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10/31/19

RESOLUTION NO. 2019- 151

A RESOLUTION ACCEPTING AND APPROVING A DIGITAL IMAGING AGREEMENT BETWEEN THE CITY OF ROCK SPRINGS AND FAMILYSEARCH INTERNATIONAL, A UTAH NONPROFIT CORPORATION, AND AUTHORIZING TIMOTHY A. KAUMO, AS MAYOR, AND MATTHEW L. MCBURNETT, AS CITY CLERK, TO EXECUTE SAID AGREEMENT ON BEHALF OF THE CITY OF ROCK SPRINGS.

WHEREAS, the City of Rock Springs wishes to enter into a Digital Imaging Agreement with FamilySearch International for the collection of original records set forth in Appendix A, attached hereto; and,

WHEREAS, the Governing Body of said City has said Digital Imaging Agreement before it and has given it careful review and consideration; and,

WHEREAS, it is considered in the best interest of said City to accept and approve said Digital Imaging Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF ROCK SPRINGS, STATE OF WYOMING:

Section 1. That the Digital Imaging Agreement with FamilySearch International, attached hereto and by this reference made a part hereof, is hereby accepted and approved by the City of Rock Springs.

Section 2. That the Mayor of said City be, and he is hereby authorized, empowered and directed to execute said Agreement on behalf of said City; and that the City Clerk be, and he is hereby, authorized and directed to attest said Agreement and to attach a certified copy of this Resolution.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
President of the Council

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

## DIGITAL IMAGING AGREEMENT

This agreement ("**Agreement**") is effective as of the last date of the signatures below ("**Effective Date**") and is made by and between: **[Rock Springs City Hall]** ("**Record Custodian**"), located at **[212 D Street, Rock Springs, Wyoming 82901]**, and FamilySearch International ("**FamilySearch**"), a Utah nonprofit corporation affiliated with The Church of Jesus Christ of Latter-day Saints, located at 50 East North Temple Street, Salt Lake City, Utah 84150. Record Custodian and FamilySearch are sometimes referred to herein collectively as the "**Parties**" and individually as a "**Party**." The Parties will each be independent contractors and nothing herein will make either Party the employee, agent or representative of the other Party, nor will the Parties be considered as joint venturers or partners for any purpose.

### 1. CONTENT DIGITIZATION

- a. Scope of Original Records. The Parties intend that the collection of original records set forth in Appendix A to this Agreement ("**Original Records**") be made available to the public in digital format. In the future, and upon the mutual written agreement of the Parties, additional records of genealogical value may be added ("**Additional Records**"), subject to the same use rights, limitations, and other terms and conditions of this Agreement. Any Additional Records will be included and treated as Original Records through an addendum signed by both Parties (see Appendix B). Original Records and Additional Records are referred to collectively as "**Records**".
- b. Creating Digital Images. FamilySearch will create digital images of the Records ("**Digital Images**") based on FamilySearch's standard specifications (available upon request) without charge.
- c. Copy to Record Custodian. When needed, the Record Custodian may request a single digital copy of the Digital Images for its internal use (as defined below), which FamilySearch agrees to provide to the Record Custodian in FamilySearch's then-standard format without charge. If any such copy is lost or destroyed, Record Custodian may request another copy, at Record Custodian's expense.
- d. Creating Research Materials and an Index. FamilySearch may choose, at its option and cost, to create research materials, in any format or medium, based on the content of the Digital Images ("**Research Materials**"). As part of the Research Materials, FamilySearch may also create an index of any and all information in the Digital Images. Record Custodian acknowledges and agrees that any Research Materials (including any FamilySearch-produced index) will be exclusively owned by FamilySearch.
- e. Existing Aids. If Record Custodian creates or has created finding aids or indexes (including any descriptions and metadata) relevant to the Records ("**Existing Aids**"), Record Custodian will provide a free copy of the Existing Aids to FamilySearch so that FamilySearch may, at its discretion, apply or link the Existing Aids to the Digital Images. Record Custodian conveys to FamilySearch the same rights to use the Existing Aids as conveyed herein (see Section 2) to use the Records and Digital Images.

### 2. RIGHTS; USE OF PREMISES; COMPLIANCE WITH LAWS

- a. Rights to Use Records and Digital Images; Use Limitations. Record Custodian retains all rights to the Records it heretofore has held, except as expressly provided herein:
  1. To the full extent permitted by governing law, FamilySearch may create Digital Images of the Records and may use or transfer the Digital Images for any purpose without limitation. The Parties specifically acknowledge that FamilySearch may license, reproduce, display, distribute, transmit, create derivative works of, and otherwise use the Digital Images as FamilySearch sees fit, and may do so in any and all media formats now known or hereafter invented, including without limitation Internet hosting for public access.
  2. To the extent Record Custodian claims a copyright interest in the Records, then (a) FamilySearch will own all rights to the Digital Images created hereunder, and (b) each Party hereby grants to the other Party the non-exclusive, perpetual, worldwide, irrevocable, fully-paid, and royalty-free permission to perform the tasks and use the Digital Images to the full extent contemplated in this Agreement, subject only to the restrictions set forth herein.
  3. Record Custodian agrees (a) not to distribute or license copies of Digital Images or Research Materials for any form of third-party commercial use, and (b) not to permit copying or distribution of all or substantially all of the Digital Images by or to any third-party, without first obtaining written authorization from FamilySearch.
  4. Nothing in this Agreement grants either Party any right to display or otherwise use the other Party's (or any of its affiliated entities') name or trademarks, and the Parties agree to refrain from such use without written permission from the other Party, except that each Party may issue publicity relating to the Agreement in which it makes incidental references to the other Party, the Agreement, services, Records, or Research Materials, so long as such references are not derogatory.
- b. Record Custodian's Premises and Security. If digital imaging is to occur on Record Custodian's premises, Record Custodian agrees to provide FamilySearch with timely, reasonable access to the Records at no cost to FamilySearch, including sufficient space near the



Records in a secure location (where there will be no third-party access to the Records and/or the digital imaging equipment) acceptable to both Parties for installation and operation of digital imaging equipment (*i.e.*, electricity, Internet connectivity, environmental considerations, etc.), until digital imaging is completed.

c. Authorization and Compliance with Laws. Record Custodian will provide FamilySearch with access to the Records only to the extent authorized by law, and will redact any Records (or portions of Records) that may not be made available to the public. Records Custodian represents and warrants that it has the authority to grant the rights granted herein, and that the execution, delivery, and performance of this Agreement does not conflict with any other agreement to which it is a party. Additionally, each of the persons signing this Agreement on behalf of the Parties personally warrants his/her authority to so sign and to bind the Parties by his/her signature.

### 3. GENERAL TERMS

a. Term and Termination. This Agreement will commence as of the Effective Date and will continue in force for a period of five years, and will automatically renew for successive five year periods unless terminated earlier as set forth herein (the "**Term**"). Either Party may terminate this Agreement by providing 90 calendar days Notice (as defined below) to the other Party. This Agreement may be terminated at any time upon the material breach of this Agreement by either Party, subject to a 30 calendar day cure period from the time of Notice of the material breach. Any termination of this Agreement will only affect the right to create additional Digital Images after the termination date of this Agreement, and will not terminate or otherwise limit the use rights granted in this Agreement prior to the date of termination.

b. Indemnification and Covenant Not to Sue. Each Party will indemnify, defend, and hold harmless the other Party, and all affiliated entities, officers, directors, representatives, and employees thereof, for and against all costs, losses, damages, and attorneys' fees attributable to any third-party claim brought against the other Party arising from a breach or alleged breach of this Agreement by the indemnifying Party. Except in cases of willful misconduct or gross negligence, in recognition of the nature of the Parties as non-profit entities and to the extent permitted under applicable law, each Party hereby waives its right to bring any legal claim against the other Party for any loss or damage in connection with this Agreement.

c. Choice of Law and Dispute Resolution. This Agreement will be construed and interpreted exclusively according to the laws of the State of Utah, except for its conflicts of law rules. If the Parties cannot amicably resolve any dispute between themselves, then such dispute will be resolved exclusively in the state or federal courts located in Salt Lake County, Utah, and the Parties consent to such jurisdiction and venue. The prevailing Party in any legal proceeding or action to enforce any term of this Agreement will be entitled, in addition to any other rights and remedies such Party may have, to recover its costs and reasonable attorneys' fees incurred in such proceeding from the other Party.

d. Entire Agreement; Controlling Language; Notice; Counterparts. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and supersedes and integrates all prior discussions, agreements, and understandings pertaining thereto. No modification of this Agreement will be effective unless in writing and signed by both Parties. This Agreement and all related appendices shall be construed and interpreted in the English language which shall be the controlling language for all purposes. Any official notice given under the terms of this Agreement ("**Notice**") will be in writing and sent by a commercial courier service, delivery charge prepaid, return receipt requested, to the address noted above. All Notices will be effective upon receipt. This Agreement may be executed by electronic signature and in counterparts, all of which shall be considered original and a single document for all purposes.

The Parties signify their acceptance of the foregoing by their signatures below:

**Record Custodian**

**FamilySearch**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## APPENDIX A

### Original Records

- Burial Permits;
- St Joseph's Deed Certificates;
- Sexton Records;
- Burial Plot Index Cards;
- Old Town Meeting Minute Books;
- Record Custodian documents previously acquired by FamilySearch;

Record Custodian \_\_\_\_\_ FamilySearch \_\_\_\_\_

**APPENDIX B**

**Additional Records**

- *[Insert Additional Records as detailed on FamilySearch's "Record Listing Form"]*

By their signatures below, the Parties signify their acceptance of adding the Additional Records into the Agreement as set forth herein above in this Appendix B:

**Record Custodian**

**FamilySearch**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_