

## RESOLUTION 04-02-2013

### A RESOLUTION OF SANTAQUIN CITY APPROVING AN AGREEMENT, REGARDING CONTINUED MASS-GRADING OPERATIONS ON CITY PROPERTY, BETWEEN SANTAQUIN CITY AND SUNROC CORPORATION, A UTAH CORPORATION.

**WHEREAS**, Sunroc Corporation has been operating a mass-grading operation on lands within the Summit Ridge Development area since 2006; and

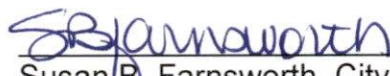
**WHEREAS**, Santaquin City now owns a portion of the land on which the Sunroc Corporation mass-grading operation is being conducted; and

**WHEREAS**, Santaquin City and Sunroc Corporation desire now to establish an agreement for continued mining of product on the City property as part of the mass-grading operation.

**THEREFORE, LET IT BE RESOLVED**, that the governing body of Santaquin City approves an agreement between Santaquin City and Sunroc Corporation for the continuance of a mass-grading operation on city owned property. (See Attached)

Approved the 3<sup>rd</sup> day of April, 2013.

  
James E. DeGraffenried, Mayor

  
Susan B. Farnsworth, City Recorder



## AGREEMENT

THIS AGREEMENT (the "Agreement") is entered into as of the 20 day of March 2013, by and between the City of Santaquin, a municipality of the State of Utah ("Santaquin" or "City"), and Sunroc Corporation, a Utah corporation ("Sunroc"), together (the "Parties").

### RECITALS

- A. WHEREAS Santaquin is a municipality of the State of Utah; and
- B. WHEREAS Sunroc operates a Sand and Gravel Operation on certain real property within the City pursuant to a Conditional Use Permit approved by the City on or about 2006 (the "2006 Permit"), which expires on June 7, 2012;
- C. WHEREAS, a portion of the Property is owned by the City and the remainder of the Property is owned by HG Utah 1, a Utah LLC (HG Utah 1"); and
- D. WHEREAS, Sunroc desires to continue to operate its aforementioned Sand and Gravel business for a certain period of time after the expiration of the 2006 Permit and has entered into a contract with HG Utah 1, which will allow the Sand and Gravel Operation on that portion of the Property owned by HG Utah 1 to continue after the expiration of the 2006 Permit; and
- D. WHEREAS Santaquin is willing to extend the period of time for Sunroc's operation of its Sand and Gravel Operation so long as certain terms and conditions are met and Sunroc compensates the City for the Product removed from its portion of the Property and offsets certain costs that the City will incur as a result of the continued operation of the Sand and Gravel business within the City; and
- E. WHEREAS the Parties now desire to enter into an agreement to set forth the terms and conditions for the continued operation of the Sand and Gravel Operation;

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

### SECTION I. DEFINITIONS

Unless the context requires a different meaning, any term or phrase used in this Agreement that has its first letter capitalized shall have that meaning given to it by this Agreement or, if different, by the Santaquin City Zoning Ordinance in effect on the date of the execution of this Agreement. Certain such terms and phrases are referenced below; others are defined where they appear in the text of this Agreement.

- 1.1 "City Property" means that portion of the Property that is owned by Santaquin City, which property is more particularly described in Exhibit "A" hereto.
- 1.2 "HG Utah 1 Property" means that portion of the Property that is owned by HG Utah 1.

1.3 **“Mass Grading Plan”** means the Mass Grading Plan that was approved by the City on or about January 23<sup>rd</sup>, 2013.

1.4 **“Product”** means any and all sand, gravel, rock, or other soil removed from the Property.

1.5 **“Property”** means that real property that is more particularly described in Exhibit “B” hereto.

1.6 **“Sand and Gravel Operation”** means the mining, quarrying or excavation of rock, sand, and /or gravel; including the operation of equipment for the purpose of weighing Product.

## SECTION II. RIGHTS AND RESPONSIBILITIES OF SUNROC

2.1 **Compliance with Terms and Conditions.** As consideration for the execution of this agreement, Sunroc agrees to comply with all of the terms and conditions of this Agreement, including but not limited to the conditions of the Mass Grading Plan.

2.2 **Road Repairs.** Sunroc has met with City’s Engineering staff and together have determined what repairs are required to that portion of Summit Ridge Parkway that abuts the Property (“Summit Ridge Parkway”) and shall provide a cash payment to the City for those repairs on or before May 1, 2013. Sunroc shall place and maintain sufficient asphalt at the site of any operable scales on the Property in an amount and in such manner as to minimize the need for cleaning of Summit Ridge Parkway during the term of this Agreement; shall install “rumble strips” at all egress points onto Summit Ridge Parkway, in compliance with SWPP standards; and shall sweep and water Summit Ridge Parkway 2-3 times per week or as necessary.

2.3 **Road Repair Payment.** Sunroc shall deliver to the City a cash payment of \$2,000 that will complete their portion of repairs to Summit Ridge Parkway, as determined by the City Engineer, for an area of 1,200 square feet. The City shall be responsible for the appropriate use of the funds to repair the identified problem areas. It is anticipated that repairs will be done in conjunction with the larger Summit Ridge Parkway rehabilitation project.

2.4 **Signage.** Sunroc shall install a sign on the Property that will reasonably advise motorists on Summit Ridge Parkway of the temporary nature of the work performed under the Conditional Use Permit; maintain said sign during the term of this Agreement; and shall remove said sign upon the expiration of the Conditional Use Permit.

2.5 **Removal of and Payment for Product.** Sunroc may remove Product from City Property and shall pay the City for all Product removed from the City Property as provided in this section 2.5.

2.5.1 Sunroc may remove up to one hundred thousand tons of Product from the City Property and shall pay the City thirty thousand dollars (\$30,000.00) after July 1, 2013 and before July 31, 2013, for up to one hundred thousand (100,000) tons of Product removed from City Property.

2.5.2 The City may authorize Sunroc to remove more than one hundred thousand (100,000) tons of Product from the City Property. Sunroc shall pay the City thirty cents (\$.30) per ton of Product removed from City Property in excess of one hundred thousand (100,000) tons between the execution of this Agreement and the expiration of the Conditional Use Permit, which amount shall be paid to the City after July 1, 2013 and before July 31, 2015.

2.5.3 All quantities of Product shall be determined by surveys of the City Property; the first of which was completed prior to the January 23, 2013 approval; the second of which shall be completed on or before July 31, 2014; and the third of which shall be completed on or before July 31, 2015. All surveys shall be performed under the direction of the City Engineer.

2.5.4 Sunroc shall reimburse the City for all costs of the surveys referenced in this section 2.5.

2.6 **Utility Services.** Sunroc acknowledges that at the present time, the City will not provide any water, wastewater disposal, electrical or other utility service to the Property. Unless and until such time as the City determines that it is in the best interests of the City to provide any such services to the Property, Sunroc agrees that the City shall have no obligation to provide any such service and that all utility services necessary for the use of the Property shall be the responsibility of Sunroc.

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

2.8 **Compliance with City Requirements and Standards.** Sunroc expressly acknowledges that nothing in this Agreement shall be deemed to relieve Sunroc from its obligations to comply with all applicable requirements of the City necessary for any use of the Property including payment of fees, the approval of all building permits and construction permits, and compliance with all applicable ordinances, resolutions, policies and procedures of the City.

2.9 **Remedies.** In the event that any fee due under section 2.5 of this agreement is not paid within thirty (30) days of the due date, Santaquin may, in addition to any other remedies available at law, initiate proceedings to terminate the Conditional Use Permit issued pursuant to the provisions of section 3 herein and Sunroc specifically agrees that in such event it will not protest or otherwise oppose such action.

### SECTION III. RIGHTS AND RESPONSIBILITIES OF SANTAQUIN

3.1 **Approval of Conditional Use Permit.** Upon execution of this Agreement by all parties, Santaquin shall approve a Conditional Use Permit to allow Sunroc to operate a Sand and Gravel Operation on the Property, so long as said operation complies with applicable ordinances and regulations and the terms and conditions of this Agreement. The Conditional Use Permit shall be granted for a period of two (2) years from the execution of this Agreement and shall be reviewed by the parties for compliance after the first anniversary of the execution of the Agreement.

3.2 **Reserved Legislative Powers.** This Agreement shall not limit the future exercise of the police powers of the City to enact ordinances, standards, or rules regulating development. The City acknowledges, however, that any exercise of its legislative or police powers which alters or modifies this Agreement to Sunroc's detriment may render the City liable to such remedies as may be available to Sunroc under such circumstances.

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

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

3.3.2 If, however, it should be discovered that there did, in fact, exist, as of the date of this Agreement, material facts under which modification of the rights under this Agreement would be justified by a "compelling, countervailing public interest," Sunroc acknowledges that it neither had nor has any vested rights as to any matter arising from or affected by any material facts of which the City was not or could not have been aware as of the date of this Agreement.

3.4 **Recording.** Either party may cause this Agreement, together with all exhibits and attachments, to be recorded with the county recorder of Utah County.

#### SECTION IV. GENERAL PROVISIONS

4.1 **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 and to those provisions concerning off site improvements, including, but not limited to, trails, roads and utilities. 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 Area.

#### 4.2 **Transfer and Assignment.**

4.2.1 Sunroc acknowledges that its qualifications and identity are of particular concern to the City, and that it is because of such qualifications and identity that the City is entering into this Agreement. Accordingly, Sunroc agrees for itself and any successor in interest that, prior to the contemplated completion of the terms of this Agreement, Sunroc shall not convey, assign, or transfer any of its rights or obligations of this Agreement, to another, without the written consent of the City, which consent shall not be unreasonably withheld.

4.2.2 Sunroc shall provide written notice of any proposed or completed assignment or transfer with a complete description of the proposed assignee. In the event of an assignment, the transferee shall succeed to all of the assignor's rights and obligations under this Agreement.

4.3 **No Agency, Joint Venture or Partnership.** The Parties hereby renounce the existence of any form of agency relationship, joint venture or partnership. Nothing contained herein shall be construed as creating any such relationship between the City and any other party, individual or entity.

4.4 **Consent.** In the event this Agreement provides for consent from the City or Sunroc, 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.

4.5 **Legal Challenges.** In the event that any person challenges this Agreement or any of the provisions herein, Sunroc agrees to indemnify the City for all legal fees, including attorneys' fees,

expenses, and/or court costs incurred by the City upon presentation of an itemized list of costs, expenses, and fees.

## SECTION V. MISCELLANEOUS

5.1 **Incorporation of Recitals, Introductory Paragraphs, and Exhibits.** The Recitals contained in this Agreement, the introductory paragraph preceding the Recitals, and all Exhibits referred to or attached hereto are hereby incorporated into this Agreement as if fully set forth herein.

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

5.3 **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.

5.4 **Construction.** This Agreement has been reviewed and revised by legal counsel for Sunroc and the City, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

5.5 **Further Assurances, Documents, and Acts.** Each of the parties hereto agrees to cooperate in good faith with the other, and to execute and deliver such further documents, and to take all further actions reasonably necessary in order to carry out the intent and purposes of this Agreement and the actions contemplated hereby. All provisions and requirements of this Agreement shall be carried out by each party as allowed by law.

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

5.7 **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. Venue shall be Utah County, State of Utah.

5.7.1 **Mediation.** Any and all disputes arising out of or related to this Agreement or the parties' performance hereunder shall be submitted to mediation before a mutually-acceptable mediator prior to initiation of litigation or any other binding or adjudicative dispute resolution process. The parties shall: (i) mediate in good faith; (ii) exchange all documents which each believes to be relevant and material to the issue(s) in dispute; (iii) exchange written position papers stating their position on the dispute(s) and outlining the subject matter and substance of the anticipated testimony of persons having personal knowledge of the facts underlying the dispute(s), and; (iv) engage and cooperate in such further discovery as the parties agree or mediator suggests may be necessary to facilitate effective mediation. Mediator, venue, and related costs shall be shared equally by the parties. Venue of the mediation shall be the State of Utah. In the event the parties are unable to agree upon a mediator, the mediator shall be appointed by a court of competent jurisdiction. This provision shall be specifically enforceable according to its terms, including but not limited to an action to compel mediation. The prevailing party in any action to enforce in whole or in part this mediation clause or in any subsequent arbitration or mediation shall be entitled to reimbursement of attorneys' fees and costs incurred in said action.

5.7.2 **Default Litigation.** If any party hereto is required to engage the services of counsel by reason of the default of another party, the non defaulting party shall be entitled to receive its costs and reasonable attorneys' fees, both before and after judgment and whether or not suit be filed or if

the provisions of this Agreement are enforced through arbitration. Said costs and attorneys' fees shall include, without limitation, costs and attorneys' fees incurred in any appeal and in any proceedings under any present or future federal bankruptcy act or state receivership act.

5.8 **Notices.** Any notice or communication required hereunder between the Parties must be in writing, and may be given either personally or by registered or certified mail, return receipt requested or by facsimile. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice is given when delivered to the Party to whom it is addressed. If given by facsimile to the address and number for such party set forth below (provided, however, that the notice is not effective unless a duplicate copy of the facsimile notice is promptly given by one of the other methods permitted under this paragraph), the notice is deemed to have been given upon receipt by the other Party. Any Party hereto may at any time, by giving ten (10) days written notice to other Parties hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at the addresses set forth below:

If to City to:

*Santaquin City  
c/o Benjamin Reeves, City Manager  
275 West Main Street  
Santaquin, UT 84655*

Copy to:

*Brett B. Rich, Esq.  
Nielsen & Senior  
15 W. South Temple, Suite 1700  
Salt Lake City, Utah 84101*

If to Sunroc Corporation to:

*Sunroc Corporation  
Russell A. Leslie  
Vice President, Construction Materials  
3657 South River Road  
St. George, UT 84790  
Office: 435-986-3056  
Mobile: 435-680-2208  
Fax: 435-634-0561  
[rleslie@sunroc.com](mailto:rleslie@sunroc.com)*

Copy to:

4/02/2013

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

5.10 **Counterparts and Exhibits.** This Agreement is executed in two (2) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of nine (9) pages, including notary acknowledgment forms, and an additional two (2) exhibits, which constitute the entire understanding and agreement of the Parties to this Agreement. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

Exhibit A	Legal description of the City Property
Exhibit B	Legal description of the Property

5.11 **Duration.** This Agreement shall continue in force and effect until all obligations hereunder have been satisfied.

5.12 **Concurrency.** The City shall take reasonable steps to ensure that the resources, services, and facilities needed to support progressing development are available concurrent with the impacts of such development. No development permit will issue in the event that concurrent infrastructure and services are not available to serve the contemplated development.

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

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

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

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

5.13.2.1 **Additional named insureds.** The City and its elected and appointed boards, officers, agents, employees, and consultants shall be added as additional named insureds on all insurance policies references herein.



5.13.2.3 **Notice.** Each insurance policy shall provide that the policy may not be terminated, nor canceled, nor any coverage limits reduced, until after thirty (30) days written notice is given to the City.

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

5.14 **Nondiscrimination.** Neither the parties to this Agreement, nor any of their agents, employees, or representatives, shall discriminate against, segregate, persecute, oppress, or harass one another's agents, employees, or representatives; contractors or subcontractors; the agents, employees, or representatives of any of the foregoing; tenants, owners, occupants, or residents, whether actual or potential; or any other person or entity.

5.15 **Acknowledgment.** By the authorized signature below, Sunroc acknowledges that the Property shall be subject to all of the terms and conditions of this Agreement upon execution by the City.

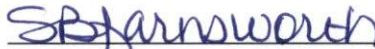
IN WITNESS THEREOF, this Agreement has been executed by a person duly authorized by SUNROC to execute the same and by the duly elected Mayor of the City of Santaquin, with the approval of the Santaquin City Council as of the 20 day of March, 2013.




CITY OF SANTAQUIN

  
\_\_\_\_\_  
JAMES E. DEGRAFFENRIED, Mayor

ATTEST:

  
\_\_\_\_\_  
Susan B. Farnsworth, City Recorder

SUNROC CORPORATION

  
\_\_\_\_\_  
Russell A. Leslie, Vice President, Construction Materials

STATE OF UTAH     )  
                              :SS  
COUNTY OF UTAH    )

On this 3<sup>rd</sup> day of April, 2013, personally appeared before me, Russell Leslie who, after being duly sworn, acknowledged to me that he is authorized by Sunroc Corporation to execute this document and who executed the same.



Lewis Fuller

## Exhibit "A"

A portion of the South half of Section 10 and the North half of Section 15, Township 10 South, Range 1 East, Salt Lake Base and Meridian, located in Santaquin, Utah County, State of Utah, more particularly described as follows:

Beginning at a point located North 89° 43' 52" East along the Section line 629.30 feet from the South quarter corner of Section 10, Township 10 South, Range 1 East, Salt Lake Base and Meridian; thence South 180.26 feet; thence West 1,167.86 feet to the Easterly right-of-way line of the Union Pacific Railroad; thence North 1° 26' 00" East along said right-of-way 1,527.58 feet; thence 89° 07' 43" East 492.94 feet; thence South 0° 19' 10" East 352.32 feet; thence North 89° 43' 53" East 634.81 feet; thence South 990.01 feet to the point of beginning.

## Exhibit "B"

The following 5 parcels, located in Santaquin, Utah County, State of Utah, more particularly described as follows in the Utah County records:

Serial Number 32:021:0061  
Serial Number 32:021:0058  
Serial Number 32:021:0059  
Serial Number 32:021:0064  
Serial Number 32:021:0063