

RESOLUTION 11-01-2018

A RESOLUTION OF SANTAQUIN CITY APPROVING AN ANNEXATION AGREEMENT FOR THE LITTLE OPEE'S ANNEXATION

WHEREAS, on August 1st, 2018, Mr. Mark Openshaw, representing Little Opee's LLC., (the "Petitioner"), who owns certain real property adjacent to the City of Santaquin, petitioned to annex the real property described in Exhibit A (the "Property") to the City; and

WHEREAS, the area proposed for annexation lies within the City's current Annexation Policy Plan and General Plan areas, which outline goals and policies for protecting and supporting agriculture operations, such as those found on the Property; and


WHEREAS, Santaquin city recognizes the positive contribution the Petitioner make to the Santaquin City quality of life and community character through their agriculture operations; and


WHEREAS, Both Santaquin City and the Petitioner recognize a mutually beneficial opportunity to work together; and

WHEREAS, the Parties desire now to enter into an annexation agreement to establish parameters for the acceptance and incorporation of this property into Santaquin City;

THEREFORE, LET IT BE RESOLVED, that the governing body of Santaquin City approves an annexation agreement between Santaquin City and Little Opee's LLC., which is attached hereto, and made part hereof, as Exhibit A.

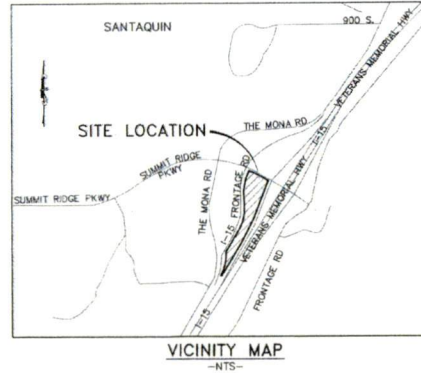
Originally approved on November 6th, 2018 and reapproved the 18th day of December, 2018.


Kirk F. Hunsaker, Mayor


Susan B. Farnsworth, City Recorder



Resolution 11-01-2018 Exhibit "A"



SURVEYORS CERTIFICATE

I, BARRY PRETTYMAN DO HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR, AND THAT I HOLD CERTIFICATE NO. 166406 AS PRESCRIBED UNDER THE LAWS OF THE STATE OF UTAH. I FURTHER CERTIFY THAT THIS IS A TRUE AND ACCURATE MAP OF THE TRACT, BASED ON UTAH COUNTY NAD27, OF LAND TO BE ANNEXED INTO SANTAQUIN CITY, UTAH COUNTY, UTAH.

BOUNDARY DESCRIPTION

BEGINNING AT A UDOT RIGHT-OF-WAY MARKER ON THE WESTERLY SIDE OF INTERSTATE 15, 75.00 FEET WESTERLY OF ENGINEERS STATION 34+00, LOCATED N01°04'18"W ALONG THE SECTION LINE 609.69 FEET AND WEST 327.75 FEET FROM THE EAST 1/4 CORNER OF SECTION 15, TOWNSHIP 10 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN; THENCE S30°59'39"W 1.00 FOOT WESTERLY AND PARALLEL TO AN EXISTING UDOT FENCELINE 706.69 FEET; THENCE N89°42'18"W ALONG THE QUARTER SECTION LINE 22.30 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF AN 840.00 FOOT RADIUS CURVE TO THE LEFT 441.29 FEET THROUGH A CENTRAL ANGLE OF 30°06'01"; (THE CHORD BEARS N14°06'33"E 436.24 FEET); THENCE ALONG THE EAST BOUNDARY OF SOUTH COUNTY ANNEXATION THE FOLLOWING 4 COURSES TO WIT: (1) N30°17'48"E 547.77 FEET; (2) NORTHEASTERLY 503.92 FEET ALONG THE ARC OF A 874.93 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 32°59'59"; (THE CHORD BEARS N14°10'23"E 496.98 FEET); (3) N02°19'37"W 235.03 FEET; (4) NORTHEASTERLY 431.69 FEET ALONG THE ARC OF A 898.51 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 27°31'40"; (THE CHORD BEARS N11°26'13"E 427.55 FEET); THENCE SOUTHEASTERLY 394.64 FEET ALONG THE ARC OF A 1940.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 11°40'31"; (THE CHORD BEARS S62°33'05"E 394.64 FEET); THENCE S21°03'54"W 805.43 FEET; THENCE S27°17'08"W 554.08 FEET TO THE POINT OF BEGINNING. CONTAINS 9.17 ACRES.

Barry Prettyman
SURVEYOR

July 10, 2018
DATE

ACCEPTANCE BY THE LEGISLATIVE BODY

THIS IS TO CERTIFY THAT WE THE UNDERSIGNED SANTAQUIN CITY COUNCIL HAVE ADOPTED A RESOLUTION OF ITS INTENT TO ANNEX THE TRACT OF LAND SHOWN HEREIN AND HAVE SUBSEQUENTLY ADOPTED AN ORDINANCE ANNEXING SAID TRACT INTO SANTAQUIN CITY, UTAH AND THAT A COPY OF THE ORDINANCE HAS BEEN PREPARED FOR FILING HEREWITH ALL IN ACCORDANCE WITH UTAH COUNTY CODE SECTION 10-2-418 AS REVISED AND THAT WE HAVE EXAMINED AND DO HEREBY APPROVE AND ACCEPT THE ANNEXATION OF THE TRACT AS SHOWN AS PART OF SAID CITY AND THAT SAID TRACT OF LAND IS TO BE KNOWN HEREAFTER AS THE LITTLE OPEE'S ANNEXATION

DATED THIS _____ DAY OF _____, 20____

CLERK RECORDER _____ DATE _____

ACCEPTANCE BY UTAH COUNTY SURVEYOR

THIS PLAT HAS BEEN REVIEWED BY THE COUNTY SURVEYOR AND IS HEREBY CERTIFIED AS A FINAL LOCAL ENTITY PLAT, PURSUANT TO UTAH CODE ANN. 17-23-20 AS AMENDED.

UTAH COUNTY SURVEYOR _____ DATE _____

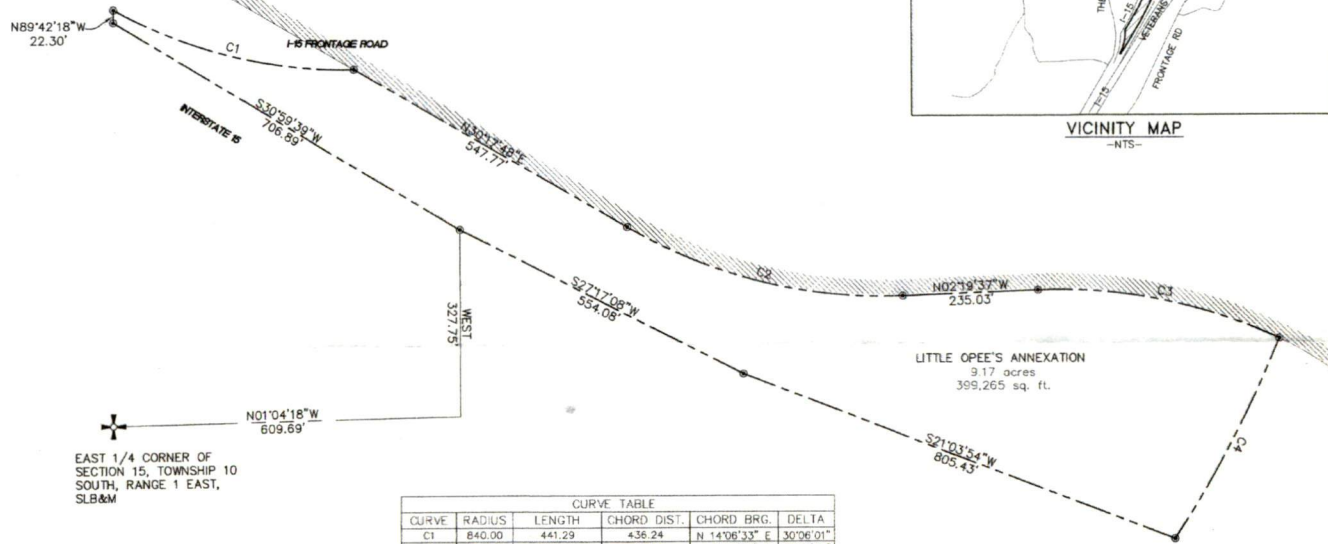
ANNEXATION PLAT

LITTLE OPEE'S ANNEXATION

SANTAQUIN, UTAH COUNTY,
UTAH

UTAH COUNTY RECORDER SEAL

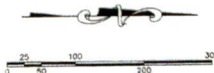
COUNTY SURVEYOR SEAL	SURVEYOR'S SEAL 	NOTARY PUBLIC SEAL	CITY ENGINEER SEAL	CLERK-RECORDER SEAL
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CURVE TABLE					
CURVE	RADIUS	LENGTH	CHORD DIST.	CHORD BRG.	DELTA
C1	840.00	441.29	436.24	N 14°06'33" E	30°06'01"
C2	874.93	503.92	496.98	N 14°10'23" E	32°59'59"
C3	898.51	431.69	427.55	N 11°26'13" E	27°31'40"
C4	1940.00	395.32	394.64	S 62°33'05" E	11°40'31"

EAST 1/4 CORNER OF SECTION 15, TOWNSHIP 10 SOUTH, RANGE 1 EAST, SLB&M

EXISTING SANTAQUIN CITY BOUNDARY



(24"x36")
SCALE 1" = 100'
(11"x17")
SCALE 1" = 200'

**ANNEXATION AND DEVELOPMENT AGREEMENT
FOR LITTLE OPEE'S PROPERTY**

THIS AGREEMENT is made and entered into on this 6th day of December, 2018, by and between the City of Santaquin, Utah, a municipality and political subdivision of the State of Utah, hereinafter ("City") and Little Opee's Produce and Sales, LLC, a Utah Limited Liability Company, hereinafter referred to as ("Petitioner").

RECITALS:

A. WHEREAS the Petitioner filed a petition with the City (the "Petition"), formally requesting the annexation of certain real property adjacent to the City (hereafter, the "Property"), into the City. (The Property is more particularly described in Exhibit A attached hereto.)

B. WHEREAS, on **August 1, 2018**, the City Council unanimously accepted the Petition.

C. WHEREAS on **August 1, 2018**, the Santaquin City Recorder certified the Petition pursuant to the provisions of Utah Code Ann. § 10-2-405(2).

D. WHEREAS on **September 4, 2018**, after proper notice, a public hearing was held concerning the proposed annexation of the Property.

E. WHEREAS the Parties intend to enter into this Agreement to establish annexation and development parameters for the Project Area and to take all steps necessary to finalize the annexation and zoning of the Property, and to develop the Property according to this Agreement.

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

SECTION I. DEFINITIONS

Unless the context requires a different meaning, any term or phrase used in this Agreement that has its first letter capitalized shall have that meaning given to it by this Agreement or, if different, 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 **"Annexation Application"** means that certain Petition for annexation to the City dated **July 18, 2018**, and executed by the above named Petitioner.

1.2 **"Buildout"** means the completion of all of the development of the Property.

1.3 **"Commercial Uses"** shall include industrial, neighborhood convenience, sales and other commercial uses excluding multi-family uses as defined in the Santaquin City Code.

1.4 **"Developer"** means any person or entity that initiates any development of any portion of the Property, together with all assigns and successors in interest, whether in whole or in part. Developer may include Petitioner and may include more than one individual or entity. Developer shall not include a person who purchases a platted and improved building lot within a Project.

1.5 **“Development”** means any initiation or commencement of subdividing of all or any portion of the Property, including the submission to the City of any concept plan, preliminary plat, final plat, or the submission of any application for a building permit prior to approval of a final subdivision plat.

1.6 **“Development Standards”** means the Santaquin City Construction Standards and Specification Details, as adopted by Santaquin City and as may be amended from time to time.

1.7 **“Project”** means any portion of the Property for which Development is initiated.

1.8 **“Property”** means all of the real property that is described in Exhibit A.

SECTION II. GENERAL RIGHTS AND RESPONSIBILITIES

2.1 **General Rights and Responsibilities of Petitioner.**

2.1.1 **Development of the Property.** As consideration for the annexation of the Property into Santaquin City, Petitioner agrees that the entire Property shall only be developed pursuant to the terms and conditions of this Agreement. Petitioner also agrees that each and every Developer shall be entitled to the rights and will be bound by the obligations hereof.

2.1.2 **Conditions of Approval and Impact Fees.** With respect to the development of the Property, Petitioner 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 schedule of such fees will be applied uniformly within the City or service area of the City, as applicable. Petitioner acknowledges that the Property requires 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. Petitioner 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 and Petitioner, or its successors, receive those credits and offsets against such fees as may be provided in this Agreement.

2.1.3 **Parties’ Reliance.** The City acknowledges that the Petitioner is relying on the execution and continuing validity of this Agreement and the City’s faithful performance of the City’s obligations under this Agreement. Petitioner acknowledges that the City is relying on the execution and continuing validity of this Agreement and the Petitioner’s faithful performance of its obligations under this Agreement in continuing to perform the obligations of the City hereunder.

2.1.4 **Statement Regarding “Compelling, Countervailing Public Interests.”** The Parties acknowledge that they are familiar with the “compelling, countervailing public interest” test that is generally an exception to the doctrine of vested rights in the State of Utah.

2.1.4.1 The City acknowledges that as of the date of this Agreement, to the best of its knowledge, information and belief, the City is presently unaware of any material facts under which a desire of the City to modify Petitioner’s rights under this Agreement would be justified by a “compelling, countervailing public interest.”

2.1.4.2 If, however, it should be discovered that there did, in fact, exist, as of the date of this Agreement, material facts under which modification of the Petitioner’s rights under this Agreement would be justified by a “compelling, countervailing public interest,” Petitioner acknowledges

that it neither has nor had any vested rights as to any matter arising from or affected by any material facts of which the City was not or could not have been aware as of the date of this Agreement.

2.1.5 **Subsequent Applications Under Future Development Code.** Without waiving any rights granted by this Agreement, any Developer may from time-to-time or at any time, choose to submit some or all of the Property for development under the version of the City's Development Code existing at the time of the application.

2.1.6 **Construction of Improvements.** All utilities and roads necessary for the development of the Property, shall be constructed by and shall be the sole responsibility of Petitioner, and shall be constructed in compliance with the Development Standards.

2.1.7 **Compliance with City Requirements and Standards.** Petitioner expressly acknowledges that nothing in this Agreement shall be deemed to relieve Petitioner from its obligations to comply with all applicable requirements of the City necessary for approval and payment of all applicable fees for a Project in effect at the time of development approval, including the payment of unpaid fees, the approval of 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.

2.2 **General 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 Petitioner's detriment may render the City liable to such remedies as may be available to Petitioner under such circumstances.

2.2.2 **Power of Eminent Domain.** The City agrees that in the event a Petitioner needs to obtain easements or rights of way 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 such Petitioner, may consider exercise of its power of eminent domain to obtain such easements or rights of way, the costs of which, including reasonable attorneys' fees, shall be borne by said Petitioner.

2.2.3 **Property a Part of Santaquin City.** Upon annexation, the Property shall become and remain, for all purposes—including government, taxation, municipal services and protection, and consideration in all municipal matters—a part of Santaquin City. Development therein, and the residents and occupants thereof, shall be treated in all respects as is any other development, resident, or occupant of Santaquin City.

2.3 **Recording.** Petitioner and the City shall cause this Agreement, together with all exhibits and attachments, to be recorded with the county recorder of Utah County.

SECTION III. SPECIFIC RIGHTS AND RESPONSIBILITIES

3.1 **Water.**

3.1.1 **Developer's Obligations.**

3.1.1.1 **Water System.** Each Developer shall design, build and dedicate to the City adequate water facilities according to City specifications and standards, including all distribution

lines, for any Project for which it obtains final plat approval. Said facilities shall include provision for all fire flow, culinary and secondary needs. All facilities required to provide the secondary water system shall be constructed and installed according to City specifications and standards in the Project concurrent with the construction of other improvements in such Project. All such facilities, upon acceptance by the City, shall be owned, operated and maintained by the City.

3.1.1.2 **Water Rights.** Petitioner has read and is familiar with Santaquin City Code § 8-1-10 A.2 and hereby agrees to either dedicate water rights to the City, or pay a cash equivalent in value to the cost of the required water rights, as specified by, or as determined in accordance with the provisions of the City Code prior to either approval of a final plat for, or issuance of a permit to build on, any parcel of property that is included in the Property. In addition, prior to either approval of a final plat for, or issuance of a building permit on, any parcel of property that is included in a Project, the Developer thereof shall dedicate, to the City, the amount of water required by § 8-1-10 A.2, for its pro-rata share of all of the Property. The City acknowledges that Petitioner previously dedicated 0.9 acre/feet of water to the City and hereby agrees to credit said dedication to Petitioner's requirement for water dedication for the existing home and surrounding landscaping on the Property, to be applied as follows: (a) 0.4 acre/feet for indoor water use; and (b) 0.5 acre/feet for outdoor water use for irrigation of 0.125 acres.

3.1.1.3 **Pressurized Irrigation Connection.** Petitioner shall pay all applicable fees for connection to the Santaquin Pressurized Irrigation System and shall connect to said system within eighteen (18) months of the execution of this Agreement.

3.1.2 **City Obligations.** Upon the dedication of the water delivery system provided in paragraph 3.1.1.1 above, the required water rights provided in paragraph 3.1.1.2 above, the City's acceptance of said water delivery system and water rights, the necessary approvals and payment of impact fees by Developer, the City shall provide all use areas served by such infrastructure within the Project with water service at a level generally provided to other areas of the City.

3.2 **Sanitary Sewer Service and Facilities**

3.2.1 **Developer Obligations.** In recognition and consideration for the City's willingness to provide the sanitary sewer service necessary to meet the demands of a Project at Buildout, Petitioner voluntarily agrees as follows:

3.2.1.1 **Easements.** Each Developer shall obtain and grant to the City, at no cost to the City, all easements determined necessary by the City, for the construction and operation of the wastewater facilities, including easements necessary for the installation and maintenance of all wastewater collection lines, located within said Developer's Project.

3.2.1.2 **Construction of Sewer Infrastructure.** Each Developer 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 from its Project to the existing Santaquin Sewer System, which shall be constructed in a location which shall be designated by the City and in accordance with the Design Guidelines.

3.2.1.3 **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 of all required sewer-related infrastructure improvements to City specifications and standards, the payment of or credit against all required impact

fees and dedication and acceptance of all lines and necessary sewer-related improvements and easements, the City shall provide to all residential and nonresidential use areas in a Project, sanitary sewer service at a level generally provided to other areas of the City.

3.3 **Dedication.** The City shall accept the dedication of all streets in each Project, so long as such streets are constructed pursuant to the terms of this Agreement and the Development Standards, and are dedicated free of all liens and encumbrances.

3.4 **Other Utilities.**

3.4.1 **Developer's Obligations.** Developer shall be responsible for the provision of all utility infrastructure within its Projects, including (but not necessarily limited to) the following:

3.4.1.1 As provided in § 3.1 et seq. hereof, culinary and secondary water systems, including all appurtenances;

3.4.1.2 As provided in § 3.2 et seq. 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 Each Developer shall also provide for the planning, design, construction, installation, inspection, and testing of such underground telecommunications infrastructure as may be necessary to allow for access, installation, placement, operation, and maintenance of a full-service, fiber-optic (or better) telecommunications network, built to provide access to developed commercial and residential areas within its Project. Such infrastructure shall include (but is not limited to) all necessary underground conduit, manholes and splicing vaults. This requirement may be waived by the City Council at approval of any preliminary plat.

3.4.2 **Easements.** Each Developer 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 for its Project(s).

3.4.3 **City's Obligations.** The City agrees to grant the use of its easements and infrastructure 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, shall be installed underground, to the extent that such installation (a) is reasonably practicable, (b) lies within the parameters of City specifications, (c) complies with applicable federal, state, and local law, regulation, and ordinance, and (d) accords with industry standards and practice.

SECTION IV. ZONING

4.1 **Amendment of Santaquin Zoning Map.** Upon annexation of the Property, the Santaquin City Zoning Map shall be amended to include the Property in a C-1 zone. In addition, the City

will recognize the two accessory buildings existing on the Property as of the date of the execution of this Agreement as S-1 classification.

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. 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.** Petitioner shall have the right to assign or transfer all or any portion of its rights and obligations under this Agreement. Petitioner shall provide written notice to the City of any completed assignment or transfer. In the event of an assignment, the transferee shall succeed to all of Petitioner's rights and obligations 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 will be a private development; (ii) City and the Petitioner hereby renounce the existence of any form of agency relationship, joint venture or partnership among City and Petitioner, or any future Developer; and (iii) nothing contained herein shall be construed as creating any such relationship among City and Petitioner and/or Developer.

5.4 **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, and in no event shall consent be unreasonably withheld or delayed.

5.5 **Legal Challenges.** In the event that any person challenges this Agreement or the Development contemplated herein, upon request by Petitioner, or with notice to Petitioner and Petitioner's consent or acquiescence, the City may undertake to defend this Agreement or the Development. In such a case, Petitioner agrees that it shall be liable for all legal fees, including attorneys' fees, expenses, and/or court costs incurred by the City upon presentation to the Petitioner 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 Petitioner and 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 Assurances, Documents, and Acts.** Each of the parties hereto agrees to cooperate in good faith with the others, and to execute and deliver such further documents, and to take all further actions 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.

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

6.7 **Agreement to Run with the Land.** This Agreement shall be recorded against the Property and shall be deemed to run with the land.

6.8 **Governing Law, and Dispute Resolution, and Attorney's Fees.** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

6.8.1 **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 each 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 the 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.

6.8.2 **Default Litigation.** If any party hereto is required to engage the services of counsel by reason of the default of another party, the non defaulting 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.

6.9 **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:

Petitioner: Little Opee's Produce and Sales, LLC
c/o Mark Openshaw
1215 East 270 South
Santaquin, UT 84655
Email: mark@littleopees.com

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

With a copy to: Nielsen & Senior
Attention: Brett B. Rich
P.O. Box 970663
1145 South 800 East, Suite 110
Orem, Utah 84097
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.

6.10 **No Third Party Beneficiary.** This Agreement is made and entered into for the sole protection and benefit of the parties and their assigns. No other party shall have any right of action based upon any provision of this Agreement whether as third party beneficiary or otherwise.

6.11 **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 ten (10) pages, including notary acknowledgment forms, and an additional two (2) exhibits, which constitute the entire understanding and agreement of the Parties to this Agreement. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

Exhibit A Legal description of the Property

6.12 **Duration.** This Agreement shall continue in force and effect until the earlier of December 31, 2028, or such time as all obligations hereunder have been satisfied.

6.13 **Insurance and Indemnification.** The Developer of each Project shall defend and hold the City and its officers, employees, and consultants harmless for any and all claims, liability and damages arising out of any work or activity of said Developer, its agents, or its employees permitted pursuant to this Agreement.

6.13.1 **Hazardous, Toxic, and/or Contaminating Materials.** Petitioner further agrees to defend and hold the City and its elected and/or appointed boards, officers, agents, employees, and consultants, harmless from any and all claims, liability, costs, fines, penalties, charges and/or claims of any kind whatsoever relating to the existence and removal of hazardous, toxic and/or contaminating materials, except where such claims, liability, costs, fines, penalties, charges and/or claims are due to the actions of the City.

6.13.2 **Bodily Injury and Property Damage Insurance.** Developer agrees to and shall indemnify and hold the City and its elected and appointed boards, officers, agents, employees, and consultants harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person, or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person, directly or indirectly caused by any acts done thereon or any errors or omissions of said Developer or its agents, servants, employees, or contractors, except for wilful misconduct or negligent acts or omissions of the City or its elected and appointed boards, officers, agents, employees, and consultants.

Prior to any construction on the Property, Petitioner/Developer shall furnish or cause to be furnished to the City duplicate originals or appropriate certificates of insurance as follows: (a) Comprehensive general liability (bodily injury and property damage); blanket contractual liability; and personal injury liability, all with limits not less than \$2,000,000 combined single limit per occurrence; and automobile liability, including owned, hired, and non-owned vehicles, up to \$1,000,000; (b) Endorsements shall be obtained for the policies providing the above insurance for the following three provisions:

6.13.2.1 **Additional named insureds.** The City and its elected and appointed boards, officers, agents, employees, and consultants are added as additional named insureds with respect to this subject project and contract with the City.

6.13.2.2 **Notice.** Said policy shall not terminate nor shall it be canceled or the coverage reduced until after thirty (30) days written notice is given to the City.

6.13.2.3 **Primary Coverage.** Said policy and coverage as is afforded to the City and its elected and appointed boards, officers, agents, employees, and consultants shall be primary insurance and not contributing with any other insurance maintained by the City.

6.14 **Nondiscrimination.** Neither the City nor Petitioner, nor the agents, employees, or representatives of either, shall discriminate against, segregate, persecute, oppress, or harass one another's agents, employees, or representatives; other developers, contractors or subcontractors; the agents, employees, or representatives of any of the foregoing; tenants, owners, occupants, or residents, whether actual or potential; or any other person or entity.

6.15 **Acknowledgment.** By its signature below, Petitioner acknowledges that the respective parcel of property owned by Petitioner at the time of execution of this Agreement shall be subject to all of the terms and conditions of this Agreement upon execution by the City.

The remainder of this page is intentionally left blank.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth above.

LITTLE OPEE'S, LLC

Mark Openshaw
Mark Openshaw, Member

STATE OF UTAH)
 :SS
COUNTY OF UTAH)

On this 6 day of ~~November~~ ^{December}, 2018, personally appeared before me Mark Openshaw, who after being duly sworn, stated that he is a Member of Little Opee's Produce and Sales, LLC; that he is authorized by the same to execute, and that he did execute the foregoing Agreement.



Susan B. Farnsworth
Notary Public

CITY OF SANTAQUIN

Kirk F. Hunsaker
Kirk F. Hunsaker, Mayor

ATTEST:

Susan B. Farnsworth
Susan B. Farnsworth, Recorder

