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ENT 72772:2023 PG 1 of 15
ANDREA ALLEN
UTAH COUNTY RECORDER
2023 Nov 6 03:10 PM FEE 0.00 BY AC
RECORDED FOR AMERICAN FORK

ORDINANCE NO. 2023-0023

AN ORDINANCE BY THE AMERICAN FORK CITY COUNCIL APPROVING THE DEER PARK-THOMSON ANNEXATION, CONSISTING OF 4.35 ACRES AT APPROXIMATELY 50 WEST 1100 SOUTH, AND ESTABLISHING ZONING CLASSIFICATION FOR SAID PROPERTY.

WHEREAS, a Petition for Annexation, along with an accurate plat of said property, was filed on March 16, 2023, by Deer Park, LLC., requesting American Fork City annex property into the city; and

WHEREAS, the City Council accepted the petition on April 11, 2023, and the city recorder determined the annexation complies with all provisions of state law and certification was provided to the Utah County Commission pursuant to Utah Code Ann §10-2-405 on April 19, 2023; and

WHEREAS, a 30-day protest period was held and no written protests that would affect the proposed annexation were received; and

WHEREAS, a public hearing considering the proposed annexation was held by the City Council on August 22, 2023, pursuant to Utah Code Ann §10-2-407(7).

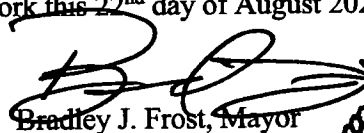
NOW, THEREFORE, BE IT ORDAINED BY THE AMERICAN FORK CITY COUNCIL, UTAH:

SECTION I. That the City Council hereby approves the Deer Park-Thomson Annexation consisting of 4.35 acres at approximately 50 West 1100 South into American Fork City, and the boundaries of American Fork City are hereby extended to include within the city limits the following described land located in Utah County as provided in Attachment "A".

SECTION II. That the territory annexed under Section 1 above is hereby classified into the Planned Industrial Zone and subject to the terms and conditions of the Deer Park-Thomson Annexation Agreement as provided in Attachment 'B'.

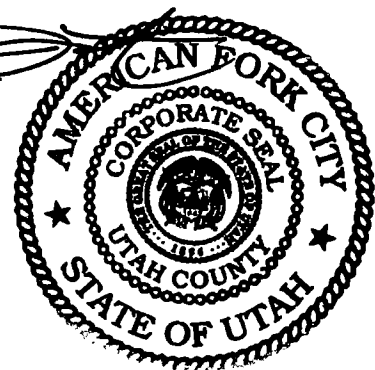
SECTION III. This ordinance shall take effect upon its passage and first publication.

PASSED by the City Council of American Fork this 22nd day of August 2023.


Bradley J. Frost, Mayor

ATTEST:


Terilyn Lurker, City Recorder



ATTACHMENT "A"

BOUNDARY DESCRIPTION

All of an entire tract of land described in that Quit Claim Deed recorded February 1, 2023 as Entry No. 6074:2023 in the Office of the Utah County Recorder. Said entire tract is located in the Southeast Quarter of Section 26, Township 5 South, Range 1 East, Salt Lake Base and Meridian described as follows:

Beginning at a point on a current American Fork City boundary described in that Pulley II Annexation Plat "A" recorded January 6, 2016 as Entry No. 1072:2016, having Map No. 14903 in the Office of said Utah County Recorder, which is 631.46 feet S. 89°00'19" E. along a monument line and 1970.35 feet North from a Reference Monument to the South Quarter Corner of said Section 26; said point also being 548.06 feet S. 89°48'53" E. along the Section line and 1899.49 feet North from said South Quarter Corner of Section 26; thence N. 64°51'27" W. 301.49 feet to the westerly boundary line of said entire tract; thence N. 00°22'32" E. (Deed = North) 627.37 feet along said westerly boundary line to the Quarter Section line; thence S. 89°56'25" E. (Deed = East) 275.00 feet along said Quarter Section line to the northwesterly corner of said Pulley II Annexation Plat "A"; thence S. 00°28'09" W. 755.19 feet along the westerly line of said Pulley II Annexation Plat "A" to the **Point of Beginning**.

The above-described parcel of land contains 189,710 sq ft in area or 4.355 acres, more or less.

**ANNEXATION AGREEMENT
(Deer Park -Thomson Annexation)**

This Annexation Agreement ("Agreement"), made and entered into this 23 day of August, 2023, by and between City of American Fork, Utah, a Utah Municipal Corporation (hereafter referred to as "City") and Deer Park LLC, a Utah limited partnership (hereafter referred to as "Applicant"), is based on the following:

RECITALS

WHEREAS, Applicant is the owner of certain parcels of privately-owned real property constituting the entirety of the Deer Park Thomson Annexation Area, which annexation is located within the unincorporated territory of Utah County, contiguous to the corporate boundary of the City, and is within the City's proposed expansion area;

WHEREAS, a "Petition for Annexation" (Attachment 1 to this Agreement), together with a plat (Attachment 2 to this Agreement) have been prepared by the Applicant and show the real property proposed for annexation (hereafter referred to as "Annexation Area");

WHEREAS, in accordance with the provisions of UCA 10-2-402, the American Fork City Council has heretofore adopted Resolution No. 2023-04-18R, accepting the Petition for Annexation;

WHEREAS, 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) enact an ordinance of annexation relating thereto, subject to the prior execution of this Agreement, 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.

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 and Annexation Contingency: 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. This Agreement will be effective if and only if (a) the City approves an ordinance annexing the Annexation Area into the City; and (b) all procedural requirements associated with an annexation under the law of the State of Utah have been complied with, including the issuance of a certificate of annexation by the Lieutenant Governor.

SECTION 2 - Annexation a benefit to Applicant: Applicant and City acknowledge that the City has discretion to approve or deny the annexation and that the terms and conditions of annexation, as set forth herein, are reasonable and entered into freely and voluntarily. Further, Applicant hereby acknowledges and agrees 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 herein and under the terms of the City's Development Code and Impact Fee Ordinance does not constitute a constitutional taking, as that term is defined pursuant to the terms of UCA 10-9a-103, 1953, as amended.

SECTION 3 - Authority of Applicant: Applicant hereby affirms that it is the current owner of the total private land area within the Annexation Area and has complete authority to enter into this Agreement and bind the property hereto.

SECTION 4 - Compatibility with Land Use Plan and Initial Zone Classification: The City's General Plan classifies the proposed uses for the Annexation Area as Design Industrial. Therefore, the zone classification attached to the Annexation Area shall be Planned Industrial (PI-1). A map illustrating the zone classification for the Annexation Area has been prepared by the City and is made part of this agreement (Attachment 3 to this Agreement).

SECTION 5 - Right-of-way to be Conveyed: The City's General Plan provides for the development of 1100 South as a Minor Collector Road ("Minor Collector"). As a condition of annexation, Applicant hereby agrees to dedicate and convey to the City the right-of-way necessary for the construction of the Minor Collector in accordance with American Fork City Code in the location shown on the street dedication map prepared by the Applicant and approved by the City (Attachment 4 to this Agreement). Applicant shall have no obligation to construct any improvements to any City right of way ("ROW") within the Annexation Area unless and until any improvement or development occurs within the Annexation Area. Any construction will be subject to the provisions as outlined in the American Fork City Development Code Section 17.5.126 (Minimum Level of Improvements Required). Only that certain portion of Applicant's property fronting the 1100 South roadway will be required to be dedicated as a ROW, pursuant to the 1100 South roadway requirements, which shall include shared use path as depicted on Attachment 4 to this Agreement.

SECTION 6 - Conveyance of Water Right: American Fork City Code 17.1.400, Conveyance of Water, requires conveyance of water shares/rights at the time of annexation unless the City determines that there is good and sufficient reason to delay the time of the conveyance. City and Applicant acknowledge and agree that the parties are unable to determine the quantity of shares/rights required for the Annexation Area at the present time and therefore, the City authorizes a delay in the time of conveyance of water shares/rights until the time of development. Any subsequent conveyance of water shares/rights shall be no more than what is required for the development of the Annexation Area as provided for under applicable City standards at the time of development. A Water Delay Agreement will be entered into by the parties concurrently with this Agreement and the terms of such Water Delay Agreement are incorporated into this Agreement as Attachment 5.

SECTION 7 - Open Ditches to be Piped: Applicant acknowledges that it is Applicant's 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 within the Annexation Area.

SECTION 8 - Property Taxes and Rollback Taxes to be Paid on any Right-of-Way Dedicated to City: Applicant agrees 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 ROW which are to be dedicated to City in

connection with this Agreement. Proof of payment of these taxes shall be required prior to recording of this Agreement.

SECTION 9 - Impact Fees: No impact fees are required to be paid at this time as a condition of annexation. However, nothing in this Agreement constitutes a waiver of any obligation that Applicant 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. Applicant acknowledges 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: In the event either party seeks to enforce the terms hereof in a lawsuit or other proceeding, the prevailing party shall be entitled to an award of the costs incurred, including reasonable attorney fees.

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 Applicant, to Tyler Horan, 520 S 850 E, Suite A4, Lehi, UT 84043

SECTION 12 - Entire Agreement: This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof and may be changed only in writing signed by all parties.

SECTION 13 Severability: The provisions of this Agreement shall be deemed to be severable, and if any provision of this Agreement is determined to be invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect or limit the validity or enforceability of the remaining provisions hereof.

SECTION 14 - Binding Effect: This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, representatives, officers, agents, employees, members, successors and assigns.

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

Michael B. Horan

 Michael B. Horan

AMERICAN FORK CITY

Bradley J. Frbst

 Bradley J. Frbst, Mayor

ATTEST:
Dee Lynn

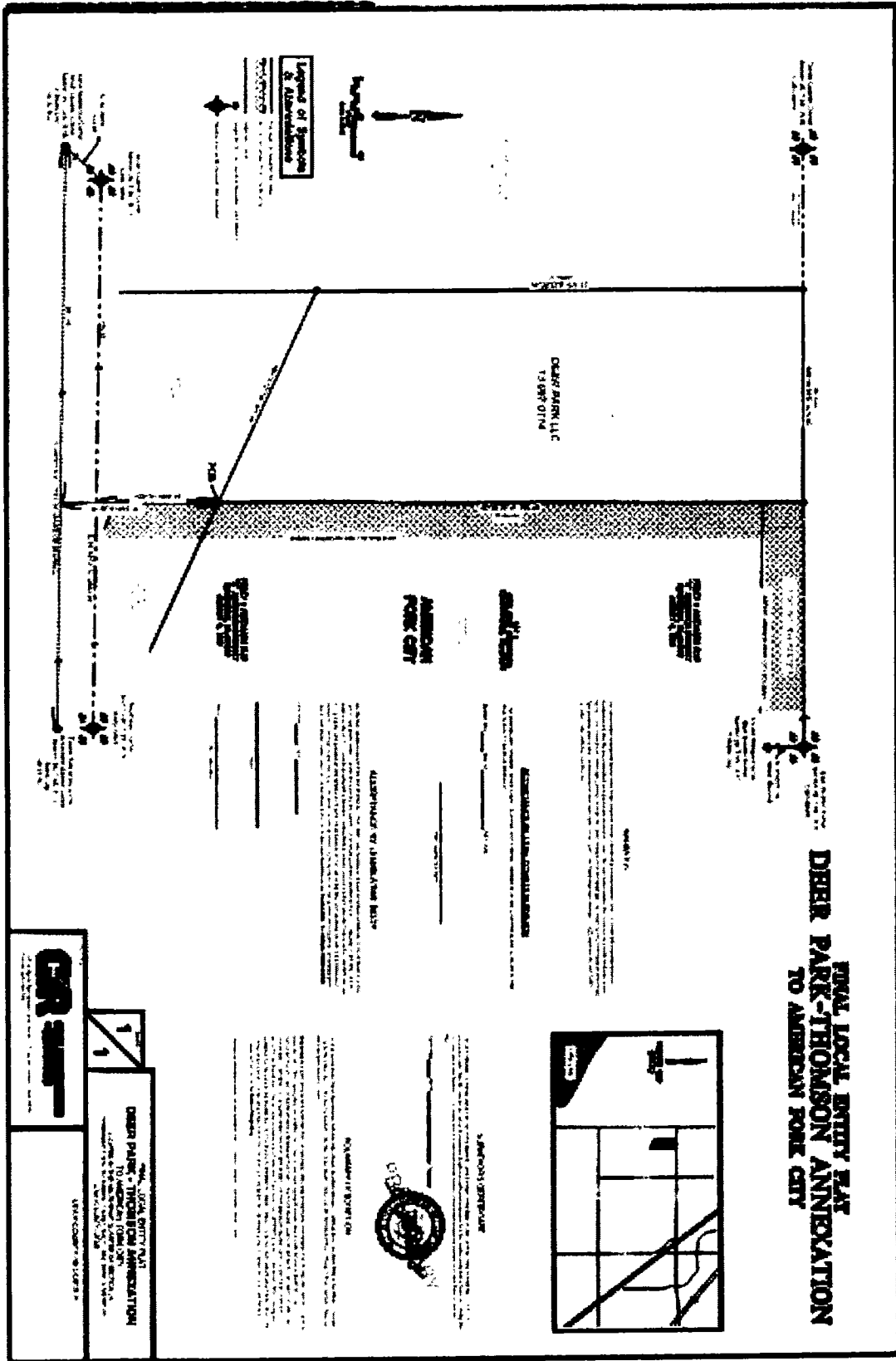
 City Recorder

BOUNDARY DESCRIPTION

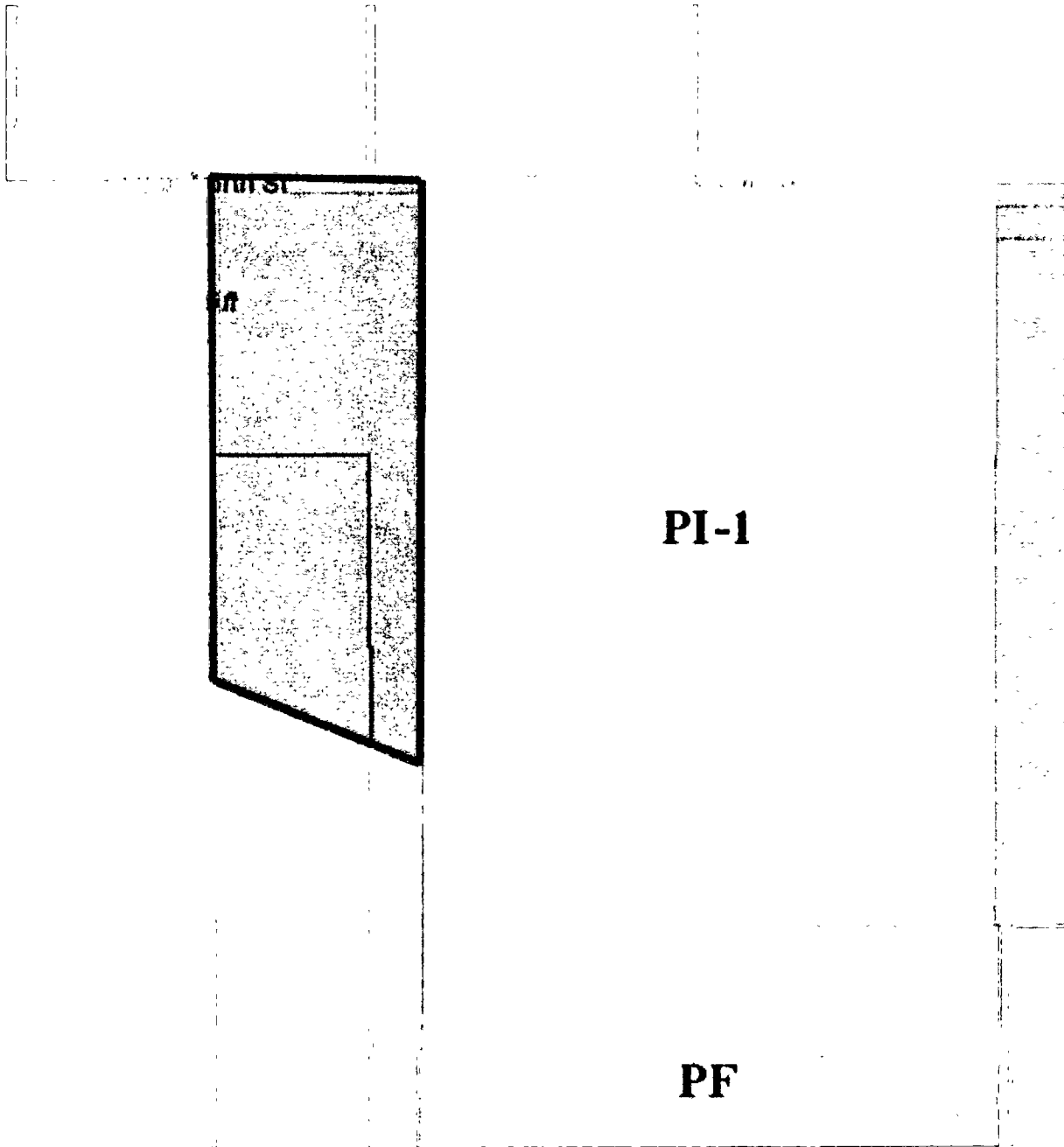
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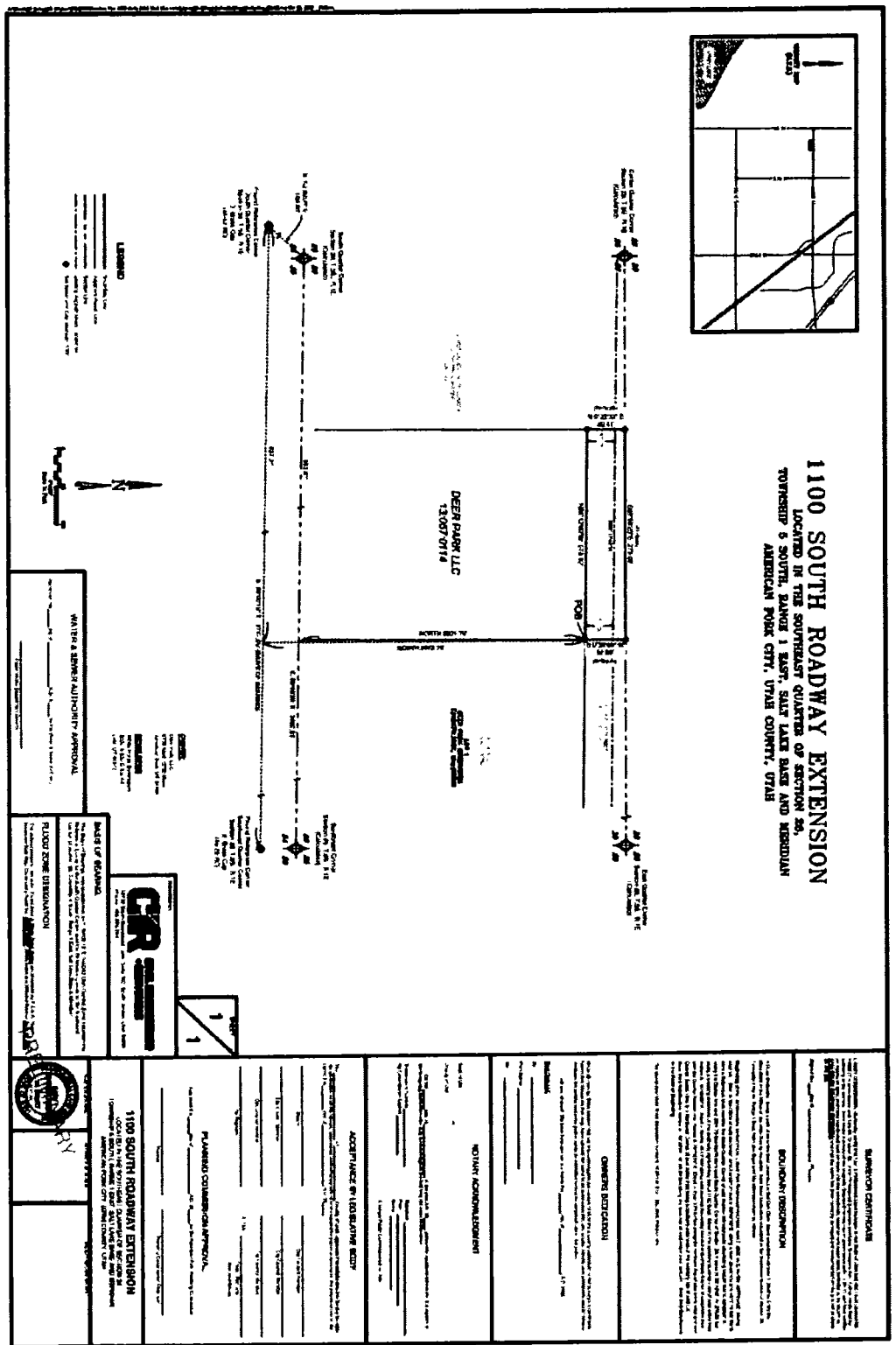


Attachment 3



Note: Area shown in grey is the proposed area of properties considered for annexation. These properties are to be designated as Design Industrial on the Land Use Map, and as PI-1 on the Zoning Map.

Attachment 4



Attachment 5

WATER DELAY AGREEMENT FOR ANNEXATION

This Water Delay Agreement for Annexation (“**Agreement**”) is entered into as of the 31st day of July, 2023 (“**Effective Date**”), by and between DEER PARK, LLC (“**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. 13:067:0114 (“**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 August 22, 2023. 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

[Signature]
Bradley J. Frost, Mayor

Attest: [Signature]
Terilyn Lurker, City Recorder

STATE OF UTAH)
) :SS
COUNTY OF UTAH)

On the 29 day of AUGUST, 2023, 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.



[Signature]
NOTARY PUBLIC

[OWNER]

[Signature]

STATE OF UTAH)
) :SS
COUNTY OF Utah)

On the 31st day of July, 2023, Michael B Itaren personally appeared before me and duly acknowledged that he/she executed this Water Delay Agreement for the purposes stated therein.

[Signature]
NOTARY PUBLIC

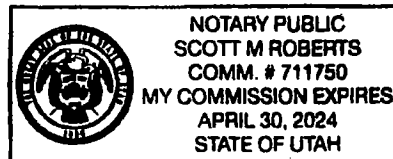


EXHIBIT A

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

3.5 acre feet from Utah Water Right No. 55-2374

Attachment 1



Notice of Intent to File an Annexation Petition

Pursuant to Utah Code Ann. §10-2-403(2), notice is hereby given that the person or persons identified below intend to file an annexation petition with American Fork City. The area proposed for annexation is commonly described as the Thompson Annexation and consists of 4.25 acres of approximately 9 W 1100 S AF. Further, an accurate map of the area that is proposed to be annexed is attached to this notice.

Person or persons intending to file annexation petition

Dear Park - Thompson
TH

Contact Person:

Name: Tyler Huran

Address: 520 S. 850 E Suite A7 Lehi, UT 84043

Phone Number: _____

Email: tyler@whitehorse-developers.com

Name: _____

Address: _____

Phone Number: _____

Email: _____

Name: _____

Address: _____

Phone Number: _____

Email: _____

- This notice of intent must also be sent to affected entities.
- The petitioner must submit a written request to the county to mail the required notice and pay the county the estimated cost of mailing the required notice. Please see attached letter from Utah County.

Attachment 2