



## **ADDENDUM CITY COUNCIL AGENDA**

PUBLIC NOTICE is hereby given that the City Council of Spanish Fork, Utah, will hold a regular public meeting in the Council Chambers in the City Office Building, **40 South Main Street**, Spanish Fork, Utah, commencing at **6:00 p.m. on January 22, 2008**.

### AGENDA ITEMS:

#### **1. CALL TO ORDER, PLEDGE, RECOGNITIONS:**

- a. Pledge

#### **2. PUBLIC COMMENTS:**

Please note: In order to be considerate of everyone attending the meeting and to more closely follow the published agenda times, public comment will be limited to three minutes per person. A spokesperson who has been asked by a group to summarize their concerns will be allowed five minutes to speak. Comments which cannot be made within these limits should be submitted in writing. The Mayor or Council may restrict the comments beyond these guidelines.

#### **3. COUNCIL COMMENTS:**

#### **4. CONSENT ITEMS:**

These items are considered by the City Council to be routine and will be enacted by a single motion. If discussion is desired on any particular consent item, that item may be removed from the consent agenda and considered separately.

- a. \*Minutes of Spanish Fork City Council Meeting – January 8, 2008

#### **5. NEW BUSINESS:**

- a. \*Amendment to Boards and Committees Ordinance
- b. Appointment of Boards and Committees
- c. \*Old Mill Estates Amended Preliminary Plat
- d. \*Davis Annexation
- e. \*Envision Annexation

### ADJOURN:

\* Supporting documentation is available on the City's website [www.spanishfork.org](http://www.spanishfork.org)

Notice is hereby given that:

- In the event of an absence of a quorum, agenda items will be continued to the next regularly scheduled meeting.
- By motion of the Spanish Fork City Council, pursuant to Title 52, Chapter 4 of the Utah Code, the City Council may vote to hold a closed executive meeting for any of the purposes identified in that Chapter.

SPANISH FORK CITY does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in the employment or the provision of services. The public is invited to participate in all Spanish Fork City Council Meetings located at 40 South Main St. If you need special accommodation to participate in the meeting, please contact the City Manager's Office at 798-5000.

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**Tentative Minutes**  
**Spanish Fork City Council Meeting**  
**January 8, 2008**

Elected Officials Present: Mayor Joe L Thomas, Councilmember's Steven M. Leifson, G. Wayne Andersen, Rod Dart, Richard M. Davis, Jens P. Nielson

Staff Present: Dave Oyler, City Manager; Seth Perrins, Assistant City Manager; Junior Baker, City Attorney; Kent Clark, Finance Director; Richard Heap, Public Works Director; Dale Robinson, Parks and Recreation Director; Dave Anderson, Planning Director; Dee Rosenbaum, Public Safety Director; John Bowcut, IS Director; Angie Jackson, Legal Secretary; Angie Warner, Office Clerk; Kimberly Robinson, Deputy Recorder

Citizens Present: Joan Davis Johnson, Lane Thomas, Annette Thomas, Natalie Compton, Morgan Finch, Ashley Walton, Brent Jarvis, Ken Pruitt, Nick Oberhansly, LaDawna Cherepovich, Nate Dart, Nick Dart, Brandon Dart, Ann Dart, Lana Creer Harris, Tamara Davis, Karissa Davis, John Mendenhall, Mike Mendenhall, Chase Castleberry

**CALL TO ORDER, PLEDGE:**

Mayor Thomas called the meeting to order at 6:00 p.m.

Councilman Dart led in the pledge of allegiance.

**Oath of Office**

Mr. Clark administered the Oath of Office with the new Council Members.

**PUBLIC COMMENTS:**

Chief Brent Jarvis, and Assistant Chief Ken Pruitt, congratulated the new Council and noted the Fire Department will be celebrating their 100 year anniversary this year.

**COUNCIL COMMENTS:**

Councilman Nielson is excited to start this process and thanked all those that helped through the campaign. He appreciates all the citizens and candidates as he has realized there is a lot that goes on to run a city. He is impressed with the staff and the knowledge they have and the residents of the city that care about what goes on. He asks for patience while he is learning.

Councilman Davis said this is a humbling experience. He is excited to serve the community of Spanish Fork. He will do his very best to help this city and wants to maintain the small town atmosphere, to do so we need the citizens of Spanish Fork to help, if they see problems let the Council know. He hopes to help make this city what it has always been, "The City of Pride and Progress". He wants everyone to know he is here to serve anyway he can.

Councilman Dart is honored to hold this position and thanked those that supported him, to those out there that didn't, he will do his very best to serve the city. He believes Spanish Fork is a well run and managed City, through all the meetings he has been to he has found it to be true. He thanked his family for supporting him through this process and is happy to be here.

51  
52 Councilman Leifson congratulated the new Councilmember's. He feels this will be a great  
53 Council and they will continue learning together as they go. The Parks and Recreation committee  
54 met this week and discussed the survey, they are finalizing it and will send another breakdown to  
55 the Council. The next step will be presenting ways to fund the projects.

56  
57 Councilman Andersen expressed appreciation for the opportunity to work with Councilman  
58 Leifson and Mayor Thomas. He expressed to the new Council he is excited and ready to work, it  
59 is a great experience to sit as a Council together, the things that affect a community bring us  
60 together and cause us to work issues through.

61  
62 Mayor Thomas said the economic development committee is working to enhance the  
63 community. There will be a press release and some additional jobs coming to our community.  
64 North Park will be moving forward and he asks that we be patient for them to give a press  
65 release. He met with the County Commissioners and formed an incentive to help the wind farm  
66 come about. The windmills are planned to serve for sixty years. This is the second urban  
67 windmill farm in America and the first one in the West so it is exciting to watch it go up. He  
68 would like to extend a welcome and congratulations to the new councilmember's. He also asked  
69 the public to recommit the service they can give to the community.

70  
71 **CONSENT ITEMS:**

72  
73 **Minutes of Spanish Fork City Council Meeting – December 18, 2007**

74  
75 Councilman Leifson made a **Motion** to approve the consent items. Councilman Andersen  
76 **Seconded** and the motion **Passed** all in favor.

77  
78 **NEW BUSINESS:**

79  
80 **Adoption of Ordinance Splitting the Finance Director and Recorder Duties**

81  
82 Mr. Baker explained currently under our ordinance the Recorder and Finance Director can be  
83 split. They feel this is the right timing, this is an ordinance that will split the Finance Director  
84 and City Recorder duties.

85  
86 Councilman Andersen made a **Motion** to accept Ordinance 01-08 an Ordinance splitting the  
87 Finance Director and Recorder duties. Councilman Davis **Seconded** and the motion **Passed** all in  
88 favor.

89  
90 Mr. Baker added that by state law ordinances become effective 20 days after publication.

91  
92 **Appointment of City Recorder; City Treasurer**

93  
94 Mayor Thomas would like to appoint Kimberly Robinson as the City Recorder.

95  
96 Councilman Leifson made a **Motion** to appoint Kimberly Robinson as the City Recorder.  
97 Councilman Nielson **Seconded** and the motion **Passed** all in favor.

98  
99 Mayor Thomas would like to appoint Claire White as the Treasurer.

100

101 Councilman Davis made a **Motion** to appoint Claire White as the City Treasurer. Councilman  
102 Andersen **Seconded** and the motion **Passed** all in favor.

103  
104 Mayor Thomas would like to appoint Councilman Andersen as the Mayor Pro Tem.

105  
106 Councilman Nielson made a **motion** to appoint Councilman Andersen as Mayor Pro Tem.  
107 Councilman Davis **seconded** and the motion **passed** all in favor.

### 108 109 **Elected Official Assignments**

110  
111 Councilman Andersen is to serve on the Council of Governments (COG), in the Mayors absence,  
112 and the South Utah Valley Solid Waste District (SUVSWD), in the Mayors absence.

113  
114 Mayor Thomas is to serve on the Utah Municipal Power Agency Board (UMPA) with two  
115 others, Councilman Steve Leifson as an alternate and Matt Barber as special advisor for the next  
116 three to six months due to the bonding issue.

117  
118 Councilman Leifson is to serve on the South Utah Valley Power System (SUVPS) in the Mayors  
119 absence.

120  
121 Councilman Dart to serve on the Library Board, Seniors Board, with the Mayor as alternate on  
122 the Seniors Board; South Utah Valley Animal Special Service District, Spanish Fork Chamber of  
123 Commerce, with the Mayor, and the Wastewater Treatment Plant Advisory Committee.

124  
125 Councilman Davis is to serve on the Airport Board, Fiesta Days Committee, Youth Council, and  
126 the Risk Management Committee.

127  
128 Councilman Nielson is to serve on the Miss Spanish Fork Pageant Committee, Economic  
129 Development Committee, with the Mayor, Finance Committee, Personnel Committee, also the  
130 and Risk Management Committee.

131  
132 Councilman Leifson made a **Motion** to appoint the suggested committees with Mr. Baker's  
133 changes to make Matt Barber a special advisor for the next three to six months due to the  
134 bonding. Councilman Nielson **Seconded** and the motion **Passed** all in favor.

### 135 136 **Appointment of Boards and Commissions**

137  
138 Mayor Thomas asked the public that are interested in serving on committees to send their  
139 information to [council@spanishfork.org](mailto:council@spanishfork.org). He also noted there could be a committee created for  
140 recycling and other special interests; they would welcome any volunteer activity.

### 141 142 **Resolution Authorizing Legal Settlement – Kevin Payne**

143  
144 Mr. Baker stated they have been involved with some litigation with the north park project and  
145 explained the process of the lawsuit coming about. They have reached a settlement agreement.  
146 Mr. Payne has requested that he not incur any additional cost.

147  
148 Councilman Leifson made a **Motion** to adopt Resolution 08-01 authorizing legal settlement with  
149 Kevin Payne. Councilman Nielson **Seconded** and the motion **Passed** all in favor.

150

151 **Financial Advisor Appointment**

152  
153 Mr. Clark explained the financial advisor RFP's were sent out and after reviewing the documents  
154 the finance committee recommends using Zion's Bank Public Finance.

155  
156 Councilman Andersen stated the last meeting they had was very informative, based on those  
157 presentations they were able to clarify what they felt was the most important elements of a  
158 financial advisor.

159  
160 Councilman Dart stated he had the opportunity to sit in on the meeting and was very impressed  
161 with the people that serve on that committee.

162  
163 Councilman Davis made a **Motion** to continue to use Zion's Bank as the financial advisor for  
164 Spanish Fork City and to authorize the Mayor to sign. Councilman Dart **Seconded** and the  
165 motion passed all in favor.

166  
167 **OTHER BUSINESS:**

168  
169 Councilman Andersen reported that the County Fair is coming back home and all those involved  
170 are excited about the process. The County Commissioner's have been great to work with and  
171 without their support some of these things would not have happened.

172  
173 Councilman Davis would really like to see more floats in the Fiesta Days Parade and he will  
174 work on that. He feels there will be a higher quality by bringing in more floats and hopes the  
175 other cities get involved.

176  
177 Councilman Andersen noted there are some legislative issues coming up this year concerning  
178 water, also city governments and how they are established and set up. He suggests the citizens of  
179 the community make themselves aware of what will be going on at Capital Hill, be involved and  
180 let their views be known.

181  
182 Mayor Thomas feels when the public gets involved they are vested, he feels more personally  
183 connected because of the service and time he puts in. He would like to see more citizens and  
184 families get involved. He stated some challenges with the recycling and possible ways to get a  
185 break-even recycling program going.

186  
187 **ADJOURN:**

188  
189 Councilman Andersen made a **Motion** to adjourn to executive session for Land Use Issues  
190 Councilman Leifson **Seconded** and the motion **Passed** all in favor at 6:50 p.m.

191  
192  
193 ADOPTED:

194 \_\_\_\_\_  
Kimberly Robinson, Deputy Recorder

**ORDINANCE NO. 02-08**

**ROLL CALL**

<b>VOTING</b>	<b>YES</b>	<b>NO</b>
<b>MAYOR JOE L THOMAS</b> <i>(votes only in case of tie)</i>		
<b>G. WAYNE ANDERSEN</b> <i>Councilmember</i>		
<b>ROD DART</b> <i>Councilmember</i>		
<b>RICHARD M. DAVIS</b> <i>Councilmember</i>		
<b>STEVE LEIFSON</b> <i>Councilmember</i>		
<b>JENS P. NIELSON</b> <i>Councilmember</i>		

I MOVE this ordinance be adopted: \_\_\_\_\_

I SECOND the foregoing motion: \_\_\_\_\_

**ORDINANCE No. 02-08**

**AN ORDINANCE AMENDING THE REQUIREMENTS OF  
BOARDS, COMMISSIONS, AND COMMITTEES**

WHEREAS, Spanish Fork City has numerous boards, commissions, and committees designed to provide information and recommendations to the governing body to assist the governing body in carrying out its responsibilities; and

WHEREAS, Spanish Fork City has created an ordinance defining the various responsibilities of the boards, commissions, and committees of the City; and

WHEREAS, in order to have the boards, commissions, and committees function more effectively it is necessary to amend the requirements from time to time; and

WHEREAS, the utility board has not functioned for several years, and it appears there is no longer a need for a permanent utility board, but that those functions can best be addressed by an ad hoc committee;

NOW THEREFORE, be it ordained and enacted by the Spanish Fork City Council as follows:

**I.**

Spanish Fork Municipal Code §7.28.050 is hereby amended to read as follows:

**7.28.050 Personnel Committee**

A. A personnel committee is created, consisting of the Mayor, two council members, the City Manager, the assistant city manager, two employees elected by other employees, and two citizens with human resource backgrounds. The personnel committee is to make recommendations to the council concerning compensation and benefits of all employees. The committee may also make recommendations to the City Manager or designated human resource officer concerning the city's personnel policy and other personnel matters.

B. The employee members shall serve for four year terms. One member shall be up for election every two years. The council members shall be appointed for one year terms. The citizen members shall serve staggered four year terms.

**II.**

Spanish Fork Municipal Code §7.28.160 is hereby amended to read as follows:

**7.28.160 Fiesta Days Committee**

A. A Fiesta Days Committee is created consisting of six members, including an elected official, a representative from the public safety department, the City special events coordinator, and three citizens. One of the citizen appointees will be appointed as chair of the committee. The other two citizen members shall be the past chair and the chair elect. The committee shall make recommendations to the Council concerning the annual City celebration known as Fiesta Days. The committee may create any number of subcommittees to assist it with the Fiesta Days celebration, which subcommittees shall act as ad hoc committees.

B. The terms of the citizens members shall be for three years, the first shall be as the chair elect, the next as chair, and the last as past chair.

**III.**

Spanish Fork Municipal Code §7.28.130, Utility Board, is hereby repealed.

**IV.**

Spanish Fork Municipal Code §7.28.\_\_\_\_ is hereby amended to read as follows:

**V.**

This ordinance shall become effective twenty days after passage and publication.

PASSED AND ORDERED PUBLISHED BY THE CITY COUNCIL OF SPANISH  
FORK, UTAH, this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

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JOE L THOMAS, Mayor

ATTEST:

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KENT R. CLARK, City Recorder



# REPORT TO THE PLANNING COMMISSION OLD MILL ESTATES AMENDED PRELIMINARY PLAT APPROVAL REQUEST

**Agenda Date:** January 22, 2008

**Staff Contacts:** Dave Anderson, Planning Director

**Reviewed By:** Development Review Committee

**Request:** CW Management is requesting an amended approval for their Preliminary Plat. They are requesting to amend the approval of this Master Planned Development so as to incorporate a City-owned parcel adjacent to their site into the subdivision. Incorporating this land into the development will allow CW Management adequate space to include an additional building lot in the development. As part of the exchange of the additional property CW management has agreed to pipe the canal that is located on the City owned parcel.

**Zoning:** R-1-15

**General Plan:** Residential 1.5 to 2.5 units per acre

**Project Size:** 29.75 acres

**Number of lots:** 57 building lots

**Location:** Approximately 700 West 1400 South

## Background Discussion

In 2007, the City Council approved a Preliminary Plat for Old Mill Estates. In fact, a Final Plat has been approved for the development as well.

Subsequent to these approvals, it has been recommended that the City allow the applicant to include a parcel of property in the development so as to avoid the creation of what may otherwise become a derelict piece of property. This parcel is owned by the City, is bisected by a canal and is approximately 13,200 square feet in size.

In staff's view, having this parcel included in the subdivision is advantageous for the City as the property would not then be left as an isolated unusable tract. Another benefit of having this property included in the subdivision is the fact the applicant has agreed to pipe the canal located on the property.

With the inclusion of this parcel in the development, there is adequate area for the applicant to include an additional 15,000 square foot lot in the plat. The developer has agreed to pipe the canal largely with the idea that he would be able to increase his lot count in the subdivision.

The Development Review Committee reviewed this request on December 19, 2007 and recommended that it be approved. Minutes from that meeting read as follows:

### Old Mill Estates Amended

Applicant: CW Management

General Plan: Residential 1.5 to 2.5 Units Per Acre

Zoning: R-1-15

Location: Arrowhead Trail and Mill Road

Discussion was held regarding lot line adjustments on lots three (3) through six (6) to include the City property and CW Management and Jed Morley sharing the costs associated with piping the canal.

Mr. Nielson expressed concern with lot 57 replacing the landscape entrance and explained that the construction drawings did not allow for Arrowhead Trail to be a five (5) lane road.



Discussion was held regarding lot 57 and the curb line allowing for a five (5) lane road on Arrowhead Trail, bonus density for piping the canal, and the electric service line along Arrowhead Trail.

Mr. Oylar **moved** to recommend to the Planning Commission **approval** to amend the Old Mill Estates Preliminary Plat for CW Management located at Arrowhead Trail and Mill Road subject to the following conditions:

### Conditions

1. That the applicant move lot lines three (3) through six (6) to include the City property.
2. That the applicant adjust lot lines on Arrowhead road to accommodate the needed cross section and easements on the power line.
3. That the applicant meet all conditions of prior plat approval.
4. That lot 57 is designed to meet the setback requirements as designated by the Engineering Department.
5. That lot 57 not be allowed direct access to Arrowhead Trail.

Mr. Baker **seconded** and the motion **passed** all in favor.

The Planning Commission reviewed this request in their January 9, 2007 meeting and recommended that it be approved. Draft minutes from that meeting read as follows:

### Old Mill Estates

Applicant: CW Management  
General Plan: Residential 1.5 to 2.5 units per acre  
Zoning: R-1-15  
Location: 1503 South Mill Road

Mr. Anderson explained the proposal is a master planned development. This change was made so that the applicant could still maintain their density by providing another important means for ingress and egress. He explained there was a 13,000 square foot parcel of City owned land, bisected by a large canal, and adjacent to the proposal. The City has deeded this land to CW management in exchange for them assuming all costs associated with the piping of the canal. CW Management and Jed Morley will be sharing some of the costs associated with piping the canal.

Commissioner Christianson asked about the irrigation easements and if the canal would be

included in the property of the lots that abut the canal.

Wayne Niederhauser

Mr. Niederhauser explained he did not have a problem putting verbiage on the plat regarding the irrigation easement that would be included with the lots that abut the canal. He feels unless there is a clean out section in the pipe in this area that the pipe should not ever have to be disturbed. He said due to the residential housing market slowing down they would like to phase their project. The first phase would provide access to Mill Road, Arrowhead Road and out to the north subdivision (Academy Park). The other two phases will be fairly small but would like to not put as many lots on the market. They will work with Mr. Jed Morley and pipe the canal in conjunction with the construction of his proposal.

Mr. Nielson explained the canal will need to be piped according to the irrigation season.

Jeff Clark

Mr. Clark asked which irrigation ditches would be piped and a timeframe of when they would be piped.

Mr. Niederhauser explained what irrigation ditches he would be piping with regard to his proposal.

Discussion was held regarding the irrigation ditches in the area and easements.

No public comment.

Commissioner Marshall **moved** to recommend to the City Council **approval** of the Preliminary Plat for Old Mill Estates located approximately 700 West 1400 South subject to the following conditions:

### Conditions

1. That the applicant adjust lot lines on Arrowhead road to accommodate the needed cross section and easements on the power line.
2. That the applicant meets all conditions of prior plat approval.
3. Include all piping of irrigation ditches in phase one.

Commissioner Lewis **seconded** and the motion **passed** all in favor by a roll call vote.

## **Budgetary Impact**

Approving the proposed Amended Preliminary Plat may have some budgetary impact for the City in that the applicant has concurred to pipe the canal that is located on the City-owned parcel. This act removes any potential responsibility to pipe the canal, at some point in time, from the City shoulders.

## **Alternatives**

As this is a Master Planned Development, the City does have discretion relative to various aspects of the proposal. In this case, where the developer is essentially asking for no bonus density the amount of discretion that the City can exercise is somewhat limited.

## **Staff Recommendation**

Staff recommends that the City Council approve the proposed Amended Preliminary Plat for Old Mill Estates subject to the following findings:

## **Conditions**

1. That the applicant meet all conditions of prior plat approval.
2. That lot 57 not be allowed direct access to Arrowhead Trail.
3. That any required piping of irrigation ditches be completed with the first phase.





# REPORT TO THE PLANNING COMMISSION DAVIS ANNEXATION

**Agenda Date:** January 22, 2008

**Staff Contacts:** Dave Anderson, Planning Director

**Reviewed By:** Development Review Committee

**Request:** The applicant, Envision Development, is requesting approval for an Annexation.

**Zoning:** R-1-15 Requested

**General Plan:** Residential 1.5 to 2.5 Units Per Acre

**Project Size:** 47.79 acres

**Location:** Approximately 2550 East 100 South.

## Background Discussion

Accompanying this report is an Annexation Report and proposed Annexation Agreement. In short, this proposed annexation has been in the review process for a number of months and a number of specific issues have been addressed during this review. In recent weeks, the Development Review Committee recommended that it be approved. Draft minutes from that meeting read as follows:

### Davis Annexation

Applicant: Mike Davis  
General Plan: Residential 1.5 to 2.5 Units Per Acre  
Zoning: R-1-15 requested  
Location: approximately 200 South 2800 East

Mr. Baker explained the Strawberry Electric Service District buyout for the lines that run through the area.

Discussion was held regarding the SESD power lines and the applicants need to contact SESD with regard to the buyout.

Mr. Baker moved to approve the Davis Annexation located at approximately 200 South 2800 East and the Envision Annexation located at 600 South 2550 East subject to the following conditions:

### Conditions

1. That the applicants enter into annexation agreements and based on all of the information in Richard Nielson's report.

Mr. Nielson seconded and the motion passed all in favor.

The Planning Commission reviewed this request in their January 9 meeting and recommended that it be approved. Draft minutes from that meeting read as follows:

### Davis Annexation

Applicant: Mike Davis  
General Plan: Residential 1.5 to 2.5 Units Per Acre  
Zoning: R-1-15 requested  
Location: approximately 200 South 2800 East

Mr. Anderson explained the proposals and the purpose of the annexation reports. Feels the



biggest issue is power. A substation is needed in this area of town and until a substation site has been acquired by the City; no development will be approved in the area. He commended the applicants and the working relationship with them.

Commissioner Lewis asked if annexing these two proposals would limit other annexations in the area.

Mr. Anderson explained that this area is one of the places in that has been earmarked for annexation and development and that there would not be issues providing utilities at the current general plan.

Mr. Nielson explained he had talked to UDOT regarding an update on the 2550 east railroad crossing reopening. UDOT is waiting for word from the railroad in Omaha, Nebraska.

Discussion was held regarding the annexation agreements, 90 foot right-of-way, and the City hiring a firm to do a master traffic plan for the entire City.

Commissioner Marshall **moved** to recommend to City Council **approval** of the Davis Annexation located at approximately 2550 East 100 South with a R-1-15 zone and subject to the following condition:

#### **Condition**

1. That the applicants enter into the accompanying Annexation Agreements.

Commissioner Christianson **seconded** and the motion **passed** all in favor by a roll call vote.

#### **Staff Recommendation**

Staff recommends that the City Council approves the proposed Annexation subject to the following condition:

1. That the applicant enter into the accompanying Annexation Agreement.

**ANNEXATION AGREEMENT  
FOR THE MICHEAL DAVIS ANNEXATION**

THIS ANNEXATION AND DEVELOPMENT AGREEMENT (the "Agreement") is entered into as of the \_\_\_\_\_ day of December, 2007 by and between Micheal G. Davis (hereinafter Petitioner) and Spanish Fork City, (hereinafter City), (together, the "Parties").

**RECITALS**

A. WHEREAS, Petitioner owns approximately \_\_\_\_\_ acres of real property at approximately 100 South 2700 East (the Project Area), which area is described in Exhibit A, and which is part of a larger area consisting of 47.79 acres, which larger area is under consideration for annexation (the Annexed Area), which area is described in Exhibit B; and

B. WHEREAS, Owners have filed a Petition with City (the Petition), formally requesting the annexation of the property described in Exhibit B; and

C. WHEREAS, the Parties intend to enter into this Agreement to allow Petitioner and City to agree on issues such as streetscape, amenities, and other development objectives prior to development of the area in the Project Area. This process will lead to an attractive community that functions in a way that will add quality of life to future residents while allowing City to provide municipal services in a cost effective and efficient manner and in accordance with the Spanish Fork City General Comprehensive Plan, applicable zoning ordinances, and the Construction and Development Standards of City; and

D. WHEREAS, approval of this annexation agreement does not grant subdivision approval, site plan approval, or approval of any building permit, or other land use activity regulated by Spanish Fork City ordinances. Petitioner expressly acknowledges that nothing in this agreement shall be deemed to relieve Petitioner from the obligation to comply with all applicable requirements of City necessary for approval and recordation of subdivision plats, nor does it 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;

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants hereinafter 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 shall have that meaning given to it by the Spanish Fork City Land Use Ordinance in effect on the date of a complete application. Certain other terms and phrases are referenced below. In the event of a conflict in definitions, that definition which provides the most restrictive development latitude shall prevail.

1.1 **Annexed Area** means the 47.79 acres under consideration for annexation into Spanish Fork City as described in Exhibit B.

1.2 **Buildout** means the completion of all of the development of the land in the Project Area, described in Exhibit A, in accordance with this Agreement.

1.3 **Design Guidelines** means the Design and Development Standards, found in the Spanish Fork Municipal Code, Title 15, Part 4, Chapter 16, and the Spanish Fork City Construction Standards, including the Specifications, Details, and Design Guidelines.

1.4 **Owner or Owners** means the owner(s) of the Property, or any part thereof, as indicated on the records of the Utah County Recorder.

1.5 **Project Area** means the \_\_\_\_\_ acres of land identified in Exhibit A, which has been petitioned for annexation and which is the subject of this agreement.

## SECTION II. GENERAL RIGHTS AND RESPONSIBILITIES

### 2.1 General Rights and Responsibilities of Developer

2.1.1 **Conditions of Approval and Impact Fees.** With respect to the development of the Project Area, Petitioner accepts and agrees to comply with the impact, connection and building fees of the City in effect at the time of assessment, whether or not currently in effect, the City agreeing and representing that any such fee schedule will be applied uniformly within the City or service area of the City, as applicable. Developer acknowledges that the Project 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.

2.1.2 **Construction Mitigation.** Petitioner shall provide the following measures, all to the reasonable satisfaction of the City, to mitigate the impact of construction within Project Area. Petitioner shall also adhere to the usual construction impact mitigation measures required by City. Additional reasonable site-specific mitigation measures may be required. The following measures shall be included in each application for development of any final plat:

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

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

2.1.2.3 Construction traffic routing plan to minimize traffic impacts on Spanish Fork City and residential areas as approved by City; and

2.1.3 **Subsequent Applications Under Future Development Code.** Without waiving any rights granted by this Agreement, Petitioner may choose to submit some or all of Petitioner's properties for development under the version of the City's Design Guidelines existing at the time of the application. In the event an application or plat expires, the version of the Design Guidelines existing at the time of re-application shall apply.

### 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 or zoning.

2.2.2 **Compliance with City Requirements and Standards.** Petitioner expressly acknowledges that nothing in this Agreement shall be deemed to relieve any of them from their obligations to comply with all applicable requirements of City necessary for approval and recordation of subdivision plats and site plans for the Project Area, or any other portions of the Property, in effect at the time of development approval, or re-approval in the event of expiration, including the payment of unpaid fees, the approval of subdivision plats and site plans, the approval of building permits and construction permits, and compliance with all applicable ordinances, resolutions, policies and procedures of City.

2.2.3 **Power of Eminent Domain.** City agrees that, in the event Petitioner needs to obtain easements or rights of way for the purpose of constructing offsite infrastructure improvements for the Project and is otherwise unable to negotiate a reasonably acceptable contract for such easements or rights of way, City, upon the request of Petitioner, may *consider* the exercise of its power of eminent domain to obtain such easements or rights of way, the cost of which shall be borne by Petitioner, including land costs, court costs, appraisal costs, legal fees, and any other costs associated with any such condemnation action.

2.3 **Recording.** City or Petitioner may cause this Agreement, or a notice concerning this Agreement, to be recorded with the Utah County Recorder.

### SECTION III. SPECIFIC RIGHTS AND RESPONSIBILITIES

#### 3.1 Obligations of Petitioner

##### 3.1.1 Municipal Utilities

**Satisfaction of Water Rights Requirement.** Petitioner hereby asserts that it has read and is familiar with Spanish Fork City Code §15.4.16.080 and hereby agrees that prior to either approval of a final plat for, or issuance of a building permit on, any parcel of property that is included in the Project Area, the owner of the subject parcel shall 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. City shall not be required to approve any plat, or issue any building permit, until such requirements are fully satisfied.

**Installation and Design Criteria.** City provides the following utilities, which need to be brought to the Project by Petitioner, at no cost to City: Electric Power, Culinary Water, Pressurized Irrigation Water, Sewer, Storm Drain, and Telecommunications. Petitioner shall design, build and dedicate to the City adequate delivery systems for each of these utilities according to City specifications and standards, including all distribution lines, conduit, street lights, valving, fire hydrants, meters, and other required services to meet the needs for the Project Area. Improvements shall be upsized at the direction of the City Engineer to meet future needs of the City utilities. All facilities necessary to provide adequate utility services installed by Petitioner within the Project Area, upon acceptance by the City, shall be owned, operated, and maintained by City, provided that any warranty periods as established by City ordinance or Design Guidelines shall be the responsibility of Petitioner. Petitioner or its successors or assigns shall be responsible for such infrastructure until such time as City accepts the improvements.

**Easements.** Petitioner shall grant to City, at no cost to City, all easements necessary for the operation, maintenance, and replacement of all utilities, located within the Project Area as City determines to be necessary. In addition to on site easements, an off site sewer easement is necessary to service the Project Area with sewer. Petitioner shall be required to obtain and transfer to City the off site sewer easement needed to provide sewer service, unless another developer has already provided it. This shall be provided prior to recordation of the annexation plat, or prior to the filing of a development application with City. It shall be in a location suitable to the public works department of City.

**Master Plan Utility Infrastructure Sizing.** Petitioner shall design, build and dedicate to City the utility infrastructure as shown in Exhibit C, unless it has already been provided by another developer. The timing of construction shall be dependent on project phasing and necessary sizing requirements to meet the standards of service at a level generally provided to other areas of the City and as determined by the City Engineer. Petitioner shall be entitled to reimbursement for the difference in cost between a twelve inch and twenty inch culinary water line in 2550 East. Petitioner shall be entitled to reimbursement for the difference in cost between a ten inch and sixteen inch pressure irrigation water line in 2550 East. Petitioner shall be entitled to reimbursement for the difference in cost between an eighteen inch and

twelve inch sewer line in 100 South. Petitioner shall be entitled to reimbursement for the cost of the storm drain line in 2550 East. Reimbursement shall be made from impact fees pursuant to a separate agreement, to be drafted and executed when the actual costs of construction are known. Reimbursement will be over a period of years, based upon a ratio of these costs compared to the overall costs for which impact fees are assessed, and are subject to the collection of impact fees. If another developer has previously provided this infrastructure, Petitioner shall not be entitled to reimbursement, but may be obligated to pay the earlier developer under the terms of a connector's agreement.

**Storm Drain.** In addition to the storm drain line shown on Exhibit C, Petitioner shall construct facilities to retain storm water on site until such time as the regional facilities shown on City's Storm Drain Master Plan are constructed and ready to accept storm drain flows. These on site facilities shall be constructed during the first phase of any development and shall be ready for use prior to the issuance of any certificate of occupancy.

**SESD.** Petitioner shall be obligated to buy out SESD electrical facilities which may exist in the Annexed Area. This shall be accomplished prior to recording of the Annexation ordinance. A letter from SESD, indicating payment for the facilities has been received, shall accompany the annexation mylar.

**Reimbursement.** The cost of upsizing the culinary water, pressurized irrigation water, electric power, telecommunications, storm drain, or sewer infrastructure, except as set forth in the preceding paragraph, shall be borne by the Petitioner without reimbursement. Connector's agreements will be granted to Petitioner to allow for a pro-rata reimbursement of costs from future developers or Owners who connect to the infrastructure installed by Petitioner. A separate connector's agreement shall be entered when the actual cost of those improvements is known. City's standard connector's agreement shall be used. Reimbursement shall come from those properties benefitting from the listed improvements, as determined by the City Engineer, at the time of development or otherwise when connecting to the improvements. The amount shall be determined on a pro-rata basis, based upon the benefit conferred, as determined by the City Engineer. Petitioner agrees to timely pay any connector's agreements to which it is subject.

### 3.1.2 Transportation, Including Streets and Trails

**Roadway Dedication.** Petitioner shall dedicate sufficient property for an 80 foot wide roadway right of way (minor collector, with trail) along 100 South (currently 6800 South, County). The dedication shall take place prior to recording of the annexation ordinance, and shall be a condition of annexation.

**Roadway Construction.** Petitioner shall be required to build a road along the frontage of the Project Area, in accordance with the Design Guidelines, for a minor collector along 750 South when development of the Project Area takes place. Other offsite road improvements may be required, at the time of development, if traffic or safety studies indicate the development in the Project Area will create a need for offsite improvements. The parties may negotiate the details and timing of any such improvements. Offsite sidewalk improvements may also be required in order to create safe sidewalks for children from development in the Project Area to walk to the nearest public school.

**Railroad Crossings.** The railroad crossing at 2550 East and the railroad adjacent to State Road 6 is in need of upgrading to handle increased traffic created by this Project, together with other development in the vicinity. UDOT is currently undertaking to upgrade that crossing. However, no timetable for completion is known. Petitioner agrees that no final plats may be approved until that railroad crossing is complete.

**Trail Corridor Dedication and Trail Construction.** Petitioner will dedicate land for a trail along the Rocky Mountain Power electric easement corridor in the Project Area, which event shall be a condition of annexation. Petitioner may elect to build, to City Design Guidelines, a trail on the dedicated

ground. Should Petitioner so elect, a density bonus for the trail dedication and installation shall be granted to Petitioner, in accordance with the Master Planned Development ordinance of City.

**Reimbursement.** The cost of required, offsite improvements in this section 3.1.2 are subject to a pro-rata reimbursement from other properties benefitting from the improvements. Connector's agreements will be granted to Petitioner to allow for a pro-rata reimbursement of costs from future developers or Owners who have frontage to the infrastructure installed by Petitioner. A separate connector's agreement shall be entered when the actual cost of those improvements is known. City's standard connector's agreement shall be used. Reimbursement shall come from those properties benefitting from the listed improvements, as determined by the City Engineer, at the time of development or otherwise when connecting to the improvements. The amount shall be determined on a pro-rata basis, based upon the benefit conferred, as determined by the City Engineer. Petitioner agrees to timely pay any connector's agreements to which it is subject.

### 3.1.3 Land Transfer

**Electric Substation.** City needs a new electric substation in order to provide electric service to the Mapleton Bench area of City, including the Project Area. City is underway with various studies, which will recommend suitable locations for a new electric substation in the vicinity of the Project Area. Until City obtains the location for the electric substation, no development application may be submitted by Petitioner.

**Well Property.** City is investigating various locations for a well, to serve culinary and/or pressure irrigation water needs. If it is determined that the well location needs to be within the Project Area, Petitioner agrees to transfer up to one-half an acre, together with an appropriate source protection zone if a culinary well is to be drilled. The location will be designated by City.

**Purchase Price.** City shall be obligated to pay fair market value for any land transfer required by this section 3.13. If the parties cannot agree upon the fair market value, City, at its sole cost and expense, shall obtain an appraisal of the property. If Petitioner does not agree with City's appraisal, it shall, at its sole cost and expense, obtain a second appraisal. The average of the two appraisals shall be deemed to be fair market value.

## 3.2 Obligations of City.

**Acceptance of Infrastructure.** City shall accept the dedication and maintenance of all streets, trails and open spaces in the Project Area, so long as such streets are constructed to the City specifications and standards, and are dedicated free of all liens and encumbrances, provided that any warranty periods as established by City ordinance or Design Guidelines shall be the responsibility of Petitioner.

**Utility Service.** Upon the dedication and acceptance by City of the utility infrastructure, satisfaction of the water rights requirements (as outlined in section 3.1.1), and payment of impact fees, connection fees, and any other applicable fees by Petitioner, City shall provide all of the Project Area served by such infrastructure with utility service at a level generally provided to other areas of the City.

**Plat Review.** Upon Petitioner complying with all the conditions of this Agreement, City shall promptly review development requests made by Petitioner, including plat approval, in accordance with City ordinances, rules, and policies. Petitioner shall comply in all respects with requirements of plat and/or development approval. Nothing herein shall be considered to limit or restrict the police powers of the City Council in approving, denying, or establishing conditions for any development request. Development approval is not guaranteed hereby, but vesting may occur only through the provisions of the Utah Land Use Development and Management Act, Utah Code Ann. §10-9a-101 et seq. (1953, as amended) and Spanish Fork Municipal Code, Title 15.

## SECTION IV. ZONING

4.1 **Master Planned Development and Underlying Zoning.** Petitioner may desire to provide amenities and obtain bonus densities based upon a Master Planned Development as contemplated by Spanish Fork Municipal Code §15.3.24.030. Petitioner shall be allowed to proceed with the development of a Master Planned Development and to receive bonus densities, for a total project density up to 2 ½ units per acre, as authorized by the Master Planned Development Ordinance as long as Petitioner provides amenities allowed by the Ordinance and required by the City Council during preliminary plat approval and remains in full compliance with the Municipal Code and all Design Guidelines of City. Nothing herein shall be construed to limit the ability of the City Council from exercising its police powers to enact zoning ordinances, some of which may affect the Project Area.

## SECTION IV. 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 Project to which the successor holds title, or which would apply to the Developer 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 Project.

5.2 **Assignment.** Petitioner shall have the right, with City's consent, 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 Project or any portion thereof, except as specifically set forth below. The City may not unreasonably withhold its consent to such 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. Petitioner shall provide written notice of any proposed or completed assignment or transfer. Unless City objects in writing within thirty (30) days, City shall be deemed to have approved of and consented to the assignment. In the event of an assignment, the transferee shall succeed to all of Petitioner's rights under this Agreement. Notwithstanding the foregoing, Petitioner's selling or conveying individual lots or parcels of land to builders, individuals or developers shall not be deemed to be an assignment subject to the above requirement for approval unless specifically designated as an assignment by Petitioner.

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

5.4 **Consent.** In the event this Agreement provides for consent from the City or 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, Developer agrees to accept responsibility for all legal fees, including attorneys fees, expert witness expenses, and/or court costs incurred by the City upon presentation to Petitioner of an itemized list of costs, expenses, and fees. City shall not be required to make any reimbursements contemplated herein if the source of funds for such reimbursements are held invalid,

illegal, void, or otherwise unenforceable. Petitioner shall be allowed to participate in decisions related to this provision, including the selection and hiring of legal counsel and the conduct of the litigation or any settlement thereof.

## SECTION VI. MISCELLANEOUS

6.1 **Incorporation of Exhibits and Headings.** All Exhibits referred to or attached hereto are hereby incorporated into this Agreement as if fully set forth herein. The headings to the various paragraphs and sections are for assistance in locating contract provisions, but are not to be considered part of the contract provisions.

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 each of the Parties 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 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.

6.6 **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.

6.6.1 **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. 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; and; (iii) 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 in Utah County. In the event the Parties are unable to agree upon a mediator, the mediator shall be appointed from an approved mediator list provided by the Utah State Bar Association with specialized knowledge of contract and municipal law. The appointment shall take place pursuant to the guidelines set forth by the Utah State Bar. 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.

6.6.2 **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. 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.

6.7 **Notices.** Any notice or communication required hereunder between the Parties must be in writing, and may be given either personally or by certified mail, return receipt requested or by facsimile.

If given by 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 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 addresses set forth below:

If to City to:  
SPANISH FORK CITY  
Attn: City Manager  
40 South Main  
Spanish Fork, Utah 84660

If to Petitioner to:  
Micheal G. Davis  
1957 S. 120 W.  
Orem, Utah 84058

6.8 **Exhibits.** The following exhibits are attached to this Agreement and incorporated herein for all purposes:

Exhibit A	Legal description of the Project Area
Exhibit B	Legal description of the Annexed Area
Exhibit C	Utility and Improvement Plan

IN WITNESS WHEREOF, this Agreement has been executed by the Parties, by persons duly authorized to execute the same and by the City of Spanish Fork, acting by and through its City Council as of the \_\_\_\_ day of \_\_\_\_\_, 2007.

**SPANISH FORK CITY** by:

\_\_\_\_\_  
JOE L THOMAS, Mayor

ATTEST:

\_\_\_\_\_  
Kent R. Clark, City Recorder

\_\_\_\_\_  
MICHEAL G. DAVIS

**SPANISH FORK CITY  
Annexation Feasibility Report**



<b>Agenda Date:</b>	November 7, 2007
<b>Staff Contacts:</b>	Dave Anderson, Planning Director Richard Nielsen, Assistant Public Works Director
<b>Reviewed By:</b>	Development Review Committee
<b>Subject:</b>	Davis Annexation Report

**SECTION 1**

Annexation Map.

Annexation Plat.

**SECTION 2**

annexation sponsor: Michael Davis

phone: (801) 226-0810

annexation location: 2600 East Center Street

acreage in annexation: 48.91 acres

property owner(s) and parcels

owner: J. Merrill Hallam  
valuation: \$123,100

parcel: 27:032:0103

acreage: 16.26 acres

owner: Michael G. Davis Property  
valuation: \$154,200

parcel: 27:032:0078

acreage: 16.97 acres

owner: Julie Ann Curtis  
valuation: \$352,900

parcel: 27:032:0104

acreage: 3.11 acres

owner: Brian Bird  
valuation: \$153,800

parcel: 27:032:0073

acreage: 6.06 acres

owner: W. Jan & Sharon Storrs  
valuation: \$278,800

parcel: 27:032:0054

acreage: 3.03 acres

submittal date: February 26, 2007

acceptance date: March 20, 2007

certification date: April 13, 2007

date of protest filed: none

Development Review Committee recommendation date:

Planning Commission recommendation date:

City Council meeting date:

## SECTION 3

In accordance with 15.3.08.030 (B) of the Municipal Code, the following items are addressed in Section 3 of the Annexation report:

**1. Whether the proposed property is within the Growth Management Boundary of the General Plan.**

It has been proposed to amend the Growth Management Boundary to include the annexation area.

**2. Present and proposed land use and zoning.**

At present, there are two dwellings on the subject properties and the annexation area has a Residential Agricultural zoning designation in Utah County. Spanish Fork City has designated the annexation area as Residential 1.5 to 2.5 units per acre on the General Plan. The zoning that most appropriately correlates to the General Plan is R-1-15.

**3. Present and potential demand for various municipal services.**

At present, there is essentially no demand for municipal services. If the subject properties are annexed, the City will then be obligated to provide at least some municipal services to the area. Most immediately, the City will be required to provide public safety service to the area. As the properties develop, the City will then be obligated to provide utility service. Any residents of the annexation area would, of course, be entitled to any services (recreations programs, library....) that the City offers.

**4. Distances from existing utility lines, public schools, parks, and shopping areas.**

Detailed information is provided in Section 4 of this report relative to the proximity of the proposed annexation to utility lines. At present, the closest elementary school, Rees Elementary, is .9 miles from the proposed annexation. The closest junior high is Diamond Fork, is 1.8 miles from the proposed annexation. At present, a new high school, Maple Mountain, is under construction at a location that is essentially adjacent to the proposed annexation. It is anticipated that Maple Mountain will be open for classes in August of 2009. The closest shopping area of any substantial size is 2.1 miles from the proposed annexation.

**5. Specific time tables for extension of services to the area and how these services would be financed.**

It is anticipated that services will be extended to the area as development occurs. As such, it is expected that utilities will be funded by property owners or the development community. At present the City has no plans to extend utilities to the area or to make upgrades to City facilities that would serve the Annexation Area. It's possible that this situation may change with respect to power service. Within the next twelve months, the City may obtain property for a power substation and may budget funds to construct that substation within the next 24 months.

**6. Potential impact on existing and proposed streets.**

The streets in the Davis Annexation area that need to be addressed during the annexation process are 100 South (6800 South Utah County) and 2550 East. These streets will be needed to provide adequate traffic capacity in the area.

**100 South**

100 South is planned as Minor Collector (40' of asphalt) with a trail along the south side of the street. This cross section requires an 80-foot right-of-way and should be consistent with the existing improvements to the west of the proposed annexation. There is an existing railroad crossing east of the proposed annexation that will need to be upgraded and signalized as this area continues to develop.

**2550 East**

In the Spanish Fork City street master plan, 2550 East is planned to be a 90-foot right-of-way with a trail (Major Collector). MAG would like to see the street be a 128-foot right-of-way (Arterial) between US-6 and connecting to US-89 in Mapleton. In my opinion, the 128-foot ROW is not needed as the traffic patterns are not likely to go from US-6 to US-89, but rather toward I-15. 2550 East will need to curve to the east at 400 North to align with Expressway Lane, as this will allow for a signal that is not under the large UP&L power lines. The only portion of 2550 East that is in the proposed annexation is the easterly side from 400 South to 100 South, but the appropriate right-of-way should be dedicated for the widening of the street.

**7. The effect that the annexation will have upon City boundaries and whether the annexation will create potential for islands, or difficult service areas.**

Relative to the annexation's configuration and the provision of City services, Spanish Fork City is currently providing services in the immediate vicinity and it is not anticipated that the annexation would create a difficult service area for the City or other service provider.

**8. An estimate of potential revenue verses potential service costs.**

As it is anticipated that the annexation area would be developed residentially, there will be little generated in terms of revenue for the City. Such a situation is common with residential development given that municipalities commonly use sales tax revenue to subsidize the provision of services to residential neighborhoods.

**9. Requirements imposed by state law.**

Staff is aware of no requirements imposed by State Law, aside from following the requisite procedure for annexation, that would impact the annexation area.

**SECTION 4**

In order to evaluate the City's ability to provide municipal services to the proposed annexation, the following information is provided:

**1. Conformity to Master Plans for public utilities and facilities.**

**Water**

The culinary water system will need to be extended into and through the proposed annexation. The minimum size of any culinary line is to be 8". There are larger lines that are needed in the following streets:

2550 East – 100 South to US-6 – 20"

2550 East – 100 South to 400 North – 16"

100 South – 2550 East to UPRR – 12”

As the area develops and final densities are established, the Engineering Department will evaluate the need for any additional 12” lines in the area. The City has adopted the policy that the City will cover the additional cost of water lines in excess of 12”. This cost is funded through impact fees.

### **Sewer**

This annexation will be served by the existing Mapleton trunk line to the north of the area. There will need to be a new line constructed from the Mapleton trunk line to the south along Expressway Lane/ 2550 East that is 21” in size. This line will be constructed in 2550 East south of 400 North, but easements will be needed north of 400 North to the location of the Mapleton trunk line. These easements should follow the proposed alignment of Expressway Lane or possibly the Rocky Mountain Power high voltage corridor. These easements will need to be provided by the applicant/ developer in conjunction with the annexation. There will also be a new line in 100 South that is 18” in size. This line will extend to the south and east to serve the remainder of the Northeast Bench and the Ensign-Bickford property. There will also be a 12” constructed in 2550 East south of 100 South. The City has adopted the policy that the City will cover the additional cost of sewer lines in excess of 12”. This cost is funded through impact fees.

### **Storm Drain**

The storm drain system in the proposed annexation will need to follow the storm drain master plan for the northeast bench. That plan calls for a 24” storm drain line in Expressway Lane and an 18” storm drain line in 2550 East. These two lines are part of the impact fee projects. Other lines will need to be built in the area and should be sized appropriately for the development(s) the line will serve. The detention basins planned for the northeast bench area are not within the proposed annexation. In order for the proposed annexation to be developed, an alternate plan will need to be developed for this site. The detention requirements will need to be met by either providing the planned, off-site detention facilities, or by providing adequate detention facilities within the proposed annexation and development. This would require the construction and dedication of a retention basin (the minimum size accepted by the City is 3 acres) or providing additional landscaped retention areas adjacent to the streets. These areas will need to be of sufficient width and depth as to provide for the maintenance of the landscape and the requirements of the storm water. The construction of these facilities would not relieve the proposed development of this annexation from participating in the overall northeast bench storm drain master plan and paying the appropriate storm drain impact fees. Due to the fact that storm water flows downhill, the basin/ park areas will need to be placed in such locations as to allow for the storm water to enter the basin from the appropriate areas and also exit the basin into the storm drain outfall lines leading to Dry Creek.

The entire northeast bench area, not just this annexation, drains to the northwest. As the area continues to develop, there will be a point, at approximately the time when 50-55% of the land on the northeast bench is developed, that the lines that are outside of the northeast bench area will need to be constructed. This is similar to the scenario that took place on the southeast bench a few years ago. At that time, the developer and/or the City will need to construct the offsite lines to allow for the continued development of the area.

### **Pressurized Irrigation**

The pressurized irrigation system will need to be extended into and through the proposed annexation. The minimum size of any pressurized irrigation line is to be 6”. There are larger lines that are needed in the following streets:

2550 East – 100 South to US-6 – 16”

2550 East – 100 South to 400 North – 14”

100 South – 2550 East to UPRR – 10”

All other lines should be sized one size smaller than the culinary water lines.

### **Streets**

The streets in the Davis Annexation area that need to be addressed during the annexation process are 100 South (6800 South Utah County) and 2550 East. These streets will be needed to provide adequate traffic capacity in the area.

### **2550 East**

In the Spanish Fork City street master plan, 2550 East is planned to be a 90-foot right-of-way with a trail (Major Collector). MAG would like to see the street be a 128-foot right-of-way (Arterial) between US-6 and connecting to US-89 in Mapleton. In my opinion, the 128-foot ROW is not needed as the traffic patterns are not likely to go from US-6 to US-89, but rather toward I-15. 2550 East will need to curve to the east at 400 North to align with Expressway Lane, as this will allow for a signal that is not under the large UP&L power lines. The only portion of 2550 East that is in the proposed annexation is the easterly side from 130 North to 100 South, but the appropriate right-of-way should be dedicated for the widening of the street.

### **100 South**

100 South is planned as Minor Collector (40' of asphalt) with a trail along the south side of the street. This cross section requires an 80-foot right-of-way and should be consistent with the existing improvements to the west of the proposed annexation. There is an existing railroad crossing east of the proposed annexation that will need to be upgraded and signalized as this area continues to develop.

### **Surface Irrigation**

The East Bench Irrigation Company has existing ditches that run through the proposed annexation and continue beyond the proposed annexation and City boundary to existing users. These ditches will need to be piped through the annexation as the area develops. The other existing ditches in the area will need to be piped or abandoned as the area develops. This work will need to be coordinated with the canal company.

### **Parks and Trails**

The following improvements are required to meet the City's needs for parks and recreation facilities:

Parks needed: Neighborhood Park (this could be located in adjacent annexations)

Trails: Trail along power corridor, Trail along east side of 2550 East

### **Power**

This area is being serviced by SUVSD; the City has no power utilities in the area at this time. There will need to be a buy out of SUVSD line and customers in this area. There is a 46KV SUVPS line that runs through this area and easements and right of ways need to be addressed.

With the present loading of the City's current substations, the 600 amp line on 2550 East needs to be put in to service this area in 2008 to be able to service this area as it grows, the City also needs to put a new substation in this area by spring of 2009. Lastly, we need to obtain land and easements and right of ways for the power lines needed to feed power to this area.

### **Communications**

It is expected that all communications facilities will be installed at the time of development.

### **Gas**

Natural Gas is available in the immediate vicinity. Questar Gas is the service provider.

## **2. Presence of unique utility/facility needs or requirements.**

Aside from what has been noted in this report, there are no known unique facility needs or requirements.

## **3. Presence of irrigation or other ditches and related facilities.**

Aside from what has already been described in this report, there are no noteworthy ditches or irrigation facilities.

## **4. Public Safety evaluation.**

The City has a need for a substation in the immediate vicinity of this annexation. It is currently anticipated that the substation would house an ambulance and one fire engine. It is also anticipated that the development of this and other annexations in the area will generate the need for at least one additional police officer.

**5. Presence of Sensitive Lands or Watershed Protection issues.**

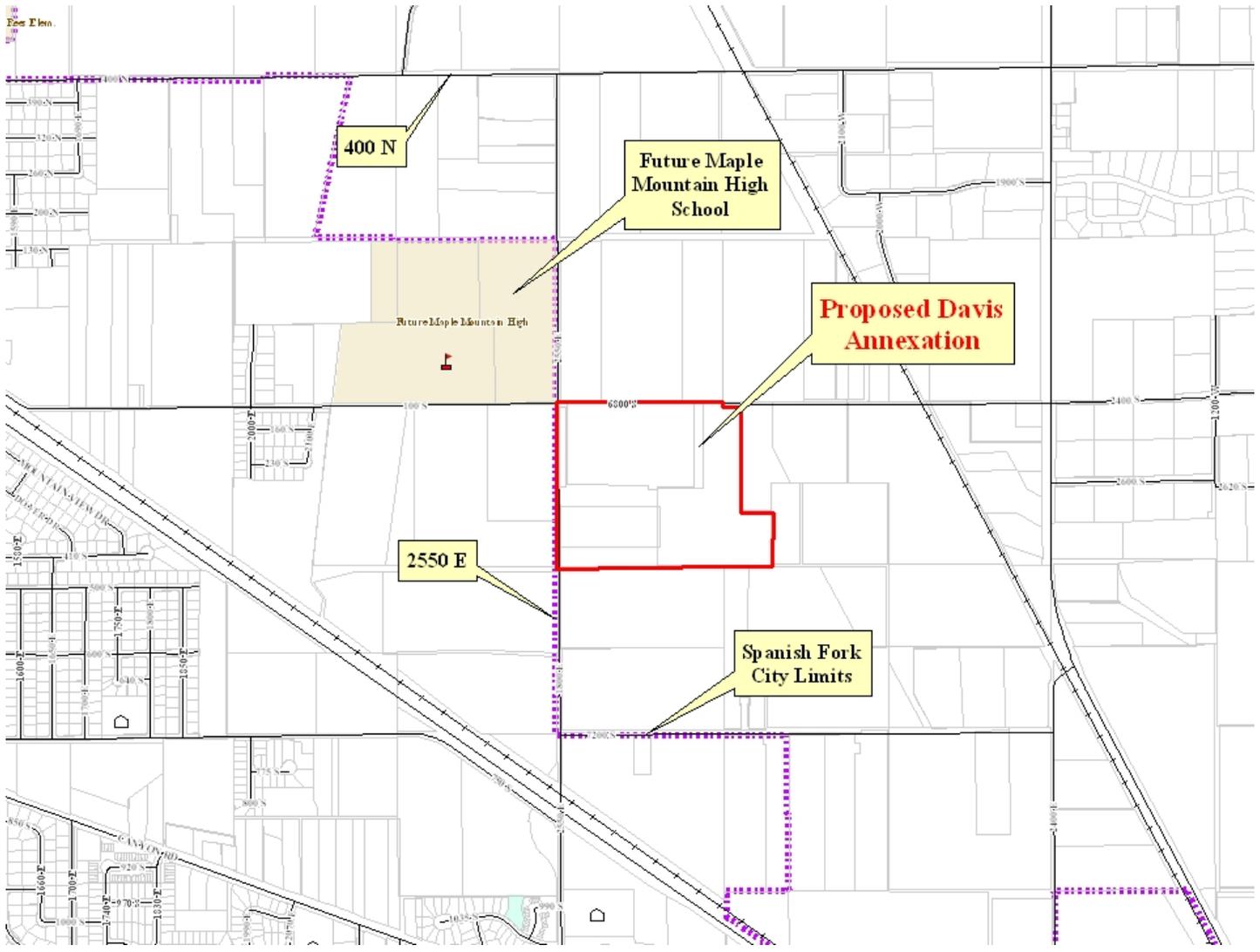
Staff is aware of no sensitive lands or watershed protection issues relative to the proposed annexation.

**6. Concept Plan's conformity with proposed zoning.**

To date, no concept plan has been formally reviewed for the proposed annexation.

**7. Annexation Agreement.**

A draft copy of the Annexation Agreement accompanies this report.







# REPORT TO THE PLANNING COMMISSION ENVISION ANNEXATION

**Agenda Date:** January 22, 2008

**Staff Contacts:** Dave Anderson, Planning Director

**Reviewed By:** Development Review Committee

**Request:** The applicant, Envision Development, is requesting approval for an Annexation.

**Zoning:** R-1-15 Requested

**General Plan:** Residential 1.5 to 2.5 Units Per Acre

**Project Size:** 78.17 acres

**Location:** Approximately 2550 East 500 South.

## Background Discussion

Accompanying this report is an Annexation Report and proposed Annexation Agreement. In short, this proposed annexation has been in the review process for a number of months and a number of specific issues have been addressed during this review. In recent weeks, the Development Review Committee recommended that it be approved. Draft minutes from that meeting read as follows:

## Envision Annexation

Applicant: Kay Heaps  
 General Plan: Residential 1.5 to 2.5 Units Per Acre  
 Zoning: R-1-15  
 Location: 600 South 2550 East

Mr. Baker explained the Strawberry Electric Service District buyout for the lines that run through the area.

Discussion was held regarding the SESD power lines and the applicants need to contact SESD with regard to the buyout.

Mr. Baker moved to approve the Davis Annexation located at approximately 200 South 2800 East and the Envision Annexation located at 600 South 2550 East subject to the following conditions:

## Conditions

1. That the applicants enter into annexation agreements and based on all of the information in Richard Nielson's report.

Mr. Nielson seconded and the motion passed all in favor.

The Planning Commission reviewed this request in their January 9, 2008 meeting and recommended that it be approved. Draft minutes from that meeting read as follows:

## Envision Annexation

Applicant: Kay Heaps  
 General Plan: Residential 1.5 to 2.5 Units Per Acre  
 Zoning: R-1-15  
 Location: 600 South 2550 East



Mr. Anderson explained the property J. Merrill Hallam owns be assigned R-R.

Commissioner Lewis **moved** to recommend to the City Council **approval** of the Envision Annexation subject to the following condition:

#### **Condition**

1. That the applicants enter into the accompanying Annexation Agreements and based on all of the information in Richard Nielson's report.
2. J. Merrill Hallam parcel(s) be zoned R-R and the remaining portion R-1-15.

Commissioner Huff **seconded** and the motion **passed** all in favor.

#### **Staff Recommendation**

Staff recommends that the City Council approves the proposed Annexation subject to the following condition:

1. That the applicant enter into the accompanying Annexation Agreement.

## ANNEXATION AGREEMENT FOR THE ENVISION ANNEXATION

THIS ANNEXATION AND DEVELOPMENT AGREEMENT (the "Agreement") is entered into as of the \_\_\_\_\_ day of December, 2007 by and between Envision Development, L.L.C. (hereinafter Petitioner) and Spanish Fork City, (hereinafter City), (together, the "Parties").

### RECITALS

A. WHEREAS, Petitioner owns approximately 28.83 acres of real property at approximately 750 South 2700 East (the Project Area), which area is described in Exhibit A, and which is part of a larger area consisting of 78.172 acres, which larger area is under consideration for annexation (the Annexed Area), which area is described in Exhibit B; and

B. WHEREAS, Owners have filed a Petition with City (the Petition), formally requesting the annexation of the property described in Exhibit B; and

C. WHEREAS, the Parties intend to enter into this Agreement to allow Petitioner and City to agree on issues such as streetscape, amenities, and other development objectives prior to development of the area in the Project Area. This process will lead to an attractive community that functions in a way that will add quality of life to future residents while allowing City to provide municipal services in a cost effective and efficient manner and in accordance with the Spanish Fork City General Comprehensive Plan, applicable zoning ordinances, and the Construction and Development Standards of City; and

D. WHEREAS, approval of this annexation agreement does not grant subdivision approval, site plan approval, or approval of any building permit, or other land use activity regulated by Spanish Fork City ordinances. Developer expressly acknowledges that nothing in this agreement shall be deemed to relieve Developer from the obligation to comply with all applicable requirements of City necessary for approval and recordation of subdivision plats, nor does it 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;

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants hereinafter 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 shall have that meaning given to it by the Spanish Fork City Land Use Ordinance in effect on the date of a complete application. Certain other terms and phrases are referenced below. In the event of a conflict in definitions, that definition which provides the most restrictive development latitude shall prevail.

1.1 **Annexed Area** means the 78.172 acres under consideration for annexation into Spanish Fork City as described in Exhibit B.

1.2 **Buildout** means the completion of all of the development of the land in the Project Area, described in Exhibit A, in accordance with this Agreement.

1.3 **Design Guidelines** means the Design and Development Standards, found in the Spanish Fork Municipal Code, Title 15, Part 4, Chapter 16, and the Spanish Fork City Construction Standards, including the Specifications, Details, and Design Guidelines.

1.4 **Owner or Owners** means the owner(s) of the Property, or any part thereof, as indicated on the records of the Utah County Recorder.

1.5 **Project Area** means the 28.83 acres of land identified in Exhibit A, which has been petitioned for annexation and which is the subject of this agreement.

## SECTION II. GENERAL RIGHTS AND RESPONSIBILITIES

### 2.1 General Rights and Responsibilities of Developer

2.1.1 **Conditions of Approval and Impact Fees.** With respect to the development of the Project Area, Petitioner accepts and agrees to comply with the impact, connection and building fees of the City in effect at the time of assessment, whether or not currently in effect, the City agreeing and representing that any such fee schedule will be applied uniformly within the City or service area of the City, as applicable. Developer acknowledges that the Project 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.

2.1.2 **Construction Mitigation.** Petitioner shall provide the following measures, all to the reasonable satisfaction of the City, to mitigate the impact of construction within Project Area. Petitioner shall also adhere to the usual construction impact mitigation measures required by City. Additional reasonable site-specific mitigation measures may be required. The following measures shall be included in each application for development of any final plat:

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

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

2.1.2.3 Construction traffic routing plan to minimize traffic impacts on Spanish Fork City and residential areas as approved by City; and

2.1.3 **Subsequent Applications Under Future Development Code.** Without waiving any rights granted by this Agreement, Petitioner may choose to submit some or all of Petitioner's properties for development under the version of the City's Design Guidelines existing at the time of the application. In the event an application or plat expires, the version of the Design Guidelines existing at the time of re-application shall apply.

### 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 or zoning.

2.2.2 **Compliance with City Requirements and Standards.** Petitioner expressly acknowledges that nothing in this Agreement shall be deemed to relieve any of them from their obligations to comply with all applicable requirements of City necessary for approval and recordation of subdivision plats and site plans for the Project Area, or any other portions of the Property, in effect at the time of development approval, or re-approval in the event of expiration, including the payment of unpaid fees, the approval of subdivision plats and site plans, the approval of building permits and construction permits, and compliance with all applicable ordinances, resolutions, policies and procedures of City.

2.2.3 **Power of Eminent Domain.** City agrees that, in the event Petitioner needs to obtain easements or rights of way for the purpose of constructing offsite infrastructure improvements for the Project and is otherwise unable to negotiate a reasonably acceptable contract for such easements or rights of way, City, upon the request of Petitioner, may *consider* the exercise of its power of eminent domain to obtain such easements or rights of way, the cost of which shall be borne by Petitioner, including land costs, court costs, appraisal costs, legal fees, and any other costs associated with any such condemnation action.

2.3 **Recording.** City or Petitioner may cause this Agreement, or a notice concerning this Agreement, to be recorded with the Utah County Recorder.

### SECTION III. SPECIFIC RIGHTS AND RESPONSIBILITIES

#### 3.1 Obligations of Petitioner

##### 3.1.1 Municipal Utilities

3.1.1.1 **Satisfaction of Water Rights Requirement.** Petitioner hereby asserts that it has read and is familiar with Spanish Fork City Code §15.4.16.080 and hereby agrees that prior to either approval of a final plat for, or issuance of a building permit on, any parcel of property that is included in the Project Area, the owner of the subject parcel shall 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. City shall not be required to approve any plat, or issue any building permit, until such requirements are fully satisfied.

3.1.1.2 **Installation and Design Criteria.** City provides the following utilities, which need to be brought to the Project by Petitioner, at no cost to City: Electric Power, Culinary Water, Pressurized Irrigation Water, Sewer, Storm Drain, and Telecommunications. Petitioner shall design, build and dedicate to the City adequate delivery systems for each of these utilities according to City specifications and standards, including all distribution lines, conduit, street lights, valving, fire hydrants, meters, and other required services to meet the needs for the Project Area. Improvements shall be upsized at the direction of the City Engineer to meet future needs of the City utilities. All facilities necessary to provide adequate utility services installed by Petitioner within the Project Area, upon acceptance by the City, shall be owned, operated, and maintained by City, provided that any warranty periods as established by City ordinance or Design Guidelines shall be the responsibility of Petitioner. Petitioner or its successors or assigns shall be responsible for such infrastructure until such time as City accepts the improvements.

3.1.1.3 **Easements.** Petitioner shall grant to City, at no cost to City, all easements necessary for the operation, maintenance, and replacement of all utilities, located within the Project Area as City determines to be necessary. In addition to on site easements, an off site sewer easement is necessary to service the Project Area with sewer. Petitioner shall be required to obtain and transfer to City the off site sewer easement needed to provide sewer service, unless another developer has already provided it. This shall be provided prior to the filing of an application for preliminary plat approval with City. It shall be in a location suitable to the public works department of City.

3.1.1.4 **Master Plan Utility Infrastructure Sizing.** Petitioner shall design, build and dedicate to City the utility infrastructure as shown in Exhibit C, unless it has already been provided by another developer. The timing of construction shall be dependent on project phasing and necessary sizing requirements to meet the standards of service at a level generally provided to other areas of the City and as determined by the City Engineer. Petitioner shall be entitled to reimbursement for the difference in cost between a twelve inch and twenty inch culinary water line in 2550 East. Petitioner shall be entitled to reimbursement for the difference in cost between a ten inch and sixteen inch pressure irrigation water line

in 2550 East. Petitioner shall be entitled to reimbursement for the cost of the storm drain line in 2550 East. Reimbursement shall be made from impact fees pursuant to a separate agreement, to be drafted and executed when the actual costs of construction are known. Reimbursement will be over a period of years, based upon a ratio of these costs compared to the overall costs for which impact fees are assessed, and are subject to the collection of impact fees. If another developer has previously provided this infrastructure, Petitioner shall not be entitled to reimbursement, but may be obligated to pay the earlier developer under the terms of a connector's agreement.

**3.1.1.5 Storm Drain.** In addition to the storm drain line shown on Exhibit C, Petitioner shall construct facilities to retain storm water on site until such time as the regional facilities shown on City's Storm Drain Master Plan are constructed and ready to accept storm drain flows. These on site facilities shall be constructed during the first phase of any development and shall be ready for use prior to the issuance of any certificate of occupancy.

**3.1.1.6 SESD.** Petitioner shall be obligated to buy out SESD electrical facilities which may exist in the Annexed Area. This shall be accomplished prior to recording of the Annexation ordinance. A letter from SESD, indicating payment for the facilities has been received, shall accompany the annexation mylar.

**3.1.1.7 Reimbursement.** The cost of upsizing the culinary water, pressurized irrigation water, electric power, telecommunications, storm drain, or sewer infrastructure, except as set forth in the preceding paragraph, shall be borne by the Petitioner without reimbursement. Connector's agreements will be granted to Petitioner to allow for a pro-rata reimbursement of costs from future developers or Owners who connect to the infrastructure installed by Petitioner. A separate connector's agreement shall be entered when the actual cost of those improvements is known. City's standard connector's agreement shall be used. Reimbursement shall come from those properties benefitting from the listed improvements, as determined by the City Engineer, at the time of development or otherwise when connecting to the improvements. The amount shall be determined on a pro-rata basis, based upon the benefit conferred, as determined by the City Engineer. Petitioner agrees to timely pay any connector's agreements to which it is subject.

### **3.1.2 Transportation, Including Streets and Trails**

**3.1.2.1 Roadway Dedication.** Petitioner shall dedicate sufficient property for a 68 foot wide roadway right of way (minor collector) along 750 South (currently 7200 South, County) with frontage to the Project Area. The dedication shall take place prior to recording of the annexation ordinance, and shall be a condition of annexation.

**3.1.2.2 Roadway Construction.** Petitioner shall be required to build a road along the frontage of the Project Area, in accordance with the Design Guidelines, for a minor collector along 750 South when development of the Project Area takes place. Other offsite road improvements may be required, at the time of development, if traffic or safety studies indicate the development in the Project Area will create a need for offsite improvements. The parties may negotiate the details and timing of any such improvements. Offsite sidewalk improvements may also be required in order to create safe sidewalks for children from development in the Project Area to walk to the nearest public school.

**3.1.2.3 Railroad Crossings.** The railroad crossing at 2550 East and the railroad adjacent to State Road 6 is in need of upgrading to handle increased traffic created by this Project, together with other development in the vicinity. UDOT is currently undertaking to upgrade that crossing. However, no timetable for completion is known. Petitioner agrees that no building permits may be issued until that railroad crossing is complete.

**3.1.2.4 Trail Corridor Dedication and Trail Construction.** Petitioner will dedicate land for a trail along the Rocky Mountain Power electric easement corridor in the Project Area, which event shall

be a condition of annexation. Petitioner may elect to build, to City Design Guidelines, a trail on the dedicated ground. Should Petitioner so elect, a density bonus for the trail dedication and installation shall be granted to Petitioner, in accordance with the Master Planned Development ordinance of City.

**3.1.2.5 Reimbursement.** The cost of required, offsite improvements in this section 3.1.2 are subject to a pro-rata reimbursement from other properties benefitting from the improvements. Connector's agreements will be granted to Petitioner to allow for a pro-rata reimbursement of costs from future developers or Owners who have frontage to the infrastructure installed by Petitioner. A separate connector's agreement shall be entered when the actual cost of those improvements is known. City's standard connector's agreement shall be used. Reimbursement shall come from those properties benefitting from the listed improvements, as determined by the City Engineer, at the time of development or otherwise when connecting to the improvements. The amount shall be determined on a pro-rata basis, based upon the benefit conferred, as determined by the City Engineer. Petitioner agrees to timely pay any connector's agreements to which it is subject.

### **3.1.3 Land Transfer**

**3.1.3.1 Electric Substation.** City needs a new electric substation in order to provide electric service to the Mapleton Bench area of City, including the Project Area. City is underway with various studies, which will recommend suitable locations for a new electric substation in the vicinity of the Project Area. Until City obtains the location for the electric substation, no development application may be submitted by Petitioner.

**3.1.3.2 Well Property.** City is investigating various locations for a well, to serve culinary and/or pressure irrigation water needs. If it is determined that the well location needs to be within the Project Area, Petitioner agrees to transfer up to one-half an acre, together with an appropriate source protection zone if a culinary well is to be drilled. The location will be designated by City.

**3.1.3.3 Purchase Price.** City shall be obligated to pay fair market value for any land transfer required by this section 3.13. If the parties cannot agree upon the fair market value, City, at its sole cost and expense, shall obtain an appraisal of the property. If Petitioner does not agree with City's appraisal, it shall, at its sole cost and expense, obtain a second appraisal. The average of the two appraisals shall be deemed to be fair market value.

## **3.2 Obligations of City.**

**Acceptance of Infrastructure.** City shall accept the dedication and maintenance of all streets, trails and open spaces in the Project Area, so long as such streets are constructed to the City specifications and standards, and are dedicated free of all liens and encumbrances, provided that any warranty periods as established by City ordinance or Design Guidelines shall be the responsibility of Petitioner.

**Utility Service.** Upon the dedication and acceptance by City of the utility infrastructure, satisfaction of the water rights requirements (as outlined in section 3.1.1), and payment of impact fees, connection fees, and any other applicable fees by Petitioner, City shall provide all of the Project Area served by such infrastructure with utility service at a level generally provided to other areas of the City.

**Plat Review.** Upon Petitioner complying with all the conditions of this Agreement, City shall promptly review development requests made by Petitioner, including plat approval, in accordance with City ordinances, rules, and policies. Petitioner shall comply in all respects with requirements of plat and/or development approval. Nothing herein shall be considered to limit or restrict the police powers of the City Council in approving, denying, or establishing conditions for any development request. Development approval is not guaranteed hereby, but vesting may occur only through the provisions of the Utah Land Use Development and Management Act, Utah Code Ann. §10-9a-101 et seq. (1953, as amended) and Spanish Fork Municipal Code, Title 15.

## SECTION IV. ZONING

4.1 **Master Planned Development and Underlying Zoning.** Petitioner may desire to provide amenities and obtain bonus densities based upon a Master Planned Development as contemplated by Spanish Fork Municipal Code §15.3.24.030. Petitioner shall be allowed to proceed with the development of a Master Planned Development and to receive bonus densities, for a total project density up to 2 ½ units per acre, as authorized by the Master Planned Development Ordinance as long as Petitioner provides amenities allowed by the Ordinance and required by the City Council during preliminary plat approval and remains in full compliance with the Municipal Code and all Design Guidelines of City. Nothing herein shall be construed to limit the ability of the City Council from exercising its police powers to enact zoning ordinances, some of which may affect the Project Area.

## SECTION IV. 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 Project to which the successor holds title, or which would apply to the Developer 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 Project.

5.2 **Assignment.** Petitioner shall have the right, with City's consent, 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 Project or any portion thereof, except as specifically set forth below. The City may not unreasonably withhold its consent to such 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. Petitioner shall provide written notice of any proposed or completed assignment or transfer. Unless City objects in writing within thirty (30) days, City shall be deemed to have approved of and consented to the assignment. In the event of an assignment, the transferee shall succeed to all of Petitioner's rights under this Agreement. Notwithstanding the foregoing, Petitioner's selling or conveying individual lots or parcels of land to builders, individuals or developers shall not be deemed to be an assignment subject to the above requirement for approval unless specifically designated as an assignment by Petitioner.

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

5.4 **Consent.** In the event this Agreement provides for consent from the City or 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 a third party challenges this Agreement or the development reimbursement to Petitioner as contemplated herein, Petitioner agrees to accept responsibility for all legal fees, including attorneys fees, expert witness expenses, and/or court costs incurred by the City to defend such action, upon presentation to Petitioner of an itemized list of costs, expenses, and fees. City

shall not be required to make any reimbursements contemplated herein if the source of funds for such reimbursements are held invalid, illegal, void, or otherwise unenforceable. Petitioner shall be allowed to participate in decisions related to this provision, including the selection and hiring of legal counsel and the conduct of the litigation or any settlement thereof.

## SECTION VI. MISCELLANEOUS

6.1 **Incorporation of Exhibits and Headings.** All Exhibits referred to or attached hereto are hereby incorporated into this Agreement as if fully set forth herein. The headings to the various paragraphs and sections are for assistance in locating contract provisions, but are not to be considered part of the contract provisions.

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 each of the Parties 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 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.

6.6 **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.

6.6.1 **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. 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; and; (iii) 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 in Utah County. In the event the Parties are unable to agree upon a mediator, the mediator shall be appointed from an approved mediator list provided by the Utah State Bar Association with specialized knowledge of contract and municipal law. The appointment shall take place pursuant to the guidelines set forth by the Utah State Bar. 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.

6.6.2 **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. 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.

6.7 **Notices.** Any notice or communication required hereunder between the Parties must be in writing, and may be given either personally or by certified mail, return receipt requested or by facsimile. If given by 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 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 addresses set forth below:

If to City to:  
SPANISH FORK CITY  
Attn: City Manager  
40 South Main  
Spanish Fork, Utah 84660

If to Petitioner to:  
Envision Development, L.L.C.  
Attn: L. Kay Heaps  
P.O. Box 717  
Springville, Utah 84663

6.8 **Exhibits.** The following exhibits are attached to this Agreement and incorporated herein for all purposes:

Exhibit A	Legal description of the Project Area
Exhibit B	Legal description of the Annexed Area
Exhibit C	Utility and Improvement Plan

IN WITNESS WHEREOF, this Agreement has been executed by the Parties, by persons duly authorized to execute the same and by the City of Spanish Fork, acting by and through its City Council as of the \_\_\_\_ day of \_\_\_\_\_, 2007.

**SPANISH FORK CITY** by:

\_\_\_\_\_  
JOE L THOMAS, Mayor

ATTEST:

\_\_\_\_\_  
Kent R. Clark, City Recorder

**ENVISION DEVELOPMENT, L.L.C.** by:

\_\_\_\_\_  
L. KAY HEAPS, Manager

**SPANISH FORK CITY  
Annexation Feasibility Report**



<b>Agenda Date:</b>	November 7, 2007
<b>Staff Contacts:</b>	Dave Anderson, Planning Director Richard Nielsen, Assistant Public Works Director
<b>Reviewed By:</b>	Development Review Committee
<b>Subject:</b>	Envision Annexation Report

**SECTION 1**

Annexation Map.

Annexation Plat.

**SECTION 2**

annexation sponsor: Envision Development

phone: (801) 489-0750

annexation location: 200 South 2600 East

acreage in annexation: 74.08 acres

property owner(s) and parcels

owner: Arne & J. Merrill Hallam  
valuation: \$324,900

parcel: 27:032:0036

acreage: 20.3 acres

owner: Carol & J. Merrill Hallam  
valuation: \$324,900

parcel: 27:032:0035

acreage: 19.99 acres

owner: Bruce & Crystal Tietjen  
valuation: \$80,200

parcel: 36:525:0001

acreage: 5.25 acres

owner: Sunrise Ridge at Springville  
valuation: \$724,400

parcel: 36:525:0003

acreage: 13.82 acres

owner: Sunrise Ridge at Springville  
valuation: \$724,400

parcel: 36:525:0003

acreage: 14.99 acres

submittal date: April 12, 2007

acceptance date: April 17, 2007

certification date: May 4, 2007

date of protest filed: none

Development Review Committee recommendation date:

Planning Commission recommendation date:

City Council meeting date:

### SECTION 3

In accordance with 15.3.08.030 (B) of the Municipal Code, the following items are addressed in Section 3 of the Annexation report:

**1. Whether the proposed property is within the Growth Management Boundary of the General Plan.**

It has been proposed to amend the Growth Management Boundary to include the annexation area.

**2. Present and proposed land use and zoning.**

At present, there are no dwellings on the subject properties and the annexation area has a Residential Agricultural zoning designation in Utah County. Spanish Fork City has designated the annexation area as Residential 1.5 to 2.5 units per acre on the General Plan. The zoning that most appropriately correlates to the General Plan is R-1-15.

**3. Present and potential demand for various municipal services.**

At present, there is essentially no demand for municipal services. If the subject properties are annexed, the City will then be obligated to provide at least some municipal services to the area. Most immediately, the City will be required to provide public safety service to the area. As the properties develop, the City will then be obligated to provide utility service. Any residents of the annexation area would, of course, be entitled to any services (recreations programs, library....) that the City offers.

**4. Distances from existing utility lines, public schools, parks, and shopping areas.**

Detailed information is provided in Section 4 of this report relative to the proximity of the proposed annexation to utility lines. At present, the closest elementary school, Rees Elementary, is 1.2 miles from the proposed annexation. The closest junior high is Diamond Fork, is 1.8 miles from the proposed annexation. At present, a new high school, Maple Mountain, is under construction at a location that is essentially adjacent to the proposed annexation. It is anticipated that Maple Mountain will be open for classes in August of 2009. The closest shopping area of any substantial size is 2.4 miles from the proposed annexation.

**5. Specific time tables for extension of services to the area and how these services would be financed.**

It is anticipated that services will be extended to the area as development occurs. As such, it is expected that utilities will be funded by property owners or the development community. At present the City has no plans to extend utilities to the area or to make upgrades to City facilities that would serve the Annexation Area. It's possible that this situation may change with respect to power service. Within the next twelve months, the City may obtain property for a power substation and may budget funds to construct that substation within the next 24 months.

**6. Potential impact on existing and proposed streets.**

The streets in the Envision Annexation area that need to be addressed during the annexation process are 750 South (7200 South County) and 2550 East. These streets will be needed to provide adequate traffic capacity in the area.

**750 South**

750 South is planned as Minor Collector (68' right-of-way w/40' of asphalt).

**2550 East**

In the Spanish Fork City Street Master Plan, 2550 East is planned to be a 90-foot right-of-way with a trail (Major Collector). MAG would like to see the street be a 128-foot right-of-way (Arterial) between US-6 and connecting to US-89 in Mapleton. In my opinion, the 128-foot ROW is not needed as the traffic patterns are not likely to go from US-6 to US-89, but rather toward I-15. The only portion of 2550 East that is in the proposed annexation is the easterly side from approximately 400 South to 750 South, but the appropriate right-of-way should be dedicated for the widening of the street.

**7. The effect that the annexation will have upon City boundaries and whether the annexation will create potential for islands, or difficult service areas.**

Relative to the annexation's configuration and the provision of City services, Spanish Fork City is currently providing services in the immediate vicinity and it is not anticipated that the annexation would create a difficult service area for the City or other service provider.

**8. An estimate of potential revenue verses potential service costs.**

As it is anticipated that the annexation area would be developed residentially, there will be little generated in terms of revenue for the City. Such a situation is common with residential development given that municipalities commonly use sales tax revenue to subsidize the provision of services to residential neighborhoods.

**9. Requirements imposed by state law.**

Staff is aware of no requirements imposed by State Law, aside from following the requisite procedure for annexation, that would impact the annexation area.

**SECTION 4**

In order to evaluate the City's ability to provide municipal services to the proposed annexation, the following information is provided:

**1. Conformity to Master Plans for public utilities and facilities.**

**Water**

The culinary water system will need to be extended into and through the proposed annexation. The minimum size of any culinary line is to be 8". There are larger lines that are needed in the following streets:

- 2550 East – 100 South to US-6 – 20"
- 2550 East – 100 South to 400 North – 16"
- 100 South – 2550 East to UPRR – 12"

As the area develops and final densities are established, the Engineering Department will evaluate the need for any additional 12" lines in the area. The City has adopted the policy that the City will cover the additional cost of water lines in excess of 12". This cost is funded through impact fees.

### **Sewer**

This annexation will be served by the existing Mapleton trunk line to the north of the area. There will need to be a new line constructed from the Mapleton trunk line to the south along Expressway Lane/2550 East that is 21" in size north of 100 South. This line will be constructed in 2550 East south of 400 North, but easements will be needed north of 400 North to the location of the Mapleton trunk line. These easements should follow the proposed alignment of Expressway Lane or possibly the Rocky Mountain Power high voltage corridor. These easements will need to be provided by the applicant/ developer in conjunction with the annexation. There will also be new lines in 2550 East and 750 South that are 12" in size. These lines will extend to the south and east to serve the remainder of the Northeast Bench. The City has adopted the policy that the City will cover the additional cost of sewer lines in excess of 12". This cost is funded through impact fees.

### **Storm Drain**

The storm drain system in the proposed annexation will need to follow the storm drain master plan for the northeast bench. That plan calls for a 24" storm drain line in Expressway Lane and an 18" storm drain line in 2550 East. These two lines are part of the impact fee projects. Other lines will need to be built in the area and should be sized appropriately for the development(s) the line will serve. The detention basins planned for the northeast bench area are not within the proposed annexation. In order for the proposed annexation to be developed, an alternate plan will need to be developed for this site. The detention requirements will need to be met by either providing the planned, off-site detention facilities, or by providing adequate detention facilities within the proposed annexation and development. This would require the construction and dedication of a retention basin (the minimum size accepted by the City is 3 acres) or providing additional landscaped retention areas adjacent to the streets. These areas will need to be of sufficient width and depth as to provide for the maintenance of the landscape and the requirements of the storm water. The construction of these facilities would not relieve the proposed development of this annexation from participating in the overall northeast bench storm drain master plan and paying the appropriate storm drain impact fees. Due to the fact that storm water flows downhill, the basin/ park areas will need to be placed in such locations as to allow for the storm water to enter the basin from the appropriate areas and also exit the basin into the storm drain outfall lines leading to Dry Creek.

The entire northeast bench area, not just this annexation, drains to the northwest. As the area continues to develop, there will be a point, at approximately the time when 50-55% of the land on the northeast bench is developed, that the lines that are outside of the northeast bench area will need to be constructed. This is similar to the scenario that took place on the southeast bench a few years ago. At that time, the developer and/or the City will need to construct the offsite lines to allow for the continued development of the area.

### **Pressurized Irrigation**

The pressurized irrigation system will need to be extended into and through the proposed annexation. The minimum size of any pressurized irrigation line is to be 6". There are larger lines that are needed in the following streets:

2550 East – 100 South to US-6 – 16"  
750 South – 2550 East to 3400 East – 10"

All other lines should be sized one size smaller than the culinary water lines.

### **Streets**

The streets in the Envision Annexation area that need to be addressed during the annexation process are 750 South (7200 South County) and 2550 East. These streets will be needed to provide adequate traffic capacity in the area.

### **750 South**

750 South is planned as Minor Collector (68' right-of-way w/40' of asphalt).

## **2550 East**

In the Spanish Fork City Street Master Plan, 2550 East is planned to be a 90-foot right-of-way with a trail (Major Collector). MAG would like to see the street be a 128-foot right-of-way (Arterial) between US-6 and connecting to US-89 in Mapleton. In my opinion, the 128-foot ROW is not needed as the traffic patterns are not likely to go from US-6 to US-89, but rather toward I-15. The only portion of 2550 East that is in the proposed annexation is the easterly side from approximately 400 South to 750 South, but the appropriate right-of-way should be dedicated for the widening of the street.

## **Surface Irrigation**

The East Bench Irrigation Company has existing ditches that run through the proposed annexation and continue beyond the proposed annexation and City boundary to existing users. These ditches will need to be piped through the annexation as the area develops. The other existing ditches in the area will need to be piped or abandoned as the area develops. This work will need to be coordinated with the canal company.

## **Parks and Trails**

The following improvements are required to meet the City's needs for parks and recreation facilities:

Parks needed: Neighborhood Park (this could be located in adjacent annexations)

Trails: Trail along power corridor, Trail along east side of 2550 East

## **Power**

This area is being serviced by SUVSD; the City has no power utilities in the area at this time. There will need to be a buy out of SUVSD line and customers in this area. There is a 46KV SUVPS line that runs through this area and easements and right of ways need to be addressed.

With the present loading of the City's current substations, the 600 amp line on 2550 East needs to be put in to service this area in 2008 to be able to service this area as it grows, the City also needs to put a new substation in this area by spring of 2009. Lastly, we need to obtain land and easements and right of ways for the power lines needed to feed power to this area.

## **Communications**

It is expected that all communications facilities will be installed at the time of development.

## **Gas**

Natural Gas is available in the immediate vicinity. Questar Gas is the service provider.

## **2. Presence of unique utility/facility needs or requirements.**

Aside from what has been noted in this report, there are no known unique facility needs or requirements.

## **3. Presence of irrigation or other ditches and related facilities.**

Aside from what has already been described in this report, there are no noteworthy ditches or irrigation facilities.

## **4. Public Safety evaluation.**

The City has a need for a substation in the immediate vicinity of this annexation. It is currently anticipated that the substation would house an ambulance and one fire engine. It is also anticipated that the development of this and other annexations in the area will generate the need for at least one additional police officer.

## **5. Presence of Sensitive Lands or Watershed Protection issues.**

Staff is aware of no sensitive lands or watershed protection issues relative to the proposed annexation.

## **6. Concept Plan's conformity with proposed zoning.**

To date, no concept plan has been formally reviewed for the proposed annexation.

**7. Annexation Agreement.**

A draft copy of the Annexation Agreement accompanies this report.



**SURVEYOR'S CERTIFICATE**  
 I, **CHRIS ANDERSON**, of the County of Salt Lake and State of Utah, do hereby certify that I am a registered land surveyor and that I have surveyed the above described plat and that the same is correct and accurate and that I have caused the same to be recorded in the office of the County Clerk of Salt Lake County, Utah.

**BOUNDARY DESCRIPTION**  
 BEGINNING AT A POINT WHICH IS NORTH 00°10'48" EAST ALONG THE SECTION CORNER OF SECTION 21, TOWNSHIP 8 SOUTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN THENCE EAST 1044.33 FEET; THENCE NORTH 89°42'05" EAST 776.63 FEET; THENCE SOUTH 100°12'44" WEST 1044.33 FEET; THENCE WEST 262.57 FEET; THENCE SOUTH 00°23'00" WEST 107.71 FEET; THENCE NORTH 89°42'05" EAST 776.63 FEET; THENCE SOUTH 100°12'44" WEST 1044.33 FEET; THENCE WEST 262.57 FEET; THENCE SOUTH 00°23'00" WEST 107.71 FEET; THENCE NORTH 89°42'05" EAST 776.63 FEET; THENCE SOUTH 100°12'44" WEST 1044.33 FEET TO THE POINT OF BEGINNING.  
 AREA = 78.072 ACRES (340883.07 SQ. FT.)

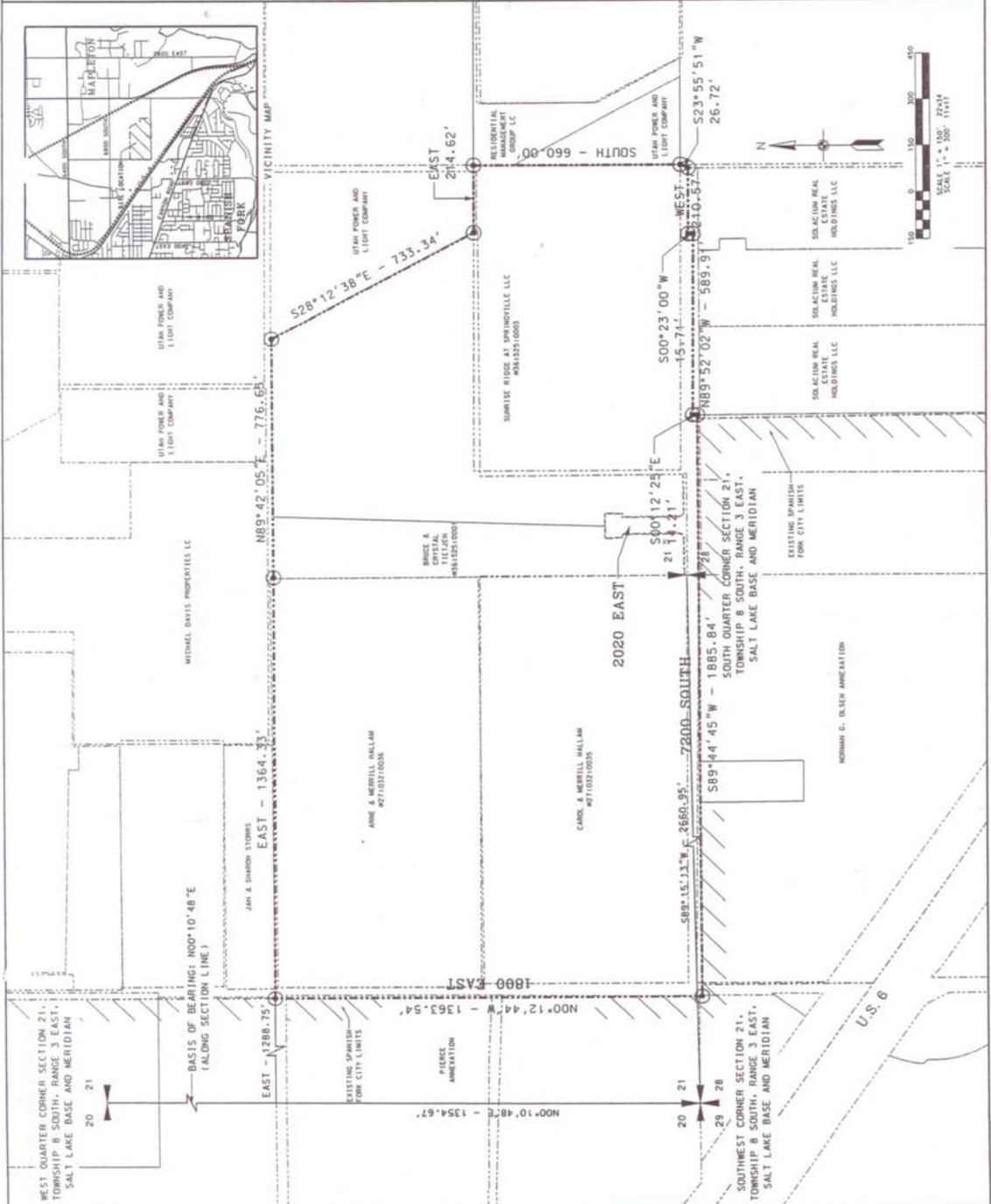
4/3/07  
 Chris Anderson  
 Surveyor



**ACCEPTANCE BY LEGISLATIVE BODY**  
 HAS TO CERTIFY THAT THE SURVEYOR HAS COMPLIED WITH ALL REQUIREMENTS OF THE SURVEYING ACT AND THAT THE SURVEY IS CORRECT AND ACCURATE AND THAT THE SURVEYOR IS A LICENSED SURVEYOR IN THE STATE OF UTAH.

ATTEST:  
 \_\_\_\_\_  
 CLERK OF COUNTY

ANNEXATION PLAT  
**ENVISSION ANNEXATION**  
 SHEET NO. 60  
 UTAH COUNTY, UTAH



EnviSSION Annexation.dwg 4/16/2007 10:19:47 AM