



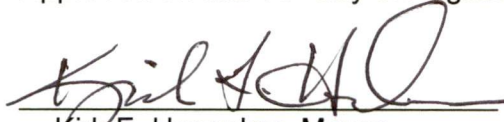
RESOLUTION 07-01-2017
A RESOLUTION APPROVING A WATER SERVICE
AGREEMENT WITH SUMMIT CREEK NURSERY, LLC.

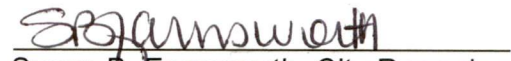
BE IT HEREBY RESOLVED:

SECTION 1: The attached document represents the Water Service Agreement with Summit Creek Nursery, LLC.

SECTION 2: This Resolution shall become effective upon passage.

Approved on this 16th day of August, 2017.


Kirk F. Hunsaker, Mayor


Susan B. Farnsworth, City Recorder



WATER SERVICE AGREEMENT

THIS WATER SERVICE AGREEMENT (the "Agreement") is entered into as of the 16 day of August 2017, by and between Summit Creek Nursery, LLC, (hereinafter referred to as the "Petitioner"), and Santaquin City, a fourth class city of the State of Utah (hereinafter referred to as the "City"), (together, the "Parties").

RECITALS

A. WHEREAS, Petitioner intends to purchase real property located immediately adjacent to the City and it is anticipated that Petitioner shall formally request annexation of said real property into the City within 45 days of the purchase. The real property being discussed herein (hereinafter referred to as the "Property"), is more particularly described in Exhibit A.

B. WHEREAS, as part of its due diligence in purchasing the Property, Petitioner must ensure the availability of water to run its agricultural operation. Accordingly, Petitioner has appeared before the City Council and provided a proposal to connect to the City's water system regardless of annexation. Said proposal falls within the guidelines of the City Code and has been conceptually reviewed by the City Council.

C. WHEREAS Petitioner is engaged in agriculture and intends, but is in no way restricted by this agreement, to continue to use the subject Property for greenhouse/nursery growing and other agricultural purposes.

D. WHEREAS City encourages that Petitioner develop its business on the Property.

E. WHEREAS in consideration of Petitioner's anticipated nursery/greenhouse operation and agricultural use of the Property, Petitioner and City have agreed to allow Petitioner, upon purchasing the subject Property, to connect to the City's culinary water system, prior to the completion of the annexation process, under the terms and conditions identified herein. At such time as annexation of the Property is requested by Petitioner, it is anticipated that the City and Petitioner shall enter into an annexation agreement that adopts the terms of this Water Service Agreement appropriately addresses the related annexation issues. The Parties agree that should the annexation process fail, this Water Service Agreement shall continue.

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

SECTION I. WATER SERVICE

1.1 Water

1.1.1 **Connection to City Culinary Water Service.** Although Petitioner intends to pursue annexation of the Property, Petitioner does not qualify, subject to approval of the City Council, payment of fees and dedication of water, to connect to the City's culinary water supply under Santaquin City Code § 8-1-4 as the Property is less than 200 feet from an existing main line of service.

1.1.1.2 **Dedication of Water.** Petitioner plans to purchase the Property for the purpose of conducting its greenhouse/nursery operation and other agricultural uses. Accordingly, City and Petitioner agree to the following provisions for connection to the City's culinary water:

- a. **Anticipated Use.** Petitioner reasonably anticipates using approximately 37.29 acre feet of water per year on the Property. Therefore, at the rate of 1.8 acre feet per Summit Creek Irrigation and Canal Company share, Petitioner is required to dedicate a minimum of 16.58 shares of Summit Creek Irrigation and Canal Company water to the City, an amount equal to 80% of Petitioner's anticipated yearly use, which would result in the payment of money in lieu of water shares for the remaining 4.14 shares in the amount of \$28,318.00 (\$3,800.00 per acre foot x 1.8 acre foot per share x 4.14 shares) to the City. However, for rounding purposes so as to not divide water shares into fractional parts, Petitioner shall dedicate 17 shares of Summit Creek Irrigation and Canal Company water to the City resulting in a reduction to the calculation of the payment of money in lieu of water shares to 3.72 shares in the amount of \$25,444.80 (\$3,800.00 per acre foot x 1.8 acre foot per share x 3.72 shares). Dedication of said shares shall be completed within 45 days of Petitioner's connection of the Property to the City's water utility.
- b. **Actual Use Review.** In order to reconcile the anticipated use identified above with the actual usage, the parties agree that City and Petitioner shall review the actual water usage on the Property at the end of the twenty-four month period after Petitioner notifies City that buildout of its facilities for the greenhouse/nursery operation and other agriculture uses anticipated upon execution of this Agreement ("Buildout") is complete. The Parties will then review Petitioner's actual usage for the prior twenty-four months and identify a 12-month average water usage by adding the usage for the prior twenty-four months and dividing the total by two (the "Review"). Using the 12-month average actual water usage, the parties shall finalize the dedicated shares/payment in lieu of water requirements. In the event Petitioner's actual annual usage exceeds the anticipated annual usage prior to Buildout, the Parties agree to an interim review, following the same process, including duration, as the Review, and adjustment of the water dedication requirements.
- c. **Adjustment Upon Reconciliation.** If the Review identifies a 12-month average actual usage higher than the anticipated 37.29 acre-feet per year, Petitioner shall dedicate Summit Creek Irrigation and Canal Company shares and pay money in lieu of water at the 80/20 rate identified herein to firm up its usage and dedication requirements at the rates identified herein. Alternatively, should the Review demonstrate that Petitioner's 12-month average actual usage is less than the anticipated 37.29 yearly acre feet per year, the City shall return the money paid in lieu of water to Petitioner in an amount that accounts for Petitioner's 12-month average actual usage based upon the Review and at the rates identified herein. In the event that the reconciliation shows the City owes Petitioner an amount that exceeds the amount of money paid in lieu of water, the City, at Petitioner's discretion, will either pay Petitioner for the amount of the excess at the same rate used herein to determine the value of the water shares or will retain the extra water shares on a credit for Petitioner to use at some future date when additional dedication may be required, but the City shall retain ownership of all water shares. Following the Review and after the dedication/payments have been balanced according to the 12-month average actual usage, no further dedication or payment shall be required, outside of the regular taxes, payments for water used, etc. based upon Petitioner's usage unless and until: (i) said Property is developed for other than the herein identified and intended agriculture uses or; (ii) any change to the greenhouse/nursery growing and other agricultural use that would legally require a building

permit if the Property is, or were to be annexed into the City. In the event that either 1.1.1.2(c)(i) or (ii) are triggered, further dedication and/or payment shall be made based upon actual usage using the same process identified herein at 1.1.1.2(a) unless and until such expansion places Petitioner outside of its stated agricultural use as identified herein. In the event that such expansion places Petitioner outside of its stated agricultural use, further dedication or payment may be required as set forth in Santaquin City Code § 8-1-10, as modified by Ordinance No. 1-05-2017. Any additional water dedication required of Petitioner shall be satisfied at the 80/20 rate identified herein.

- d. **Water Service.** Upon the satisfaction of water rights dedication requirement and payment of impact fees by Petitioner and acceptance of the water delivery system by the City, the City shall provide the Property with water service on the same terms and conditions applicable to other City culinary water users.
- e. **Future Development.** In the future, should any party seek to develop the Property for other than the greenhouse/nursery or the herein identified and intended agricultural uses, City shall be entitled to require said party to dedicate/pay, in the discretion of the City, for additional water shares, with credit to be given for the dedication/payments already made by Petitioner under this Agreement.

1.2 **Fees/Payment for Usage.** This agreement does not abrogate or otherwise diminish Petitioner's requirement to pay for the fees and water usage required by the City in the normal course of business and pursuant to its standard practices and procedures. Petitioner shall pay all base and usage rates as established in the City's fee schedule as the same may be amended from time to time. In consideration of the terms and conditions of this agreement, Petitioner's base and usage rates will not be subject to the increase normally charged for water service outside the City limits.

1.3 **Construction and Installation of Water Delivery Infrastructure.** Petitioner shall be responsible for the cost of installation and all infrastructure required to carry the water from the City's water main to the Property. All such infrastructure must be constructed, installed and inspected as required by all rules, regulations and standards applicable to similar facilities and improvements constructed in Santaquin City.

1.4 **Effect of Water Dedication on Subsequent Annexation of the Property.** Upon annexation of the Property into Santaquin City, all water dedicated to City pursuant to the terms and conditions of this Agreement, together with all monies paid by Petitioner in lieu of dedicated water, shall be credited to the water dedication requirements for property annexed into the City as set forth in Santaquin City Code § 8-1-10, as modified by Ordinance No. 1-05-2017.

SECTION II. ANNEXATION PETITION AND DEVELOPMENT FEES

2.1 Annexation

2.1.1 **Annexation.** The Petitioner shall submit an Annexation Application within 45 days of purchasing Property. While this agreement does not bind the Parties to complete said annexation, the Parties agree to act in good faith towards the successful completion of said annexation.

2.1.2. **Annexation Fees.** The Petitioner agrees to submit Annexation Fees in the amount of One-Thousand Nine-Hundred Ninety-Nine Dollars and 65/100 cents (\$1,999.65) with the submission of its Annexation Application.

2.2. Development

2.2.1 **Development and Fees.** The Parties acknowledge that Petitioner's development of the Property will impact certain utilities and services provided by the City. Based upon the anticipated use of the Property, as identified by the Petitioner, the Petitioner agrees to pay all fees, as identified herein, associated with its proportionate share of the impact that said use will have upon the utility systems and services provided by Santaquin City regardless of a successful or unsuccessful finalization of annexation process. Those Impact Fees set forth in this section 2.2, or equivalent amounts, shall be paid by the Petitioner prior to the date Petitioner connects the Property to the City water utility, or as set forth below. Said fees are outlined in the remainder of this section.

2.2.1.1 **Culinary Impact & Installation Fees.** It is understood by the Parties that the Petitioner is currently evaluating its internal infrastructure needs and options. As such, as of the date of this agreement, it is unknown if the Petitioner will require a 2", 3", 4" or 6" water connection. Once determined by the Petitioner, the Petitioner agrees to pay for its culinary impact and installation fees based upon the following schedule:

Description	2" Meter	3" Meter	4" Meter	6" Meter
Culinary Impact Fee	\$6,988.00	\$13,990.00	\$21,856.00	\$43,699.00
Meter Fee (Actual Cost)	\$770.00	\$1,249.83	\$2,432.76	\$4,379.77
Installation Fee	\$200.00	\$200.00	\$200.00	\$200.00
Total Cost:	\$7,958.00	\$15,439.83	\$24,488.76	\$48,278.77

2.2.1.2 **Pressurized Irrigation Impact Fees.** It is not anticipated that pressurized irrigation will be needed by the Petitioner on this Property. If pressurized irrigation water is desired by the Petitioner in the future, the Petitioner agrees to pay the corresponding Santaquin City Pressurized Irrigation Impact Fees based upon anticipated consumption. However, should the City wish to have Petitioner use the pressurized irrigation system for purposes of conserving the culinary water or for other reasons and Petitioner agrees to such after confirming that the use of said water would adequately meet Petitioner's needs, to be determined in Petitioner's sole discretion, Petitioner and City may come to an agreement related to the pressurized irrigation impact fees other than identified herein.

2.2.1.3 **Sewer Impact Fees.** With each phase of construction, the Petitioner agrees to pay for all Sewer Impact Fees associated with said construction. Sewer Impact Fees shall be assessed by the City based upon the existing Impact Fee Schedule, which is usually determined by the number of fixtures (e.g. sinks, toilets, maintenance basins, etc.) installed in said phase of construction.

2.2.1.4 **Public Safety Impact Fees:** Public Safety Impact Fees shall be based upon the average number of calls for service over a three year period. The average number of Fire/EMS calls has been identified as zero and the average number of Police calls is .67 calls per year. The following schedule identifies the assessed Public Safety Impact Fees:

Description	# Calls	Impact Fee Rate	Assess Impact Fee
Average Fire/EMS Calls	0	\$3,452.20/call	\$0.00
Average Police Calls	.67	\$78.82/call	\$52.55
Total Impact Fee:			\$52.55

2.2.1.5 **Transportation Impact Fees.** In lieu of completing a traffic study and assessing a Transportation Impact Fee associated therein, the Parties agree to the following in lieu of Transportation Impact Fees:

2.2.1.5.1 **500 South Street.** Currently, the County is attempting to have a third-party pay repairs and asphalt overlay to 500 South directly north of the Property. Accordingly, the Petitioner agrees to pay \$25,560.00, the projected cost, into an interest-bearing escrow account the City can use for the installation of a leveling course and 2" asphalt overlay for the section of 500 South that runs directly north of the Property (the "Project") in the event that a third-party does not do the work by the 2018 road-maintenance season. If, however, a third-party does the Project, or an equivalent thereto, prior to the 2018 road maintenance season, the money shall remain in the interest-bearing escrow account for Petitioner's use if and when 2.2.1.5.2 below is triggered. Petitioner shall not be responsible for any other costs associated with the Project. In the event that the City uses the \$25,560 identified above to complete the Project and the County or a third-party provides remuneration for said costs of the Project thereafter, City agrees to place said remuneration in an interest-bearing escrow account for Petitioner's use if and when 2.2.1.5.2 below is triggered. Note: Santaquin City will be installing similar improvements along 500 South from 300 West to 500 West within its 2017 Road Maintenance Projects. Petitioner's improvements will extend the City Improvements approximately an additional two blocks.

2.2.1.5.2 **500 West Street.** Petitioner will not oppose or otherwise knowingly undermine the efforts of any adjoining property owner to construct 500 West Street from 500 South to US-6 Main Street in the future. At the time of construction, Petitioner agrees to pay its proportionate share of the costs of constructing 500 West which would include the dedication of its proportionate share of the required property for said construction and the payment of one-half of the cost of street improvements along the frontage owned by Summit Creek Nursery to an agricultural standard (e.g. Twenty-six feet of asphalt, half of which Petitioner would be responsible for, with gravel shoulder). This Agreement does not obligate Petitioner to pay for or agree to the installation of curb, gutter, water, gas or other utilities. Nor does it require Petitioner to have to dedicate more than 1/2 the width of the road, costs, or other improvements.

SECTION III. GENERAL PROVISIONS

3.1 **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 Petitioner 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.

3.2 **Transfer of Property.** Petitioner 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 Petitioner's rights under this Agreement.

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

3.4 **Consent.** In the event this Agreement provides for consent from the City or the Petitioner, 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.

SECTION IV. MISCELLANEOUS

4.1 **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.

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

4.3 **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.

4.4 **Construction.** This Agreement has been reviewed and revised by legal counsel for Petitioner, and by legal counsel for 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.

4.5 **Further Assurances, 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 purposes 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.

4.6 **Assignment.** Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned by the Petitioner 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.

4.7 **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.

4.7.1 **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.

4.7.2 Costs and Attorneys' Fees. The prevailing party in any suit or arbitration proceedings to enforce the provisions of this agreement, in whole or in part, shall be entitled to reimbursement of costs and attorneys' fees incurred in said action. 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.

4.8 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, or by facsimile. 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 any 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 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 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:

*Santaquin City Recorder
275 West Main Street
Santaquin, UT 84655
Facsimile: (801) 754-3526*

Copy to:

*Brett B. Rich, Esq.
Nielsen & Senior
1145 East 800 South, Suite 109
Orem, Utah 84097*

Email: bbr@ns-law.com

If to Petitioner:

*Olson's Greenhouse Gardens, Inc.
c/o Bart Olson/Jordan Rolfe
1876 North 460 West
PO Box 1247
Salem, Utah 84653
Facsimile: (801)794-9683*

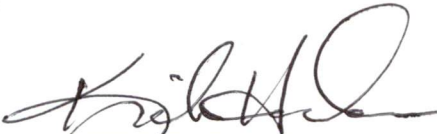
4.9 **Counterparts and Exhibits.** This Agreement is executed in two (2) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of six (6) pages and one (1) additional exhibit(s), which constitute the entire understanding and agreement of the Parties to this Agreement. The following exhibit is attached to this Agreement and incorporated herein for all purposes:

Exhibit A Legal description of the Property

IN WITNESS WHEREOF, this Agreement has been executed by the Parties, by persons duly authorized to execute the same and by the City of Santaquin, acting by and through its City Council as of the 16 day of August, 2017.

SANTAQUIN CITY

SUMMIT CREEK NURSERY, LLC

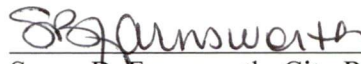


KIRK HUNSAKER, Mayor



BART OLSON, President

ATTEST:



Susan B. Farnsworth, City Recorder



EXHIBIT A

Utah County Parcel No. 32:017:0013

Approx: ± 29.61 Acres

Beginning 0.25 chains West of the Northeast corner of the Northwest quarter of Section 11, Township 10 South, Range 1 East of the Salt Lake Base & Meridian; thence South 17.36 chains; thence West 6.28 chains; thence North 20° West 2.00 chains; thence South 70° West 3.50 chains; thence South 4.50 chains; thence South 67-1/2° West 6.00 chains; thence North 23.00 chains; thence East 15.50 chains to the place of beginning.