

AN ORDINANCE

AN ORDINANCE AMENDING SECTION 1.12.010 OF THE REVISED ORDINANCES OF AMERICAN FORK CITY 1985, AS AMENDED, ANNEXING CERTAIN PROPERTIES TO AMERICAN FORK CITY AND ESTABLISHING ZONING CLASSIFICATION FOR SAID PROPERTY.

BE IT ORDAINED BY THE CITY COUNCIL OF AMERICAN FORK CITY, UTAH:

SECTION I. That the following described real property be, and the same is hereby annexed to American Fork City, Utah, the corporate limits of said city are hereby extended to include said described property, and said property is hereby declared to be part of American Fork City and shall henceforth be subject to all of the ordinances and regulations thereof, and that the description of the boundaries of American Fork City as set forth in Section 1.12.010 of the revised ordinances be amended to include the following described property to-wit:

ORDINANCE NO. 2019-04-20
AF PENROD ANNEXATION (950 WEST 620 SOUTH)
SEE ATTACHMENT 'A'

SECTION II. That the territory annexed under Section 1 above is hereby classified into the PR 3.0 Zone and the TOD zone subject to the terms and conditions of the AF Penrod Annexation Agreement as provided in Attachment 'B'.

SECTION III. This ordinance shall take effect upon its passage and first publication.

PASSED by the City Council of American Fork this 9 day of April, 2019.



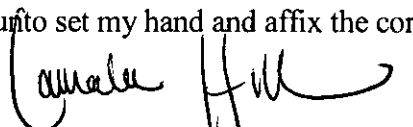

Bradley J. Frost, Mayor

ENT 39589:2019 PG 1 of 18
JEFFERY SMITH
UTAH COUNTY RECORDER
2019 May 06 4:28 pm FEE 0.00 BY MG
RECORDED FOR AMERICAN FORK CITY

ATTEST:

State of Utah
County of Utah

I, Lauralee Hill, Deputy Recorder of American Fork City, Utah, do hereby certify the above and foregoing to be a full, true and correct copy of an ordinance amending Section 1.12.010 of the revised ordinances of American Fork City 1985, Amended, annexing certain properties to American Fork and establishing zoning classification for said property. In witness whereof, I hereunto set my hand and affix the corporate seal of American Fork, Utah this 9 day of April, 2019.


Lauralee Hill, Deputy Recorder



SURVEYOR'S CERTIFICATE

I, TREVOR J. HATCH DO HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR, AND THAT I HOLD CERTIFICATE NUMBER 9031945 IN ACCORDANCE WITH TITLE 58, CHAPTER 22 OF THE PROFESSIONAL ENGINEERS AND LAND SURVEYORS LICENSING ACT, UTAH CODE ANNOTATED, 1953 AMENDED. I FURTHER CERTIFY THAT THIS IS A TRUE AND ACCURATE MAP OF THE TRACT OF LAND TO BE ANNEXED TO AMERICAN FORK CITY, UTAH COUNTY, UTAH.

BOUNDARY DESCRIPTION

BEGINNING AT A POINT WHICH IS SOUTH 92.27 FEET AND S89°49'04"W 583.88 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 22, TOWNSHIP 5 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN;

THENCE ALONG THE EXISTING AMERICAN FORK CITY BOUNDARY THE FOLLOWING COURSE:

1) NORTH 89°37'41" WEST 369.01 FEET ALONG THE DIXIE FENN AMERICAN FORK ANNEXATION,

THENCE NORTH 01°03'29" EAST 784.42 FEET TO THE EXISTING AMERICAN FORK CITY BOUNDARY;

THENCE ALONG THE EXISTING AMERICAN FORK CITY BOUNDARY THE FOLLOWING TWO (2) COURSES:

1) NORTH 46°41'58" EAST 51.71 FEET ALONG THE BOLEY II ANNEXATION,

2) NORTH 519.58 FEET ALONG THE BOLEY II ANNEXATION,

THENCE SOUTH 89°16'09" EAST 324.39 FEET;

THENCE SOUTH 00°49'10" WEST 592.87 FEET;

THENCE SOUTH 36°43'44" EAST 23.83 FEET TO THE EXISTING AMERICAN FORK CITY BOUNDARY;

THENCE ALONG THE EXISTING AMERICAN FORK CITY BOUNDARY THE FOLLOWING COURSE:

1) SOUTH 01°02'47" WEST 725.78 FEET ALONG THE DIXIE FENN AMERICAN FORK ANNEXATION TO THE POINT OF BEGINNING.

ANNEXATION PARCEL CONTAINING: 466,926 SF OR 10.72 ACRES.

BASIS OF BEARING: SOUTH 89°52'20" WEST ALONG THE SECTION LINE BETWEEN THE SOUTHEAST AND SOUTH QUARTER CORNER OF SAID SECTION.

ANNEXATION AGREEMENT
(*AF Penrod Annexation*)

This Agreement, made and entered into this 9 day of April, 2019, by and between The City of American Fork, Utah, a Utah Municipal Corporation (hereafter referred to as "City") and Barry Neil Penrod, Kelly M Penrod, and Denise E Penrod, (hereafter referred to as "Applicants"), is based on the following:

AF P.D. LLC as successor in interest to

RECITALS

WHEREAS, Applicants are the owners of parcels of privately-owned real property constituting the entirety of the *AF Penrod Annexation*, which annexation is located within the unincorporated territory of Utah County and contiguous to the corporate boundary of the City. A "Request to Initiate Annexation of Land Within an Island or Peninsula" (Attachment 1), together with an Annexation Area map (Attachment 2) prepared by the Applicants showing the real property proposed for annexation (hereafter referred to as "Annexation Area").

WHEREAS, the Annexation Area constitutes a portion of an existing island, as defined by Utah State law; and

WHEREAS, in accordance with the provisions of UCA 10-2-418, the American Fork City Council has heretofore adopted Resolution No. 2019-01-03R indicating its intent to annex the entire Annexation Area. Further, notice of hearing regarding the proposed annexation has been published and the public hearing thereon held.

WHEREAS, the City Council has determined that annexation of the Annexation Area is in the best interest of the City and has indicated an intent to: (1) execute this Agreement and enact an ordinance of annexation relating thereto, and (2) authorize the recording of the annexation plat at the office of the Utah County Recorder, subject to the terms and conditions of this Agreement and any other conditions required prior to annexation.

TERMS AND CONDITIONS

NOW THEREFORE, based on the above recitals and in consideration of the annexation of the Annexation Area to the City, the parties covenant and agree as follows:

SECTION 1 - Applicability of Agreement: The real property to which the terms of this Agreement apply shall be the parcels of private property within the Annexation Area, identified on Attachment 2. Attachment 2 is hereby made part of this Agreement.

SECTION 2 - Annexation a benefit to Applicants: Applicants and City acknowledge that the City is not required to approve the annexation and that the terms and conditions of annexation, as set forth herein, are reasonable and entered into freely and voluntarily. Further, Applicants hereby acknowledge and agree that the benefit received from annexation of the property is equal to or greater than the requirements and conditions of annexation as set forth in this Agreement and the conditions of the development as set forth under the terms of the City's Development Code and Impact Fee Ordinance and does not constitute a taking as defined pursuant to the terms of UCA 10-9a-103(6), 1953, as amended.

SECTION 3 - Authority of Applicants: Applicants hereby affirm that they are the current owners of at least 75% of the Annexation Area and have complete authority to enter into this Agreement and bind the Annexation Area hereto.

SECTION 4 - Compatibility with Land Use Plan and Initial Zone Classification: The Land Use Element of the General Plan shows the Annexation Area classified as "Low Density Residential" and "Transit Oriented Development". Therefore, the zone classifications attached to the parcels shall be the PR-3.0 zone (which zone district allows for a variety of lot sizes and development styles) and the TOD zone. A map illustrating the zone classifications has been prepared by the City and is made part of this agreement (Attachment 3).

SECTION 5 - Right-of-way to be Conveyed. The City's Transportation Element of the General Plan provides for the development of 900 West as a Transit Oriented Development Neighborhood Collector and 620 South as a Collector. Additionally, the Bike and Pedestrian Master Plan identifies placement of a Cycle Track/Protected Bike Lane and Shared Use Path through the Annexation Area. As a condition of annexation, Applicants hereby agree to convey to the City any right-of-way necessary for these thoroughfares in the location(s) shown on the plat prepared by the Applicant and approved by the City (Attachment 4). Applicants shall have no obligation to construct any right-of-way improvements unless and until any improvement or development occurs on the parcels adjacent to the right-of-way, or as otherwise required by City Code, subject to the provisions as outlined in the American Fork City Development Code Section 17.5.126 (Minimum Level of Improvements Required).

SECTION 6 - Conveyance of Water Right: Applicants acknowledge that the dedication of water rights is required pursuant to City Code Section 17.1.400—Conveyance of Water. City acknowledges that Applicants have a sufficient basis to delay the time of conveyance of water rights until the time of development in accordance with City Code Section 17.1.400(C). A Water Delay Agreement is hereby entered into by the parties and is incorporated into this Agreement as Attachment 5.

SECTION 7 - Open Ditches to be Piped: Applicants acknowledge that it is their burden in full to pipe any and all gravity irrigation conveyances (ditches), to the standards of the City and to the standards of the applicable irrigation company or private ditch easement holders,

as part of any forthcoming development project. Such piping shall be completed prior to or in concurrence with the development of the parcel and in compliance with City Code Section 17.8.303 – Plan to identify and accommodate natural constraints to development.

SECTION 8 - Property Taxes and Rollback Taxes to be Paid on any Right-of-Way Dedicated to City: Applicants agree to pay any outstanding property taxes on the Annexation Area including any and all rollback taxes if the subject area is classified as "Greenbelt" with the Utah County Tax Assessor, for any areas identified as right-of-way to be dedicated to City. Proof of payment of these taxes shall be required prior to recording of this Agreement.

SECTION 9 - Impact Fees: No impact fees are required as a condition of annexation. However, nothing in this Agreement constitutes a waiver of any obligation that Applicants or any successor may have for the payment of impact fees required as a condition of development of the Annexation Area or any portion thereof. Applicants acknowledge that no development approval or building permit shall be issued until all applicable fees required by City ordinance have been paid at the amount then in effect.

SECTION 10 - Default: Should any of the parties default in the performance of any of the terms of this Agreement, the parties shall first seek mediation to resolve any defaulting performance. The defaulting party shall pay all costs and expenses, including mediation fees and/or reasonable attorney's fees, which may arise from enforcing this Agreement, whether such remedy is pursued by mediation and/or filing suit or otherwise.

SECTION 11 - Notice: Any notice to be given hereunder shall be given by certified mail, return receipt requested, addressed as follows:

- a. If to the City, to the City of American Fork, 51 East Main Street, American Fork Utah, 84003
- b. If to Applicants, to XXXXX, XXXXX, American Fork Utah, 84003.

SECTION 12 - Counterparts and Severability: In the event that any provision of this Agreement shall be held invalid and unenforceable, such provision shall be severable from, and such invalidity and unenforceability shall not be construed to have any effect on, the remaining provisions of this Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

SECTION 13 - Entire Agreement: This Agreement constitutes the entire agreement between the parties and may be changed only in writing signed by all parties, and this agreement shall bind the heirs, assigns, and successors in interest of the respective parties. If any party shall breach this Agreement, the other party shall be entitled to recover their attorney fees and court costs in addition to other lawful damages resulting therefrom.

IN WITNESS WHEREOF, the parties have signed this agreement on the date first mentioned above.

Applicants names
AF P.D. LLC

MAYOR



Applicants signatures
Darwin Fielding Manager

ATTEST:

City Recorder

IN WITNESS WHEREOF, the parties have signed this agreement on the date first mentioned above.

Applicants names

MAYOR

Applicants signatures

[Handwritten Signature]
ATTEST:

[Handwritten Signature]
Deputy Recorder



LIST OF ATTACHMENTS

- | | |
|---------------------|---|
| Attachment 1 | Request to Initiate Annexation of Land of Within an Island or Peninsula |
| Attachment 2 | Annexation Area Map |
| Attachment 3 | Zone Classification Map |
| Attachment 4 | Annexation Plat |
| Attachment 5 | Water Delay Agreement |

Attachment 1

Exhibit "A"

5.5.a

REQUEST TO INITIATE ANNEXATION OF LAND WITHIN IN AN ISLAND OR PENINSULA

DATE: _____

We the undersigned, by virtue of our signatures affixed hereto, do hereby request the City of American Fork, Utah, to annex the parcel(s) identified on the attached map, in accordance with the procedures for "Annexation Without Petition" as set forth under Section 10-2-418(1)(a)(ii) of the Utah State Code.

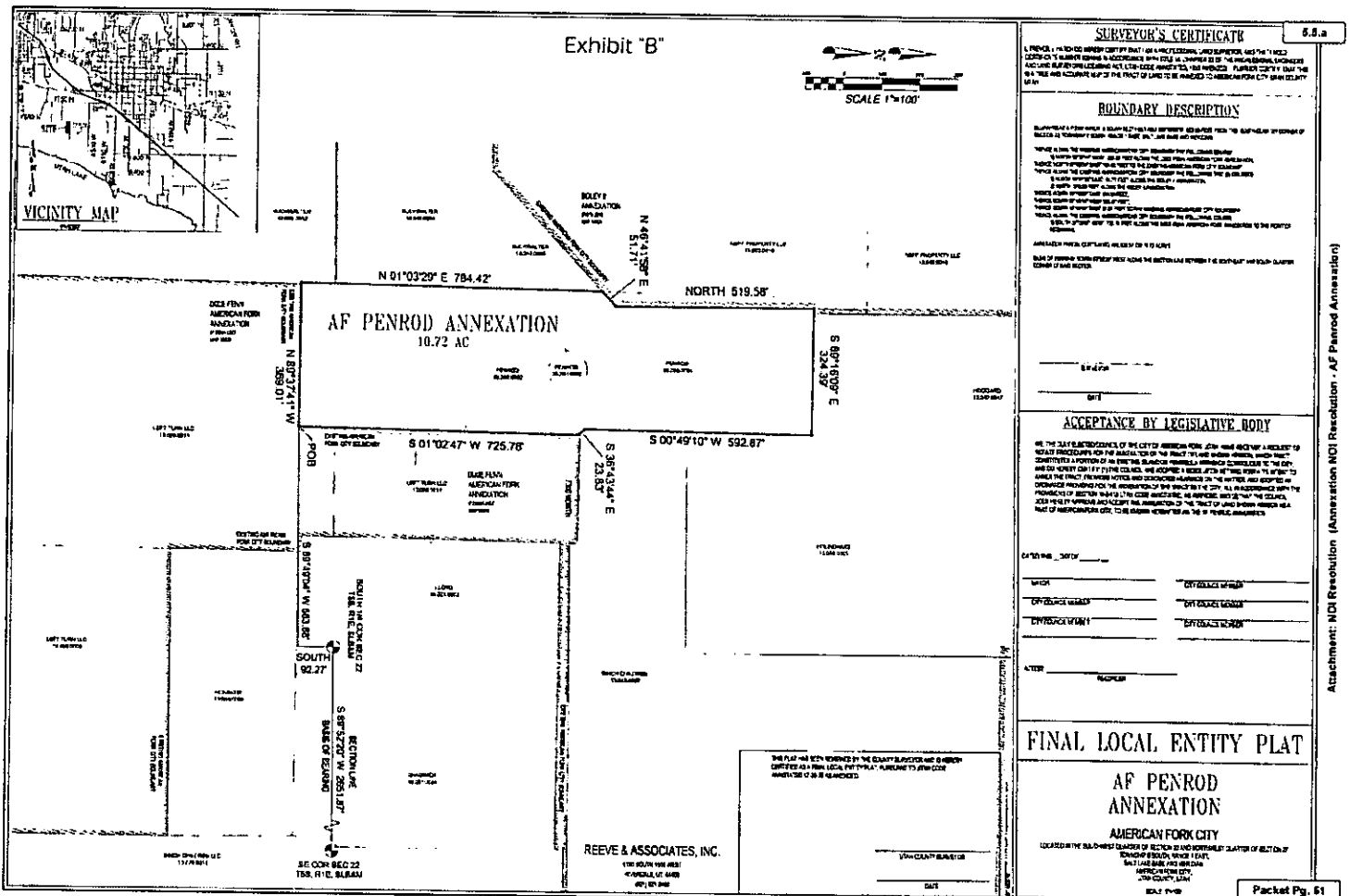
We hereby further acknowledge and affirm as follows:

- A. The area to be annexed is contiguous to the municipality and has fewer than 800 residents, and
- B. The municipality has provided one or more municipal type services to the area for at least one year.

Tax I.D. No.	Name(s) of Owner	Signature of Owner(s)
35:280:0001	PENTCOT, BARREY NEIL	x <i>Barrey Pentcot</i>
35:280:0002	PENTCOT, BARREY KELLY M PENTCOT, BARREY DENISE E	x <i>Kelly Pentcot</i> x <i>Denise Pentcot</i>

Attachment: NOI Resolution (Annexation NOI Resolution - AF Penrod Annexation)

Attachment 2



Attachment: NDI Resolution (Annexation NDI Resolution - AF Penrod Annexation)

WARRANTY DEED

(900 WEST)
Utah County

Affecting Tax ID No: 35:280:0001
35:280:0002

Project: AF Penrod Annexation

AF PD, LLC

_____, as Grantor, hereby
CONVEYS AND WARRANTS to AMERICAN FORK CITY, at 51 East Main Street, American Fork,
Utah 84003, Grantee, for the sum of ten (10) Dollars, and other good and valuable considerations,
the following described parcel of land in Utah County, State of Utah, to-wit:

A parcel of land for the dedication of future 900 West road, situate in Section 22, Township 5 South,
Range 1 East, Salt Lake Base and Meridian. The boundaries of said parcel of land are described as
follows:

Beginning at a point which is North 00°01'56" East 1103.01 feet and West 559.03 feet from the
South Quarter corner said Section 22; and running:

thence along the arc of a 330.50 foot radius curve to the left a distance of 306.30 feet (curve having
a central angle of 53°06'00" and a long chord bearing S26°33'09"W 295.45 feet); thence South
00°00'09" West 191.76 feet to a point along the right-of-way line of 7300 North cul-de-sac; thence
along said right-of-way the arc of a non-tangent 50.00 foot radius curve to the left a distance of
208.70 feet (curve having a central angle of 239°09'09" and a long chord bearing S00°19'55"W
86.97 feet); thence South 00°00'09" West 532.82 feet; thence along the arc of a 644.00 foot radius
curve to the right a distance of 121.04 feet (curve having a central angle of 10°46'08" and a long
chord bearing S05°23'13"W 120.86 feet); thence North 89°37'41" West 81.53 feet; thence along the
arc of a 564.00 foot radius curve to the left a distance of 120.72 feet (curve having a central angle of
12°15'51" and a long chord bearing N06°08'04"E 120.49 feet); thence North 00°00'09" East 552.55
feet; thence North 89°01'53" West 8.51 feet; thence North 00°00'09" East 258.86 feet; thence along
the arc of a 419.50 foot radius curve to the right a distance of 424.28 feet (curve having a central
angle of 57°56'55" and a long chord bearing N28°58'36"E 406.43 feet); thence North 57°57'04" East
30.34 feet; thence South 00°49'10" West 107.37 feet to the point of beginning.

The above described parcel contains 104,508 square feet in area or 2.40 acres.

(Note: All bearings in the above description are based on the NAD 27 bearing of
N 00°10'41" E along the section line from the West Quarter Corner of Section 22, Township 5 South,
Range 1 East to the Northwest Corner of said Section 22.)

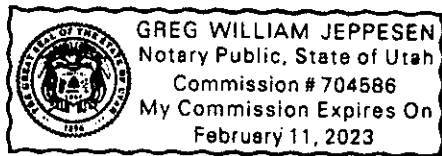
IN WITNESS WHEREOF, said AF PD, LLC has caused this instrument to be executed by its proper officers thereunto duly authorized, this 8th day of April, A.D. 20 19.

X [Signature]
Scott Smithson
Type or print name of grantor

STATE OF Utah)
COUNTY OF Utah) ss.

On the date first above written personally appeared before me, Scott Smithson, who, being by me duly sworn, says that he is the CEO of AF PD, LLC, a ~~corporation~~ LLC, and that the within and foregoing instrument was signed in behalf of said ~~corporation by authority of~~ AF PD, LLC and said ~~Scott Smithson~~ Scott Smithson acknowledged to me that said corporation executed the same.

WITNESS my hand and official stamp the date in this certificate first above written:
[Signature]
Notary Public



ATTACHMENT 5

WATER DELAY AGREEMENT FOR ANNEXATION

This Water Delay Agreement for Annexation ("**Agreement**") is entered into as of the ____ day of _____, 2019 ("**Effective Date**"), by and between AF PD ("**Owner**"), and AMERICAN FORK CITY, a municipal corporation and political subdivision of the State of Utah ("**City**").

RECITALS

WHEREAS Owner is the owner of Parcel Nos. 35:280:0002; 35:280:0500 & 35:280:0001 ("**Property**"), which are located outside of the City's current municipal boundaries; and

WHEREAS Owner has filed with the City a request to have the Property annexed into the City ("**Annexation Request**"); and

WHEREAS Section 17.1.400(C) of the City Code requires the conveyance of title to water rights concurrently with final action by the City Council on an annexation, except under pursuant to certain findings, terms, and conditions; and

WHEREAS City and Owner desire to enter into this Agreement as part of the findings, terms, and conditions required under Section 17.1.400(C) of the City Code.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants hereafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and City, incorporating the recitals set forth above, agree as follows:

AGREEMENT

1. Determination of City Council. The City Council, with the recommendation of the City Planning Commission, has determined that there is good and sufficient reason to delay the time of conveyance of water rights and/or water shares beyond the time of the City Council's final action on the Annexation Request. This determination was made in the City Council meeting held on April 9, 2019. The basis and reasoning for the City Council's determination are included within the recording, minutes, and other documentation from said City Council meeting.

2. Water Rights/Shares. The specific water rights and/or water shares that may be conveyed to the City, and that pursuant to the terms and conditions of this Agreement are hereby committed to the City, which commitment is irrevocable by Owner and may be released by the City only as provided in this Agreement ("**Committed Water**"), are identified in Exhibit A of this Agreement.

3. Conveyance of Committed Water. Prior to the City's approval of any development on the Property that will require the delivery of water, the City will determine the amount of water rights/shares required for dedication and conveyance to the City in order to meet the water requirements of the development. Owner will convey clear title to the required amount of the Committed Water to the City. If the amount of water necessary for the development is less than the

total amount of the Committed Water, the City will release the commitment (provided in paragraph 2 above) as to the unnecessary portion of the Committed Water. If the amount of water necessary for the development is more than the total amount of the Committed Water, Owner shall convey additional acceptable water rights/shares to the City to meet the dedication requirements. If the Committed Water consists of any water rights, the conveyance shall be by Warranty Deed and an accompanying Water Rights Deed Addendum. If the Committed Water consists of any water shares, the conveyance shall be by assignment, endorsement, and delivery of the appropriate share certificates. Owner acknowledges that under the Article XI, Section 6 of the Utah Constitution, City is prohibited from returning to Owner any portion of the Committed Water once it has been conveyed to the City.

4. Change Application. If any of the Committed Water consists of water rights, an express prerequisite for conveyance shall be the filing and approval of an Application for Permanent Change of Water (“**Change Application**”) with the Utah Division of Water Rights (“**Division**”) to convert the water rights to municipal use to be diverted from the City’s wells. Prior to the filing of the Change Application, the water rights shall be reviewed by the City’s water attorneys to ensure that the water rights are suitable for dedication. The City’s water attorneys shall also prepare and prosecute the Change Application, with the full assistance and support of Owner. The water rights will be deemed acceptable for conveyance to the City under this paragraph upon the issuance of an Order approving the Change Application that is acceptable to the City and upon expiration of all applicable deadlines for requests for reconsideration and/or appeal of the Order. Owner shall be responsible for all costs associated with the Change Application, including but not limited to the City’s attorney fees, application filing fees, and document fees.

5. Title to Committed Water. Owner shall convey unencumbered title to the Committed Water to the City. If the Committed Water consists of water rights, the City will obtain a water rights title insurance policy for the water rights. Owner shall be responsible for all costs associated with the water rights title insurance, including but not limited to the policy premium and recording fees. Owner shall be responsible for satisfying the requirements and conditions of the Title Commitment in order for the title company to issue a title insurance policy that is acceptable to the City. A water rights title insurance policy that is agreeable to the City is an express condition to the acceptability of the water rights for dedication and conveyance to the City. If the Committed Water consists of water shares, the City will obtain written confirmation of share ownership and current payment of all assessments from the respective water company/companies. Owner shall be responsible for all costs associated with obtaining the written confirmation. From the date of this Agreement until the Committed Water is conveyed to the City, Owner shall not sell or otherwise dispose of the Committed Water, nor shall Owner allow any liens or encumbrances upon the Committed Water that would prevent Owner from conveying unencumbered title to the Committed Water to the City.

6. Cessation of Owner’s Use. Upon conveyance of the Committed Water to the City, Owner shall immediately cease any and all use of the Committed Water.

7. Successors and Assigns. Pursuant to the terms of this Agreement, Owner shall have the right to assign its rights, duties, and obligations. The parties acknowledge that the rights, duties, and obligations of Owner will also apply to any successor or assign of Owner, and that the use of the term “Owner” in this contract includes Owner’s successors or assigns.

8. Ownership of Water Facilities. Nothing in this Agreement shall alter the ownership of any wells or other water facilities of Owner or City.

9. Entire Agreement. This Agreement represents the entire agreement between the parties and supersedes all prior agreements and understandings concerning the commitment and conveyance of water rights for the Property. This Agreement shall not be amended, modified, or terminated except by written instrument signed by all parties.

10. Construction and Enforcement. This Agreement shall be construed in accordance with and governed by the laws of the State of Utah. This Agreement may be specifically enforced.

11. Third Party Beneficiaries. This Agreement is not intended to and shall not create any rights in any person or entity not a party to this Agreement.

12. Attorney Fees. In any action arising out of this Agreement, the prevailing party shall be entitled to costs and reasonable attorney fees.

13. Further Assurances. After the execution of this Agreement, the parties agree to execute and deliver such documents, and to take or cause to be taken all such other actions, as either party may reasonably deem necessary or appropriate in order to carry out the intents and purposes of this Agreement.

14. Severability. If any term, covenant, or condition of this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and the remainder of the Agreement shall remain in full force and effect.

15. Authority of Parties. The persons signing this Agreement represent and warrant that they have full authority to do so and that their corporation or entity has undertaken and obtained whatever formalities and approvals are necessary to enter into this Agreement.

16. Counterparts. This Agreement may be executed in multiple counterparts, all of which taken together shall comprise one agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

AMERICAN FORK CITY

Bradley J. Frost
Bradley J. Frost, Mayor

Attest: *Terilyn Lurker*
Terilyn Lurker, City Recorder

STATE OF UTAH)
)
) :SS
COUNTY OF *Utah*)

On the *15* day of *April*, 20*19*, personally appeared before me Bradley J. Frost and Terilyn Lurker, known to me to be the Mayor and City Recorder, respectively, of American Fork City, who acknowledged to me that they executed the within Water Delay Agreement pursuant to the approval and authorization of the City Council at a regular meeting at which a quorum was in attendance.

Laurel Jarman Allman
NOTARY PUBLIC

[OWNER]

Dan Fielding



STATE OF UTAH)
)
) :SS
COUNTY OF *Utah*)

On the *4th* day of *April*, 20*19*, *Darwin Fielding* personally appeared before me and duly acknowledged that he/she executed this Water Delay Agreement for the purposes stated therein.

Greg William Jepesen
NOTARY PUBLIC

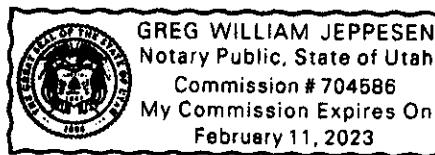


EXHIBIT A
Description of Water Rights and/or Water Shares Committed to the City

The above-mentioned parcel numbers have the following water rights associated with them:

Parcel number:

#35:280:0002, 35:280:0500, 35:280:0001

Water right: 55-1566

Water right: 55-12526

Water right: 55-3449

Water right: 55-3508

Water right: 55-3509

Water right: 55-3576

Water right: 55-3887

Water right: 55-12832

Water right: 55-4321

Water right: 55-6685

Total Acre Feet 296.08