

# Santaquin City Resolution 02-03-2015

## A RESOLUTION APPROVING AN AGREEMENT WITH THE MYRON VIVAN OLSON AND ETHEL VIRGINIA OLSON FAMILY TRUST REGARDING IRRIGATION WATER DELIVERY

**WHEREAS**, the City of Santaquin, a fifth class city in the State of Utah, is in process of designing and constructing the new road of 500 East which will extend from Main Street (US-6) to 100 North Street; and

**WHEREAS**, in order to construct 500 East, an existing irrigation ditch will need to be crossed (*at an estimated cost of \$25,000 for the installation of an irrigation water syphon*) –OR- the irrigation ditch would need to be eliminated with an alternative delivery of irrigation water provided to the Olson Family; and

**WHEREAS**, it is in the best interest of the city to forgo the cost of installing an irrigation syphon; and

**WHEREAS**, it is in the best interest of the Myron Olson Family to have read access to pressurized irrigation water from the Santaquin City Pressurized Irrigation System which would allow for the watering of their property at a time and manner pleasing to the Olson Family; and

**NOW, THEREFORE, BE IT RESOLVED**, that the Santaquin City Council approves an agreement with the MYRON VIVAN OLSON and ETHEL VIRGINIA OLSON FAMILY TRUST for the delivery of irrigation water as outlined in the attached agreement.

Approved and adopted by the Santaquin City Council this <sup>4</sup>18<sup>th</sup> day of ~~February~~ <sup>March</sup>, 2015.



  
Kirk F. Hunsaker, Mayor

Attest:   
Susan B Farnsworth, City Recorder

**AGREEMENT**

THIS AGREEMENT is made and entered into on this 23<sup>rd</sup> day of March, 2015, by and between the City of Santaquin, Utah, a municipality and political subdivision of the State of Utah (hereinafter "City"); the Myron Vivan Olson and Ethel Virginia Olson Family Trust, a trust established on July 18, 2005, (hereinafter "Olson Family"); and Daniel M. Olson, hereinafter ("Dan Olson") an individual residing at 630 East 450 South, Santaquin, UT 84655.

**RECITALS:**

**WHEREAS**, the City is in the process of designing and constructing a new road at 500 East which will extend from Main Street (US-6) to 100 North Street, (hereinafter "500 East"); and

**WHEREAS**, the Olson Family owns certain real property in the vicinity of the proposed 500 East Street (hereinafter "Olson Property") and irrigates said real property with water that it receives pursuant to ownership of six (6) shares of stock in Summit Creek Irrigation Company (hereinafter "Olson Family Shares"), which water is delivered through an irrigation ditch that runs across the property upon which 500 East will be constructed; and

**WHEREAS**, Dan Olson owns one (1) share of stock in Summit Creek Irrigation Company, represented by Certificate Number 3713, (hereinafter "Dan Olson Share"), which water is also delivered to the Olson Property through that same irrigation ditch used by the Olson Family; and

**WHEREAS**, the construction of 500 East, will require either the abandonment of, or accommodation for, the aforementioned irrigation ditch to assure the continued delivery of irrigation water to the Olson Property; and

**WHEREAS**, the Olson Family and Dan Olson desire to have access to pressurized irrigation water from the Santaquin City Pressurized Irrigation System which would allow for the watering of their properties at times and in a manner that is more convenient to the Olson Family and Dan Olson; and

**WHEREAS**, the Santaquin City Council prefers to abandon the aforementioned irrigation ditch, accept the water attributable to the Olson Family Shares and the Dan Olson Share, and allow the Olson Family and Dan Olson to obtain water from the City's pressurized irrigation system for the irrigation of the Olson Property and also the property where Dan Olson resides at 630 East 450 South, Santaquin, Utah, (hereinafter "Dan Olson Property").

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is herein acknowledged, the parties agree as follows:

- 1. Transfer of Summit Creek Water.** The Olson Family and Dan Olson shall transfer the delivery of the irrigation water under the Olson Family Shares and the Dan Olson Share to the Santaquin City Irrigation Pond located near Pole Canyon Road.



**2. Waiver and Relinquishment of Rights in Irrigation Ditch.** The Olson Family and Dan Olson hereby waive all rights to the delivery of any and all irrigation water from or through the irrigation ditch located parallel and north of Main Street (US-6) between 400 East and 700 East, in perpetuity. The Olson Family and Dan Olson shall execute all documents and take all reasonable measures as requested by the City to accomplish the abandonment of the irrigation ditch as a vehicle for the delivery of irrigation water, and for any other purpose. The provisions of this paragraph shall survive any termination or expiration of this Agreement.

**3. Water Use.** The Olson Family and Dan Olson shall be entitled to utilize irrigation water from the Santaquin City Pressurized Irrigation System in an amount not to exceed the total volume of water attributable to the Olson Family Shares and the Dan Olson Shares that is delivered to the City's irrigation pond.

**4. Ownership of Water Shares.** The Olson Family and Dan Olson shall retain title and ownership of their respective shares of Summit Creek Irrigation Company stock and shall assure timely payment of all fees, including assessment fees of said shares to the Summit Creek Irrigation Company, which have been or will be assessed during the term of this Agreement to assure delivery of water from said shares to the City's irrigation system.

**5. Delivery of Water.** The City shall provide Irrigation Water from the City's pressurized irrigation system to the Olson Property in amounts not exceeding the amounts attributable to the Olson Family Shares. The City shall provide Irrigation Water from the City's pressurized irrigation system to the Dan Olson Property, in amounts not exceeding the amounts attributable to the Dan Olson Share. The City, the Olson Family and Dan Olson agree to cooperate in the timing of the delivery of water pursuant to this Agreement to not create an undue hardship on any party to this Agreement.

**6. Olson Family Water Fees.** The City shall waive the Santaquin City Irrigation Base Water Rates for water delivered to the Olson Property through the City's pressurized irrigation system pursuant to this Agreement. The City shall also waive all Santaquin City Irrigation Usage Water Fees up to an amount of water equal to the volume delivered to Santaquin City's irrigation pond from the Olson Family Shares. The Olson Family shall pay the City for all water delivered to the Olson Property or used by the Olson Family during any water year in excess of the amounts delivered to the Santaquin Irrigation Ponds pursuant to this Agreement during that same water year. The rates charged to the Olson Family for water amounts in excess of those described in this paragraph shall be charged at the usage rate assessed to all other Santaquin City Irrigation Users. The City shall not pay the Olson Family for any difference between the amount of water that is delivered to the City and the amount of water that is used by the Olson Family.

**7. Dan Olson Water Fees.** Dan Olson shall pay the Santaquin City Irrigation Base Water Rate, in compliance with the terms and conditions of the City's applicable rate schedule, including any amendments thereto. The City shall deliver water to the Dan Olson Property at no additional charge, for up to fifty percent (50%) of the water delivered to the Santaquin Irrigation Pond and attributable to the Dan Olson Share. Dan Olson shall pay the City for all water delivered to the Dan Olson Property by Santaquin City in excess of fifty percent (50%) of the

water that is attributable to the Dan Olson share. The rates charged to Dan Olson for water amounts in excess of those described in this paragraph shall be charged at the usage rate assessed to all other Santaquin City Irrigation Users. The City shall not pay Dan Olson for any difference between the amount of water that is delivered to the City and the amount of water that is used by Dan Olson.

**8. Term.** This Agreement shall continue in full force and effect until the earlier of: a) the date when the Olson Property is no longer used as a single dwelling unit; or b) the date when the Olson Family transfers or conveys any ownership interest in that portion of the Olson Property located at 97 North Orchard Lane, Santaquin, Utah, to any other party. Upon the occurrence of either of the foregoing, this Agreement shall terminate as to all Parties.

**9. Default and Remedies.** Except as otherwise provided in this Agreement, if any Party fails to perform any of its obligations under this Agreement or if any Party's representations or warranties contained in this Agreement shall be untrue, inaccurate or incomplete at any time, and that failure continues for ten (10) days after receipt by such Party (the "defaulting Party") of written notice from any other Party, such defaulting Party shall be in default and any other Party may: (i) cancel this Agreement as to the defaulting Party; (ii) bring an appropriate action for specific performance of this Agreement; and/or (iii) pursue any other remedy available under this Agreement, at law or in equity.

**10. Entire Agreement; Amendments.** This Agreement sets forth the entire understanding of the Parties with respect to the subject matter hereof, and all prior negotiations, understandings, representations, inducements and agreements, whether oral or written and whether made by a Party hereto or by any one acting on behalf of a Party, shall be deemed to be merged in this Agreement and shall be of no further force or effect. No amendment, modification, or change in this Agreement shall be valid or binding unless reduced to writing and signed by all of the Parties hereto.

**11. Expenses of Enforcement.** In any proceeding to enforce, interpret, rescind or terminate this Agreement or in pursuing any remedy provided hereunder or by applicable law, the prevailing Party shall be entitled to recover from the defaulting Party all costs and expenses, including reasonable attorney fees, whether such proceeding or remedy is pursued by filing suit or otherwise, and regardless of whether such costs, fees and/or expenses are incurred in connection with any bankruptcy proceeding.

**12. Notices.** Except as otherwise required by law, any notice given in connection with this Agreement must be in writing and must be given by personal delivery, overnight courier service, confirmed facsimile, or United States certified or registered mail, return receipt requested, postage prepaid, addressed to the Parties as follows (or at another physical or electronic address as a Party may designate in writing):

Olson Family: MYRON VIVAN OLSON AND  
ETHEL VIRGINIA OLSON FAMILY TRUST  
P.O. Box 366  
Santaquin, Utah 84655



Dan Olson: Daniel M. Olson  
630 East 450 South  
Santaquin, UT 84655

City: Santaquin City  
Attention: City Manager  
275 West Main Street  
Santaquin, Utah 84655

With a copy to: Nielsen & Senior  
Attention: Brett B. Rich  
15 W. South Temple, Suite 1700  
Salt Lake City, Utah 84101  
Email: bbr@ns-law.com

Notice is deemed to have been given on the date on which notice is delivered, if notice is given by personal delivery or confirmed electronic transmission, on the date of delivery to the overnight courier service, if that service is used, and on the date of deposit in the mail, if mailed. Notice is deemed to have been received on the date on which the notice is actually received or delivery is refused.

**13. Waiver.** The failure to enforce at any time any provision of this Agreement or to require the performance of any provision hereof shall not constitute a waiver of any such provision or affect either the validity of this Agreement or any part hereof or the right of any Party hereto to thereafter enforce each and every provision of this Agreement in accordance with the terms of this Agreement.

**14. Time of Essence; Dates of Performance.** Time is expressly declared to be of the essence of this Agreement. In the event that any date for performance by any Party of any obligation hereunder required to be performed by such Party falls on a Saturday, Sunday or nationally established holiday, the time for performance of such obligation shall be deemed extended until the next business day following such date.

**15. Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all such counterparts, when taken together, shall be deemed to constitute one and the same instrument.

**16. Electronic Transmission.** Electronic transmission of this Agreement, signed by a Party, and retransmission of any signed electronic transmission, shall be the same as delivery of an original hereof.

**17. Succession and Assignment.** This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. Any third party acquiring an interest in the Olson Property after the execution of the Agreement shall be a permitted assignee of the Olson Family, and any third party acquiring an interest in the

Dan Olson Property shall be a permitted assignee of Dan Olson. With the exception of these permitted assignees, no Party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other Party.

**18. Further Acts.** The Parties hereby agree for themselves, and for their successors and assigns, to execute any instruments and to perform any act which may be necessary or proper to carry out the purposes of this Agreement.

**19. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah without giving effect to any choice or conflict of law provision or rule (whether of the State of Utah or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Utah.

**20. Submission to Jurisdiction.** Each of the Parties submits to the jurisdiction of the Fourth Judicial District Court of the State of Utah in any action or proceeding arising out of or relating to this Agreement and agrees that all claims in respect of the action or proceeding may be heard and determined in such court. Each of the Parties waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety, or other security that might be required of any other Party with respect thereto. Each Party agrees that a final judgment in any action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment or in any other manner provided by law or at equity.

**21. Interpretation.** In the event an ambiguity or question of intent or interpretation arises, no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. This Agreement has been divided into paragraphs and subparagraphs for convenience only and the paragraph headings contained herein are for purposes of reference only, which shall not limit, expand, or otherwise affect the interpretation of any provision hereof. Whenever the context requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, any gender shall include the masculine, feminine and neuter gender, and the term "person" shall include any individual, firm, partnership (general or limited), joint venture, corporation, limited liability company, trust, association, or other entity or association or any combination thereof.

**22. Authority of Signers.** Each person executing this Agreement hereby warrants his or her authority to do so, on behalf of the entity for which he or she signs, and to bind such entity.

**23.** The recitals are hereby incorporated into this agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

MYRON VIVAN OLSON AND  
ETHEL VIRGINIA OLSON FAMILY TRUST

Scott R Olson  
Trustee

Date: 3/28/15

STATE OF UTAH     )  
                                  )ss:  
COUNTY OF UTAH    )

On this 28 day of March, 2015, personally appeared before me, Scott R Olson, who after being duly sworn, stated that he/she executed the foregoing document on behalf of the Myron Vivian Olson and Ethel Virginia Olson Family Trust.

Susan B Farnsworth  
Notary Public



DAN OLSON  
Dan Olson  
Dan Olson

Date: 3/28/2015

STATE OF UTAH     )  
                                  )ss:  
COUNTY OF UTAH    )

On this 28 day of March, 2015, personally appeared before me, Dan Olson, who after being duly sworn, stated that he executed the foregoing document.

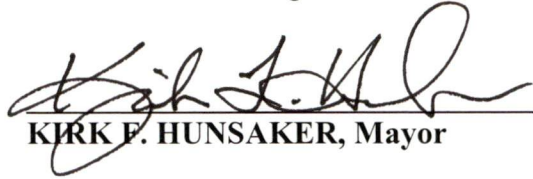
Susan B Farnsworth  
Notary Public







CITY OF SANTAQUIN

  
KIRK F. HUNSAKER, Mayor

Date: 3/23/15

ATTEST:

  
SUSAN B. FARNSWORTH, Recorder