

RESOLUTION 05-03-2014

A RESOLUTION OF SANTAQUIN CITY APPROVING A DEVELOPMENT AGREEMENT BETWEEN SANTAQUIN CITY AND ROBERT OBERG


WHEREAS, Mr. Robert Oberg, who owns and controls property within Santaquin City desires to rezone his property in order to facilitate development of the same; and

WHEREAS, Mr. Robert Oberg and Santaquin City desire to enter into an agreement to establish the terms and phasing of development on Mr. Oberg's property should a rezone of the property take place.

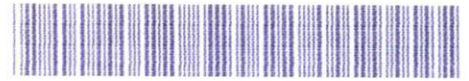
NOW THEREFORE, LET IT BE RESOLVED, that the governing body of Santaquin City approves the Development Agreement between Santaquin City and Robert Oberg as attached to this resolution and by this reference made part hereof.

Approved the 21st day of May, 2014.


Kirk Hunsaker, Mayor


Susan B. Farnsworth, City Recorder





**DEVELOPMENT AGREEMENT FOR
SANTAQUIN CITY – ROBERT OBERG**

THIS DEVELOPMENT AGREEMENT (the “Agreement”) is entered into as of the 22nd day of May, 2014, by and between Robert Oberg (Owner), and Santaquin City, a fifth class city of the State of Utah (hereinafter referred to as the “City”), (together, the “Parties”).

RECITALS

- A. WHEREAS, the Owner owns approximately 2.33 acres of property, (the “Property”), which is known by Utah County Parcel Serial Numbers 300910040 and 300910043 and more particularly designated as the Property in Exhibit A, attached hereto.
- B. WHEREAS, the Property was annexed in 2009 with the Northeast Annexation and was anticipated to be developed in conjunction with surrounding properties.
- C. WHEREAS, the Owner desires to now rezone the Property and the Parties intend to enter into this agreement to establish parameters for further development of the Property in the event that Owners and/or any successors or assigns undertake development of such.

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants set forth herein, the sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

SECTION I. DEFINITIONS

Unless the context requires a different meaning, and term or phrase used in this Agreement that has its first letter capitalized shall have that meaning established in these definitions if therein; or if not contained here; as established by the Santaquin Zoning Ordinance in effect on the date of a complete application. Certain such terms and phrases are referenced below; others are defined where they appear in the text of this agreement.

- 1.1 “**Applicant**” means the person or entity that applies for development of a Project.
- 1.2 “**Buildout**” means the completion of all development of the Property.
- 1.3 “**Design Guidelines**” means Santaquin City Standard Specifications and Drawings, adopted by Santaquin City on June 20, 2012, pursuant to Resolution 05-01-2012, together with any subsequent amendments thereto.
- 1.4 “**Owner**” means the owner(s) of the Property, or any part thereof, as indicated on the tax records of Utah County.
- 1.5 “**Project**” means any portion of the Property proposed for development by an Owner and/or any successors or assigns thereof beyond the specified Temporary Use.

SECTION II. GENERAL RIGHTS AND RESPONSIBILITIES

2.1 General Rights and Responsibilities of Owner

2.1.1 **Conditions of Approval and Impact Fees.** With respect to the development of the Property, Owner accepts and agrees to comply with the impact, connection and building fees of

the City currently in effect, or as amended, the City agreeing and representing that any such fee schedule will be applied uniformly within the City or service area of the City, as applicable. Owner acknowledges that the development of any Project will require infrastructure supported by impact fees and finds the fees currently imposed to be a reasonable monetary expression of exactions that would otherwise be required at this time. Owner agrees not to challenge, contest or bring a judicial action seeking to avoid payment of or to seek reimbursement for such fees, so long as such fees are applied uniformly within the City or service area.

2.1.2 Construction Mitigation. Owner shall provide and adhere to the usual construction impact mitigation measures required by the City as outlined within the City Design Guidelines. These shall include but are not limited to the following:

2.1.2.1 Limits of disturbance, vegetation protection and the re-vegetation plan for all construction, including construction of public improvements;

2.1.2.2 Protection of existing infrastructure improvements from abuse or damage while new infrastructure improvements are being constructed; and

2.1.2.3 Construction traffic routing plan to minimize traffic impacts on Santaquin City and residential areas as approved by the City.

2.1.3 Subsequent Applications under Future Development Code. Without waiving any rights granted by the Agreement, Owner may, from time-to-time or at any time, choose to submit application for a Project on some or all of the Property for development in accordance with the version of the City's Development Code in place at the time of the application.

2.1.4 Vested Rights in Concept Plan. Owner may apply for development of the Property so long as the proposed development complies with all City land use ordinances in effect on the date that the complete application was submitted to the City. Land use regulations which are applicable to the Project may be modified when required by federal and/or state laws and regulations promulgated to avoid any imminent and substantial risk or threat of injury to the public health and safety. All development within the Property shall be subject to and comply with any future amendments or changes to the International Building Code, American Association of State Highway Transportation Officials (AASHTO) standards, codes and/or regulations that may now or then be applicable to the Project or any phase thereof.

2.1.5 Prior Agreements. This Agreement, with all its parts, supersedes any and all prior agreements between the Parties, which may have been or currently are in effect upon the Property. The Parties agree to relinquish any claim of rights, obligations, duties or responsibilities associated with any previous agreements between the Parties that were attached to the Property. Any parts of this agreement, although having the same or similar affects as previous agreements, are enforceable under this agreement.

2.2 Rights and Responsibilities of the City.

2.2.1 Reserved Legislative Powers. This agreement shall not limit the future exercise of the police powers of the City to enact ordinances, standards, or rules regulating development. The City acknowledges, however, that any exercise of its legislative or police powers which alters or modifies this Agreement to Owner's detriment may render the City liable to such remedies as may be available to Owner under such circumstances.

2.2.2 Compliance with City Requirements and Standards. Owner expressly acknowledges that nothing in this Agreement shall be deemed to relieve it of its obligations to comply with all applicable requirements of the City necessary for approval and recordation of subdivisions plats and site plans for any Project, in effect at the time of development approval, including the payment of unpaid fees, the approval of subdivision plats and site plans, the approval of building permits and construction permits, and compliance with all applicable ordinances, resolutions, policies and procedures of the City. Owner specifically acknowledges that the City may enact ordinances(s) regulating land use and development in a flood plain or potential geologic hazard to protect life or prevent the substantial loss of or damage to real property, and agree to be bound by any such ordinances whether adopted prior to or subsequent to the execution of this agreement.

2.2.3 Power of Eminent Domain. The City agrees that in the event that an Applicant needs to obtain easements or rights of for the purpose of constructing infrastructure improvements for a Project and is otherwise unable to negotiate a reasonably acceptable contract for such easements or rights of way, the City, upon the request of the Applicant, may *consider* exercise of its power of eminent domain to obtain such easements or rights of way, and all costs of which shall be borne by the Applicant so requesting.

2.3 Recording. The City shall cause this Agreement, together with all exhibits and attachments, to be recorded with the Utah County Recorder.

SECTION III. SPECIFIC RIGHTS AND RESPONSIBILITIES

3.1 Water

3.1.1 Obligations of the Owner.

3.1.1.1 Water System. Development of any Project shall include the design, build and dedication to the City an adequate water delivery system according to City Design Guidelines and in accordance with the City's adopted Culinary and/or Irrigation Master Plans and Impact Fee Facilities Plans, which shall also include all distribution lines, for the Project, including all fire flow needs. All facilities necessary to provide a water system installed by Applicant within the Project, upon acceptance by the City, shall be owned, operated and maintained by the City. The obligations of Applicant or its successors or assigns shall include the construction of water distribution lines outside the Project and outside the Property as necessary to connect to the existing Santaquin City water systems. Applicant shall be similarly responsible for such

infrastructure at such time as any portion of the Property is developed beyond the Temporary Use.

3.1.1.2 Satisfaction of Water Rights Requirement. Owner hereby asserts that it is familiar with Santaquin City Code §8-1-10 A.2 and hereby agrees that prior to either approval of a preliminary plat for, or issuance of a building permit on, any parcel within a Project on the Property, the Owner of the subject parcel shall dedicate wet water rights to the City in accordance with, the provisions of the City Code. It is the City's intent to not accept money in lieu of the required water right dedication. The City, in its sole discretion, shall determine whether the requirements of this section shall be satisfied by the dedication of water rights or the payment of money in lieu of said water rights. The City shall not be required to approve any plat, or issue any building permit, until such requirements are fully satisfied.

3.1.1.3 Payment of Water Impact Fees. All preliminary and final subdivision plats and all site plan approvals presented after the effective date of this Agreement are subject to the payment of Culinary and Irrigation impact fees then in effect and generally applicable to other development within the City, payable at the time of building permit issuance.

3.1.2 City Obligations.

3.1.2.1 Delivery of Services. Upon the dedication and acceptance by the City of the water delivery system, satisfaction of the water right requirements (as outlined in section 3.1.1.2) and payment of impact fees, the City shall provide all use areas served by the infrastructure within a Project with water service at a level generally provided to other areas of the City.

3.1.2.2 Reimbursement for Impact Fee Eligible Costs. The City will reimburse Applicants for costs associated with upsizing of lines, storage or water delivery facilities which are constructed in accordance with the City's adopted Master Plans and Impact Fee Facilities Plans. Reimbursements shall be provided on a quarterly basis and depend on the availability of funds derived from any Project or development utilizing the eligible facilities. Actual terms and amounts of reimbursement will be established under separate negotiated agreement between the Parties.

3.2 Sanitary Sewer Service and Facilities

3.2.1 Owner's Obligations. In recognition and consideration of the City's willingness to provide the sanitary sewer service necessary to meet the demands of development at Buildout, Owner voluntarily agrees as follows:

3.2.1.1 Construction of Sewer Infrastructure. Each Applicant for the development of a Project shall install, at its sole expense, all sewer lines and other infrastructure improvements which the City deems necessary to provide such disposal and treatment service for the Project through the Santaquin Sewer System, including both on-site and off-site improvements in

accordance with the City's Waste Water Collection and Treatment Master Plans and associated impact fee facilities plans.

3.2.1.2 Payment of Sewer Impact Fees. All preliminary and final subdivision plats and all site plan approvals presented after the effective date of this Agreement are subject to the payment of sewer impact fees and sewer connection fees then in effect and generally applicable to other development within the City, payable at the time of building permit issuance.

3.2.2 City Obligations. Upon construction to City Design Guidelines of all required sewer-related infrastructure improvements, the payment of all required impact fees and other fees described herein, and dedication and acceptance of all lines and necessary sewer-related improvements and easements, the City shall provide to the Project, sanitary sewer service at a level generally provided to other areas of the City.

3.3 Transportation and Traffic Mitigation

3.3.1 Applicant's Obligations. Each Applicant for the development of a Project shall provide the following transportation and traffic mitigation measures which are intended to reduce potential traffic impacts resulting from the development anticipated by the Project.

3.3.1.1 Plans and Permits. The Applicant shall obtain all necessary approvals and permits from the City, and from the Utah Department of Transportation (hereinafter "UDOT") if applicable.

3.3.1.2 Roads Within a Project. In the event that the City shall approve a final plat or site plan for development of a Project, the Applicant shall construct all roads within the project that are designated on final plans for the development, including internal circulation routes. All such construction shall be completed in accordance with the requirements of all such approvals and permits and Design Guidelines. Prior to the construction of any of the improvements described herein, the Applicant shall obtain the City's written approval of all plans, drawings and specifications with respect to the alignment and construction of such road improvements. Upon completion of the construction of such improvements, the same shall be dedicated to the City. Applicant shall pay all costs of construction of such improvements.

3.3.1.3 Sidewalk, Curb and Gutter. Each Applicant for development of a Project shall construct, at its sole expense, internal curbing and pedestrian pathways in all portions of the Project as may be required by the City in connection with the approval of any final subdivision or development plat, or building permit.

3.3.1.4 Master Roads and Trails. In the event that any part of a Project includes property that is designated as an Arterial or collector road on the City's Master Roads or Circulation plan, or a trail on the Santaquin City Open Space, Parks and Trails Master Plan, Applicant shall incorporate the said roads and trails as described in said plans into the Project and shall design and construct all such facilities at its sole expense, in accordance with the Design Guidelines, and upon completion shall dedicate said facilities to the City.

3.3.2 City Obligations.

3.3.2.1 **Dedications.** The City shall accept the dedication of all streets in each Project so long as such streets are constructed to the City Design Guidelines, are dedicated free of all liens and encumbrances, including tax obligations, and are covered by all required bonds and warranties.

3.4 Utilities.

3.4.1 **Applicant's Obligations.** Each Applicant for development of a Project shall be responsible for the provision of all utility infrastructure within the Project, including (but not necessarily limited to) the following:

3.4.1.1 As provided in §3.1 hereof, culinary and irrigation water systems, including all appurtenances;

3.4.1.2 As provided in §3.2 hereof, sewer and sanitary systems

3.4.1.3 Runoff and storm drainage;

3.4.1.4 Natural gas;

3.4.1.5 Electricity; and

3.4.1.6 Telecommunications

3.4.2 **Easements, Rights-of-Way, Etc.** Applicant shall grant, provide, and/or dedicate all such easements, rights of way, rights of entry, or other servitudes as may be necessary for the installation and maintenance of the infrastructure contemplated herein.

3.4.3 **City's Obligations.** The City agrees to allow, upon proper application and permit, work on property owned by the City as may be necessary to connect, link, construct, or accommodate utility improvements in the Project.

3.4.4 **Underground Utilities.** All utility lines, conduits, pipes, maintenance or service stations, pump houses, and the like, that are installed or replaced in connection with the development of a Project, whether within or outside the Property, shall be installed underground, to the extent that such installation (i) is reasonably practicable, (ii) lies within the parameters of City specifications, (iii) complies with applicable federal, state, and local law, regulation, and ordinance, and (iv) accords with industry standards and practices. All such utilities necessary for appropriate service to the Project, whether within or outside the Project, shall be installed or replaced at the sole cost of the Applicant.

3.5 Parks, Trails, and Open space.

3.5.1 Parks and Open Space. Any Project shall provide the parks, trails and open spaces identified in the City's Parks, Trails, and Open Spaces Master Plan and/or Recreation Impact Fee Facility Plan as may be amended from time to time and in effect at the time of Project submittals.

3.5.2 Reimbursement for Impact Fee Eligible Costs. The City will reimburse Applicants for costs associated with parks and open space facilities which are constructed in accordance with the City's adopted Master Plans and Impact Fee Facilities Plans. Actual terms and amounts of reimbursement will be established under separate negotiated agreement between the Parties.

3.6 Flood Mitigation.

3.6.1 Existing Facilities. Existing flood mitigation facilities are located adjacent to the western boundary of the Property. Owner agrees to provide sufficient access for Santaquin City to improve and maintain such facilities.

3.6.2 Runoff Impacts. Owners acknowledge that the Property is susceptible to runoff water impacts, due to natural topography and the constraints of I-15. Any development of the property will install appropriate means to prevent runoff water damage from the flood mitigation facilities, or otherwise, to development improvements.

SECTION IV. ZONING

4.1 Current Zoning. The Property is currently zoned R-Ag and any development must comply with the standards of such zones. The Parties agree to take reasonable measures to rezone the Property as I-1 with the use and development of such area being in accordance the standards of such zone.

4.2 Petitioner's Right to Apply for Zoning Change. The Owner, or Applicant for future development, may request a zone change in accordance with City policies and procedures. The City is not obligated to approve any rezoning request, but may, in accordance with State and local laws, change the zoning of the Property as it deems appropriate.

SECTION V. GENERAL PROVISIONS

5.1 Covenants Running With the Land. The provisions of this Agreement shall constitute real covenants, contract and property rights and equitable servitudes, which shall run with all of the land subject to this Agreement. The burdens and benefits hereof shall bind and inure to the benefit of each of the Parties hereto and all successors in interest to the Parties hereto. All successors in interest shall succeed only to those benefits and burdens of this Agreement which pertain to the portion of the Property to which the successor holds title, or which would apply to the Owner through whom the interest was acquired. Such titleholder is not a third party beneficiary of the remainder of this Agreement or to zoning classifications and benefits relating to other portions of the Property.

5.2 Transfer of Property. Owner shall have the right to assign or transfer all or any portion of his/her rights and obligations under this Agreement to any party acquiring an interest or estate

in the Property or any portion thereof. In the event of an assignment, the transferee shall succeed to all of Owner's rights under this agreement.

5.3. No Agency, Joint Venture or Partnership. It is specifically understood and agreed to by and among the Parties that: (i) each Project is a private development; (ii) City and Petitioner hereby renounce the existence of any form of agency relationship, joint venture or partnership between City and Owner; and (iii) nothing contained herein shall be construed as creating any such relationship between City and Owner.

5.4 Consent. In the event this Agreement provides for consent from the City or the Owner, such consent shall be deemed to be given thirty (30) days after consent is requested in writing in the event no response to the request is received within that period. All requests for consent shall be made in writing.

5.5 Legal Challenges. In the event that any person challenges this Agreement or the development contemplated herein, upon request by Owner, or with notice to Owner and Owner's consent or acquiescence, the City may undertake to defend this Agreement or the development. In such a case, Owner agrees to accept responsibility for all legal fees, including attorneys' fees, expenses, and/or court costs incurred by the City upon presentation to the Owner of an itemized list of costs, expenses, and fees.

SECTION VI. MISCELLANEOUS

6.1 Incorporation of Recitals, Introductory Paragraphs, and Exhibits. The Recitals contained in this Agreement, the introductory paragraph preceding the Recitals, and all Exhibits referred to or attached hereto are hereby incorporated into this Agreement as if fully set forth herein.

6.2 Other Miscellaneous Terms. The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive.

6.3 Severability. If any provision of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this agreement shall continue in full force and effect.

6.4 Construction. This Agreement has been reviewed and revised by legal counsel for Owner, and by legal counsel of the City, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

6.5 Further Assurance, Documents, and Acts. Each of the Parties agrees to cooperate in good faith with the others, and to execute and deliver such further documents, and to take all further acts reasonably necessary in order to carry out the intent and purpose of this Agreement

and the actions contemplated hereby. All provisions and requirements of this Agreement shall be carried out by each party as allowed by law.

6.6 Assignment. Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned by the Owner to any other party, individual or entity without assigning the obligations as well as the rights under this Agreement. The rights of the City under this Agreement shall not be assigned.

6.7 Governing Law, and dispute Resolution, and Attorneys' Fees. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

6.7.1 Mediation. Any and all disputes arising out of or related to this Agreement or the Parties' performance hereunder shall be submitted to mediation before a mutually acceptable mediator prior to initiation of litigation or any other binding or adjudicative dispute resolution process. The parties shall: (i) mediate in good faith; (ii) exchange all documents which either believes to be relevant and material to the issue(s) in dispute; (iii) exchange written position papers stating their position on the dispute(s) and outlining the subject matter and substance of the anticipated testimony of persons having personal knowledge of the facts underlying the dispute(s), and; (iv) engage and cooperate in such further discovery as the parties agree or mediator suggests may be necessary to facilitate effective mediation. Mediator, venue, and related costs shall be shared equally by the Parties. Venue of the mediation shall be Utah County, State of Utah. In the event the Parties are unable to agree upon a mediator, the mediator shall be appointed by a court of competent jurisdiction. This provision shall be specifically enforceable according to its terms, including but not limited to an action to compel mediation. The prevailing party in any action to enforce, in whole or in part, this mediation clause or in any subsequent arbitration or mediation shall be entitled to reimbursement of attorneys' fees and costs incurred in said action.

6.7.2 Default Litigation. If any Party hereto is required to engage the services of legal counsel by reason of the default of another Party, the nondefaulting Party shall be entitled to receive its costs and reasonable attorneys' fees, both before and after judgment and whether or not suit be filed or if the provisions of this Agreement are enforced through arbitration. Said costs and attorneys' fees shall include, without limitation, costs and attorneys' fees incurred in any appeal and in any proceedings under any present or future federal bankruptcy act or state receivership act.

6.8 Notices. Any notice or communication required hereunder between the Parties must be in writing and may be given either personally or by registered or certified mail, return receipt requested, by facsimile, or email. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of: (i) actual receipt by an of the addressees designated below as the party to whom notices are to be sent; or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice is given when delivered to the party to whom it is addressed. If given by facsimile or email to the address and number for

such party set forth below (provided, however, that the notice is not effective unless a duplicate copy of the facsimile or email notice is promptly given by one of the other methods permitted under this paragraph), the notice is deemed to have been given upon receipt by the other Party. Any party hereto may at any time, by giving ten (10) days written notice to other Parties hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at the address set forth below:

If to City to:

Santaquin City Recorder
 275 West Main Street
 Santaquin City, UT 84655
 Facsimile: (801) 754-3825

Copy to:

Brett B. Rich, Esq.
 Nielsen & Senior
 15 W. South Temple, Suite 1700
 Salt Lake City, UT 84101
 bbr@ns-law.com

If to Owner to:

Robert Oberg

6.9 Counterparts and Exhibits. This Agreement is executed in two (2) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of twelve (12) pages, including notary acknowledgement forms, and one exhibit, which constitute the entire understanding and agreement of the parties to this Agreement. The following exhibit is attached to this Agreement and incorporated herein for all purposes:

Exhibit A Map of Property

6.10 Duration. This agreement shall continue in force and effect until all obligations hereunder have been satisfied, but shall not exceed ten (10) years from the execution of this Agreement. In the event that less than all obligations hereunder have been satisfied this agreement shall expire and any further development of the Property shall proceed in accordance with all applicable laws and ordinances in effect at the time of a completed application for a project, including the requirements for dedication of water rights.



Map Depicting the Property

The Property includes two parcels known by Utah County Serial Numbers 300910040 and 300910043