

When recorded return to:
Payson City Corporation
439 W Utah Avenue
Payson, UT 84651

R & C #2 ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT (“Agreement”) is entered into this ___ day of _____, 20___, by and between Payson City, a municipal corporation (hereinafter, “Payson City” or the “City”) and R & C LLC (hereinafter sometimes referred to as “Annexation Sponsor,” “Petitioner,” or “Property Owner,”), to set forth the terms and conditions under which Payson City will annex certain land located in unincorporated Utah County, Utah, whose legal description is provided in Exhibit “C” attached hereto, whose street address is approximately 900 North 400 West, and which is referred to herein as the R & C #2 Annexation. The City and Petitioner are sometimes collectively referred to in this Agreement as the “Parties” or individually as a “Party”.

Included in the annexation is real property owned by Annexation Sponsor and Petitioner that constitutes approximately 12.91 acres (the “Applicant Property”); the real property owned by Lee and Veloy Hill that constitutes approximately 5.10 acres; the real property owned by the Moore Family Trust that constitutes approximately 5.00 acres; the real property owned by Mary Ann Clegg that constitutes approximately 4.21 acres; and real property owned by Tanya Thatcher which constitutes approximately 4.84 acres. Also included in the annexation is real property owned by Non-Petitioners which includes the real property owned by Max Lerwill that constitutes approximately 1.00 acres; and the real property owned by Fernando and Tahira Carroll that constitutes approximately 2.60 acres (the “Non-Petitioners” and together with the Applicant Property, the “Property”).

RECITALS

- A. Payson City, acting pursuant to its authority under Utah Code Annotated §10-2-401, *et seq.* and 10-9a-101, *et seq.* of the Utah Code, Annotated 1953, and in furtherance of its land use policies, goals, objectives, ordinances, resolutions, and regulations, has made certain determinations with respect to the R & C #2 Annexation and, in exercise of its legislative discretion, has elected to enter into this Agreement.
- B. This Agreement is prepared pursuant to Chapter 13.26 of the Payson City Zoning Ordinance to specifically describe the rights, obligations and duties of the Parties and to address zoning designation, infrastructure and utility systems, existing and future land uses, compliance with City land use and development ordinances and regulations, and other matters related to the improvement and development of property as illustrated in Exhibit “A” and described in Exhibit “C”.

- C. The annexation and the content of this Agreement are intended to be consistent with the Payson City General Plan and the Payson City Annexation Policy Plan.
- D. The Payson City Council has authorized the negotiation of and adoption of an annexation agreement that advances the policies, goals, and objectives of the Payson City General Plan, and preserves and maintains the atmosphere desired by the residents of Payson, Utah. Moreover, the Parties have voluntarily agreed to the terms of this Agreement and hereby acknowledge the obligations to complete the annexation and improve the property in a manner consistent with this Agreement, the approval of the city council, and the applicable regulations of the Payson City Code.
- E. Consistent with the foregoing authorization and the provisions of Utah State law, the City's governing body has authorized execution of this Agreement, Ordinance No. _____, a copy of which is attached to this Agreement as Exhibit "B".

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, CONDITIONS AND CONSIDERATIONS THAT ARE MORE FULLY SET FORTH BELOW, CITY, ANNEXATION SPONSOR, PETITIONERS, AND PROPERTY OWNERS HEREBY AGREE AS FOLLOWS:

- I. **Recitals.** The recitals set forth above are incorporated herein by this reference.
- II. **Exhibits.** The Exhibits and attachments are intended to be included as if in the body of this Agreement and regulated as such:
 - Exhibit "A" – The Annexation Plat
 - Exhibit "B" – Adopting Ordinance
 - Exhibit "C" – Legal Description
 - Exhibit "D" – Parcels Zoning Map
- III. **Definitions.**
 - 1. **Annexation** shall mean the process by which unincorporated property, the subject property of this Agreement, is brought into the municipal boundaries of Payson, Utah.
 - 2. **Annexation Area** shall mean the total amount of real property that is being annexed into the municipal boundaries of Payson, Utah pursuant to this Agreement and that is referred to herein as the R & C # 2 Annexation.

3. **Petition of Annexation** is the formal written application requesting Payson City to incorporate unincorporated real property into the corporate limits of Payson, Utah County, Utah.
4. **Annexation Sponsor(s)** is R & C LLC, a Utah limited liability company represented by Justin Hill.
5. **Applicant** is an individual or entity that seeks approval of an activity regulated by the Payson City Code, including, but not limited to, the annexation of real property into the municipal boundaries of the Payson, Utah.
6. **City** means the City of Payson, Utah, a municipal corporation.
7. **Development** shall mean approval of a land use application, issuance of a building permit, or approval of any other development related activity regulated by Payson City. The party seeking development is herein referred to as “**Developer.**”
8. **Petitioner(s)** represents, via signature, the petition for annexation. Property owners not endorsing the annexation by signature are herein referred to as “**Non-Petitioners.**”
9. **Property Owner(s)** shall mean a holder, proprietor of land, or group of owners of real property within the Annexation Area.

IV. Existing Uses.

The Parties agree the Annexation Area consists of an aggregate of 40.50 acres presently used for agricultural and residential purposes. Following annexation, all legal conforming and non-conforming land uses, must comply with the ordinances, resolutions and policies of Title 13 of Payson City Code. Animals must be kept in accordance with Title 7, Animal Control Regulations and the Property Owner is responsible to maintain the animals in a manner that does not create a nuisance as defined in Utah Code and the Payson City Code. The Animal Control Regulations address pre-existing animal rights and allowable animal units following annexation.

If there are uses in the Annexation Area that are not consistent with the Payson City Code, the Property Owner must demonstrate that the use legally existed prior to annexation in order to request to continue the use after annexation. The property shall adhere to all Payson City codes and ordinances including the city Beautification Ordinance related to storage, debris, refuse and weeds. Upon receipt of acceptable proof, the City Council may, but is not obligated to, allow the use to continue as a non-conforming use until the property is further developed.

V. Zoning Designation.

The Parties agree that, by ordinance, the Payson City Council has approved and adopted the R & C # 2 Annexation. The Parties agree that the property within the annexation is assigned and subject to the I-1, Light Industrial Zone and the A-5-H,

Annexation Holding Zone (see zoning map Exhibit “D”, Parcels Zoning Map). Each parcel shall comply with the respective Payson City ordinances, resolutions, and regulations. It is anticipated that in the future, the Property Owner(s) will request additional land use approvals for industrial uses.

VI. Existing Infrastructure and Future Development.

The Parties agree there are limited utilities and infrastructure to support additional development within the Annexation Area. At the applicant’s expense, utility modeling must be completed using the City’s third-party consultant to identify adequate utility connection and infrastructure locations. Development will require extending and possibly looping utilities and infrastructure improvements including mainlines (i.e. sewer, drinking water, pressurized irrigation) to the Annexation Area, improving existing infrastructure and roadways, and developing a new street network. There may also be upgrades to existing utility systems and potentially the installation of new systems. The costs associated with designing, installing, and extending the utilities and infrastructure systems may be borne by various entities, including Petitioners, Property Owners, Developers, and builders. At the time of development, the City may participate in the cost of upsizing municipal service(s) for system improvements to include only the increase in pipe size if required in an adopted master plan or identified through the utility modeling, but not for required improvements, as outlined in this Agreement.

Existing properties are required to connect to Payson City utilities and install roadway improvements when a land use application or change of use is approved.

Land Use

Development of the Property in the Annexation Area will be consistent with the intent of the I-1, Light Industrial Zone. Because there are residential uses in the area, any Applicant for Development approval will be required to implement reasonable land use transition methods, which could include alternate access and travel routes, to prevent, to the extent possible, any negative impacts the industrial use(s) could impose on the residential uses.

Transportation, Roads, Circulation, and Access

The transportation system must provide proper connectivity through the grid system, including appropriate public street connections to surrounding properties. Cul-de-sacs shall not be considered. A traffic study shall be required that will identify capacities, circulation, and access needs based off usage. The traffic study may require additional connections to access the property. The roads and streets developed in the Annexation Area shall be constructed in such a manner as to satisfy the Payson City Development Guidelines and the Transportation Master Plan. Any development shall

include active transportation facilities that will allow safe movement of pedestrians through the Annexation Area. This may include walkways, bike lanes, and trails. Applicant, Developer, or assignee, shall be responsible to dedicate the required right-of-way and complete improvements as determined at the time of development. There will not be any reimbursement paid to the Developer by the City to construct the proper width of the roadways as part of this annexation.-

Wastewater System

Development within the Annexation Area may require the installation of supplementary sewer facilities. A sewer trunk line running through the property exist already at the preferred 900 West future roadway alignment. At this time it is not expected that the sewer lines in 900 West, 400 West, or 900 North will need to be upsized for capacity by this development, but will require acid- resistant manholes and the flow cannot be disrupted.

Water System

Development within the Annexation Area may require the installation of supplementary drinking water and pressurized irrigation mainlines. A drinking water and pressurized irrigation line running adjacent to the property along 400 West Street already exists. At the time of this agreement, it was not expected that the water lines in 400 West would need to be upsized for capacity by this development. New water lines will be required within the 900 North and 900 West right-of-way and sized to meet the City's utility master plan requirements.

Storm Water

At the time of execution of this Agreement, there were no existing Payson City or Utah County stormwater infrastructure within or adjacent to the Annexation Area. Development within the Annexation Area will require the installation of independent storm water retention and injection facilities on site meeting and/or exceeding the requirements set forth in the Payson City Development Guidelines and adopted utility master plans. All developments within the Annexation Area will retain all stormwater on site and be designed to ensure all drainage is addressed within its own project boundaries and not adversely affect other properties.

Electrical Considerations

As required by City ordinance, and as a condition of annexation, Payson City shall provide all electrical service to the Annexation Area, unless otherwise agreed to in writing by Payson City or otherwise ordered by a court of competent jurisdiction. At the time of Development, Developer will take all steps necessary to affect a transfer of electric service to Payson City at such time as Payson City shall direct consistent with

Utah law and/or agreement between Payson City and South Utah Valley Electric Service District (dba SESD). No development will be approved until such transfer of electrical service has been completed. Developer agrees to reimburse Payson City for all reasonable amounts paid by Payson City to SESD pursuant either to an agreement between Payson City and SESD or pursuant to Section 10-2-421 Utah Code Annotated which costs are directly associated with the Property.

Pursuant to the Settlement Agreement between Payson City and SESD the agreed upon price for Section 421 transfers, Payson will pay to SESD an amount equal to \$15,500 (“Reimbursement Price”) multiplied by the number of SESD customers in the annexation at the time of notice to SESD. As such, Annexation Sponsor shall reimburse Payson City at the rate of \$15,500 per SESD customer at the time of the notice to SESD and prior to the recordation of the annexation plat. Provision of electrical service for future customers must satisfy the regulations of federal, state and local law or ordinance, and any other service provider obligations.

Applicants and City will coordinate to secure easements or needed land dedication to provide connection to the Payson Power electrical system.

Water Transfer

Applicants for development approval may be required to transfer to the City adequate water to serve any development within the Annexation Area consistent with the regulations of Title 4.04, Water Ordinance. Although applicants are not required to transfer water at the time of annexation, no development, as defined in Section III herein, will be approved until the transfer of water has been completed, if required. City recognizes that Petitioners and Property Owners may be utilizing different sources of water to serve existing uses in the Annexation Area. Petitioners and Property Owners may continue utilizing these sources of water until the property is further developed. At the time of development, Applicants will be required to dedicate sufficient water to satisfy City’s water dedication requirements for each final plat pursuant to the Payson City Water Ordinance.

Municipal Utility Connections

Applicant agrees that all municipal utility services required to service the Property at the time of development shall be installed by the Developer and all impact, connection and related development fees related to the Property shall be paid when development occurs. All applicable impact, connection and related development fees shall be those fees in place at the time an application for development is submitted or when the existing structures are required to connect to the municipal utility services.

VII. Compliance with Land Use and Development Ordinances and Regulations.

Nothing in this Agreement shall be deemed to relieve Petitioners, Property Owners, Developers, or Applicants from the obligation to comply with all applicable federal, state, and local law and requirements of City necessary for approval of future development proposals, nor does it in any way indicate approval of any land use application, permits, or business license. Development approval shall include the payment of applicable fees and comply with all other applicable ordinances, resolutions, regulations, policies and procedures of Payson City, including but not limited to, the Payson City Zoning Ordinance, Subdivision Ordinance, Sensitive Lands, and Development Guidelines.

VIII. Entire Agreement.

This Agreement and the documents incorporated into it by reference shall constitute the entire agreement among the Parties. Any prior discussions, understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.

IX. Reserved Legislative Powers.

Nothing in this Agreement shall limit the future exercise of the police power by City in enacting zoning, subdivision, development, transportation, environmental, open space, and related land use plans, policies, ordinances and regulations after the date of this Agreement.

X. Agreement to Run with the Land.

This Agreement shall be recorded against the land included in the annexation to Payson, Utah and shall run with the land and shall be binding on all successors and/or assigns of the land or development of any portion or phase of the property.

XI. Assignment.

Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned to any other party, individual or entity without assigning the rights as well as the responsibilities under this Agreement and without the prior written consent of City, which shall not be unreasonably withheld.

XII. No Joint Venture, Partnership or Third-Party Rights.

This Agreement does not create any joint venture, partnership, undertaking or business arrangement between the Parties hereto, nor any rights or benefits to third parties.

XIII. Amendment.

This Agreement cannot be amended, altered, or modified in any manner except by a written amendment signed by each of the Parties.

XIV. Severability.

If any part or provision of this Agreement shall be determined to be unconstitutional, invalid or unenforceable by a court of competent jurisdiction, then such a decision shall not affect any other part or provision of this Agreement, except that specific provision determined to be unconstitutional, invalid or unenforceable. If any condition, covenant or other provision of this Agreement shall be deemed invalid due its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

XV. Default.

Should the proponent of an annexation default on any provisions of the agreement, the City may pursue appropriate legal action to enforce the provisions of the agreement, including revocation of the annexation and disconnection from the City. Dispute Resolution.

Any dispute regarding the construction or interpretation of any provision of this Agreement, or regarding any determination of an issue of fact, shall be referred for resolution to a committee consisting of two individuals selected by each Party.

If the dispute is not resolved by such committee, within thirty (30) days after the dispute is referred to such committee, then the Parties shall refer the dispute for resolution to a single mediator, agreed upon by the Parties.

If the Parties are unable to agree upon a single mediator, the matter shall be referred to a three-member mediation panel. Each Party shall select a mediator, and the two mediators so selected shall select a third mediator. Mediators shall be independent of the Parties and shall be recognized and approved by State and/or federal courts as qualified and experienced mediators/arbitrators, or otherwise satisfactory to the parties. Each Party shall pay its own costs and fees. The Parties shall jointly pay for the costs and fees of the selected mediator(s).

If the mediator or mediation panel cannot resolve the dispute within ninety (90) days from the date of a final determination by the committee, the dispute may be brought before a court or other tribunal on the basis of a de novo review.

A matter may only proceed to court after exhausting the above procedures.

XVI. Effective Date.

This Agreement is effective upon filing and recordation of the annexation ordinance, annexation plat, and this Agreement in compliance with state annexation filing requirements, pursuant to the Utah Code Annotated Section 10-2-425.

(Signature Pages to Follow)

DRAFT

ACKNOWLEDGEMENT BY ANNEXATION SPONSOR AND PETITIONERS

R & C LLC, Annexation Sponsor, Property Owner, and
Petitioner

STATE OF UTAH)
 : ss
COUNTY OF _____)

On the _____ day of _____, 2023, before me _____, a
Notary Public in and for the State of Utah, personally appeared, _____, proved
on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument,
and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this date first
above written.

NOTARY PUBLIC

ACKNOWLEDGMENT BY PAYSON CITY

William R. Wright
Payson City Mayor

Attest:

Kim E. Holindrake
Payson City Recorder

STATE OF UTAH)
 : ss
COUNTY OF UTAH)

On this __ day of _____, 2023, before me _____, a Notary Public in and for the state of Utah, personally appeared WILLIAM R. WRIGHT, Payson City Mayor, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this date first above written.

NOTARY PUBLIC

EXHIBIT B
Payson City Ordinance

DRAFT

EXHIBIT C
Legal Description

R & C #2 ANNEXATION

COMMENCING NORTH A DISTANCE OF 93.72 FEET FROM THE NORTH 1/4 CORNER OF SECTION 8, TOWNSHIP 9 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN; THENCE AS FOLLOWS:

THENCE S.89°00'00"E A DISTANCE OF 472.14 FEET; THENCE S.01°00'00"W. A DISTANCE OF 88.69 FEET TO A POINT ON THE CURRENT CORPORATE LIMITS OF PAYSON CITY (THE DEPOT ANNEXATION) THENCE ALONG SAID CORPORATE LIMITS THE FOLLOWING 2 (TWO) COURSES AND DISTANCES: 1) S.01°00'00"W. DISTANCE OF 1326.25 FEET; 2) THENCE N.89°00'00"W. A DISTANCE OF 61.76 FEET TO A POINT ON THE CURRENT CORPORATE LIMITS OF PAYSON CITY (THE HARDY ADDITION ANNEXATION) THENCE ALONG SAID CORPORATE LIMITS THE FOLLOWING 2 (TWO) COURSES AND DISTANCES: 1) THENCE N.89°00'00"W. A DISTANCE OF 656.95 FEET 2) THENCE S.01°00'00"W. A DISTANCE OF 14.75 FEET TO A POINT ON THE CURRENT CORPORATE LIMITS OF PAYSON CITY (THE PACE INDUSTRIAL PARK ANNEXATION) THENCE ALONG SAID CORPORATE LIMITS THE FOLLOWING 8 (EIGHT) COURSES AND DISTANCES: 1) THENCE N.88°14'30"W. A DISTANCE OF 176.26 FEET (178.79 FEET OF RECORD); 2) THENCE N.00°30'20"E. A DISTANCE OF 236.40 FEET; 3) THENCE N.00°42'00"W. A DISTANCE OF 21.76 FEET; 4) THENCE N.00°42'00"W. A DISTANCE OF 132.53 FEET; 5) N.00°42'00"W. A DISTANCE OF 36.94 FEET; 6) THENCE N.88°11'02"W. A DISTANCE OF 238.67 FEET; 7) THENCE N.88°24'30"W. A DISTANCE OF 166.43 FEET; 8) THENCE N.89°46'00"W. A DISTANCE OF 75.13 FEET; THENCE N.00°06'20"E. A DISTANCE OF 995.83 FEET; THENCE S.89°00'00"E. A DISTANCE OF 926.26 FEET; TO THE POINT OF BEGINNING.

CONTAINING 40.50 ACRES OF LAND MORE OR LESS.

