Park. Midway City agrees to have someone on its staff certified to take the necessary samples at all times.
2. The Division will retain ownership of its culinary and secondary system and all obligation for on-going maintenance.
3. The parties agree to work together in the future to explore the possibility of a mutual water system that would be beneficial to both and agree to meet and confer about the project the first week of April, yearly.
4. Midway City and the Division agree to contribute and pay for construction and maintenance of any mutual water system improvements as mutually agreed upon between the parties.

C. Road Ploughing: Midway City shall plough all roads designated as Class B and Class C public roads within the annexation area, or contract with Wasatch County to provide the same service, at no cost to the Division.

D. Agreement to Explore Mutually Beneficial Projects: The parties agree to explore possible ways to work together to improve the water system, the trail system, and the facilities and improvements within the Park, including working together to develop a regional plan that will enhance accessibility and usage of WMSP.

9. Miscellaneous Provisions:

- A. **Headings.** The descriptive headings of the paragraphs of this Agreement are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.
- B. **Authority.** The Parties to this Agreement represent to each other that they have full power and authority to enter into this Agreement, the City Council and/or Mayor on

behalf of the City and the Applicant on behalf of its property within the Annexation Property. The parcels of property that are not signatories to this Agreement but that are included in the Annexation are bound by the terms of this Agreement pursuant to State Law. The Applicant represents and warrants that each Party is fully authorized and validly existing under the laws of the State of Utah, if applicable. The Applicant and the City warrant to each other that the individuals executing this Agreement on behalf of their respective Parties are authorized and empowered to bind the Parties on whose behalf each individual is signing. The Applicant represents to the City that by entering into this Agreement, the Applicants have bound themselves, all the owners of the Annexation Property, and all persons and entities having any current or future legal or equitable interest in the Annexation Property, to the terms of this Agreement.

- C. Entire Agreement. This Agreement, including Exhibits, constitutes the entire agreement between the Parties, except as supplemented by Midway City Ordinances, Resolutions, policies, procedures and plans.
- D. Amendment of this Agreement. This Agreement may not be amended, in whole or in part, except by the mutual written consent of the Parties to this Agreement or by their successors in interest or assigns. Any such amendment to this Agreement shall be recorded in the official records of the Wasatch County Recorder's Office.
- E. Severability. If any of the provisions of this Agreement are declared void or unenforceable, such provision shall be severed from this Agreement, which Agreement shall otherwise remain in full force and effect.
- F. Governing Law. The laws of the State of Utah shall govern the interpretation and enforcement of this Agreement. The Parties agree that the venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction located in Wasatch County, Utah, and the Parties hereby waive any right to object to such venue.
- G. Remedies. If any Party to this Agreement breaches any provision of this Agreement, the non-defaulting Party shall be entitled to all remedies available at both law and in equity.
- H. Attorney's Fees and Costs. If any Party brings legal action either because of a breach of the Agreement or in order to enforce a provision or term of this Agreement, the prevailing Party shall be entitled to recover reasonable attorney's fees and court costs.
- I. Binding Effect. The benefits and burdens of this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective heirs, legal representatives, successors in interest and assigns, including all successive owners of the Annexation Property. The Agreement shall be incorporated by reference in any instrument purporting to convey an interest in any portion of the Annexation Property. The terms of this Agreement and the obligations of the Applicant hereunder shall be binding upon all present and future owners of the Annexation Property and shall be appurtenant to, and shall run with, said land.

- J. **Third Parties.** There are no third-party beneficiaries to this Agreement, and no person or entity not a Party hereto shall have any right or cause of action hereunder.
- K. **No Agency or Partnership Created.** Nothing contained in this Agreement shall be construed to create any partnership, joint venture, or agency relationship between the Parties.
- L. **Recording.** Upon execution, this Agreement shall be recorded in the official records of the Wasatch County Recorder.
- M. **Governmental Funding.** The Division is a governmental entity funded by the Legislature, and therefore does not guarantee the performance of any specific provision of this Agreement and hereby assumes no liability to Midway City for breach or non-performance, if the Applicant's funding and/or staff is cut by the Legislature, Governor or Executive Director of the Department of Natural Resources (including by not limited during periods of economic crises), etc. If a conflict or ambiguity exists between this term and any other term of this Agreement governing liability, remedies, and attorney's fees, the parties acknowledge and agree that the terms of this paragraph (8.M) shall govern, and effectively amend or replace, and/or supersede any conflicting term and bar a claim and judgment for money damages.
- N. **Governmental Immunity:** Midway City and the Division are both corporate and political bodies of the State of Utah, and therefore subject to the Governmental Immunity Act of Utah (the "Act"), Utah Code Ann. §§ 63G-7-101 to -904. Midway City and the Division shall only be liable within the parameters of the Governmental Immunity Act. Nothing contained in herein shall be construed in any way, to modify the limits of liability set forth in that Act or the basis for liability as established in the Act.

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SIGNATURE PAGE FOLLOWS

IN WITNESS HEREOF, this Agreement has been entered into by and between the Applicant and the City as of the date and year first above written.

CITY OF MIDWAY

Attest:

Celeste Johnson, Mayor

Brad Wilson, City Recorder

STATE OF UTAH)
 :SS
COUNTY OF WASATCH)

The foregoing instrument was acknowledged before me this ___ day of _____, 2020, by Celeste Johnson, who executed the foregoing instrument in her capacity as the Mayor of Midway City, Utah, and by Brad Wilson, who executed the foregoing instrument in his capacity as Midway City Recorder.

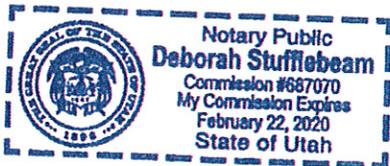
NOTARY PUBLIC

APPLICANT
Utah Department of Natural Resources
Division of Parks and Recreation

Scott Strong
By: Scott Strong (Acting for Director Rasmussen)
Its: Deputy Director

STATE OF UTAH)
 :SS
COUNTY OF WASATCH)

The foregoing instrument was acknowledged before me this 4th day of February 2020, by Scott Strong, who executed the foregoing instrument in his capacity as the Deputy Director of the Applicant.



Deborah Stufflebeam
NOTARY PUBLIC

Exhibit "A"
ANNEXATION PETITION

[Faint, illegible text, possibly a signature or stamp]

Exhibit "B"
MAP OF PROPOSED ANNEXATION



ORDINANCE 2020-09

AN ORDINANCE APPROVING THE WASATCH MOUNTAIN STATE PARK ANNEXATION AND DESIGNATING ZONING TO APPLY TO THE ANNEXATION PROPERTY

WHEREAS, Title 10, Chapter 2, Part 4 of the Utah Code authorizes a municipality to annex unincorporated areas into the municipality; and

WHEREAS, on 4 February 2020, a petition was filed with Midway City to annex approximately 24.16 acres of land known as the Wasatch Mountain State Park Annexation into Midway City; and

WHEREAS, the City has reviewed the annexation petition and has verified that it meets all applicable legal requirements; and

WHEREAS, on 17 March 2020, the Midway City Council held a duly noticed public hearing to receive public input on the proposed annexation; and

WHEREAS, the Midway City Council finds it desirable and in the public interest to approve the proposed annexation at this time.

NOW THEREFORE, be it ordained by the City Council of Midway City, Utah, as follows:

Section 1: The real property described in Section 2 below is hereby annexed to Midway City, Utah, and the corporate limits of the City are hereby extended accordingly.

Section 2: The real property subject to this Ordinance is described as follows:

THE W 1/2 OF SECTION 22, AND PARCEL 00-0020-8244 IN TOWNSHIP 3 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN.

MORE PARTICULARLY DESCRIBED AS:

BEGINNING AT THE SOUTHWEST CORNER OF SECIION 22, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN;
AND RUNNING THENCE NORTH 00°00'30" EAST 2673.36 FEET ALONG THE SECTION LINE TO THE WEST QUARTER CORNER OF SECTION 22;
THENCE NORTH 00°20'45" EAST 2673.09 FEET ALONG THE SECTION LINE TO THE NORTHWEST CORNER OF SAID SECTION;
THENCE NORTH 89°20'01" EAST 2688.14 FEET ALONG THE SECTION LINE TO THE NORTH QUARTER CORNER OF SAID SECTION:
THENCE SOUTH 00°36'13" WEST 2711.27 FEET ALONG THE QUARTER SECTION LINE TO THE CENTER QUARTER OF SAID SECTION;
THENCE SOUTH 00°36'13" WEST 2653.62 FEET ALONG THE QUARTER SECTION LINE TO THE SOUTH QUARTER CORNER OF SAID SECTION;
THENCE SOUTH 89°43'01" WEST 1961.30 FEET ALONG THE SECTION LINE;
THENCE SOUTH 00°48'00" WEST 1411.17 FEET TO THE CLARK-CONDIE ANNEXATION AS DOCUMENTED IN ENTRY NO. 146271, IN THE WASATCH COUNTY RECORDER'S OFFICE; THENCE ALONG SAID ANNEXATION THE FOLLOWING THREE COURSES: (1) NORTH 75°00'18" WEST 1.07 FEET; (2) WEST 154.24 FEET; (3) NORTH 88°35'14" WEST 211.71 FEET TO THE TURNBERRY WOODS ANNEXATION AS DOCUMENTED IN ENTRY NO. 339588, IN THE WASATCH COUNTY RECORDER'S OFFICE; THENCE ALONG SAID ANNEXATION THE FOLLOWING THREE COURSES: (1) NORTH 00°56'48" WEST 10.71 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 520.50 FEET AND TO WHICH POINT A RADIAL LINE BEARS SOUTH 09°23'36" WEST; (2) THENCE 80.22 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 08°49'49" (CHORD BEARING AND DISTANCE OF NORTH 76°11'29" WEST 80.14 FEET); TO THE BEGINNING OF A COMPOUND CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 1039.02 FEET; (3) THENCE 230.97 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 12°44'12" (CHORD BEARING AND DISTANCE OF NORTH 65°24'29" WEST 230.49 FEET); THENCE NORTH 00°33'37" WEST 1276.44 FEET ALONG THE SECTION LINE TO THE POINT OF BEGINNING.

PARCEL CONTAINS 349.719 ACRES MORE OR LESS.

Section 3: The real property described in Section 2 above shall be classified as being in the P-160 Zone, pursuant to the Midway City Municipal Code, and the official Zoning Map of Midway City shall be amended accordingly.

Section 4: The real property described in Section 2 above shall be subject to all laws, ordinances and policies of Midway City

Section 5: This Ordinance shall take effect as and when provided by Utah Code Title 10, Chapter 2, Part 4.

PASSED AND ADOPTED by the City Council of Midway City, Wasatch County, Utah
this day of 2020.

	AYE	NAY
Council Member Steve Dougherty	_____	_____
Council Member Jeff Drury	_____	_____
Council Member Lisa Orme	_____	_____
Council Member Kevin Payne	_____	_____
Council Member JC Simonsen	_____	_____

APPROVED:

Colleen Bonner, Mayor

ATTEST:

Brad Wilson, City Recorder

APPROVED AS TO FORM:

Corbin Gordon, City Attorney

(SEAL)