

Midway City Council
17 March 2020
Regular Meeting

Resolution 2020-08 /
Wasatch Mountain State Park
Annexation Agreement



RESOLUTION 2020-08

A RESOLUTION APPROVING THE ANNEXATION OF THE WASATCH MOUNTAIN STATE PARK ANNEXATION AND AUTHORIZING THE MAYOR TO EXECUTE THE ANNEXATION AGREEMENT THEREFORE

WHEREAS, Utah law authorizes municipalities to enter into annexation agreements governing the annexation of parcels of property into the City boundaries, and prescribing terms and conditions for that annexation; and

WHEREAS, the Midway City Council finds it in the public interest of the City of Midway to approve the Wasatch Mountain State Park Annexation Petition, to Annex the property described therein into Midway City, all according to the terms and conditions of the Annexation Agreement;

NOW, THEREFORE, be it hereby **RESOLVED** by the City Council of Midway City, Utah, as follows:

Section 1: The Midway City Council hereby approves the Wasatch Mountain State Park Annexation Petition, and annexes the property described therein into Midway City, subject to the execution of the Annexation Agreement pertaining thereto.

Section 2: The Midway City Council hereby authorizes the Mayor of Midway City to execute the annexation agreement on behalf of the City.

PASSED AND ADOPTED by the Midway City Council on the day of 2020.

MIDWAY CITY

Celeste Johnson, Mayor

ATTEST:

(SEAL)

DRAFT

Exhibit A

DRAFT

**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. Noting 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

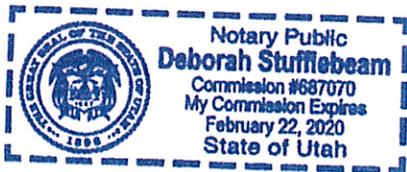
Scott Strong

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





PETITION FOR ANNEXATION

We the undersigned owners of certain real property hereby submit this Petition for Annexation and respectfully represent the following:

1. That this petition and the annexation meet the requirements of the Utah Code and the Midway City Municipal Code.
2. That the real property is described as follows:

Approximate location:

See Map Attached

Legal description:

See Map Attached

3. That up to five of the signers of this petition are designated as sponsors, one of whom is designated as the contact sponsor, with the name and mailing address of each sponsor indicated as follows:

<u>Contact Sponsor</u>	<u>Mailing Address</u>
Jeff Rasmussen Division of Natural Resources	1594 W. North Temple, Suite 116 P.O Box 146001 Salt Lake City, UT 84114-6001

4. That this petition is accompanied by an accurate and recordable map, prepared by a licensed surveyor, of the area proposed for annexation.
5. A copy of this petition and the accompanying map was also delivered or mailed to the Wasatch County Clerk and the chair of the Midway City Planning Commission.
6. That the petitioner(s) request the property, if annexed, be zoned **SP 160**.
7. That this petition contains the following signatures of the owners of private real property that:
 - a. Covers a majority of the private land area within the area proposed for annexation.

b. Is equal in market value to at least 1/3 of the market value of all private real property within the area proposed for annexation.

<u>Petitioner</u>	<u>Signature</u>	<u>Acres</u>	<u>Market Value</u>	<u>Serial Number</u>
<u>Jeff Rasmussen</u>	<u></u> Acting For Director Rasmussen	<u>349</u>	<u>N/A</u>	<u>00-0020-8244</u>

Exhibit "B"

MAP OF PROPOSED ANNEXATION

