

Midway City Council
4 May 2021
Regular Meeting

Resolution 2021-11 /
Hot Springs Annexation
Agreement



RESOLUTION 2021-11

A RESOLUTION APPROVING THE ANNEXATION OF THE HOT SPRINGS 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 Hot Springs 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 Hot Springs Annexation Petition, and annexes the property described therein into Midway City, subject to the execution of the attached Annexation Agreement (Exhibit A) 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 2021.

MIDWAY CITY

Celeste Johnson, Mayor

ATTEST:

Brad Wilson, Recorder

(SEAL)

DRAFT

Exhibit A

DRAFT

ANNEXATION AGREEMENT FOR THE THOMAS WHITAKER/MOUND CITY, LLC 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 Mound City, LLC (hereinafter referred to as the Applicant”). The property which is included in the Annexation Petition, and which is the subject of this Agreement is a 12.26 acre parcel owned by the Applicant. 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. The Annexation Property, once annexed into Midway City, will be subject to the City of Midway Zoning Ordinance and other City Ordinances and Resolutions. The Applicant and the City desire to allow Applicant and others to make improvements to the Annexation Property pursuant to applicable ordinances, resolutions and the terms and conditions of this Agreement.
- D. The improvements and changes to be made to the Annexation Property shall be consistent with the current ordinances and standards of the City, any future changes to the ordinances and standards of the City and the Midway City General Plan.
- E. 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.

- F. The City's governing body has authorized the execution of this Agreement by Resolution 2020-___, to which this Agreement is attached.
- G. The City has authorized the negotiation of and adoption of annexation agreements under appropriate circumstances where proposed development contains outstanding features which advance the policies, goals and objectives of the Midway City General Plan, preserves and maintains the open and rural atmosphere desired by the citizens of Midway City, and contributes to capital improvements which substantially benefit the City.

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, to designate zoning that will apply to the Annexation Property upon annexation, and to provide for future development of the Annexation Property, in accordance with the adopted Ordinances and Resolutions of the City, the Midway City General Plan, 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. **Permitted Uses on Annexation Parcel:** The permitted uses for the Annexation Property shall be those uses specifically listed in the Zoning Ordinance of the City, as amended from time to time.
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 as well as the annexation laws and other Ordinances, Resolutions or laws of the City of Midway and the State of Utah. 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 not create or leave any islands of unincorporated property requiring municipal type services.
- 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
- 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.

- A. Description of the Annexation Property. The property is in the Midway Growth Boundary and located west of Pine Canyon Road and north of Cari Lane. The proposed zoning for the property is RZ (Resort Zone).
- B. 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.
- C. The Annexation Property consists of approximately 12.26 acres. It is currently zoned RA-1 by Wasatch County.

8. Conditions of Annexation.

- A. The Annexation Property shall be annexed into the City of Midway and shall be zoned RZ (Resort Zone).
- B. The Developer has submitted a Site Plan (attached as Exhibit A) which proposes a Lodge, six rental cabins and fifteen glamping pads. The parties agree that the proposed Site Plan is generally consistent with the RZ zone. It is acknowledged that the proposal does not maximize the potential density on the Annexation Property, and the parties agree that Developer retains the right to propose additional density and redevelopment of the Annexation Property in the future as long as the use remains consistent with the RZ zone and increases the number of rentable rooms/glamping pads on the Annexation Property. A reduction of rental units/pads from that proposed in the Site Plan shall not be allowed.
- C. A material term of granting the Annexed Property RZ zoning is the agreement that the proposed resort on the Property shall remain open to the public. The Hot Pots and other amenities on the Annexed Property have been used and enjoyed by citizens of Midway for generations, and the Applicant agrees that access to these amenities will remain open to the public, subject to reasonable fees charged for admission.
- D. City services are up to the boundary of the annexation. The developer shall build/install all required infrastructure within the annexation area required for the development so the City will incur no development cost, only maintenance cost, once that infrastructure is approved and accepted by the City.
- E. Developer agrees to pay a parks fund fee equal to \$589.11 per annexed acre. The required parks annexation donation fee is \$7,222 that shall be paid before the recording of the annexation plat.
- F. The City's Master Trail Plan has a detached 8' paved trail that will run along the

west side of Pine Canyon Road. The trail shall not be constructed at this time because there is not a trail connection to the north or south of the Annexation Property. Developer shall dedicate a 20' public trail easement along Pine Canyon Road to the City at the time of annexation and shall pay to the City funds necessary to build the trail (to be determined by City Staff) before the annexation plat will be recorded. The contributed funds shall be placed in the City's general fund and shall be used to install the trail once trails are built to the north or south of the Annexation Property. Timing of the installation of the trail shall be at the discretion of Midway City. Developer shall also dedicate any property currently found within the projected road right-of-way for Pine Canyon Road prior to plat recordation.

- G. The Applicant agrees that it will work with the City to file an approved subdivision plat in accordance with the Site Plan, that addresses needed easements, needed water rights, and any other necessary dedications or issues that are associated with the Site Plan.
- H. The parties recognize that all roads internal to the Annexation Property shall be private and maintained by the Developer or HOA.
- I. Water Rights: Prior to the recording of the subdivision plat developer shall deed to Midway City sufficient water to meet the culinary and irrigation needs of the project.
- J. Developer shall also complete the following prior to annexation:
 - i. The Developer shall extend at its own expense all necessary utilities needed for the proposed Site Plan including a water meter for the Property and fire hydrants in a number and location as required by current code. The Developer shall submit all plans to extend any utilities to the City engineer for approval before starting construction.
 - ii. Construction and/or Dedication of Culinary Line: The Developer agrees to construct the Culinary Line as directed and approved by the City, in accordance with current City standards, and upon completion to dedicate the line to the City.
 - iii. Construction Traffic: All construction traffic for the Culinary Line improvements will meet the requirements imposed by the Midway City Planning and Engineering Departments.
 - iv. Warranty: Consistent with City standards, the Developer will provide a one-year warranty for the operation of all improvements.
 - v. Bonding: Developer agrees to post performance and other bonds in amounts and types established by the City related to the performance of the

Developer's construction obligations for installing the Culinary Line and other necessary utilities pursuant to current City Ordinances and Regulations.

vi. The Developer shall remain bound by all legally adopted Ordinances, Resolutions and policies of the City involving culinary water service unless specifically agreed to otherwise herein.

vii. The size, type, and location of the culinary water meter shall be determined and approved by the City Engineer before installation.

viii. Meters that meet the specifications of Midway Irrigation Company shall be installed on all irrigation line connections within the subdivision at the time the infrastructure is installed.

ix. Developer agrees to install infrastructure to the standards required by Midway City, even if these standards exceed those required by Wasatch County.

- K. At the time of signing this Agreement Developer shall submit to Midway City an amount established by the City Planner sufficient to cover all expenses incurred by the City in reviewing the Project (i.e. engineering, legal, etc.). Developer agrees to pay all applicable Midway City fees incurred in installing the Culinary Water Line and other infrastructure, including all engineering and attorney fees and other outside consultant fees incurred by the City in relation to the Property. All fees shall be paid current prior to any culinary water service being provided.
- L. Developer agrees to allow Midway City to inspect all infrastructure as it is installed and shall have a duty to provide timely notice to the Midway City engineer of needed inspections.

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.

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 – MOUND CITY, LLC

By: Thomas Whitaker

Its: Manager

STATE OF UTAH)
 :SS
COUNTY OF WASATCH)

The foregoing instrument was acknowledged before me this ___ day of _____, 2021, by Thomas Whitaker, who executed the foregoing instrument in his capacity as the Manager of the Applicant.

NOTARY PUBLIC

Exhibit “A”

ANNEXATION PETITION

Exhibit “B”

MAP OF PROPOSED ANNEXATION

Exhibit “C”
WILL SERVE LETTER

