



MEETING NOTICE AND AGENDA

Notice is hereby given that the Kaysville City Council will hold a special council meeting on Wednesday, May 23, 2018, starting at 7:00 p.m. in the Council Room of the Kaysville City Municipal Center, 23 East Center Street, Kaysville, UT.

CITY COUNCIL MEETING - 7:00pm

The agenda shall be as follows:

1. Adopting an Agreement for the Annexation and Development of Land between Kaysville City and Frost Family Real Estate, LLC (Resolution 18-2-3).
2. Adjournment.

Kaysville City is dedicated to a policy of non-discrimination in admission to, access to, or operations of its programs, services or activities. If you need special assistance due to a disability, please contact the Kaysville City Recorder at (801) 497-7008.

I hereby certify that I posted a copy of the foregoing Notice and Agenda at City Hall, the City website and have emailed copies to media representatives on May 21, 2018.

Maria T. Devereux

Maria T. Devereux, City Recorder

**AGREEMENT FOR THE ANNEXATION AND DEVELOPMENT OF LAND BETWEEN
KAYSVILLE CITY AND FROST FAMILY REAL ESTATE, LLC.
(Approximately 1402 North Highway 89)**

THIS AGREEMENT for the development of land (hereinafter referred to as this “Agreement”) is made and entered into this ____ day of _____, 2018, between KAYSVILLE CITY, a municipal corporation of the State of Utah (hereinafter referred to as “City”), and FROST FAMILY REAL ESTATE, LLC (hereinafter referred to as “Owner”). City and Owner collectively referred to as the “Parties” and separately as “Party”.

RECITALS

WHEREAS, Kaysville City has received a petition for annexation located at approximately 1402 North Highway 89 in Kaysville City which consists of approximately 61 acres (hereinafter the “Annexation Area”), which is depicted on Exhibit “A” attached hereto (hereinafter “Exhibit A”); and

WHEREAS, in furtherance of the objectives of the Kaysville City General Plan, City has considered an application for an annexation of property into the City and zone designation of Kaysville City R-1-8 (Single Family Residential) zoning district, of 37.5 acres of the Annexation Area (hereinafter the “Subject Area”) which is depicted on Exhibit “B” and attached hereto (hereinafter “Exhibit B”); and

WHEREAS, Owner is the Owner of the above described Subject Area and has presented a proposal for development of the Subject Area to the City, which provides for development in a manner consistent with the overall objectives of Kaysville City’s General Plan; and

WHEREAS, Parties desire to enter into this Agreement to provide for the annexation, and for the rezoning of the Subject Area, in a manner consistent with the overall objectives of the City’s General Plan and the intent reflected in that Plan; and

WHEREAS, City is willing to annex, and to grant R-1-8 (Single Family Residential) zoning approval for the Subject Area, subject to Owner agreeing to certain limitations and undertakings described herein, which Agreement will provide protection to the Subject Area and surrounding property values and will enable the City Council to consider the approval of such development at this time; and

WHEREAS, City believes that entering into the Agreement with Owner is in the vital and best interest of the City and the health, safety, and welfare of its residents.

NOW, THEREFORE, each of the Parties hereto, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, covenant and agree as follows:

**ARTICLE I
DEFINITIONS**

The following terms have the meaning and content set forth in this Article I, wherever used in this Agreement:

1.1 “City” shall mean Kaysville City, a body corporate and politic of the State of Utah. The principal office of City is located at 23 East Center Street, Kaysville, Utah 84037.

1.2 “City’s Undertakings” shall mean the obligations of the City set forth in Article III.

1.3 “Owner’s Undertakings” shall have the meaning set forth in Article IV.

ARTICLE II CONDITIONS PRECEDENT

2.1 This Agreement shall not take effect until City has approved this Agreement pursuant to a resolution of the Kaysville City Council.

ARTICLE III CITY’S UNDERTAKINGS

3.1 Subject to the satisfaction of the conditions set forth in Article II, City shall approve the annexation of the Subject Area, and designate the zone as Kaysville City R-1-8 zoning district, with an effective date of no sooner than the effective date and adoption of this Agreement by the City Council. Any annexation or zoning amendment shall occur upon a finding by the City Council that it is in the best interest of the health, safety and welfare of the citizens of Kaysville City to make such a change at this time.

3.2 City shall make good faith efforts to install a water tank to service this property within two years after the date that the annexation plat is recorded.

ARTICLE IV OWNER’S UNDERTAKINGS

4.1 Conditioned upon City’s performance of its undertakings set forth in Article III with regard to the annexation and to the zoning of the Subject Property, and provided Owner has not terminated this Agreement pursuant to Section 7.8, Owner agrees to the following:

4.1.1 **Power Extension**—Kaysville City power shall be extended to service the Subject Area. Owner shall pay the full and complete cost of electric system extensions installed by the City.

4.1.2 **Power Provider**—All new and existing development within the Subject Area shall be serviced from the date of pre-construction meeting and bonding and going forward by Kaysville City Power. The full and complete cost of acquiring the existing power infrastructure from the existing provider shall be paid for by Owner and dedicated, free of charge, to Kaysville City Power.

4.1.2.1 **Payment Schedule**—Owner shall pay the City one-third of the total cost to buy-out the power within 30 days of the City being billed or invoiced for the buy-out.

4.1.3 **Culinary Water**—City shall install a water tank to service the Annexation Area as outlined in 3.2 above. City shall have sole discretion to determine the tank's capacity, but shall install a tank that provides culinary service to the Subject Area and has a minimum capacity of 1 million gallons. It is anticipated that UDOT will reimburse City for an existing water tank that they are removing as part of their Highway 89 improvements. Owner shall be required to pay any costs above those provided by UDOT to build a tank to service the Subject Area.

4.1.3.1 **Owner's Responsibilities**—In addition to the tank, owner shall be responsible for any costs not reimbursed by UDOT to pay the costs to install a pump, pump-house, piping, and any other associated improvements connected with pumping and delivering water to the water-tank. Owner shall also dedicate any easements and property required to install the water-tank, pump, pump-house, and any other associated improvements. Owner shall be solely responsible to pay for the costs of any piping used to deliver the water from the water tank to the homes in the Subject Area.

4.1.3.2 **Payment Schedule**—Owner shall pay \$30,000 within 60 days of approval of this agreement or at the approval of preliminary plat, whichever is sooner. Owner shall pay the remainder of the costs not covered by UDOT within 60 days of completion of the water tank construction or before 60 lots have been platted and recorded on the Subject Area, whichever is sooner.

4.1.3.3 **Outside Parties**—The City, at its sole discretion, shall determine if parties outside this Agreement shall participate, benefit, or connect to the culinary water system.

4.1.4 **Right of Way Dedication**—For the purpose of providing access to the Subject Area and the necessary easement for utility lines and infrastructure, Owner shall work with the Utah Department of Transportation (UDOT) to negotiate and convey the desired amount of property for the purpose of the upcoming US 89 road project.

4.1.5 **Secondary Water**—Owner shall be required to pay for, install, and construct a pressurized secondary water system to service any of the Subject Area below 4,870 feet. Owner agrees to a maximum of 16 culinary connections for secondary water if approved by variance. City Staff will not oppose the variance, but the variance, if applied for, will be decided by the Kaysville City Planning Commission. Both parties will accept the determination of the Kaysville City Planning Commission on this issue.

4.1.5.1 **16 Allowed Culinary Connections**—Each of the 16 culinary connections shall have a reduced pressure backflow assembly. Installation of the backflow assemblies shall be required to meet Kaysville City Public Works and

Engineering Standards. Further, the backflow assemblies shall be installed downstream of the water meter and shall be disconnected annually from November 1st to March 1st.

4.1.6 Road Connectivity— Owner agrees that development of the subject area identified as tax parcel 11-036-0031 in Davis County, Utah containing approximately 37.5 acres (the “Frost Property”) shall include connections to the existing stub roads along 25 South Street in Layton, Utah and no less than 2 connections to the property to the south of the Subject Area. One connection shall be on the south-eastern third of the property and the other connection shall be on the south-wester third and connect or be stubbed to connect to parcel 11-036-0073, which is the parcel directly south of the subject area.

4.1.7 Number of homes—the number of homes built on the subject area shall not exceed 95.

4.1.8 Payback Agreement—Owner may, at its discretion, apply for a fee for project improvements in compliance with Kaysville City Code 19-6-4 which shall be considered and presented to the City Council. Owner is notified that this Agreement does not bind the City to agree to enter into any form of payback agreement. Owner is notified that any payback agreement shall be subject to a reasonable administrative fee charged by the City to administer and insure that the payback is complied with.

4.2 These enumerations are not to be construed as approvals thereof, as any required approval process must be pursued independent hereof.

4.3 Owner agrees to limit development to the uses allowed in the R-1-8 zone for all properties within the Subject Area, and if other uses are desired, Owner agrees to seek amendment of this Agreement before pursuing the development of those uses.

4.4 Any conflict between the provisions of this Agreement and the City’s codified requirements shall be resolved in favor of the more strict requirement.

ARTICLE V GENERAL REQUIREMENTS AND RIGHTS OF CITY

5.1 Issuance of Permits - Owner. Owner, or its assignee, shall have the sole responsibility for obtaining all necessary building permits in connection with Owner’s Undertakings and shall make application for such permits directly to the Kaysville City Community Development Department and other appropriate departments and agencies having authority to issue such permits in connection with the performance of Owner’s Undertakings. City shall not unreasonably withhold or delay the issuance of its permits.

5.2 Completion Date. The Owner shall, in good faith, reasonably pursue completion of the development. Each phase or completed portion of the project must independently meet the requirements of this Agreement and the City’s ordinances and regulations, such that it will stand alone, if no further work takes place on the project.

5.3 Access to the Subject Area. For the purpose of assuring compliance with this Agreement, so long as they comply with all safety rules of Owner and its contractor, representatives of City shall have the right of access to the Subject Area without charges or fees during the period of performance of Owner's Undertakings. City shall indemnify, defend and hold Owner harmless from and against all liability, loss, damage, costs or expenses (including attorneys' fees and court costs) arising from or as a result of the death of a person or any accident, injury, loss or damage caused to any person, property or improvements on the Subject Area arising from the negligence or omissions of City, or its agents or employees, in connection with City's exercise of its rights granted in this paragraph.

ARTICLE VI REMEDIES

6.1 Remedies for Breach. In the event of any default or breach of this Agreement or any of its terms or conditions, the defaulting Party or any permitted successor to such Party shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach, and in any event cure or remedy the breach within thirty (30) days after receipt of such notice. In the event that such default or breach cannot reasonably be cured within said thirty (30) day period, the Party receiving such notice shall, within such thirty (30) day period, take reasonable steps to commence the cure or remedy of such default or breach, and shall continue diligently thereafter to cure or remedy such default or breach in a timely manner. In case such action is not taken or diligently pursued, the aggrieved Party may institute such proceedings as may be necessary or desirable in its opinion to:

6.1.1 cure or remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the Party in default or breach of its obligations; and

6.1.2 If the remedy of reversion is pursued, the defaulting party agrees not to contest the reversion of the zoning on undeveloped portions of the Subject Area, by the City Council to the previous zoning on the property, and hereby holds the City harmless for such reversion of the zoning from R-1-8 (Single Family Residential) to A-1 (Light Agriculture).

6.2 Enforced Delay Beyond Parties' Control. For the purpose of any other provisions of this Agreement, neither City nor Owner, as the case may be, nor any successor in interest, shall be considered in breach or default of its obligations with respect to its construction obligations pursuant to this Agreement, in the event the delay in the performance of such obligations is due to unforeseeable causes beyond its fault or negligence, including, but not restricted to, acts of God or of the public enemy, acts of the government, acts of the other Party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes or unusually severe weather, or delays of contractors or subcontractors due to such causes or defaults of contractors or subcontractors. Unforeseeable causes shall not include the financial inability of the Parties to perform under the terms of this Agreement.

6.3 Extension. Any Party may extend, in writing, the time for the other Party's performance of any term, covenant or condition of this Agreement or permit the curing of any default or breach upon such terms and conditions as may be mutually agreeable to the Parties; provided, however, that any such extension or permissive curing of any particular default shall not operate to eliminate any other obligations and shall not constitute a waiver with respect to any other term, covenant or condition of this Agreement nor any other default or breach of this Agreement.

6.4 Rights of Owner. In the event of a default by Owner's assignee, Owner may elect, in its discretion, to cure the default of such assignee; provided, Owner's cure period shall be extended by thirty (30) days.

ARTICLE VII GENERAL PROVISIONS

7.1 Successors and Assigns of Owner. This Agreement shall be binding upon Owner and its successors and assigns, and where the term "Owner" is used in this Agreement it shall mean and include the successors and assigns of Owner, except that City shall have no obligation under this Agreement to any successor or assign of Owner not approved by City. Notwithstanding the foregoing, City shall not unreasonably withhold or delay its consent to any assignment or change in Ownership (successor or assign of Owner) of the Subject Area. Upon approval of any assignment by City, or in the event Owner assigns all or part of this Agreement to an assignee, Owner shall be relieved from further obligation under that portion of the Agreement for which the assignment was made and approved by City.

7.2 Notices. All notices, demands and requests required or permitted to be given under this Agreement (collectively the "Notices") must be in writing and must be delivered personally or by nationally recognized overnight courier or sent by United States certified mail, return receipt requested, postage prepaid and addressed to the Parties at their respective addresses set forth below, and the same shall be effective upon receipt if delivered personally or on the next business day if sent by overnight courier, or three (3) business days after deposit in the mail if mailed. The initial addresses of the Parties shall be:

To Owner:
FROST FAMILY REAL ESTATE LLC
402 East Canyon Oak Road
Salt Lake City, UT 84103

To City:
KAYSVILLE CITY CORPORATION
23 East Center Street
Kaysville, Utah 84037
Attn: Shayne Scott, City Manager
(801) 546-1235

Upon at least ten (10) days' prior written notice to the other Party, either Party shall have the right to change its address to any other address within the United States of America.

If any Notice is transmitted by facsimile or similar means, the same shall be deemed served or delivered upon confirmation of transmission thereof, provided a copy of such Notice is deposited in regular mail on the same day of such transmission.

7.3 Third Party Beneficiaries. Any claims of third party benefits under this Agreement are expressly denied, except with respect to permitted assignees and successors of Owner.

7.4 Governing Law. It is mutually understood and agreed that this Agreement shall be governed by the laws of the State of Utah, both as to interpretation and performance. Any action at law, suit in equity, or other judicial proceeding for the enforcement of this Agreement or any provision thereof shall be instituted only in the courts of the State of Utah.

7.5 Integration Clause. This document constitutes the entire agreement between the Parties and may not be amended except in writing, signed by the City and the Owner.

7.6 Exhibits Incorporated. Each Exhibit attached to and referred to in this Agreement is hereby incorporated by reference as though set forth in full where referred to herein.

7.7 Attorneys' Fees. In the event of any action or suit by a Party against the other Party for reason of any breach of any of the covenants, conditions, agreements or provisions on the part of the other Party arising out of this Agreement, the prevailing Party in such action or suit shall be entitled to have and recover from the other Party all costs and expenses incurred therein, including reasonable attorneys' fees.

7.8 Termination. Except as otherwise expressly provided herein, the obligation of the Parties shall terminate upon the satisfaction of the following conditions:

7.8.1 With regard to Owner's Undertakings, performance of Owner of Owner's Undertakings as set forth herein.

7.8.2 With regard to City's Undertakings, performance by City of City's Undertakings as set forth herein.

Upon an Owner's request (or the request of Owner's assignee), the City agrees to enter into a written acknowledgment of the termination of this Agreement, or part thereof, so long as such termination (or partial termination) has occurred.

7.9 Recordation. This Agreement will be recorded in the Davis County Recorder's Office.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives effective as of the day and year first above written.

KAYSVILLE CITY CORPORATION,

By: _____
Katie Witt, Mayor

ATTEST:

By: _____
MARIA DEVEREUX, City Recorder

STATE OF UTAH)
: ss.
COUNTY OF DAVIS)

On this _____ day of _____, 20____, personally appeared before me
KATIE WITT, who duly acknowledged to me that she is the MAYOR of KAYSVILLE CITY,
and she signed the foregoing Annexation Agreement in behalf of said corporation, and KATIE
WITT acknowledged to me that Kaysville City executed the same.

NOTARY PUBLIC

FROST FAMILY REAL ESTATE, LLC

Signed by:

Name

Title

OWNER ACKNOWLEDGEMENT - CORPORATION/PARTNERSHIP
(Complete only if signing on behalf of a Corporation/Partnership)

STATE OF _____)

:ss

COUNTY OF _____)

On this _____ day of _____, 20____, personally appeared before me _____
who being by me duly sworn did say that he/she is the _____ of
_____, a corporation/partnership, and that _____ is
the legal property owner of record of the property subject to this Agreement and that the
foregoing Agreement was signed in behalf of said corporation/partnership by authority of its
Board of Directors/by-laws, and he/she acknowledged to me that said corporation/partnership
executed the same.

Notary Public

****IF ADDITIONAL SIGNERS AND/OR NOTORIAL WORDING ARE NECESSARY,
PLEASE NOTATE ANY ADDITIONS ON THIS NOTARY PAGE AND ATTACH A
STATE APPROVED NOTARIAL CERTIFICATE, WHICH IDENTIFIES THE
DOCUMENT THE ATTACHED NOTARIAL CERTIFICATE RELATES TO, AS WELL
AS, THE NUMBER OF PAGES IN THE DOCUMENT**

RESOLUTION 18-2-3

**ADOPTING AN AGREEMENT FOR THE ANNEXATION AND DEVELOPMENT
OF LAND BETWEEN KAYSVILLE CITY AND FROST FAMILY REAL ESTATE,
LLC.**

WHEREAS, Frost Family Real Estate, LLC (Owners) is annexing and developing certain property located at approximately 1402 North Highway 89 ("Annexation Area") in Kaysville City; and

WHEREAS, Owners and Kaysville City have entered into an agreement setting forth the responsibilities of both parties relative to various aspects of the development of the Annexation Area to accommodate annexation and development with appropriate infrastructure and land uses to enhance the general area; and

WHEREAS, the City Council has determined it to be in the best interest of the citizens of Kaysville City to enter into this agreement to ensure that Annexation Area will be developed according to the overall objectives and intent of the City's General Plan and in the best interest of the City.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF KAYSVILLE,
UTAH:**

1. The agreement entitled "AGREEMENT FOR THE ANNEXATION AND DEVELOPMENT OF LAND BETWEEN KAYSVILLE CITY AND FROST FAMILY REAL ESTATE, LLC." is hereby adopted and approved.

2. The Mayor is authorized to execute the Agreement, which is attached hereto and incorporated herein by this reference.

PASSED AND ADOPTED by the City Council of Kaysville Utah, this **23rd day of May, 2018.**

Katie Witt
Mayor

ATTEST:

Maria T. Devereux
City Recorder

APPROVED AS TO FORM:

Nicholas C. Mills, City Attorney