

ORDINANCE 15-06

(JBS SWIFT ANNEXATION)

WHEREAS, the owners of certain real property, described below, desire to annex such real property to the corporate limits of Hyrum City, Utah; and

WHEREAS, said real property is located within the area proposed for annexation and covers a majority of the private land area within the area proposed for annexation; and

WHEREAS, said real property is equal in value to at least one-third (1/3) of the value of all private real property within the area proposed for annexation; and

WHEREAS, said real property is a contiguous, unincorporated area contiguous to the boundaries of Hyrum City and the annexation thereof will not leave or create an unincorporated island or peninsula; and

WHEREAS, said real property covers 100% of the private land area within the area propose annexation if the area is within an agricultural protection area, or a migratory bird protection area; and

WHEREAS, said property covers an area that is equivalent to less than five percent (5%) of the total land mass of all private real property within Hyrum City; and

WHEREAS, said owners have caused a Petition for Annexation to be filed with the city, together with an accurate plat of the real property which was made under the supervision of a competent, licensed surveyor; and

WHEREAS, on February 5, 2015, the Hyrum City Council received the required Notice of Certification from the City Recorder certifying that the annexation petition meets the requirements of State law; and

WHEREAS, the City Council published and mailed notice of the certification as required by law; and

WHEREAS, no timely protests have been filed in accordance with the provisions of Section 10-2-407, Utah Code Annotated, 1953, as amended; and

WHEREAS, the City Council held the required public hearing after giving notice as required by law, and has

determined annexation of said property is appropriate and desirable;

NOW, THEREFORE, pursuant to Section 10-2-407, Utah Code Annotated 1953, as amended, the City Council of Hyrum City, Utah, hereby adopts, passes, and publishes the following:

AN ORDINANCE AMENDING THE MUNICIPAL ZONING MAP AND ANNEXING CERTAIN REAL PROPERTY AND EXTENDING THE CORPORATE LIMITS OF HYRUM CITY, UTAH (JBS SWIFT, LLC - 7.88 ACRES).

BE IT ORDAINED, by the City Council of Hyrum City, Cache County, State of Utah, as follows:

SECTION 1. That certain real property, more particularly described in Section 2 below is hereby annexed to Hyrum City, Utah, under the conditions of the attached Annexation Agreement and the corporate limits of said city are hereby extended accordingly.

SECTION 2. That the real property which is the subject of this Ordinance is described as follows:

Part of the Southwest Quarter of the Southeast Quarter of Section 32, Township 11 North, Range 1 East of the Salt Lake Base and Meridian described as follows;

Beginning at a point on the Hyrum City Corporate Limits line being North 660.00 feet of the South Quarter Corner of said Section 32; and running thence North along the existing Hyrum City Corporate Limit line, 586.66 feet to the South line of the Union Pacific Railroad right of way; thence South  $66^{\circ}01'53''$  East along the Railroad right of way, 1309.77 feet; thence South along the Railroad right of way, 54.57 feet to the Existing Hyrum City Corporate Limit; thence West along the Hyrum City Corporate Limit, 1196.85 feet to the beginning. Containing 7.88 acres.

SECTION 3. That the real property described in Section 2 above shall be classified as being in the Manufacturing Medium to Heavy M-2 Zone in accordance with the provisions of Section 17.20.020 of the Hyrum City Municipal Code and the zoning map of Hyrum City shall be amended to include the real property described above.

SECTION 4. A certified copy of this ordinance, an original plat describing the property, and the annexation

agreement shall be filed with the Cache County Recorder within thirty (30) days after the date this ordinance is adopted.

SECTION 5. This ordinance shall become effective upon the posting of three (3) copies in each of three (3) public places within the corporate limits of Hyrum City.

ADOPTED AND PASSED by the Hyrum City Council this 3<sup>rd</sup> day of December, 2015.

HYRUM CITY

BY: \_\_\_\_\_  
Stephanie Miller  
Mayor

ATTEST:

\_\_\_\_\_  
Stephanie Fricke  
City Recorder

Posted: \_\_\_\_\_

\* \* D R A F T \* \* D R A F T \* \*

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT ("Agreement"), made and entered into this 21st day of August, 2015, by and between Hyrum City ("Hyrum City" or "City"), a Utah municipal corporation, William Rupp on behalf of JBS Swift LLC, owner of real property adjacent to the municipal limits of Hyrum City, and Derek Page, contact sponsor of the petition to annex said property (collectively referred to as "APPLICANT").

WITNESSETH:

WHEREAS, APPLICANT is the owner of seven and 88/100 (7.88) acres of real property, which property is located outside City boundaries and bears Cache County Tax Numbers 03-060-0011, 03-061-0002, 03-061-0005, 03-061-0021, 03-061-0022, and 03-061-0025 ("Property") and is more particularly described hereafter; and

WHEREAS, on January 7, 2015, APPLICANT filed a petition and map pursuant to the requirements of Section 10-2-403, Utah Code Annotated, 1953, as amended, requesting annexation of said Property into the municipal limits of Hyrum City; and

WHEREAS, on January 15, 2015, said petition was accepted by resolution of the Hyrum City Council; and

WHEREAS, on February 5, 2015 said petition and map were certified by the municipal attorney and city recorder as meeting the requirements of submission; and

WHEREAS, on March 19, 2015, after providing proper notice to the public as required by Section 10-2-407 UCA, the Hyrum City Council held a public hearing to consider annexation of said property; and

WHEREAS, the Hyrum City Council has concluded that said property is an unincorporated area contiguous to the boundaries of Hyrum City and qualifies under law for annexation into Hyrum City and that annexation of said Property will not leave or create an unincorporated island or peninsula; and

WHEREAS, the Hyrum City Council has also determined that this annexation will not adversely impact the community and creates an opportunity for the City to increase its tax base and provide municipal utility services to said Property; and

WHEREAS, the parties wish to define their rights and responsibilities with respect to the annexation of the Property by virtue of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

1. **SUBJECT PROPERTY.** The Property to be annexed and that is the subject of this Agreement is described as follows:

Part of the Southwest Quarter of the Southeast Quarter of Section 32, Township 11 North, Range 1 East of the Salt Lake Base and Meridian described as follows;

Beginning at a point on the Hyrum City Corporate Limits line being North 660.00 feet of the South Quarter Corner of said Section 32; and running thence North along the existing Hyrum City Corporate Limit line, 586.66 feet to the South line of the Union Pacific Railroad right of way; thence South  $66^{\circ}01'53''$  East along the Railroad right of way, 1309.77 feet; thence South along the Railroad right of way, 54.57 feet to the Existing Hyrum City Corporate Limit; thence West along the Hyrum City Corporate Limit, 1196.85 feet to the beginning. Containing 7.88 acres.

2. **DEVELOPMENT.** Upon annexation, the Property shall become part of Hyrum City and all development or improvements of any nature in addition to any activities associated with the use of the Property shall comply with applicable federal and state code and regulations along with City ordinances, standards, regulations, procedures, and policies.
3. **ZONING.** Zoning of subject Property upon annexation into the City shall be Manufacturing M-2.
4. **ACKNOWLEDGEMENT OF EXISTING SITE PLAN AND REZONING APPROVAL.** Hyrum City and Applicant hereby acknowledge that Applicant has received the following approvals with conditions from the City Council:

- A. Site plan approval for a box cooler addition at 410 West 200 North with the following conditions (November 20, 2014):

1. Traffic flow and patterns at the JBS Swift Plant stay the same (Main entrance/exit to plant is approximately 200 West 350 North with employee traffic entering and exiting plant at this location. No

entrance/exit on 100 West 300 North); 2. No increase in noise decibel levels, it must not go above current levels; 3. Adjustment of the east boundary line so it doesn't go through the building; 4. Adjustment of the north property line so that it doesn't go through the building; 5. Contact and approval from Cache County on city/county boundary lines; 6. Remove only the pavement necessary to construct the new box cooler addition and leaving enough pavement for the road in accordance with City standards and specifications; 7. Installation of dark sky lighting throughout the property on building especially on the South side of the building; 8. Hyrum City has documented readings of the noise level before construction so that if the noise decibel level ever increases then JBS Swift will have to immediately address the problem; and 9. JBS Swift proceed with its proposal for annexation of property into Hyrum City so that the box cooler addition is completely inside Hyrum City Limits.

- B. Ordinance 15-01 amending the Zoning Map of Hyrum City, Utah by rezoning property from Residential R-2 to Manufacturing Medium to Heavy M-2 (JBS Swift property (currently inside City Limits) at approximately 200 West to 80 West between 320 North and 370 North - South of JBS Plant; and property at approximately 400 North between 230 West and 280 West - Northwest of the JBS Plant) with the following conditions (January 15, 2015):

1. A two sided decorative wall at least 8 feet tall, to be determined with site plan approval be installed as a buffer for residences on the southern boundary of the Property; 2. A 30 foot buffer zone south of the proposed wall to remain zoned R-2; 3. The 'Hammond Home (364 North 200 West' and shown lot area to remain zoned R-2; 4. The deed shall include a recorded restriction stating parking and landscaping are only allowed on the Property that has been rezoned M-2; 5. A minimum 6 foot tall privacy fence be required on the west boundary of proposed parking lot west of 200 west; 6. JBS Swift consult with the residential property owners on type of landscaping they want done on the southside of the 8' high wall; and 7. If there is future expansion or an addition to the plant that the sound issues be addressed so that additional noise does not encroach on neighboring properties and that JBS Swift hire a sound engineer to conduct a study before any future expansion approvals are given.

C. Site Plan approval for the expansion of the Meat Packing Plant and Parking Lot with the following conditions (February 19, 2015):

1. JBS Swift Company pay for the entire cost of the road including curb and gutter along the entire length of the JBS Property parking lot area on Center Street and the City will pay for the improvement costs from there to 300 North; 2. A landscaping plan that includes the 30' buffer be completed and submitted to the Planning Commission for its consideration and approval; 3. JBS Swift install a light at the entrance to the parking lot on 200 West; 4. JBS Swift install a flashing light for the crosswalk on 200 West; 5. JBS Swift submit a storm water plan to the City for the City Engineer to consider and approve; and 6. The privacy wall be sloped to be at least 10' high behind the third lot on east of 200 west to the blue building near and if building is removed to the 100 West gravel road (a berm can be used to increase the height of the wall 2' as long as the overall height is 10'). Councilmember Allgood seconded the motion.

5. **WATER SHARES.** As required by Section 16.20.070 of the Hyrum City Municipal Code, the APPLICANT agrees, upon approval and acceptance of this agreement, to provide water in the amount and under the terms and conditions established by Section 16.20.070, which requirement will be satisfied by APPLICANT'S submission of (23.64) acre-feet of water represented by (\_\_\_\_\_) shares of Blacksmith Fork Irrigation Company stock, and the balance of (\_\_\_\_\_) acre-feet to be provided by water made available by Hyrum City Corp. at the rate of \$3,500 per acre-foot. The total of all water provided by APPLICANT will comply with the CITY'S current requirement of three (3) acre-feet per gross acre developed, which requirement must be met upon annexation. Hyrum City further reserves the right to limit the area served by the municipal piped irrigation system to the amount of land that can be watered by water represented by the shares of Hyrum Irrigation Company stock. All other outside watering may be restricted to service provided through the municipal culinary distribution system.

6. **CULINARY WATER SERVICE.**

A. APPLICANT will be responsible to install culinary water mains extending from a point of junction with the main line to the Property at a size and depth to

be specified by the City necessary to serve future development, if and when necessary.

- B. APPLICANT agrees to be subject to the normal and customary impact and connection fees assessed for connections of this type to the municipal culinary water distribution system.

**7. WASTEWATER COLLECTION SERVICE.**

- A. APPLICANT will be responsible to install sewer mains extending from a point of junction with the main line to the Property at a depth and size to be specified by the City necessary to serve future development, if and when necessary.

- B. APPLICANT agrees to be subject to the normal and customary impact and connection fees assessed for connections of this type to the municipal wastewater collection system.

- 8. STORMWATER.** Applicant agrees to comply with Hyrum City's regulations governing stormwater runoff.

- 9. ELECTRICAL.** Applicant is responsible and agrees to install electrical upgrades as determined and specified by the City to serve future expansion of the JBS Plant, if and when necessary.

- 10. ALL UTILITY SERVICE EXTENSION AND IMPACT FEES.** With respect to the development of said Property, APPLICANT agrees to comply with City ordinances and regulations for extension of utility services, including payment of impact, connection, extensions, upgrades and other fees currently in effect or as amended. Applicant agrees to pay all costs associated with all utility upgrades when required by the City if JBS Swift increases demand on any utility.

- 11. TRANSPORTATION.** APPLICANT understands and agrees that traffic flow patterns will stay the same as it is presently. Development and use on this property will be required to access the property on 200 West with future access on Center Street; and meet all conditions listed above under Section 4. Acknowledgement of Existing Site Plan and Rezoning Approval.

- 12. NOISE.** Applicant understands and agrees to comply with all noise ordinances; and meet all conditions listed above



under Section 4. Acknowledgement of Existing Site Plan and Rezoning Approval.

**13. ENVIRONMENTAL CONCERNS.**

**14. AGREEMENT.** The parties hereto acknowledge that they have both participated in the preparation of this AGREEMENT and, in the event that any question arises regarding its interpretation, no presumption shall be drawn in favor of or against any party hereto with respect to the drafting hereof.

**15. GOVERNING LAW.** This AGREEMENT, and all matters relating hereto, including any matter or dispute arising out of the AGREEMENT, shall be interpreted, governed, and enforced according to the laws of the State of Utah, and the parties hereto consent to the jurisdiction of the First Judicial District Court of Cache County, Utah to resolve such disputes.

**16. AMENDMENTS.** This AGREEMENT may be amended at any time upon mutual agreement of the parties hereto, which amendment(s) must be reduced to writing and signed by all parties in order to become effective.

**17. ENTIRE AGREEMENT.** This AGREEMENT, and the exhibits thereto, constitute and represent the entire agreement of the parties hereto with respect to the subject matter hereof, and all other prior agreements, covenants, promises and conditions, verbal or written, between these parties are incorporated herein. No party hereto has relied upon any other promise, representation or warranty, other than those contained herein, in executing this AGREEMENT.

**18. FURTHER INSTRUMENTS.** The parties hereto agree that they will execute any and all other documents or legal instruments that may be necessary or required to carry out and effectuate all of the provisions hereof.

**19. ASSIGNMENT.** No assignment by a party hereto of any rights under or interests in the AGREEMENT will be binding on another party hereto without the written consent of the party sought to be bound. Hyrum City and APPLICANT each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in this AGREEMENT.

- 20. SEVERABILITY.** Whenever possible each provision of this Agreement shall be interpreted in such a manner as to be valid; but, if any provision of this Agreement shall be held, in a final judicial determination, to be invalid or prohibited under applicable law, such provision shall be severed, and the remaining provisions of this Agreement shall remain in effect. Notwithstanding the foregoing, however, should such judicially determined invalidity of any provision of this Agreement frustrate the intended purpose of the parties, as expressed herein, such invalidity shall cause this Agreement to be terminated, with the parties, to the extent possible, to be restored to the status quo as though this Agreement had not been signed.
- 21. REPRESENTATIONS.** The parties each represent and warrant that they are authorized to enter into this Agreement and carry out its obligations hereunder.
- 22. ATTORNEY FEES.** The parties herein each agree that should they default in any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including reasonable attorneys fees which may arise or accrue from enforcing this AGREEMENT, or in pursuing any remedy provided hereunder or by the statutes or other laws of the State of Utah, whether such costs and expenses are incurred with to without suit or before or after judgment.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the day and year first above written.

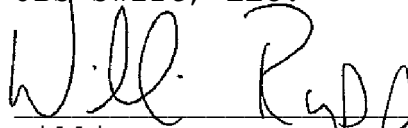
HYRUM CITY

By \_\_\_\_\_  
Stephanie Miller  
Mayor

Attest:

\_\_\_\_\_  
Stephanie Fricke  
City Recorder

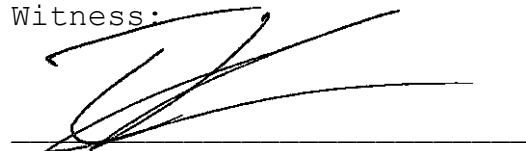
JBS Swift, LLC:

A handwritten signature in black ink, appearing to read "Will Rupp", written over a horizontal line.

William Rupp

Its: President, U.S. Fed Beef Division

Witness:

A handwritten signature in black ink, consisting of several overlapping strokes, written over a horizontal line.