



CITY COUNCIL REGULAR MEETING

448 E. 1st Street, Room 190 Salida, Colorado 81201

March 04, 2025 - 6:00 PM

AGENDA

Register for Regular City Council Meeting

<https://zoom.us/j/94566900437?pwd=LofScMlctMkI58imQPLIjhbohLUIFH.1>

After registering, you will receive a confirmation email containing information about joining the webinar.

To watch live meetings: <http://www.youtube.com/@cityofsalidacolorado>

CIVILITY INVOCATION

CALL TO ORDER

Pledge of Allegiance

Roll Call

CONSENT AGENDA

1. Approve Agenda
- [2.](#) Approve February 18, 2025 Minutes
- [3.](#) Approve Special Event Liquor License for A Church
- [4.](#) Approve contract with CivicBrand
- [5.](#) Approve City Administrator 2024 Evaluation
- [6.](#) Approve MOU between the City of Salida and Chaffee County Concerning Compensation and Development in the South Ark Neighborhood
- [7.](#) Approve MOU between the City of Salida and Colorado Mountain College Concerning Compensation and Development in the South Ark Neighborhood

CITIZEN COMMENT—Three (3) Minute Time Limit

PROCLAMATIONS

- [8.](#) Celebrating March 2025 as Women's History Month

LIQUOR LICENSING AUTHORITY

- [9.](#) New Hotel and Restaurant Liquor License for Hacienda Jalisco Family Restaurant, LLC, dba Hacienda Jalisco at 1220 E. Highway 50

UNFINISHED BUSINESS / ACTION ITEMS

- [10.](#) **Ordinance 2025 –04** AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF SALIDA, COLORADO GRANTING A NON-EXCLUSIVE FRANCHISE TO ATMOS ENERGY CORPORATION FOR THE PURPOSE OF PROVIDING, SELLING, AND DELIVERING NATURAL GAS TO THE CITY AND ITS RESIDENTS, AND APPROVING A GAS UTILITY FRANCHISE AGREEMENT CONCERNING THE SAME. **Second Reading and Public Hearing**
- [11.](#) **Ordinance 2025-05** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO APPROVING TENDERFOOT COMMUNICATION SITE LEASE WITH VISIONARY BROADBAND. **Second Reading and Public Hearing**

NEW BUSINESS / ACTION ITEMS

Individuals with disabilities needing auxiliary aid(s) may request assistance by contacting the City Clerk at 448 E. 1st Street, Ste. 112, Salida, CO 81201, Ph.719-530-2630 at least 48 hours in advance.

- 12. SOUND PERMIT** - Amplified Sound Permit Request for High Side! Bar and Grill. **Public Hearing**
- 13. Resolution 2025-09** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, APPROVING CITIZEN APPOINTMENTS TO THE PARKS, RECREATION, OPEN SPACE, AND TRAILS PURSUANT TO SECTION 2-14-20 a. OF THE SALIDA MUNICIPAL CODE
- 14. Resolution 2025-10** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, APPROVING THE ADOPTION OF A PARK DEVELOPMENT MANUAL FOR THE CITY OF SALIDA
- 15. Resolution 2025-11** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, APPROVING A CITIZEN APPOINTMENT TO THE SUSTAINABILITY COMMITTEE PURSUANT TO SECTION 2-18-10 OF THE SALIDA MUNICIPAL CODE

COUNCILORS, MAYOR AND CITY TREASURER REPORTS

Council Reports

Pappenfort - Finance Committee

Critelli

Naccarato - CHA and Sustainability Board

Martin

Stephens - Airport Board and PROST

Fontana - Finance Committe and Greater Salida Recreation Corporation Board

Mayor Report

Treasurer Report

Attorney Report

Department Updates

EXECUTIVE SESSION

16. Executive Session: For discussion of a personnel matter under C.R.S. Section 24-6- 402(4)(f) and not involving: any specific employees who have requested discussion of the matter in open session; any member of this body or any elected official; the appointment of any person to fill an office of this body or of an elected official; or personnel policies that do not require the discussion of matters personal to particular employees; AND THE FOLLOWING ADDITIONAL DETAILS ARE PROVIDED FOR IDENTIFICATION PURPOSES: **City Clerk annual performance evaluation**

ADJOURN



City Clerk | Deputy City Clerk

Mayor Dan Shore

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CITY COUNCIL REGULAR MEETING

448 E. 1st Street, Room 190 Salida, Colorado 81201

February 18, 2025 - 6:00 PM

MINUTES

Register for Regular City Council Meeting

<https://zoom.us/j/94566900437?pwd=LofScMlctMkI58imQPLIjhbohLUIFH.1>

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CIVILITY INVOCATION

CALL TO ORDER

Pledge of Allegiance

Roll Call

PRESENT

Council Member Suzanne Fontana

Council Member Dominique Naccarato

Council Member Justin Critelli

Council Member Aaron Stephens

Council Member Alisa Pappenfort

Council Member Wayles Martin

Mayor Dan Shore

Treasurer Ben Gilling

CONSENT AGENDA

Council Member Pappenfort moved to combine and approve items on the consent agenda, Seconded by Council Member Fontana.

Voting Yea: Council Member Fontana, Council Member Naccarato, Council Member Critelli, Council Member Stephens, Council Member Pappenfort, Council Member Martin

Approve Agenda

Approve February 4, 2025 Minutes

Approval for City Administrator to sign and submit an application to the State of Colorado GovGrants program for a State Internet Portal Authority (SIPA) grant

Approve contract with Ehlers and Associates, Inc. for municipal advisory services

MOTION PASSED

CITIZEN COMMENT—Three (3) Minute Time Limit

Dewey Groover and Mary Anne Hauser spoke during citizen comment.

UNFINISHED BUSINESS / ACTION ITEMS

Ordinance 2024-09 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, AMENDING THE CITY CODE TO ADD SECTION 10-7-90 ENTITLED KNOWINGLY ALLOWING UNDERAGE PERSONS TO POSSESS OR CONSUME ETHYL ALCOHOL AND/OR MARIJUANA ON PRIVATE PROPERTY TO THE SALIDA MUNICIPAL CODE. **Second Reading previously scheduled for July 16th; NO PUBLIC HEARING WILL BE HELD**

Council Member Martin moved to deny Ordinance 2024-09, Seconded by Council Member Critelli.

Voting Yea: Council Member Fontana, Council Member Naccarato, Council Member Critelli, Council Member Stephens, Council Member Pappenfort, Council Member Martin

Individuals with disabilities needing auxiliary aid(s) may request assistance by contacting the City Clerk at 448 E. 1st Street, Ste. 112, Salida, CO 81201, Ph.719-530-2630 at least 48 hours in advance.

MOTION PASSED**NEW BUSINESS / ACTION ITEMS**

Resolution 2025-07 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, APPROVING AN AMENDMENT TO SECTION 7, ENTITLED "INCLUSIONARY HOUSING," OF THE DEVELOPMENT IMPROVEMENT; SUBDIVISION IMPROVEMENT; AND INCLUSIONARY HOUSING AGREEMENT FOR THE HOLMAN COURT PLANNED DEVELOPMENT AND MAJOR SUBDIVISION

Council Member Naccarato moved to deny Resolution 2025-07, Seconded by Council Member Critelli.

Voting Yea: Council Member Naccarato, Council Member Critelli, Council Member Stephens, Council Member Martin

Voting Nay: Council Member Fontana, Council Member Pappenfort

MOTION PASSED

Resolution 2025-08 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, APPROVING CITIZEN APPOINTMENTS TO THE PUBLIC ARTS COMMISSION PURSUANT TO SECTION 2-16-30 OF THE SALIDA MUNICIPAL CODE

Council Member Pappenfort moved to approve Resolution 2025-08, Seconded by Council Member Martin.

Voting Yea: Council Member Fontana, Council Member Naccarato, Council Member Critelli, Council Member Stephens, Council Member Pappenfort, Council Member Martin

MOTION PASSED

Ordinance 2025-04 AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF SALIDA, GRANTING A NON-EXCLUSIVE FRANCHISE TO ATMOS ENERGY CORPORATION FOR THE PURPOSE OF PROVIDING, SELLING, AND DELIVERING NATURAL GAS TO THE CITY AND ITS RESIDENTS, AND APPROVING AN GAS UTILITY FRANCHISE AGREEMENT CONCERNING THE SAME. **First reading and setting second reading and public hearing for March 4, 2025**

Council Member Martin moved to approve Ordinance 2025-04, Seconded by Council Member Fontana.

Voting Yea: Council Member Fontana, Council Member Naccarato, Council Member Critelli, Council Member Stephens, Council Member Pappenfort, Council Member Martin

MOTION PASSED

Ordinance 2025-05 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO APPROVING TENDERFOOT COMMUNICATION SITE LEASE WITH VISIONARY BROADBAND. **First Reading and setting the Second Reading and Public Hearing for March 4, 2015**

Council Member Pappenfort moved to approve Resolution 2025-05, Seconded by Council Member Stephens.

Voting Yea: Council Member Fontana, Council Member Naccarato, Council Member Critelli, Council Member Stephens, Council Member Pappenfort, Council Member Martin

MOTION PASSED**COUNCILORS, MAYOR AND CITY TREASURER REPORTS****Council Reports**

Stephens - Airport Board and PROST

Fontana - Finance Committee and Greater Salida Recreation Corporation Board

Naccarato - CHA and Sustainability Board

Pappenfort - Finance Committee

Critelli

Martin

Reports were given. Council Member Fontana requested that the language in the Inclusionary Housing Deed Restrictions be discussed at a future work session. Council Members and Mayor Shore were in support of the request.

Individuals with disabilities needing auxiliary aid(s) may request assistance by contacting the City Clerk at 448 E. 1st Street, Ste. 112, Salida, CO 81201, Ph.719-530-2630 at least 48 hours in advance.

Mayor Report

Report was given.

Treasurer Report

Attorney Report

Department Updates

EXECUTIVE SESSION

Executive Session For discussion of a personnel matter under C.R.S. Section 24-6- 402(4)(f) and not involving: any specific employees who have requested discussion of the matter in open session; any member of this body or any elected official; the appointment of any person to fill an office of this body or of an elected official; or personnel policies that do not require the discussion of matters personal to particular employees; AND THE FOLLOWING ADDITIONAL DETAILS ARE PROVIDED FOR IDENTIFICATION PURPOSES: **City Administrator's and City Attorney's annual performance evaluations**

Council Member Pappenfort moved to go into Executive Session, Seconded by Council Member Critelli.
Voting Yea: Council Member Fontana, Council Member Naccarato, Council Member Critelli, Council Member Stephens, Council Member Pappenfort, Council Member Martin

MOTION PASSED

Council entered into Executive Session at 7:46 pm and returned to the Regular Meeting at 8:06 pm.

ADJOURN

Meeting adjourned at 8:07 pm



City Clerk | Deputy City Clerk

Mayor Dan Shore



Re: Salida non-profit day alcohol permit

From Nick Watson <nick@vetexpeditions.com>

Date Tue 2/18/2025 9:52 AM

To Kristi Jefferson <kristi.jefferson@cityofsalida.com>

Event description:

Climbing Film Tour 2025 Friday March 28th at A Church

Fly Fishing Film Tour 2025 Saturday March 29th at A Church

We are hosting this year's Climbing Film Tour and Fly Fishing Film Tour as a fundraiser for Veterans Expeditions. We will be showing the film tour's films, have a silent auction, and have beer and food for sale. Doors will open at 5:30 pm and the entire show will be over and we will be out of the A Church by 10 pm on Friday March 28th and Saturday March 29th. We are not serving wine or liquor. Just beer from Elevation Beer Company. We ran the Fly Fishing Film Tour as a fundraiser last year and have added the Climbing Film Tour this year.

Veterans Expeditions is a local Salida non-profit getting military and veterans outside since 2010. We run around 40 trips and events annually getting thousands of vets involved, outside, and part of our community. We operate locally, statewide, and nationwide.

Mission Statement:

Empower veterans to overcome challenges associated with military service through outdoor training and leadership.

Thank you,

Nick

On Tue, Feb 18, 2025 at 8:48 AM Kristi Jefferson <kristi.jefferson@cityofsalida.com> wrote:

Thanks Nick,

I received your signed application. Will you please provide me with a narrative of the events just in case Council has any questions?

Application for a Special Events Permit

Departmental Use Only

Item 3.

In order to qualify for a Special Events Permit, You Must Be a Qualifying Organization Per 44-5-102 C.R.S. and One of the Following (See back for details.)

- | | | |
|------------------------------------|---|---|
| <input type="checkbox"/> Social | <input type="checkbox"/> Athletic | <input type="checkbox"/> Philanthropic Institution |
| <input type="checkbox"/> Fraternal | <input type="checkbox"/> Chartered Branch, Lodge or Chapter | <input type="checkbox"/> Political Candidate |
| <input type="checkbox"/> Patriotic | <input type="checkbox"/> National Organization or Society | <input type="checkbox"/> Municipality Owned Arts Facilities |
| <input type="checkbox"/> Political | <input type="checkbox"/> Religious Institution | |

LIAB Type of Special Event Applicant is Applying for:	DO NOT WRITE IN THIS SPACE
2110 <input type="checkbox"/> Malt, Vinous And Spirituous Liquor \$25.00 Per Day	Liquor Permit Number
2170 <input type="checkbox"/> Fermented Malt Beverage \$10.00 Per Day	

1. Name of Applicant Organization or Political Candidate A Church		State Sales Tax Number (Required)
2. Mailing Address of Organization or Political Candidate (include street, city/town and ZIP) Salida, CO 81201	3. Address of Place to Have Special Event (include street, city/town and ZIP) 419 D Street Salida, CO 81201	

4. Authorized Representative of Qualifying Organization or Political Candidate Nick Watson	Date of Birth [REDACTED]	Phone Number [REDACTED]
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Authorized Representative's Mailing Address (if different than address provided in Question 2.)

5. Event Manager Andrea Mossman	Date of Birth [REDACTED]	Phone Number [REDACTED]
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Event Manager Home Address (Street, City, State, ZIP) [REDACTED]	Email Address of Event Manager [REDACTED]
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6. Has Applicant Organization or Political Candidate been Issued a Special Event Permit this Calendar Year? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes How many days? _____	7. Is the premises for which your event is to be held currently licensed under the Colorado Liquor or Beer codes? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes License Number _____
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8. Does the Applicant Have Possession or Written Permission for the Use of The Premises to be Licensed? ☒ Yes ☐ No

List Below the Exact Date(s) for Which Application is Being Made for Permit											
Date	Hours	From	To	Date	Hours	From	To	Date	Hours	From	To
03/28/25		5:00p	10:00p	03/29/25		5:00p	10:00p				

Oath of Applicant

I declare under penalty of perjury in the second degree that I have read the foregoing application and all attachments thereto, and that all information therein is true, correct, and complete to the best of my knowledge.

Signature <i>Nicholas Watson</i>	Title Executive Director	Date 02/04/25
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Report and Approval of Local Licensing Authority (City or County)

The foregoing application has been examined and the premises, business conducted and character of the applicant is satisfactory, and we do report that such permit, if granted, will comply with the provisions of Title 44, Article 5, C.R.S., as amended.

THEREFORE, THIS APPLICATION IS APPROVED.

Local Licensing Authority (City or County)	<input type="checkbox"/> City <input type="checkbox"/> County	Telephone Number of City/County Clerk
Signature	Title	Date

DO NOT WRITE IN THIS SPACE - FOR DEPARTMENT OF REVENUE USE ONLY			
Liability Information			
License Account Number	Liability Date	State	Total
		-750 (999)	\$

Address number posted
minimum 4" w/contrasting
background

Occupant Load Posted

Purchase and install Knox
Box. Provide necessary
keys to gain entrance.

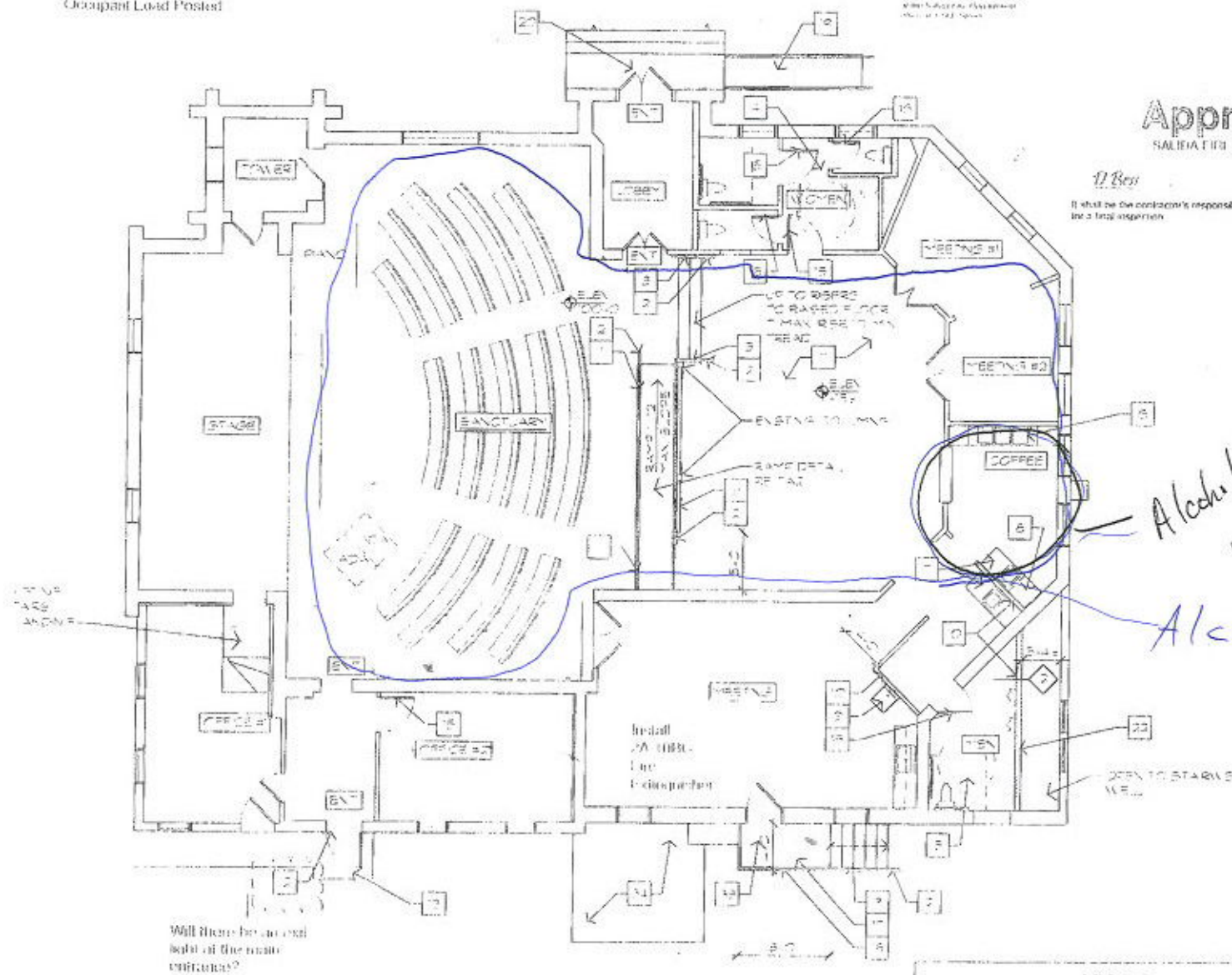
Approved by Fire Department
01/26/2018

Approved
FIRE DEPARTMENT

12 Ben

01/26/2018

It shall be the contractor's responsibility to contact the fire department
for a final inspection



OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF FACT OF GOOD STANDING

I, Jena Griswold, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

Veterans Expeditions Inc

is a

Nonprofit Corporation

formed or registered on 04/25/2014 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 20141267775 .

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 02/03/2025 that have been posted, and by documents delivered to this office electronically through 02/04/2025 @ 20:19:16 .

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 02/04/2025 @ 20:19:16 in accordance with applicable law. This certificate is assigned Confirmation Number 16968319 .



Secretary of State of the State of Colorado

*****End of Certificate*****

Notice: A certificate issued electronically from the Colorado Secretary of State's website is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State's website, <https://www.coloradosos.gov/biz/CertificateSearchCriteria.do> entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our website, <https://www.coloradosos.gov> click "Businesses, trademarks, trade names" and select "Frequently Asked Questions."



VALID ONLY FOR THIS ORGANIZATION AT THIS LOCATION

A Church
419 D Street
Salida, CO 81201

SPECIAL EVENTS PERMIT MALT, VINOUS AND SPIRITUOUS LIQUOR

	Date	Hour		Date	Hour
FROM	03/28/25	5:00pm to 10:00pm		03/29/25	5:00pm to 10:00pm

This permit is issued subject to the laws of the State of Colorado and especially under the provisions of Article 3, 4 & 5 of Title 44, Colorado Revised Statutes, as amended and the Ordinances of the City of Salida, insofar as the same may be applicable.

This permit is non-transferable. It is issued only for the specific location described above and must be conspicuously posted at that location.

In testimony whereof, The City Council has hereunto subscribed its name by its officers duly authorized this 4th day of March, 2025.

ATTEST:

The City of Salida

City Clerk/Deputy City Clerk

City Administrator

PUBLIC NOTICE

(Pursuant to § 44-5-106(2), C.R.S.)

DATE/TIME POSTED: February 19th, 20 25 at 4:00 a.m./p.m.

PROPOSED SPECIAL EVENT LIQUOR PERMIT

A Church, has filed an Application for a SPECIAL EVENT LIQUOR PERMIT to be held on March 28-29th, 20 25, from 5:00 a.m./p.m. to 10:00 a.m./p.m. at the following address:

419 "D" Street
Salida, CO.
81201

PROTEST PROCEDURE

Any affected person who wishes to protest the issuance of the permit must file a WRITTEN PROTEST within ten (10) days of the date and time posted as set forth above, stating the grounds for the protest and the name, address, email address (if any), and telephone number of the person filing the protest. A written protest will be considered filed upon receipt. Written protests may be filed by sending them to the U.S. Mail or Email address set forth below:

U.S. Mail Address: City of Salida / City Clerk
448 E. 1st St., Ste #112
Salida, CO. 81201

E-Mail Address: clerk@cityofsalida.com

HEARING

The local licensing authority, or its assigned administrative officer (which may be the Colorado Liquor Enforcement Division), shall cause a hearing to be held if, after investigation and upon review of the contents of any timely written protest(s) filed by any affected person(s), sufficient grounds appear to exist for the denial of the special event permit. Any hearing required pursuant to § 44-5-107(3), C.R.S., Regulation 47-1002 1 CCR 203-2, or any hearing held at the discretion of the local licensing authority, or its assigned administrative officer, shall be held at least ten (10) days after the date of posting of the public notice, shown above, and notice of the hearing shall be provided to the Applicant and any person who has filed a written protest.



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Administration	Sara Law - Sustainability Coordinator/PIO	March 4, 2025

AGENDA ITEM

Consent Agenda

BACKGROUND

On July 1, 2024, the City of Salida issued an RFP for a communications team to develop a strategic organizational Communications Plan. The RFP outlined services including internal and external communications, advertising campaigns, graphic design, innovative marketing strategies like web design and surveys, and the creation of annual reports. After receiving 20 applications and narrowing it down to 9 finalists, the City selected a local company, CivicBrand, to handle these communications needs.

RECOMMENDATION

Staff recommends approval of the contract with CivicBrand.

FISCAL IMPACT

The City budgeted \$60,000 for FY 2025.

MOTION

A Councilmember should make a motion to “combine and approve the items on the consent agenda”, followed by a second and a roll call vote.



Salida Professional Service Agreement For CivicBrand

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") dated as of March 4th, 2025, is entered into by and between CivicBrand, a communications agency of the State of Colorado, whose business address is 224 W Rainbow Blvd #122, Salida, CO, 81201, ("**Contractor**") and the City of Salida, Colorado, a statutory municipality of the State of Colorado ("**City**" and, together with the Contractor, "**Parties**").

RECITALS AND REPRESENTATIONS

WHEREAS, the City desires to have performed certain professional services as described in this Agreement; and

WHEREAS, the Contractor represents that the Contractor has the skill, ability, and expertise to perform the services described in this Agreement and within the deadlines provided by the Agreement; and

WHEREAS, the City desires to engage the Contractor to provide the services described in this Agreement subject to the terms and conditions of the Agreement.

NOW, THEREFORE, in consideration of the benefits and obligations of this Agreement, the Parties mutually agree as follows:

1. SERVICES AND CONTRACTOR PERFORMANCE

1.1. Services and Work Product. As directed by and under the supervision of the City Administrator for the City of Salida, the Contractor shall provide the City with the services described in **Exhibit A, attached hereto and incorporated herein** ("**Services**"). For purposes of this Agreement, "**Work Product**" shall consist of deliverables and/or product to be created, provided, or otherwise tendered to the City as described in the Services.

1.2. Changes to Services. At any time, the City may request a change or changes in the Services. Any changes that are mutually agreed upon between the City and the Contractor shall be made in writing and upon execution by both Parties shall become an amendment to the Services described in this Agreement. To be effective, any written change must be signed by the Contractor and by the Salida City Council ("**City Council**").

1.3. Independent Contractor. The Contractor shall perform the Services as an independent contractor and shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, employer/employee, or other relationship with the City other than as a contracting party and independent contractor. The City shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for the Contractor or the Contractor's employees, sub-consultants, contractors, agents, or representatives, including coverage or benefits related but not limited to: local, state, or federal income or other tax contributions; insurance contributions (e.g., FICA); workers' compensation; disability, injury, or health; professional liability insurance, errors, and omissions insurance; or retirement account contributions.



1.4. Standard of Performance. In performing the Services, the Contractor shall use that degree of care, skill, and professionalism ordinarily exercised under similar circumstances by members of the same profession practicing in the State of Colorado. Contractor represents to the City that the Contractor is, and its employees performing such Services are, properly licensed and/or registered within the State of Colorado for the performance of the Services (if licensure and/or registration is required by applicable law) and that the Contractor and employees possess the skills, knowledge, and abilities to competently, timely, and professionally perform the Services in accordance with this Agreement.

1.5. Patent Indemnification. Contractor shall indemnify, defend and hold City harmless from any and all claims, demands, and causes of action (including reasonable attorneys' fees and costs of suit) for actual or asserted infringement or actual or asserted appropriation or use by City of trade secrets, proprietary information, know-how, copyright rights, or patented inventions included in any design or specification furnished by Contractor or arising from the use or sale of materials, equipment, methods, processes, designs, and information, furnished by Contractor in connection with the Services. Contractor shall include the foregoing indemnification provision as a term of each agreement utilized by it in the performance of its work which shall extend expressly from the vendor or subcontractor to City.

1.6. Safety. When and to the extent that Contractor or any of its employees, agents, or subcontractors are working under the terms of this Agreement, Contractor will comply, and cause all its employees, agents, and subcontractors to comply, with applicable safety rules and security requirements.

1.7. Qualified Personnel. Contractor will make available all qualified Contractors, drafters, technical and clerical personnel necessary to fulfill its obligations under this Agreement. Prior to commencement of work, Contractor will provide City with the names of all Contractor personnel and their then current hourly rates, if applicable, whose services are to be employed in performance of the Services. Removal or re-assignment of personnel by Contractor will only be done with prior written approval of City.

1.8. Removal of Personnel by City. City may, in its discretion, require Contractor to dismiss from performance of the Services any personnel of Contractor or any subcontractor for any reason, effective upon written notice from City of such dismissal. City will not be required to pay salary, or any other costs associated with dismissed personnel effective upon Contractor's receipt of notice to dismiss from City.

1.9. Representations and Warranties. Contractor represents and warrants that the Services will be performed in a manner consistent with other reasonable professionals providing similar services under similar circumstances. Contractor will complete the Services in accordance with the Agreement and applicable United States laws, regulations, ordinances, and codes in existence at the time the Agreement is executed.

1.10. Maintenance of and Access to Records. Contractor will maintain detailed records of all matters relating to the Services during the term of the Agreement and for a period after its cancellation or termination of not less than five (5) years. City will have the right to copy and audit during regular business hours all records of any kind which in any way related to the Services, whether created before, during, or after the termination of this Agreement. Access to such records will be provided to City at no cost.



1.11. Colorado Open Records Act. The parties understand that all material provided or produced under this Agreement may be subject to the Colorado Open Records Act, § 24-72-201, et seq., C.R.S. In the event of the filing of a lawsuit to compel such disclosure, the City shall inform the Contractor and will tender all such material to the court for judicial determination of the issue of disclosure and the Contractor agrees to intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material or waive the same

1.12. Disclosure of Adverse Information. Contractor will promptly disclose to City any and all information which Contractor may learn, or which may have a material adverse impact on the Services or the Work Product or City's ability to utilize the Work Product in the manner and for the purpose for which the Work Product is intended.

2. COMPENSATION

2.1. Commencement of and Compensation for Services. Following execution of this Agreement by the City, the Contractor shall be authorized to commence performance of the Services as described in **Exhibit A** subject to the requirements and limitations on compensation as provided by this **Section 2.0 COMPENSATION** and its Sub-Sections.

- A. For Lump sum Task Orders.** The CONTRACTOR shall perform Services as a Task Order described in **Exhibit B** and shall invoice the CITY for work performed based on percent complete the specific task.
- B. For Time and Materials Task Orders.** The CONTRACTOR shall perform the Services and shall invoice the CITY for work performed based on the rates described in **Exhibit C**.
- C. Reimbursable Expenses.** The following shall be considered "Reimbursable Expenses" for purposes of this Agreement and may be billed to the City without administrative mark-up but which must be accounted for by the Contractor and proof of payment shall be provided by the Contractor with the Contractor's monthly invoices:
 - Vehicle Mileage (billed at not more than the prevailing per-mile charge permitted by the Internal Revenue Service as a deductible business expense)
 - Printing and Photocopying Related to the Services
 - Charges incidental to securing needed information (e.g., charges imposed to obtain recorded documents)
 - Postage and Delivery Services
 - Lodging and Meals (only with prior written approval of the City as to dates and maximum amount permitted)
- D. Non-reimbursable Costs, Charges, Fees, or Other Expenses.** Any fee, cost, charge, penalty, or expense incurred by the Contractor not otherwise specifically authorized by this Agreement shall



be deemed a non-reimbursable cost and shall be borne by the Contractor and shall not be billed or invoiced to the City and shall not be paid by the City.

- E. Increases in Compensation or Reimbursable Expenses.** Any increases or modification of compensation or Reimbursable Expenses shall be subject to the approval of the City and shall be made only by written amendment of this Agreement executed by both Parties.

2.2. Payment Processing. The Contractor shall submit invoices and requests for payment in a form acceptable to the City. Invoices shall not be submitted more often than once each month unless otherwise approved by this Agreement or in writing by the City. Unless otherwise directed or accepted by the City, all invoices shall contain sufficient information to account for all Contractor time (or other appropriate measure(s) of work effort) and all authorized Reimbursable Expenses for the Services during the stated period of the invoice. Following receipt of a Contractor's invoice, the City shall promptly review the Contractor's invoice.

2.3. City Dispute of Invoice or Invoiced Item(s). The City may dispute any Contractor time, Reimbursable Expense, and/or compensation requested by the Contractor described in any invoice and may request additional information from the Contractor substantiating any and all compensation sought by the Contractor before accepting the invoice. When additional information is requested by the City, the City shall advise the Contractor in writing, identifying the specific item(s) that are in dispute and giving specific reasons for any request for information. The City shall pay the Contractor within forty-five (45) days of the receipt of an invoice for any undisputed charges or, if the City disputes an item or invoice and additional information is requested, within thirty (30) days of acceptance of the item or invoice by the City following receipt of the information requested and resolution of the dispute. To the extent possible, undisputed charges within the same invoice as disputed charges shall be timely paid in accordance with this Agreement. Payment by the City shall be deemed made and completed upon hand delivery to the Contractor or designee of the Contractor or upon deposit of such payment or notice in the U.S. Mail, postage prepaid, addressed to the Contractor.

3. CONTRACTOR'S GENERAL RESPONSIBILITIES

3.1. The Contractor shall become fully acquainted with the available information related to the Services. The Contractor is obligated to affirmatively request from the City such information that the Contractor, based on the Contractor's professional experience, should reasonably expect is available and which would be relevant to the performance of the Services.

3.2. The Contractor shall perform the Services in accordance with this Agreement and shall promptly inform the City concerning ambiguities and uncertainties related to the Contractor's performance that are not addressed by the Agreement.

3.3. The Contractor shall provide all the Services in a timely and professional manner.

3.4. The Contractor shall promptly comply with any written City request from the City or any of the City's duly authorized representatives to reasonably access and review any books, documents, papers, and



records of the Contractor that are pertinent to the Contractor's performance under this Agreement for the purpose of the City performing an audit, examination, or other review of the Services.

3.5. The Contractor shall comply with all applicable federal, state, and local laws, ordinances, regulations, and resolutions.

3.6. The Contractor shall be responsible at the Contractor's expense for obtaining, and maintaining in a valid and effective status, all licenses and permits necessary to perform the Services unless specifically stated otherwise in this Agreement.

4. TERM AND TERMINATION

4.1. Term. The provision of services under this Agreement shall commence on March 4th, 2025 (the "**Effective Date**") and will terminate on December 31, 2025 (cumulatively, the "**Term**"); provided, however, under no circumstances will the Term exceed the end of the current City Fiscal year (January 1 – December 31). The Contractor understands and agrees that the City has no obligation to extend this Agreement's Term or contract for the provision of any future services, and makes no warranties or representations otherwise. Notwithstanding the foregoing; the Parties may mutually agree in writing to the monthly extension of this Agreement for up to twelve (12) consecutive calendar months if such extension is approved by the City Council and the Contractor and such extension do not alter or amend any of the terms or provisions of this Agreement.

4.2. Continuing Services Required. The Contractor shall perform the Services in accordance with this Agreement commencing on the Effective Date until such Services are terminated or suspended in accordance with this Agreement. The Contractor shall not temporarily delay, postpone, or suspend the performance of the Services without the written consent of the City Council.

4.3. City Unilateral Termination. This Agreement may be terminated by the City for any or no reason upon written notice delivered to the Contractor at least ten (10) days prior to termination. In the event of the City's exercise of the right of unilateral termination as provided by this paragraph:

- A.** Unless otherwise provided in any notice of termination, the Contractor shall provide no further services in connection with this Agreement after receipt of a notice of termination; and
- B.** All finished or unfinished documents, data, studies, and reports prepared by the Contractor pursuant to this Agreement shall be delivered by the Contractor to the City and shall become the property of the City, subject to the ownership restrictions in **Section 6.0** of this Agreement; and
- C.** The Contractor shall submit to the City a final accounting and final invoice of charges for all outstanding and unpaid Services and Reimbursable Expenses performed prior to the Contractor's receipt of notice of termination and for any services authorized to be performed by the notice of termination as provided by **Sub-Section 4.3(A)** above. Such final accounting and final invoice shall be delivered to the City within thirty (30) days of the date of termination; thereafter, no other invoice, bill, or other form of statement of charges owing to the Contractor shall be submitted to or accepted by the City.



4.4. Termination for Non-Performance. Should a party to this Agreement fail to materially perform in accordance with the terms and conditions of this Agreement, this Agreement may be terminated by the performing party if the performing party first provides written notice to the non-performing party which notice shall specify the non-performance, provide both a demand to cure the non-performance and reasonable time to cure the non-performance and state a date upon which the Agreement shall be terminated if there is a failure to timely cure the non-performance. For purposes of this **Sub-Section 4.4**, “reasonable time” shall be not less than five (5) business days. In the event of a failure to timely cure a non-performance and upon the date of the resulting termination for non-performance, the Contractor shall prepare a final accounting and final invoice of charges for all performed but unpaid Services and authorized Reimbursable Expenses. Such final accounting and final invoice shall be delivered to the City within fifteen (15) days of the date of termination; thereafter, no other invoice, bill, or other form of statement of charges owing to the Contractor shall be submitted to or accepted by the City. Provided that notice of non-performance is provided in accordance with this **Sub-Section 4.4**, nothing in this **Sub-Section 4.4** shall prevent, preclude, or limit any claim or action for default or breach of contract resulting from non-performance by a Party.

4.5. Unilateral Suspension of Services. The City may suspend the Contractor’s performance of the Services at the City’s discretion and for any reason by delivery of written notice of suspension to the Contractor which notice shall state a specific date of suspension. Upon receipt of such notice of suspension, the Contractor shall immediately cease performance of the Services on the date of suspension except: (1) as may be specifically authorized by the notice of suspension (e.g., to secure the work area from damage due to weather or to complete a specific report or study); (2) for the submission of an invoice for Services performed prior to the date of suspension in accordance with this Agreement or (3) as required by law.

4.6. Reinstatement of Services Following City’s Unilateral Suspension. The City may at its discretion direct the Contractor to continue performance of the Services following suspension. If such direction by the City is made within thirty (30) days of the date of suspension, the Contractor shall recommence performance of the Services in accordance with this Agreement. If such direction to recommence suspended Services is made more than thirty-one (31) days following the date of suspension, the Contractor may elect to: (1) provide written notice to the City that such suspension is considered a unilateral termination of this Agreement pursuant to **Sub-Section 4.3**; or (2) recommence performance in accordance with this Agreement; or (3) if suspension exceeded sixty (60) consecutive days, request from the City an equitable adjustment in compensation or a reasonable re-start fee and, if such request is rejected by the City, to provide written notice to the City that such suspension and rejection of additional compensation is considered a unilateral termination of this Agreement pursuant to **Sub-Section 4.3**. Nothing in this Agreement shall preclude the Parties from executing a written amendment or agreement to suspend the Services upon terms and conditions mutually acceptable to the Parties for any period of time.

4.7. Delivery of Notice of Termination. Any notice of termination permitted by this **Section 4.0 TERM AND TERMINATION** and its subsections shall be addressed to the persons identified in **Section 9.17** herein and at the addresses provided therein or such other address as either party may notify the other of and shall be deemed given upon delivery if personally delivered, or forty-eight (48) hours after deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested.



5. INSURANCE

5.1. Insurance Generally. The Contractor shall obtain and shall continuously maintain during the Term of this Agreement insurance of the kind and in the minimum amounts specified in this **Sub-Section 5.1**. The Required Insurance shall be procured and maintained with insurers with an A- or better rating as determined by Best's Key Rating Guide. All Required Insurance shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor.

The Contractor shall secure and maintain the following ("**Required Insurance**"):

- A. Worker's Compensation Insurance in the minimum amount required by applicable law for all employees and other persons as may be required by law. Such policy of insurance, if any, shall be endorsed to include the City as a Certificate Holder.
- B. Comprehensive General Liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000.00) Dollars for each occurrence and of Two Million Dollars (\$2,000,000.00) aggregate. The policy shall be applicable to all premises and all operations of the Contractor. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision. Coverage shall be provided on an "occurrence" basis as opposed to a "claims made" basis. Such insurance shall be endorsed to name the City as Certificate Holder and name the City, and its elected officials, officers, employees, and agents as additional insured parties.
- C. Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury of not less than of One Hundred Thousand Dollars (\$100,000.00) each person and each accident and for property damage of not less than Fifty Thousand Dollars (\$50,000.00) each accident with respect to each of the Contractor's owned, hired and non-owned vehicles assigned to or used in performance of the Services. The policy shall contain a severability of interests provision. Such insurance coverage must extend to all levels of subcontractors. Such coverage must include all automotive equipment used in the performance of the Agreement, both on the work site and off the work site, and such coverage shall include non-ownership and hired cars coverage. Such insurance shall be endorsed to name the City as Certificate Holder and name the City, and its elected officials, officers, employees, and agents as additional insured parties.
- D. Professional Liability (errors and omissions) Insurance with a minimum limit of coverage of One Million Dollars (\$1,000,000.00) per claim and annual aggregate. Such policy of insurance shall be obtained and maintained for one (1) year following completion of all Services under this Agreement. Such policy of insurance shall be endorsed to include the City as a Certificate Holder.

5.2. Additional Requirements for All Policies. In addition to specific requirements imposed on insurance by this **Section 5.0 INSURANCE** and its subsections, insurance shall conform to all of the following:



- A. For Required Insurance and any other insurance carried by Contractor (“**Contractor Insurance**”), all policies of insurance shall be primary insurance, and any insurance carried by the City, its officers, or its employees shall be excess and not contributory insurance to that provided by the Contractor; provided, however, that the City shall not be obligated to obtain or maintain any insurance whatsoever for any claim, damage, or purpose arising from or related to this Agreement and the Services. The Contractor shall not be an insured party for any City-obtained insurance policy or coverage.
- B. For both Required Insurance and Contractor Insurance, the Contractor shall be solely responsible for any deductible losses.
- C. For Required Insurance, no policy of insurance shall contain any exclusion for bodily injury or property damage arising from completed operations.
- D. For Required Insurance, every policy of insurance shall provide that the City will receive notice no less than thirty (30) days prior to any cancellation, termination, or a material change in such policy.

5.3. Failure to Obtain or Maintain Insurance. The Contractor’s failure to obtain and continuously maintain policies of insurance in accordance with this **Section 5.0 INSURANCE** and its subsections shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Contractor arising from performance or non-performance of this Agreement. Failure on the part of the Contractor to obtain and to continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Agreement upon which the City may immediately terminate this Agreement, or, at its discretion, the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Contractor to the City immediately upon demand by the City, or at the City’s sole discretion, the City may offset the cost of the premiums against any monies due to the Contractor from the City pursuant to this Agreement.

5.4. Insurance Certificates. Prior to commencement of the Services, the Contractor shall submit to the City applicable certificates of insurance for all Required Insurance. Insurance limits, terms of insurance, insured parties, and other information sufficient to demonstrate conformance with this **Section 5.0 INSURANCE** and its subsections shall be indicated on each certificate of insurance. Certificates of insurance shall reference the “Project Name” as identified on the first page of this Agreement. The City may request, and the Contractor shall provide within three (3) business days of such request a current certified copy of any policy of Required Insurance and any endorsement of such policy. The City may, at its election, withhold payment for Services until the requested insurance policies are received and found to be in accordance with the Agreement.

6. OWNERSHIP OF DOCUMENTS

6.1. Work Product is Property of City. Upon complete payment for services rendered, the Work Product, as defined in **Sub-Section 1.1**, shall be deemed work made for hire and made in the course of Services performed under this Agreement and will be the exclusive property of the City. City will have unlimited right to make, have made, use, reconstruct, repair, modify, reproduce, publish, distribute and sell



the Work Product, in whole or in part, or combine the Work Product with other matter, or not use the Work Product at all, as it sees fit. Any reuse of the Work Product produced under this Agreement for any purpose not directly related to this Agreement will be at the sole risk of City.

6.2. Obligations of Contractor's Personnel and Subcontractors. Contractor warrants it has enforceable written agreements with all of its personnel and subcontractors to be involved in performing the Services that:

- A. assign to Contractor ownership of all patents, copyrights, and other proprietary rights created in the course of their employment or engagement; and
- B. obligate such personnel or subcontractors, as the case may be, upon terms and conditions no less restrictive than are contained in this **Section 6.0 OWNERSHIP OF DOCUMENTS**, not to use or disclose any proprietary rights or information learned or acquired during the course of such employment or engagement including, without limitation, any Work Product, all Contractor property and any other information pursuant to this **Section 6.0 OWNERSHIP OF DOCUMENTS**.

6.3. Assignment of Proprietary Rights. To the extent that any title to any Work Product may not, by operation of law, vest in City, or such Work Product may not be considered to be work made for hire, Contractor hereby irrevocably transfers and assigns to City in perpetuity all worldwide right, title and interest in and to the patent rights, copyrights, trade secrets, and other proprietary rights in and ownership of, the Work Product.

6.4. City Furnished Information. Title to all materials and all documentation furnished by the City to Contractor will remain in the City. Contractor will deliver to the City any all Work Products and property, including copies thereof on whatever media rendered, upon the first to occur of:

- A. the City's written request; or
- B. completion of the Services under this Agreement; or
- C. termination of this Agreement.

6.5. The Contractor waives any right to prevent its name from being used in connection with the Services.

6.6. Notwithstanding the foregoing, the Contractor shall retain all rights, titles, and interests, including but not limited to all ownership and intellectual property rights, in all inventions, improvements, discoveries, methodologies, models, formats, software, algorithms, processes, procedures, designs, specifications, findings, and other intellectual properties developed, gathered, compiled or produced by the Contractor prior to or independently of any of its services under this Agreement ("Background IP"), including such Background IP that the Contractor may employ in the performance of this Agreement, or may incorporate into any part of the Work Product. The Contractor grants the City an irrevocable, non-exclusive, transferable, royalty-free license in perpetuity to use, disclose, and derive from such Background IP, but only as an inseparable part of the Work Product. Third-party content that may be used or incorporated in



the Work Product shall not become the property of the City. The Contractor shall secure all licenses necessary to any third-party content incorporated into the Contractor's Work Product for the City to utilize the Contractor's services and the Work Product for their intended purposes.

7. CONFLICT OF INTEREST

The Contractor shall refrain from providing services to other persons, firms, or entities that would create a conflict of interest for the Contractor with regard to providing the Services pursuant to this Agreement. The Contractor shall not offer or provide anything of benefit to any City official or employee that would place the official or employee in a position of violating the public trust as provided by C.R.S. §24-18-109, as amended, the Salida City Code of Ethics, as amended or the City's ethical principles.

8. REMEDIES

In addition to any other remedies provided for in this Agreement, and without limiting its remedies available at law, the City may exercise the following remedial actions if the Contractor substantially fails to perform the duties and obligations of this Agreement. Substantial failure to perform the duties and obligations of this Agreement shall mean a significant, insufficient, incorrect, or improper performance, activities, or inactions by the Contractor. The remedial actions include:

- 8.1. Suspend the Contractor's performance pending necessary corrective action as specified by the City without the Contractor's entitlement to an adjustment in any charge, fee, rate, price, cost, or schedule; and/or
- 8.2. Withhold payment to the Contractor until the necessary services or corrections in performance are satisfactorily completed; and/or
- 8.3. Deny payment for those services which have not been satisfactorily performed, and which, due to circumstances caused by the Contractor, cannot be performed, or if performed would be of no value to the City; and/or
- 8.4. Terminate this Agreement in accordance with this Agreement.

The foregoing remedies are cumulative and the City, in its sole discretion, may exercise any or all of the remedies individually or simultaneously.

9. MISCELLANEOUS PROVISIONS

9.1. **No Waiver of Rights.** A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party. The City's approval or acceptance of, or payment for, services shall not be construed to operate as a waiver of any rights or benefits to be provided under this Agreement. No covenant or term of this Agreement shall be deemed to be waived by the City except in writing signed by the City Council or by a person expressly authorized to sign such waiver by resolution of the City Council of the City of Salida,



and any written waiver of a right shall not be construed to be a waiver of any other right or to be a continuing waiver unless specifically stated.

9.2. No Waiver of Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the City, its officials, employees, contractors, or agents, or any other person acting on behalf of the City and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

9.3. Affirmative Action. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Contractor will take affirmative action to ensure applicants are employed, and employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

9.4. Americans with Disabilities Act. Contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this contract or from activities provided for under this contract. As a condition of accepting and executing this contract, the Contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. §35.130, and all other regulations promulgated under Title II of The Americans with Disabilities Act.

9.5. Binding Effect. The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this **Section 9.5** shall not authorize assignment.

9.6. No Third-Party Beneficiaries. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant, or sub-contractor of Contractor. Absolutely no third-party beneficiaries are intended by this Agreement. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

9.7. Article X, Section 20/TABOR. The Parties understand and acknowledge that the City is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the City are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the City's current fiscal period ending upon the next succeeding December 31. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the City, and other applicable laws. Upon the failure to appropriate such funds, this Agreement shall be terminated.



9.8. Governing Law, Venue, and Enforcement. This Agreement shall be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement shall be in the appropriate court for Chaffee County, Colorado, and the parties consent and agree to the jurisdiction of such courts. To reduce the cost of dispute resolution and to expedite the resolution of disputes under this Agreement, the Parties hereby waive any and all right either may have to request a jury trial in any civil action relating primarily to the enforcement of this Agreement. The Parties agree the rule providing ambiguities in a contract are to be construed against the drafting party shall not apply to the interpretation of this Agreement. If there is any conflict between the language of this Agreement and any exhibit or attachment, the language of this Agreement shall govern.

9.9. Survival of Terms and Conditions. The Parties understand and agree that all terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.

9.10. Assignment and Release. All or part of the rights, duties, obligations, responsibilities, or benefits set forth in this Agreement shall not be assigned by Contractor without the express written consent of the City Council. Any written assignment shall expressly refer to this Agreement, specify the particular rights, duties, obligations, responsibilities, or benefits so assigned, and shall not be effective unless approved by resolution or motion of the City Council. No assignment shall release the Applicant from performance of any duty, obligation, or responsibility unless such release is clearly expressed in such written document of assignment.

9.11. Paragraph Captions. The captions of the paragraphs are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

9.12. Integration and Amendment. This Agreement represents the entire and integrated agreement between the City and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. Any amendments to this must be in writing and be signed by both the City and the Contractor.

9.13. Severability. Invalidation of any of the provisions of this Agreement or any paragraph sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.

9.14. Incorporation of Exhibits. Unless otherwise stated in this Agreement, exhibits, applications, or documents referenced in this Agreement shall be incorporated into this Agreement for all purposes. In the event of a conflict between any incorporated exhibit and this Agreement, the provisions of this Agreement shall govern and control.

9.15. Non-Liability of City for Indirect or Consequential Damages or Lost Profits. Parties agree that the City shall not be liable for indirect or consequential damages, including lost profits that result from the City's declaration that the Contractor is in default of the Agreement, so long as the City acts in good faith.



9.16. Indemnity. To the fullest extent permitted by law, Contractor shall indemnify and defend the City, its members, affiliates, officers, directors, partners, employees, and agents (collectively referred to as the “City” for the purposes of this **Section 9.16**) from and against all claims, damages, losses, and expenses, including but not limited to reasonable attorney’s fees (collectively referred to “Losses”), arising out of the performance of the Services, provided that (a) any such claim, damage, loss or expense is caused by any negligent act or omission of (i) Contractor, (ii) anyone directly or indirectly employed by Contractor or (iii) anyone for whose acts Contractor may be liable; and (b) such indemnification shall not apply to the extent that such Losses are caused by the negligence of the City or other party indemnified hereunder. If Contractor is providing architectural, engineering, or surveying services; design; construction; alteration; repair; or maintenance of any building, structure, highway, bridge, viaduct, water, sewer, or gas distribution system, or other works dealing with construction, or any moving, demolition, or excavation connected with such construction, the extent of Contractor’s obligation to indemnify and defend the City is enforceable only to the extent and for an amount represented by the degree or percentage of negligence or fault attributable to the Contractor or the Contractor’s agents, representatives, subcontractors, or suppliers. If the Contractor is a person or entity providing architectural, engineering, surveying, or other design services, then the extent of Contractor’s obligation to indemnify and defend the City may be determined only after the Contractor’s liability or fault has been determined by adjudication, alternative dispute resolution, or otherwise resolved by mutual agreement between the Contractor and City. The indemnification in this **Section 9.16** shall be construed to comply with C.R.S. § 13-50.5-102(8) et. seq.

9.17. Notices. Unless otherwise specifically required by a provision of this Agreement any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when deposited in the United States Mail and properly addressed to the intended recipient. Written notice may also be provided by electronic mail which shall be deemed delivered when receipt is acknowledged by reply of the recipient.

If to the City:

City of Salida
Christy Doon, City Administrator
448 E. First Street, Suite 112
Salida, CO 81201
christy.doon@cityofsalida.com

If to the Contractor:

CivicBrand
Ryan Short
224 W. Rainbow Blvd #122
Salida, CO 81201
Ryan@civicbrand.com

With Copy to:

City Attorney
Nina P. Williams
Wilson Williams Fellman Dittman
1314 Main Street, Suite 101
Louisville, CO 80027



nina@wwfdlaw.com

Sara Law, Sustainability Coordinator, PIO
448 E. First Street, Suite 112
Salida, CO 81201
Sara.law@cityofsalida.com

10. AUTHORITY

The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of City of Salida and the Contractor and bind their respective entities.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK-SIGNATURE PAGE FOLLOWS]



THIS AGREEMENT is executed and made effective as provided above.

CITY OF SALIDA

CONTRACTOR

By: _____

By: _____

Name: Christy Doon

Name: _____

Title: City Administrator

Title: _____

APPROVED AS TO FORM:

Nina P. Williams, City Attorney



EXHIBIT A
("Services")

CivicBrand

Ongoing Marketing, Communications, and Design Services City of Salida, CO

Overview

CivicBrand will provide ongoing marketing, communications, and design services for the City of Salida, CO. This agreement establishes a structured monthly retainer with additional work billed as needed to support the city's strategic initiatives.

Fee Structure

- A monthly retainer of \$2,000 will be billed at the beginning of each month.
- The monthly retainer covers:
 - All necessary project management
 - Attendance at one (1) monthly staff meeting
 - Up to 10 hours of work per month
- The City of Salida will be responsible for ensuring CivicBrand has a pipeline of work, necessary approvals, and all assets required to fully utilize the 10 hours each month. Unused hours do not carry over to the next month.
- Any work exceeding the base retainer 10 hours will be billed on the following months invoice and will be clearly itemized and documented.
- CivicBrand will provide estimates and obtain approvals only for projects exceeding \$3,500 in a single month, beyond the retainer. All other work under that threshold will not need written approval.
- Any work exceeding the additional \$3,500 threshold in a given month requires written approval from the City of Salida.
- Monthly invoices are due within 30 days of issuance.

Scope of Services

CivicBrand will provide a range of marketing, branding, and communications support, including but not limited to:

- Graphic Design (print and digital collateral, promotional materials, signage, etc.)
- Brand Strategy (development, refinement, implementation)
- Website Design & Development (design, and php/ccs/mysql coding)

- Placemaking (design concepts and implementation support)
- Meeting Facilitation (public meetings and stakeholder workshops))
- Public Engagement (campaign development, outreach strategies, digital and in-person engagement)
- Coordination with Other Vendors (integration with external marketing and design partners such a website vendors, sign fabricators, photographers, etc)
- Marketing & Communications Strategy (content development, social media strategy, messaging framework, and campaign execution)

Planning & Project Management

- CivicBrand will work with the City of Salida to develop quarterly plans outlining upcoming projects and initiatives to ensure the minimum retainer is fully utilized and provide an estimated scope for the following months.
- Regular check-ins will be conducted to align on priorities, review project progress, and adjust plans as needed.
- CivicBrand will maintain flexibility to adapt to emerging city needs while ensuring a structured approach to workload management.

Term

This agreement shall remain in effect through December 31, 2025. Either party may request modifications or adjustments to the scope and fee structure as needed, subject to mutual agreement. Contract can be cancelled by the City of Salida with 60 days written notice.

CivicBrand

Signed: _____

Name: _____

Date: _____

City of Salida

Signed: _____

Name: _____

Date: _____

2024 Goals:

1. *In conjunction with the City Finance Department, create a Fiscal Emergency Plan.*
2. *Hire the most qualified Fire Chief.*
3. *Recommend adoption of the 2021 Building Code and associated amendments, including the 2021 IECC.*
4. *Help coordinate the successful completion of the new fire station/develop transition plan for historic firehouse.*
5. *Through work with the Sustainability Coordinator, create a work plan and priorities for the Sustainability Committee.*
6. *Implement a paid parking strategy downtown.*
7. *New Council on-boarding.*
8. *Implement an electronic onboarding module through ADP.*

2025 Goals:

1. *Create a new HR position and hire a highly experienced and culturally competent HR professional within the next 9 months to recruit and retain an effective workforce through policy, engagement and organizational culture building.*
2. *Increase the number of training hours for all City employees.*
3. *Develop and execute a well-structured and transparent sponsorship program.*
4. *Reach out to state level officials (such as Brittany Petterson) to have the DMV office moved, at least to the front offices of Toubert building, if not out of the building completely.*
5. *Facilitate the successful reorganization of the Arts and Culture Department within the next year and a half.*
6. *Administer and oversee the implementation of a contract with a Communications/Design Team to develop a Citywide Communications Plan, clearly defining communication roles and interactions.*
7. *Assist with the completion of the long-term financial management plan.*

Longer Term City Administrator Goals

1. *Educate and engage Council, boards and commissions on department priorities.*
2. *Provide professional level customer service and clear communications to the community around projects and budget.*
3. *Maintain excellent customer service by maintaining current staff levels.*

This evaluation has been reviewed and discussed between the City Council and the City Administrator on _____.

<u>City Council</u>	<u>Concurrence</u>	<u>Initials</u>
Justin Critelli	<input type="checkbox"/> YES <input type="checkbox"/> NO	_____
Suzanne Fontana	<input type="checkbox"/> YES <input type="checkbox"/> NO	_____
Wayles Martin	<input type="checkbox"/> YES <input type="checkbox"/> NO	_____
Dominique Naccarato	<input type="checkbox"/> YES <input type="checkbox"/> NO	_____
Alisa Pappenfort	<input type="checkbox"/> YES <input type="checkbox"/> NO	_____
Dan Shore	<input type="checkbox"/> YES <input type="checkbox"/> NO	_____
Aaron Stephens	<input type="checkbox"/> YES <input type="checkbox"/> NO	_____
_____ Christy Doon, City Administrator		_____ Date



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Administration	Christy Doon - City Administrator	March 4, 2025

AGENDA ITEM

Consent Agenda – Memorandum of Understanding between the City of Salida and Chaffee County Concerning Compensation and Development in the South Ark Neighborhood.

BACKGROUND

The South Ark Neighborhood completed amendments to the Original Development Plan in 2023. During that process, the City met with various stakeholders to determine their needs as well as partnership opportunities. During meetings held with Chaffee County, the two governmental entities determined that the South Ark Neighborhood could be a location in which Chaffee County could fulfill its Proposition 123 commitment to provide additional affordable housing in the County.

With the creation of up to 400 new housing units, the road infrastructure, currently maintained by the County will be impacted. The City is proposing to take over responsibility for the necessary structural or geometric improvements to CR 104 and 107 which may be required by CDOT. The County is providing much needed funding to be used for site design and construction of Phase 1. The attached MOU outlines the agreement between CMC and the City of Salida.

The Board of County Commissioners is discussing the MOU at their March 5th work session and will vote on the agreement at their March 5th regular meeting.

STAFF RECOMMENDATION

Staff recommends Council approve the MOU and allow City and County staff to address any technical items that may arise after the BOCC meeting, which could constitute a change in the attached MOU.

FISCAL IMPACT

Chaffee County will provide the City \$1,000,000 towards the design and construction of Phase I infrastructure. At this time, these payments shall be made in two tranches - \$250,000 on or before July 1, 2025 and \$750,000 on or before July 1, 2026.

MOTION

A City Councilmember should state "I move to combine and approve the items on the Consent Agenda", followed by a second and a roll call vote.

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made effective the ____ day of _____, 2025, between the CITY OF SALIDA, a Colorado statutory municipal corporation (the “City”), and the COUNTY OF CHAFFEE, COLORADO (the “County”) (collectively the “Parties”).

RECITALS

WHEREAS, the City and County recognize that there is a severe shortage of affordable workforce housing for residents of the City and County; and

WHEREAS, the City is fostering the creation of a new affordable housing development south of US Highway 50 between County Roads 104 and 107, designated as the South Ark Neighborhood; and

WHEREAS, the City and County believe that working together along with other community partners and through other available funding sources, that they can collectively create or have created additional affordable workforce housing for a portion of the residents of the City and County; and

WHEREAS, subject to the terms and conditions set forth in this MOU, the City is committed to designing and constructing certain public utility infrastructure within the South Ark Neighborhood (the “Phase I Utility Infrastructure”) so that additional affordable workforce housing for a portion of the residents of the City and County can be constructed within the South Ark Neighborhood; and

WHEREAS, subject to the terms and conditions set forth in this MOU, the County is willing to contribute One Million Dollars and 00/100 (\$1,000,000.00) to the City to assist the City in designing and constructing the Phase I Utility Infrastructure; and

WHEREAS, the City and County wish to enter into this MOU to memorialize the Parties’ collaborative relationship and understanding with respect to the aforementioned design and construction of the Phase I Utility Infrastructure and the related financial commitment, and to clarify the duties and obligations of each Party both in connection with such design and construction and the related financial commitment, and also with respect to certain subsequent road maintenance and the annexation of certain land by the City upon the occurrence of certain events.

NOW, THEREFORE, the Parties incorporate the above Recitals into this MOU and set forth and memorialize their mutual understandings as follows:

1. **Purpose and General Description.** The purpose of this MOU is to (a) detail the City’s commitment to designing and constructing the Phase I Utility Infrastructure in the South Ark Neighborhood; (b) confirm the County’s agreement to contribute One Million Dollars and 00/100 (\$1,000,000.00) to the City for purposes of partially subsidizing the City’s design and

construction of the Phase I Utility Infrastructure in the South Ark Neighborhood; (c) detail certain City road maintenance obligations upon the occurrence of certain events; and (d) detail certain City annexation obligations upon the occurrence of certain events. The South Ark Neighborhood is generally described and depicted in Exhibit A to this MOU.

2. Term. This MOU shall remain in effect from the date first set forth above until it is terminated by mutual written agreement of the Parties or as otherwise set forth herein.

3. Specific Obligations. The Parties have agreed to the following obligations and responsibilities under this MOU:

A. The City shall:

i. Subject to receipt of all necessary funds, design and construct the Phase I Utility Infrastructure in the South Ark Neighborhood, including water and sewer lines, major utilities, and public roads. The City shall be responsible for necessary structural or geometric improvements to County Road 104 or 107 which may be required by the Colorado Department of Transportation (CDOT) for the development of the South Ark Neighborhood, including but not limited to widening, auxiliary/turn lanes, right of way acquisition, drainage, and intersection improvements at US Highway 50. It is anticipated that the City's design and construction of the Phase I Utility Infrastructure in the South Ark Neighborhood will be complete mid-year 2026;

ii. Once one hundred (100) residential units receive certificates of occupancy within the South Ark Neighborhood, the City will undertake certain road maintenance obligations for the portion of County Road 107 between US Highway 50 and County Road 108, as well as the portion of County Road 104 between US Highway 50 and the east entrance to the South Ark Neighborhood. The City's road maintenance obligations for the portions of the aforementioned roads shall be limited to snow plowing, asphalt resurfacing, striping, repairing potholes, and shouldering, each to be completed by the City in the City's commercially reasonable discretion;

iii. Upon the earlier of (a) two hundred (200) deed restricted residential units, in a form approved by the City Attorney, receiving certificates of occupancy within the South Ark Neighborhood, or (b) more than half of the individually constituted real property parcels with frontage along County Road 107 between US Highway 50 and County Road 108 having been annexed into the City as determined by the City, and then subject to the then constituted City Council's approval, the City will annex the portion of County Road 107 between US Highway 50 and County Road 108;

iv. Upon the earlier of (a) two hundred (200) deed restricted residential units, in a form approved by the City Attorney, receiving certificates of occupancy within the South Ark Neighborhood, (b) the adjacent real property north of County

Road 104 (currently owned by James and Diane Treat; Parcel Number 380704300035) being annexed into the City, or (c) the adjacent real property south of County Road 104 (currently owned by Bearcreek Partnership LLC; Parcel Number 380709200041) having received a certificate of occupancy for its first building thereon, and then subject to the then constituted City Council's approval, the City will proceed with annexing the portion of County Road 104 between US Highway 50 and the eastern entrance to the South Ark Neighborhood; and

v. The City shall enter into an infrastructure cost reimbursement agreement with the County in accordance with the Code for a proportionate share of the related public water and sewer utilities infrastructure installation costs when future off-site developments tie into the mains.

B. The County shall:

i. Pay to the City Two Hundred Fifty Thousand Dollars and 00/100 (\$250,000.00) on or before July 1, 2025, as a portion of the funds required for the Phase I Utility Infrastructure design; and

ii. Pay to the City Seven Hundred Fifty Thousand Dollars and 00/100 (\$750,000.00) on or before July 1, 2026, as a portion of the funds required for the Phase I Utility Infrastructure construction, subject, however, to the award of the Phase I Utility Infrastructure contract by the City.

C. If the City does not complete the design and construction of the Phase I Utility Infrastructure in the South Ark Neighborhood as detailed in Section 3(A)(i) above on or before December 31, 2027, then (i) the City shall review funding needs with the County to identify other options or a revised schedule or (ii) upon the County's request, return to the County any amounts the County paid to the City under either Section 3(B)(i) or Section 3(B)(ii), above, whereupon this MOU shall be deemed terminated.

4. Default and Remedies.

A. County Default. If the County fails to meet its obligations under the terms of this MOU, the City shall provide written notice of such default. If the default is not remedied within thirty days from the date of written notice, the City shall be entitled to the following remedies, which shall be cumulative to any other remedies set forth in this MOU: (i) injunctive relief; (ii) specific performance; and (iii) any other remedies permitted under the Municipal Code of the City of Salida (the "Code"), or otherwise set forth in this MOU, or available at law or in equity. The City shall extend the cure period if the nature of the default is such that it cannot reasonably be remedied within thirty (30) days, provided the County commences the corrective action within thirty (30) days and diligently pursues such correction thereafter.

B. City Default. If the City fails to meet its obligations under the terms of this MOU, the County shall provide written notice of such default. If the default is not remedied within thirty days from the date of written notice, the County shall be entitled to the following remedies which shall be cumulative to any other remedies set forth in this MOU: (i) injunctive relief; (ii) specific performance; and (iii) any other remedies permitted under the Codes, or otherwise set forth in this MOU, or available at law or in equity. The County shall extend the cure period if the nature of the default is such that it cannot reasonably be remedied within thirty (30) days, provided the City commences the corrective action within thirty (30) days and diligently pursues such correction thereafter.

C. Limitation on Damages. Except as expressly provided in this MOU, neither Party shall be entitled to claim or receive any form of damages from the other, whether remedial, compensatory, punitive, or consequential, including economic damages and lost profits.

5. Legal Agreements. Any legal agreements entered into under or pursuant to this MOU must be approved, as to form, by the City Attorney and County Attorney before execution.

6. Notice. Any notice or communication required or permitted hereunder shall be given in writing and shall be personally delivered, or sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed as follows:

City:

City of Salida
Attn: City Administrator
448 E. First Street, Suite 112
Salida, CO 81201

County:

Chaffee County, Colorado
Attn: County Administrator
PO Box 699
Salida, CO 81201

With a copy to:

Nina P. Williams, Esq.
Wilson Williams Fellman Dittman
1314 Main Street, Suite 101
Louisville, CO 80027

With a copy to:

County Attorney
PO Box 699,
Salida, CO 81201

or to such other address or person as either Party shall have previously designated by written notice given to the other Party in the manner hereinabove set forth. Notices given hereunder shall be deemed given, in the case of personal delivery, on the date delivered, and in the case of delivery by certified mail, on the third (3rd) business day after delivery to the United States Postal Service.

7. No Third-Party Beneficiaries. None of the provisions in this MOU shall give or allow any claim, benefit, or right of action by any person or entity other than the Parties.

8. No Personal Liability of Elected Officials and Officers. No individual who is either a director, councilperson, and/or officer of the City or County shall be subject to personal liability

to any person or entity in connection with the performance or non-performance of the obligations and responsibilities of the City or County hereunder.

9. Governing Law. This MOU, and the terms, conditions and covenants herein contained, shall be deemed to complement and shall be in addition to the conditions and requirements of the Code and other applicable laws, rules and regulations. This MOU shall be construed pursuant to the laws of the State of Colorado. Jurisdiction and venue for any cause of action arising under this MOU shall be proper and exclusive in the Chaffee County District Court.

10. Governmental Immunity. No term or condition of this MOU shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*

11. Assignment. The County may not assign this MOU or any of its rights or obligations hereunder without the prior written consent of the City. This MOU shall be binding on and inure to the benefit of the Parties and their respective successors and permitted assigns.

12. Headings. The headings in this MOU are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

13. Severability. If any provision of this MOU is held invalid or unenforceable by a court with competent jurisdiction, the remainder of this MOU or the application of such provision to persons other than those as to who it is held invalid or unenforceable, shall not be affected and each provision of this MOU shall be valid and enforceable to the fullest extent permitted by law.

14. Attorney's Fees. In the event any Party commences an action to enforce its rights hereunder or to enjoin any violation of the terms and provisions of this MOU, the prevailing Party in such action shall be entitled to recover its reasonable attorneys' fees and other costs incurred in such action from the non-prevailing Party.

15. Entire Understanding. This MOU contains the entire understanding of the Parties and supersedes all verbal or prior written agreements, arrangements, and understandings of the Parties relating to the subject matter contained herein. The Parties further intend that this MOU constitutes the complete and exclusive statement of its terms, and that no extrinsic evidence may be introduced to reform this MOU in any judicial proceeding involving this MOU.

16. Modification/Waiver. This MOU may only be modified upon written agreement of the Parties, or their respective successors and permitted assigns. Any Party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this MOU or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that Party's right to assert or rely upon the terms and conditions of this MOU. Any express waiver of a term of this MOU shall not be binding and effective unless made in writing and properly executed by the waiving Party.

17. Appropriations. The Parties understand and acknowledge that both the City and County are subject to Article X, § 20 of the Colorado Constitution (“TABOR”). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this MOU. It is understood and agreed that this MOU does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this MOU to the contrary, all payment obligations of the City or County are expressly dependent and conditioned upon the continued availability of funds beyond the term of the City’s and/or County’s current fiscal period ending upon the next succeeding December 31. Financial obligations of the City and/or County payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations and resolutions of the City and County, respectively, and other applicable law. Upon the failure to appropriate such funds, this MOU shall be terminated.

18. Warranty of Authority. Each individual executing this MOU on behalf of the City and County represents and warrants that he or she is duly authorized to execute and deliver this MOU on behalf of the City or County, respectively, and that this MOU is binding upon the City and County.

19. Construction. Each Party has participated in the drafting of this MOU, which each Party acknowledges is the result of extensive negotiations between the Parties. Accordingly, the Parties agree that in the event an ambiguity or question of intent or interpretation arises, this MOU shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this MOU.

20. Counterparts. This MOU may be executed in one or more counterparts, each of which shall constitute an original, but all of which, when taken together shall constitute a single MOU.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this MOU to be effective as of the day and year first written above.

CITY OF SALIDA

ATTEST

By: _____
Dan Shore, Mayor

By: _____
Kristi Jefferson, City Clerk

STATE OF COLORADO)
) ss.
COUNTY OF CHAFFEE)

The foregoing instrument was subscribed to before me this _____ day of _____, 2025, by Dan Shore, as the Mayor of the City of Salida, Colorado.

Witness my hand and official seal.

Notary Public

My commission expires: _____

COUNTY OF CHAFFEE, COLORADO

ATTEST

By: _____
Chairman, Board of Commissioners

By: _____
Clerk/Deputy Clerk

STATE OF COLORADO)
) ss.
COUNTY OF CHAFFEE)

The foregoing instrument was subscribed to before me this _____ day of _____, 2025, by P.T. Wood the Chairman of the Chaffee County Board of Commissioners, County of Chaffee, Colorado.

Witness my hand and official seal.

Notary Public

My commission expires: _____

EXHIBIT A

The South Ark Neighborhood

See Attached

EXHIBIT A

General Depiction of the South Ark Neighborhood and Potential Improvements





CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Administration	Christy Doon - City Administrator	March 4, 2025

AGENDA ITEM

Consent Agenda – Memorandum of Understanding between the City of Salida and Colorado Mountain College Concerning Compensation and Development in the South Ark Neighborhood.

BACKGROUND

The South Ark Neighborhood completed amendments to the Original Development Plan in 2023. During that process, the City met with various stakeholders to determine their needs as well as partnership opportunities. Colorado Mountain College has been working to identify housing options for both students and staff. The South Ark Neighborhood is a prime area for their potential housing expansion.

The City is in a position to deed to CMC approximately 1.5 acres of land to be used for housing for students and staff. CMC is providing much needed funding to be used for site design and construction of Phase 1. The attached MOU outlines the agreement between CMC and the City of Salida.

The CMC Board approved the agreement in concept at an earlier meeting. The technical aspects of the agreement have been finalized and it is ready for final approval.

STAFF RECOMMENDATION

Staff recommends Council approve the MOU.

FISCAL IMPACT

Colorado Mountain College will provide the City \$1,000,000 towards the design and construction of Phase I infrastructure. These payments shall be made in two tranches - \$250,000 on or before July 1, 2025 and \$750,000 on or before July 1, 2026.

MOTION

A City Councilmember should state "I move to combine and approve the items on the Consent Agenda", followed by a second and a roll call vote.

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made effective the ____ day of _____, 2025, between the CITY OF SALIDA, a Colorado statutory municipal corporation (the “City”), and COLORADO MOUNTAIN COLLEGE, a local college district (“CMC”), (collectively the “Parties”).

RECITALS

WHEREAS, the City and CMC recognize that there is a severe shortage of affordable housing for eligible students enrolled at CMC and eligible employees of CMC; and

WHEREAS, the City and CMC believe that working together along with other community partners and through other available funding sources, that they can collectively create affordable housing for a portion of eligible students enrolled at CMC and eligible employees of CMC; and

WHEREAS, subject to the terms and conditions set forth in this MOU, the City is committed to designing and constructing certain Phase I infrastructure consisting of certain major public utility infrastructure within the South Ark Neighborhood (the “Phase I Utility Infrastructure”) so that CMC can subsequently construct affordable housing for a portion of eligible students enrolled at CMC and eligible employees of CMC within a portion of the South Ark Neighborhood; and

WHEREAS, subject to the terms and conditions set forth in this MOU, CMC is willing to contribute One Million Dollars and 00/100 (\$1,000,000.00) to the City to assist the City in constructing the Phase I Utility Infrastructure; and

WHEREAS, the City and CMC wish to enter into this MOU to memorialize the Parties’ collaborative relationship and understanding with respect to the aforementioned design and construction of the Phase I Utility Infrastructure and the related financial commitment, and to clarify the duties and obligations of each Party both in connection with such design and construction and the related financial commitment, and also with respect to a subsequent land transfer by the City to CMC and CMC’s related construction obligations with respect to such conveyance.

NOW, THEREFORE, the Parties set forth and memorialize their mutual understandings as follows:

1. Purpose and General Description. The purpose of this MOU is to (a) detail the City’s commitment to designing and constructing the Phase I Utility Infrastructure in the South Ark Neighborhood; (b) confirm CMC’s obligation to contribute One Million Dollars and 00/100 (\$1,000,000.00) to the City for purposes of partially subsidizing the City’s design and construction of the Phase I Utility Infrastructure in the South Ark Neighborhood; (c) approve the City’s conveyance of approximately 1.5 acres of land to CMC, as generally depicted on Exhibit A attached hereto (the “Land”), for certain defined construction by CMC within the South Ark

Neighborhood; and (d) describe CMC's construction obligations on the Land conveyed to it by the City.

2. Term. This MOU shall remain in effect from the date first set forth above until it is terminated by mutual written agreement of the Parties or as otherwise set forth herein.

3. Specific Obligations. The Parties have agreed to the following obligations and responsibilities under this MOU:

A. The City shall:

i. Subject to receipt of all necessary funds, design and construct the Phase I Utility Infrastructure in the South Ark Neighborhood, including water and sewer lines, major utilities, and public roads. It is anticipated that the City's design and construction of the Phase I Utility Infrastructure in the South Ark Neighborhood will be complete mid-year 2026; and

ii. Following acceptance of the constructed Phase I Utility Infrastructure in the South Ark Neighborhood and recordation of the associated Plat for such Phase I Utility Infrastructure in the South Ark Neighborhood, which is anticipated to occur on or before December 31, 2026, the City will convey the Land, including access to such utilities at no additional cost to CMC for certain defined construction by CMC within the South Ark Neighborhood as further detailed in Section 3(B)(iii), below. Notwithstanding the foregoing and for the avoidance of doubt, the City and CMC acknowledge and agree that CMC shall be responsible for paying system development fees and/or connection charges that are associated with the utilities.

B. CMC shall:

i. Pay to the City Two Hundred Fifty Thousand Dollars and 00/100 (\$250,000.00) on or before July 1, 2025, as a portion of the funds required for the Phase I Utility Infrastructure design;

ii. Pay to the City Seven Hundred Fifty Thousand Dollars and 00/100 (\$750,000.00) on or before July 1, 2026, as a portion of the funds required for the Phase I Utility Infrastructure construction; subject, however, to the award of the Phase I Utility Infrastructure contract by the City; and

iii. Within ten (10) years following the City's conveyance of the Land to CMC, CMC shall begin construction of affordable housing units designed to maximize the use of the conveyed Land for affordable housing while taking into consideration the college's and community's needs, which shall be for the exclusive use of eligible students enrolled at CMC and eligible employees of CMC and permanently deed restricted as such, together with such other mixed use concepts as may be approved by the City.

iv. CMC shall comply with the provisions of C.R.S. 23-71-122(1)(v) as it may be amended from time to time with respect to consulting with the City prior to development of the Land and construction of affordable housing on the Land in order to ensure that the proposed construction conforms to the adopted plan of the Vandever Ranch Planned Development as set forth in Ordinance 2023-16 insofar as feasible. In the event of any ambiguity or conflict between this MOU and Section 23-71-122(1)(v)(I), C.R.S., which cannot be resolved by reasonable good faith mutual agreement, the statute shall control.

C. If the City does not complete the design and construction of the Phase I Utility Infrastructure in the South Ark Neighborhood as detailed in Section 3(A)(i) above on or before December 31, 2027, then (i) the City shall review funding needs with CMC to identify other options or a revised schedule or (ii) upon and within 90 days of CMC's request, return to CMC any amounts CMC paid to the City under either Section 3(B)(i) or Section 3(B)(ii), above, whereupon this MOU shall be deemed terminated.

D. If CMC does not Initiate the Construction detailed in Section 3(B)(iii) above within ten (10) years following the City's conveyance of the Land to CMC, then CMC shall (i) work with the City to establish a revised timeframe for construction or (ii) sell the Land to the City or another public entity in Chaffee County should the City choose not to purchase the Land. Should Section 3(D)(ii) apply, CMC shall notify the City in writing of its intention to sell the Land for CMC's contribution amount of \$1 million plus inflation. Thereafter, the City shall have a period of ninety (90) days following receipt of such notice from CMC to elect to purchase the Land for CMC's contribution amount of \$1 million plus inflation (the "Right of First Refusal"). In the event the City elects to exercise its Right of First Refusal, the City must do so by notifying CMC of such election within such ninety (90) day period. Inflation shall be determined by the Consumer Price Index for All Urban Consumers (CPI-U), Denver-Aurora-Lakewood area, from the date of the \$1 million CMC contribution to the date of the City's exercise of its Right of First Refusal. Following any such sale of the Land to the City or to any other public entity by CMC this MOU shall be deemed terminated; provided, however, should any public entity purchase the Land it can only develop or use such Land in accordance with applicable law. "Initiate the Construction" means the obtaining of a building permit by CMC for the construction of affordable housing units designed to maximize the conveyed Land while taking into consideration the college's and community's needs together with such other mixed use concepts as may be approved by the City, which residential units will be permanently deed restricted for the exclusive use of eligible students enrolled at CMC and eligible employees of CMC, in a form approved by the City Attorney.

4. Default and Remedies.

A. CMC Default. If the City alleges that CMC is in default under this MOU and CMC does not cure such default within thirty (30) days following written notice

from the City, the City shall be entitled to the following remedies, which shall be cumulative to any other remedies set forth in this MOU: (i) injunctive relief; (ii) specific performance; (iii) withholding action on any pending applications or approval of plans, building permits or certificates of occupancy, to the extent such applications and/or approvals relate to CMC's alleged default; and (iv) any other remedies permitted under the Municipal Code of the City of Salida (the "Code"), or otherwise set forth in this MOU, or available at law or in equity. The City shall extend the cure period if the nature of the default is such that it cannot reasonably be remedied within thirty (30) days, provided CMC commences the corrective action within thirty (30) days and diligently pursues such correction thereafter.

B. City Default. If CMC alleges that the City is in default under this MOU and the City does not cure such default within thirty (30) days following written notice from CMC, CMC shall be entitled to the following remedies which shall be cumulative to any other remedies set forth in this MOU: (i) injunctive relief; (ii) specific performance; and (iii) any other remedies permitted under the Code, or otherwise set forth in this MOU, or available at law or in equity. CMC shall extend the cure period if the nature of the default is such that it cannot reasonably be remedied within thirty (30) days, provided the City commences the corrective action within thirty (30) days and diligently pursues such correction thereafter.

C. Additional Remedies. In addition to any other remedy allowed by law or in equity, in the event of default by CMC with respect to any provision of this MOU, the City may refuse to further process any site development or building permit application for property owned, in whole or in part, by CMC until such time as the default is cured or another mutually agreeable resolution is reached. Except as otherwise expressly provided in this MOU, neither Party shall be entitled to claim or receive any form of damages from the other, whether remedial, compensatory, punitive, or consequential, including economic damages and lost profits.

5. Legal Agreements. Any legal agreements entered into under or pursuant to this MOU must be approved, as to form, by the City Attorney, before execution.

6. Notice. Any notice or communication required or permitted hereunder shall be given in writing and shall be personally delivered, or sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed as follows:

City:
City of Salida
Attn: City Administrator
448 E. First Street, Suite 112
Salida, CO 81201

With a copy to:
Nina P. Williams, Esq.
Wilson Williams Fellman Dittman

CMC:
Colorado Mountain College
Matt Gianneschi
President
802 Grand Avenue
Glenwood Springs, CO 81601

With a copy to:
Lucia Padilla

1314 Main Street, Suite 101
Louisville, CO 80027

General Counsel
802 Grand Avenue
Glenwood Springs, CO 81601

or to such other address or person as either Party shall have previously designated by written notice given to the other Party in the manner hereinabove set forth. Notices given hereunder shall be deemed given, in the case of personal delivery, on the date delivered, and in the case of delivery by certified mail, on the third (3rd) business day after delivery to the United States Postal Service.

7. No Third-Party Beneficiaries. None of the provisions in this MOU shall give or allow any claim, benefit, or right of action by any person or entity other than the Parties.

8. No Personal Liability of Elected Officials and Officers. No individual who is either a director, councilperson, and/or officer of the City or trustee of CMC shall be subject to personal liability to any person or entity in connection with the performance or non-performance of the obligations and responsibilities of the City or CMC hereunder.

9. Recordation. All provisions in this MOU, including the benefits, burdens and covenants, are intended to run with the Land and shall be binding upon and inure to the benefit of the respective successors and permitted assigns of the Parties hereto. The City shall record this MOU in the official records of the County of Chaffee, State of Colorado.

10. Governing Law. This MOU, and the terms, conditions and covenants herein contained, shall be deemed to complement and shall be in addition to the conditions and requirements of the Code and other applicable laws, rules and regulations. This MOU shall be construed pursuant to the laws of the State of Colorado. Jurisdiction and venue for any cause of action arising under this MOU shall be proper and exclusive in the Chaffee County District Court.

11. Governmental Immunity. No term or condition of this MOU shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*

12. Assignment. Neither Party may assign this MOU or any of its rights or obligations hereunder without the prior written consent of the other Party. This MOU shall be binding on and inure to the benefit of the Parties and their respective successors and permitted assigns.

13. Headings. The headings in this MOU are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

14. Severability. If any provision of this MOU is held invalid or unenforceable by a court with competent jurisdiction, the remainder of this MOU or the application of such provision to persons other than those as to who it is held invalid or unenforceable, shall not be affected and each provision of this MOU shall be valid and enforceable to the fullest extent permitted by law.

15. Attorney's Fees. In the event any Party commences an action to enforce its rights hereunder or to enjoin any violation of the terms and provisions of this MOU, the prevailing Party in such action shall be entitled to recover its reasonable attorneys' fees and other costs incurred in such action from the non-prevailing Party.

16. Entire Understanding. This MOU contains the entire understanding of the Parties and supersedes all verbal or prior written agreements, arrangements, and understandings of the Parties relating to the subject matter contained herein. The Parties further intend that this MOU constitutes the complete and exclusive statement of its terms, and that no extrinsic evidence may be introduced to reform this MOU in any judicial proceeding involving this MOU.

17. Modification/Waiver. This MOU may only be modified upon written agreement of the Parties, or their respective successors and permitted assigns. Any Party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this MOU or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that Party's right to assert or rely upon the terms and conditions of this MOU. Any express waiver of a term of this MOU shall not be binding and effective unless made in writing and properly executed by the waiving Party.

18. Appropriations. The Parties understand and acknowledge that the City is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this MOU. It is understood and agreed that this MOU does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this MOU to the contrary, all payment obligations of the City are expressly dependent and conditioned upon the continued availability of funds beyond the term of the City's current fiscal period ending upon the next succeeding December 31. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations and resolutions of the City, and other applicable law. Upon the failure to appropriate such funds, this MOU shall be terminated.

Notwithstanding anything contained in this MOU to the contrary, CMC's obligations under this MOU are expressly subject to an annual appropriation being made by CMC's elected governing board in an amount sufficient to allow CMC to perform its obligations under this MOU. If sufficient funds are not so appropriated this MOU may be terminated by either Party without penalty; provided, however, if this MOU is terminated pursuant to this provision, the Parties rights with respect to the Land if it has been conveyed to CMC shall be governed by Section 3(D)(ii) above, including the City's Right of First Refusal. CMC's obligations under this MOU do not constitute a general obligation indebtedness or multiple year direct or indirect debt or other financial obligation whatsoever within the meaning of the Constitution or laws of the State of Colorado.

19. Warranty of Authority. Each individual executing this MOU on behalf of the City and CMC represents and warrants that he or she is duly authorized to execute and deliver this MOU on behalf of the City or CMC, respectively, and that this MOU is binding upon the City and CMC.

20. Construction. Each Party has participated in the drafting of this MOU, which each Party acknowledges is the result of extensive negotiations between the Parties. Accordingly, the Parties agree that in the event an ambiguity or question of intent or interpretation arises, this MOU shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this MOU.

21. Counterparts. This MOU may be executed in one or more counterparts, each of which shall constitute an original, but all of which, when taken together shall constitute a single MOU.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this MOU to be effective as of the day and year first written above.

CITY OF SALIDA

ATTEST

By: _____
Dan Shore, Mayor

By: _____
Kristi Jefferson, City Clerk

STATE OF COLORADO)
) ss.
COUNTY OF CHAFFEE)

The foregoing instrument was subscribed to before me this _____ day of _____, 2025, by Dan Shore, as the Mayor of the City of Salida, Colorado.

Witness my hand and official seal.

Notary Public

My commission expires: _____

COLORADO MOUNTAIN COLLEGE

By: _____

Print Name: _____

Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF CHAFFEE)

The foregoing instrument was subscribed to before me this _____ day of _____, 2025, by _____ the _____ of _____ Colorado Mountain College.

Witness my hand and official seal.

Notary Public

My commission expires: _____

EXHIBIT A

The Land

See Attached

EXHIBIT A

General Depiction of the South Ark Neighborhood and Potential Improvements

The Land is Outline in Teal Below





Proclamation

Celebrating March 2025 as Women's History Month

Whereas, women have played and continue to play critical economic, cultural and social roles in our county, state and community by constituting a significant portion of the labor force working inside and outside the home; and

Whereas, women have played a unique role throughout history by providing the majority of the volunteer labor force for our country, establishing early charitable, philanthropic and cultural institutions; and

Whereas every March Women's History Month provides an opportunity to honor the generations of trailblazing women and girls who have built our nation, shaped our progress, and, despite hardships, exclusion and discrimination strive and sacrifice for equity and equality in communities across our country; and

Whereas, women continue to achieve monumental labor reforms to help all workers and lead groundbreaking civil rights movements for social justice and freedom so everyone can realize the full promise of America; and

Whereas, currently there are women serving locally in leadership positions, inspiring the continued work in advancing the rights, opportunities and full participation of women and girls of all backgrounds; and

Whereas, women have served our country courageously in the military; and

Whereas, March 4, 2025 is International Women's Day and celebrates the collective power of women, pays tribute to their achievements and recognizes the remaining challenges to further efforts for women's rights in gender equality, encouraging and mobilizing all people to contribute for positive change.

Now, therefore, the Salida City Council does hereby proclaim and declare the month of March as Women's History Month in Salida, Colorado and further encourages all Salidans to observe this month with appropriate programs, ceremonies and activities.

Dan Shore, Mayor

Date



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Administration	Kristi Jefferson - City Clerk	March 4, 2025

AGENDA ITEM

New Hotel and Restaurant Liquor License for Hacienda Jalisco Family Restaurant, LLC, dba Hacienda Jalisco at 1220 E. Highway 50.

BACKGROUND

A new Colorado Hotel and Restaurant Liquor License application was filed with the City Clerk on January 16, 2025. The Notice of Public Hearing was published on January 28, 2025 in the Mountain Mail and the premises was posted on February 19, 2025.

All proper fees have been remitted to the City and State of Colorado. Individual history records and the Colorado Bureau of Investigation background checks have been reviewed by staff with no issues.

Police and Fire Inspections have been scheduled.

FISCAL NOTE

There is no fiscal impact.

RECOMMENDATION

Staff recommends that the Liquor Licensing Authority approve a new Hotel and Restaurant Liquor License request for Hacienda Jalisco Restaurant at 1220 E. Highway 50.

MOTION

Following a public hearing on the matter, a Liquor Authority Member should state "I move to _____ a new Hotel and Restaurant Liquor License request for Hacienda Jalisco Family Restaurant," followed by a second and a roll call vote.

CERTIFICATE OF PUBLICATION

STATE OF COLORADO } SS

County of Chaffee

PROOF OF PUBLICATION

Item 9.

I, JAMES O'ROURKE Being first duly sworn according to law, on oath depose and say, that I am, and at all the times herein mentioned, was the publisher of the Mountain Mail and that said Mountain Mail is a weekly newspaper of general circulation, in said County and State, printed and published in the County of Chaffee and State of Colorado, and that copies of each number thereof are, and at all the times herein mentioned were, regularly distributed and delivered, by carrier or mail, to each of the subscribers said newspaper, in accordance with the customary method of business in newspaper offices.

That the annexed

PUBLIC NOTICE

FROM

CITY OF SALIDA

In the matter of

HACIENDA JALISCO RESTAURANT HOTEL AND RESTAURANT
LIQUOR LICENSE

This a true copy of the original, and the same was regularly published in the newspaper proper and not in a supplement, for the full period of 1 INSERTIONS of said newspaper, and that the first publication was in the issue dated JANUARY 28TH, 2025 and that the last publication of the same was in the issue dated JANUARY 28TH, 2025 and the said Herald Democrat has been established, printed and published for the full period of fifty-two consecutive weeks, and continuously and uninterruptedly prior to the said date of the first publication of the notice aforesaid, in the County of Chaffee and State of Colorado, and is a newspaper duly qualified for the publishing of said notice within the meaning of an Act of the General Assembly of the State of Colorado, approved May 30th, 1923, and entitled "An act to Amend an Act Entitled 'An Act Concerning Legal Notices, Advertisements and Publications and the Fees of Printers and Publishers thereof, and to Repeal all Acts and Parts of Acts in Conflict with the Provisions of this Act'," and within the meaning of an Act amendatory thereof, approved May 18th, 1931 and entitled "An Act to Amend Section 4, of Chapter 139, Session Laws 'of Colorado, 1923, relating to Legal Notices and Advertisements," and within the meaning of any and all other Acts amendatory thereof or supplemental thereto. And further affiant saith not.

Pursuant to C.R.S. 24-70-103(5) this notice has also been posted online and available at: <https://www.leadvilleherald.com> and posted online and available at Colorado Press Association Network-Colorado Public Notice Database at: <https://www.publicnoticecolorado.com>.

James O'Rourke

The above certificate of publication was subscribed and sworn to before me by the above named James O'Rourke who is personally known to me to be the identical person described in the above certificate, on the 28th day of January, 2025 A.D.

FEIN # 92-1379977

Tomalee Young

Tomalee Young
NOTARY PUBLIC/STATE OF COLORADO
NOTARY ID #20034020559
My Commission Expires: July 15, 2027

TOMALEE YOUNG
Notary Public
State of Colorado
Notary ID # 20034020559
My Commission Expires 07-15-2027

PUBLIC NOTICE PUBLIC NOTICE PURSUANT TO THE LIQUOR LAWS OF COLORADO

Pursuant to the Liquor Laws of the State of Colorado, Hacienda Jalisco Restaurant, has requested the Local Licensing Authority of the City of Salida, Colorado grant a Hotel and Restaurant (City) liquor license to to sell malt, vinous and spirituous liquors for consumption on premises at 1220 East Highway 50, Salida, CO 81201.

A hearing on the application, received January 16, 2025 will be held before the Local Licensing Authority of the City of Salida, Colorado at the hour of 6:00 p.m., or as soon thereafter as may be heard, on Tuesday, March 4, 2025. At said time and place, any interested persons may appear to be heard for or against the granting of said license.

LOCAL LICENSING AUTHORITY

Kristi Jefferson, City Clerk
Published in The Mountain Mail January 28, 2025

NOTICE

PURSUANT TO THE LIQUOR LAWS OF COLORADO

Hacienda Jalisco Family Restaurant, LLC

1220 E. Hwy 50

Salida, CO. 81201

HAS REQUESTED THE LICENSING OFFICIALS OF

City of Salida

TO

Approve a new Hotel and Restaurant Liquor license

LICENSE AT:

1220 E. Hwy 50

Salida, CO. 81201

HEARING ON APPLICATION TO BE HELD AT:

City Council Chambers

448 E. 1st St, Ste #119 Salida, CO. 81201

TIME AND DATE:

March 4, 2025

DATE OF APPLICATION:

January 16, 2025

BY ORDER OF:

City of Salida

OFFICERS:

City Council

ADDRESS OF THE PLACE AT WHICH PETITIONS OR REMONSTRANCES MAY BE FILED



Colorado Liquor Retail License Application

* Note that the Division will not accept cash ☒ Paid by Check Date Uploaded to MoveIt

☐ Paid Online

January 27, 2025

☒ New License ☐ New-Concurrent ☐ Transfer of Ownership ☐ State Property Only ☐ Master file

- All answers must be printed in black ink or typewritten
- Applicant must check the appropriate box(es)
- Applicant should obtain a copy of the Colorado Liquor and Beer Code: SBG.Colorado.gov/Liquor

Applicant is applying as a/an ☐ Individual ☒ Limited Liability Company ☐ Association or Other
☐ Corporation ☐ Partnership (includes Limited Liability and Husband and Wife Partnerships)

Applicant Name If an LLC, name of LLC; if partnership, at least 2 partner's names; if corporation, name of corporation

Hacienda Jalisco Family Restaurant, LLC

FEIN Number

State Sales Tax Number

Trade Name of Establishment (DBA)

Business Telephone

Hacienda Jalisco

719-207-4787

Address of Premises (specify exact location of premises, include suite/unit numbers)

1220 E. Rainbow Blvd

City

County

State

ZIP Code

Salida

Chaffee

CO

81501

Mailing Address (Number and Street)

City or Town

State

ZIP Code

1220 E. Rainbow Blvd.

Salida

CO

81201

Email Address

HaciendaJalisco25@gmail.com

If the premises currently has a liquor or beer license, you **must** answer the following questions.

Present Trade Name of Establishment (DBA)

Present State License Number

Present Class of License

Present Expiration Date

1. Is the applicant (including any of the partners if a partnership; members or managers if a limited liability company; or officers, stockholders or directors if a corporation) or managers under the age of twenty-one years?..... ☐ Yes ☒ No
2. Has the applicant (including any of the partners if a partnership; members or managers if a limited liability company; or officers, stockholders or directors if a corporation) or managers ever (in Colorado or any other state):
- a. Been denied an alcohol beverage license?..... ☐ Yes ☒ No
- b. Had an alcohol beverage license suspended or revoked?..... ☐ Yes ☒ No
- c. Had interest in another entity that had an alcohol beverage license suspended or revoked?..... ☐ Yes ☒ No

If you answered yes to a, b or c above, explain in detail on a separate sheet.

3. Has a liquor license application (same license class), that was located within 500 feet of the proposed premises, been denied within the preceding two years?..... ☐ Yes ☒ No

If "yes", explain in detail.

4. Are the premises to be licensed within 500 feet, of any public or private school that meets compulsory education requirements of Colorado law, or the principal campus of any college, university or seminary?..... ☐ Yes ☒ No

or

Waiver by local ordinance? ☐ Yes ☐ No

Other

5. Is your Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 1500 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of greater than (>) 10,000? **NOTE:** The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS..... ☐ Yes ☒ No

6. Is your Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 3000 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of less than (<) 10,000? **NOTE:** The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS..... ☐ Yes ☒ No

For additional Retail Liquor Store only.

- a. Was your Retail Liquor Store License issued on or before January 1, 2016?.... ☐ Yes ☒ No
- b. Are you a Colorado resident?..... ☒ Yes ☐ No

7. Has a liquor or beer license ever been issued to the applicant (including any of the partners, if a partnership; members or manager if a Limited Liability Company; or officers, stockholders or directors if a corporation)? If yes, identify the name of the business and list any **current** financial interest in said business including any loans to or from a licensee..... ☒ Yes ☐ No

8. Does the applicant, as listed on line 2 of this application, **have legal possession of the premises by ownership**, lease or other arrangement?..... ☒ Yes ☐ No

☐ Ownership ☒ Lease ☐ Other (Explain in detail)

- a. If leased, list name of landlord and tenant, and date of expiration, **exactly** as they appear on the lease:

Landlord

Martin Rangel

Tenant

Leticia Garcia

Expires

12-31-2029

- b. Is a percentage of alcohol sales included as compensation to the landlord? If yes, complete question on page 9..... ☐ Yes ☒ No
- c. Attach a diagram that designates the area to be licensed in black bold outline (including dimensions) which shows the bars, brewery, walls, partitions, entrances, exits and what each room shall be utilized for in this business. This diagram should be no larger than 8½" X 11".

Item 9.

9. Who, besides the owners listed in this application (including persons, firms, partnerships, corporations limited liability companies) will loan or give money, inventory, furniture or equipment to or for use in this business; or who will receive money from this business? Attach a separate sheet if necessary.

Last Name	First Name
Date of Birth (MM/DD/YY)	FEIN or SSN Number
Interest/Percentage	

Last Name	First Name
Date of Birth (MM/DD/YY)	FEIN or SSN Number
Interest/Percentage	

Last Name	First Name
Date of Birth (MM/DD/YY)	FEIN or SSN Number
Interest/Percentage	

Attach copies of all notes and security instruments and any written agreement or details of any oral agreement, by which any person (including partnerships, corporations, limited liability companies, etc.) will share in the profit or gross proceeds of this establishment, and any agreement relating to the business which is contingent or conditional in any way by volume, profit, sales, giving of advice or consultation.

10. Optional Premises or Hotel and Restaurant Licenses with Optional Premises:
 Has a local ordinance or resolution authorizing optional premises been adopted?.... ☐ Yes ☒ No

Number of additional Optional Premise areas requested. (See license fee chart)

For the addition of a Sidewalk Service Area per Regulation 47-302(A)(4), include a diagram of the service area and documentation received from the local governing body authorizing use of the sidewalk. Documentation may include but is not limited to a statement of use, permit, easement, or other legal permissions.

11. Liquor Licensed Drugstore (LLDS) applicants, answer the following:

a. Is there a pharmacy, licensed by the Colorado Board of Pharmacy, located within the applicant's LLDS premise?..... ☐ Yes ☒ No

If "yes" a copy of license must be attached.

12. Club Liquor License applicants answer the following: **Attach a copy of applicable documentation** Item 9.

a. Is the applicant organization operated solely for a national, social, fraternal, patriotic, political or athletic purpose and not for pecuniary gain?..... ☐ Yes ☒ No

b. Is the applicant organization a regularly chartered branch, lodge or chapter of a national organization which is operated solely for the object of a patriotic or fraternal organization or society, but not for pecuniary gain?..... ☐ Yes ☒ No

c. How long has the club been incorporated?.....

d. Has applicant occupied an establishment for three years (three years required) that was operated solely for the reasons stated above?..... ☐ Yes ☒ No

13. Brew-Pub, Distillery Pub or Vintner's Restaurant applicants answer the following:

a. Has the applicant received or applied for a Federal Permit? (Copy of permit or application must be attached)..... ☐ Yes ☒ No

14. Campus Liquor Complex applicants answer the following:

a. Is the applicant an institution of higher education?..... ☐ Yes ☒ No

b. Is the applicant a person who contracts with the institution of higher education to provide food services?..... ☐ Yes ☒ No

If "yes" please provide a copy of the contract with the institution of higher education to provide food services.

15. For all on-premises applicants.

a. For all Liquor Licensed Drugstores (LLDS) the Permitted Manager must also submit an Manager Permit Application - DR 8000 and fingerprints.

Last Name of Manager

Garcia

First Name of Manager

Leticia

16. Does this manager act as the manager of, or have a financial interest in, any other liquor licensed establishment in the State of Colorado? If yes, provide name, type of license and account number..... ☒ Yes ☐ No

Name

La Terraza

Type of License

Hotel & Restaurant

Account Number

17. Related Facility - Campus Liquor Complex applicants answer the following:

Item 9.

- a. Is the related facility located within the boundaries of the Campus Liquor Complex?..... ☐ Yes ☒ No

If yes, please provide a map of the geographical location within the Campus Liquor Complex.

If no, this license type is not available for issues outside the geographical location of the Campus Liquor Complex.

b. Designated Manager for Related Facility - Campus Liquor Complex

Last Name of Manager

First Name of Manager

18. Tax Information.

- a. Has the applicant, including its manager, partners, officer, directors, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant, been found in final order of a tax agency to be delinquent in the payment of any state or local taxes, penalties, or interest related to a business?..... ☐ Yes ☒ No

- b. Has the applicant, including its manager, partners, officer, directors, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant failed to pay any fees or surcharges imposed pursuant to section 44-3-503, C.R.S.?..... ☐ Yes ☒ No

If applicant is a corporation, partnership, association or limited liability company, applicant must list Item 9.
Officers, Directors, General Partners, and Managing Members. In addition, applicant must list any stockholders, partners, or members with **ownership of 10% or more in the applicant.** All persons listed below must also attach form DR 8404-I (Individual History Record), and make an appointment with an approved State Vendor through their website. See application checklist, Section IV, for details.

Name			Date of Birth (MM/DD/YY)	
<div>Leticia Garcia</div>			<div></div>	
Street Address				
<div></div>				
City	State	ZIP Code	Position	%Owned
<div></div>	<div>CO</div>	<div></div>	<div>Manager</div>	<div>100%</div>
Name			Date of Birth (MM/DD/YY)	
<div></div>			<div></div>	
Street Address				
<div></div>				
City	State	ZIP Code	Position	%Owned
<div></div>	<div></div>	<div></div>	<div></div>	<div></div>
Name			Date of Birth (MM/DD/YY)	
<div></div>			<div></div>	
Street Address				
<div></div>				
City	State	ZIP Code	Position	%Owned
<div></div>	<div></div>	<div></div>	<div></div>	<div></div>
Name			Date of Birth (MM/DD/YY)	
<div></div>			<div></div>	
Street Address				
<div></div>				
City	State	ZIP Code	Position	%Owned
<div></div>	<div></div>	<div></div>	<div></div>	<div></div>
Name			Date of Birth (MM/DD/YY)	
<div></div>			<div></div>	
Street Address				
<div></div>				
City	State	ZIP Code	Position	%Owned
<div></div>	<div></div>	<div></div>	<div></div>	<div></div>
Name			Date of Birth (MM/DD/YY)	
<div></div>			<div></div>	
Street Address				
<div></div>				
City	State	ZIP Code	Position	%Owned
<div></div>	<div></div>	<div></div>	<div></div>	<div></div>
Name			Date of Birth (MM/DD/YY)	
<div></div>			<div></div>	
Street Address				
<div></div>				

** If applicant is owned 100% by a parent company, please list the designated principal officer on above.

Item 9.

** Corporations - the President, Vice-President, Secretary and Treasurer must be accounted for above (Include ownership percentage if applicable)

** If total ownership percentage disclosed here does not total 100%, applicant must check this box:

☒ Applicant affirms that no individual other than these disclosed herein owns 10% or more of the applicant and does not have financial interest in a prohibited liquor license pursuant to Article 3 or 5, C.R.S.

Oath Of Applicant

I declare under penalty of perjury in the second degree that this application and all attachments are true, correct, and complete to the best of my knowledge. I also acknowledge that it is my responsibility and the responsibility of my agents and employees to comply with the provisions of the Colorado Liquor or Beer and Wine Code which affect my license.

Printed Name

Title

Leticia Garcia

Sole Member

Authorized Signature

Date (MM/DD/YY)

Leticia Garcia

01-08-2025

Report and Approval of Local Licensing Authority (City/County)

Date application filed with local authority

Date of local authority hearing (for new license applicants; cannot be less than 30 days from date of application)

January 16, 2025

March 4, 2025

For Transfer Applications Only - Is the license being transferred valid?..... ☐ Yes ☐ No

The Local Licensing Authority Hereby Affirms that each person required to file DR 8404-I (Individual History Record) or a DR 8000 (Manager Permit) has been:

☒ Fingerprinted

☐ Subject to background investigation, including NCIC/CCIC check for outstanding warrants

That the local authority has conducted, or intends to conduct, an inspection of the proposed premises to ensure that the applicant is in compliance with and aware of, liquor code provisions affecting their class of license

(Check One)

☐ Date of inspection or anticipated date

☒ Will conduct inspection upon approval of state licensing authority

☐ Is the Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 1,500 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of > 10,000? ☐ Yes ☒ No

☐ Is the Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 3,000 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of < 10,000? ☐ Yes ☒ No

NOTE: The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.

☐ Does the Liquor-Licensed Drugstore (LLDS) have at least twenty percent (20%) of the applicant's gross annual income derived from the sale of food, during the prior twelve (12) month period? ☐ Yes ☒ No

The foregoing application has been examined; and the premises, business to be conducted, and character of the applicant are satisfactory. We do report that such license, if granted, will meet the reasonable requirements of the neighborhood and the desires of the adult inhabitants, and will comply with the provisions of Title 44, Article 4 or 3, C.R.S., and Liquor Rules. **Therefore, this application is approved.**

Local Licensing Authority for

Telephone Number

☐ Town, City

☐ County

Printed Name

Title

Signature

Date (MM/DD/YY)

Printed Name

Title

Signature

Date (MM/DD/YY)

Tax Check Authorization, Waiver, and Request to Release Information

I, Leticia Garcia

am signing this Tax Check Authorization, Waiver and Request to Release Information (hereinafter "Waiver") on behalf of

(the "Applicant/Licensee")

Hacienda Jalisco

to permit the Colorado Department of Revenue and any other state or local taxing authority to release information and documentation that may otherwise be confidential, as provided below. If I am signing this Waiver for someone other than myself, including on behalf of a business entity, I certify that I have the authority to execute this Waiver on behalf of the Applicant/Licensee.

The Executive Director of the Colorado Department of Revenue is the State Licensing Authority, and oversees the Colorado Liquor Enforcement Division as his or her agents, clerks, and employees. The information and documentation obtained pursuant to this Waiver may be used in connection with the Applicant/Licensee's liquor license application and ongoing licensure by the state and local licensing authorities. The Colorado Liquor Code, section 44-3-101, et seq. ("Liquor Code"), and the Colorado Liquor Rules, 1 CCR 203-2 ("Liquor Rules"), require compliance with certain tax obligations, and set forth the investigative, disciplinary and licensure actions the state and local licensing authorities may take for violations of the Liquor Code and Liquor Rules, including failure to meet tax reporting and payment obligations.

The Waiver is made pursuant to section 39-21-113(4), C.R.S., and any other law, regulation, resolution or ordinance concerning the confidentiality of tax information, or any document, report or return filed in connection with state or local taxes. This Waiver shall be valid until the expiration or revocation of a license, or until both the state and local licensing authorities take final action to approve or deny any application(s) for the renewal of the license, whichever is later. Applicant/Licensee agrees to execute a new waiver for each subsequent licensing period in connection with the renewal of any license, if requested.

By signing below, Applicant/Licensee requests that the Colorado Department of Revenue and any other state or local taxing authority or agency in the possession of tax documents or information, release information and documentation to the Colorado Liquor Enforcement Division, and is duly authorized employees, to act as the Applicant's/Licensee's duly authorized representative under section 39-21-113(4), C.R.S., solely to allow the state and local licensing authorities, and their duly authorized employees, to investigate compliance with the Liquor Code and Liquor Rules. Applicant/Licensee authorizes the state and local licensing authorities, their duly authorized employees, and their legal representatives, to use the information and documentation obtained using this Waiver in any administrative or judicial action regarding the application or license.

Name (Individual/Business)

Item 9.

Hacienda Jalisco

Social Security Number/Tax Identification Number

Home Phone Number

Business/Work Phone Number

[REDACTED]

[REDACTED]

719-207-4787

Street Address

1220 E. Rainbow Blvd.

City

State

ZIP Code

Salida

CO

81201

Printed name of person signing on behalf of the Applicant/Licensee

Leticia Garcia

Applicant/Licensee's Signature (Signature authorizing the disclosure of confidential tax information)

Date Signed

Leticia Garcia

01-08-2025

Privacy Act Statement

Providing your Social Security Number is voluntary and no right, benefit or privilege provided by law will be denied as a result of refusal to disclose it. § 7 of Privacy Act, 5 USCS § 552a (note).

Individual History Record

To be completed by the following persons, as applicable: sole proprietors; general partners regardless of percentage ownership, and limited partners owning 10% or more of the partnership; all principal officers of a corporation, all directors of a corporation, and any stockholder of a corporation owning 10% or more of the outstanding stock; managing members or officers of a limited liability company, and members owning 10% or more of the company; and any intended registered manager of Hotel and Restaurant, Tavern and Lodging and Entertainment class of retail license

Notice: This individual history record requires information that is necessary for the licensing investigation or inquiry. All questions must be answered in their entirety or the license application may be delayed or denied. If a question is not applicable, please indicate so by "N/A". **Any deliberate misrepresentation or material omission may jeopardize the license application.** (Please attach a separate sheet if necessary to enable you to answer questions completely)

Name of Business

Hacienda Talisco

Home Phone Number

N/A

Cellular Number

Your Full Name (last, first, middle)

Garcia Leticia

List any other names you have used

Peña, Leticia

Mailing address (if different from residence)

1220 E. Rainbow Blvd. Salida CO 81201

Email Address

HaciendaTalisco25@gmail.com

1. List current residence address. Include any previous addresses within the last five years. (Attach separate sheet if necessary)

Current Street and Number

Current City, State, ZIP

[Redacted Address Information]

Individual History Record (Continued)

Item 9.

Name of Relative

Relationship to You:

Position Held

Name of Licensee

Name of Relative

Relationship to You:

Position Held

Name of Licensee

4. Have you ever applied for, held, or had an interest in a Colorado Liquor or Beer License, or loaned money, furniture, fixtures, equipment or inventory to any licensee? ☒ Yes ☐ No

(If yes, answer in detail.)

Yes, I applied and obtained a license on 07-07-2024

5. Have you ever received a violation notice, suspension, or revocation for a liquor law violation, or have you applied for or been denied a liquor or beer license anywhere in the United States?..... ☐ Yes ☒ No

(If yes, answer in detail.)

6. Have you ever been convicted of a crime or received a suspended sentence, deferred sentence, or forfeited bail for any offense in criminal or military court or do you have any charges pending?..... ☐ Yes ☒ No

(If yes, answer in detail.)

7. Are you currently under probation (supervised or unsupervised), parole, or completing the requirements of a deferred sentence?..... ☐ Yes ☒ No

(If yes, answer in detail.)

Individual History Record (Continued)

Item 9.

8. Have you ever had any professional license suspended, revoked, or denied?..... ☐ Yes ☒ No

(If yes, answer in detail.)

Personal and Financial Information

Unless otherwise provided by law, the personal information required in this section will be treated as confidential. The personal information required in this section is solely for identification purposes.

Date of Birth	Social Security Number	Place of Birth
<div></div>	<div></div>	<div></div>
U.S. Citizen	If Naturalized, state where	When
<input checked="" type="radio"/> Yes <input type="radio"/> No	<div></div>	<div></div>
Name of District Court	Naturalization Certificate Number	Date of Certification
<div></div>	<div></div>	<div></div>
If an Alien, Give Alien's Registration Card Number	Permanent Residence Card Number	
<div></div>	<div></div>	
Height	Weight	Hair Color
<div></div>	<div></div>	<div></div>
Eye Color	Gender	
<div></div>	<div></div>	

Do you have a current Driver's License/ID? If so, give number and state. ☒ Yes ☐ No

Driver's License Number	Driver's License State
<div></div>	<div>Colorado</div>

Financial Information

9. Total purchase price or investment being made by the applying entity, corporation, partnership, limited liability company, other.....
10. List the total amount of the **personal** investment, made by the person listed on page 1 in this business including any notes, loans, cash, services or equipment, operating capital, stock purchases or fees paid.....

NOTE: If corporate investment only, please skip to and complete question 12

NOTE: Question 10 should reflect the total of questions 11 and 13

11. Provide details of the personal investment described in question 10. You must account for all of the sources of this investment. (Attach a separate sheet if needed)

Type: Cash, Services or Equipment

Account Type

Bank Name

Amount

Type: Cash, Services or Equipment

Account Type

Bank Name

Amount

Type: Cash, Services or Equipment

Account Type

Bank Name

Amount

Type: Cash, Services or Equipment

Account Type

Bank Name

Amount

12. Provide details of the corporate investment described in question 9. You must account for all of the sources of this investment. (Attach a separate sheet if needed)

Type: Cash, Services or Equipment

Loans

Account Type

Bank Name

Amount

Type: Cash, Services or Equipment

Loans

Account Type

Bank Name

Amount

Type: Cash, Services or Equipment

Loans

Account Type

Bank Name

Amount

13. Loan Information (Attach copies of all notes or loans)

Name of Lender

Address

Term

Security

Amount

Personal and Financial Information (Continued)

Item 9.

Name of Lender

Address

Term

Security

Amount

Name of Lender

Address

Term

Security

Amount

Name of Lender

Address

Term

Security

Amount

Oath of Applicant

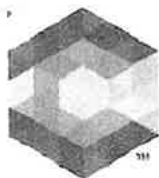
I declare under penalty of perjury that this application and all attachments are true, correct, and complete to the best of my knowledge.

Authorized Signature

Print Signature

Title

Date (MM/DD/YY)



Articles of Organization for a Limited Liability Company

filed pursuant to § 7-90-301 and § 7-80-204 of the Colorado Revised Statutes (C.R.S.)

The domestic entity name of the limited liability company is Hacienda Jalisco Family Restaurant, LLC

The principal office street address is

1220 E Rainbow Blvd
Salida CO 81201
US

The principal office mailing address is

1220 E Rainbow Blvd
Salida CO 81201
US

The name of the registered agent is Leticia Garcia

The registered agent's street address is

1220 E Rainbow Blvd
Salida CO 81201
US

The registered agent's mailing address is

1220 E Rainbow Blvd
Salida CO 81201
US

The person above has agreed to be appointed as the registered agent for this entity.

The management of the limited liability company is vested in Members

There is at least one member of the limited liability company.

Person(s) forming the limited liability company

Leticia Garcia
1220 E Rainbow Blvd
Salida CO 81201
US

Causing this document to be delivered to the Secretary of State for filing shall constitute the affirmation or acknowledgment of each individual causing such delivery, under penalties of perjury, that the document is the individual's act and deed, or that the individual in good faith believes the document is the act and deed of the person on whose behalf the individual is causing the document to be delivered for filing, taken in conformity with the requirements of part 3 of article 90 of title 7, C.R.S., and, if applicable, the constituent documents, and the organic statutes, and that the individual in good faith believes the facts stated in the document are true and the document complies with the requirements of that Part, the constituent documents, and the organic statutes.

This perjury notice applies to each individual who causes this document to be delivered to the Secretary of State, whether or not such individual is named in the document as one who has caused it to be delivered.

Name(s) and address(es) of the individual(s) causing the document to be delivered for filing

Leticia Garcia
1220 E Rainbow Blvd
Salida CO 81201
US

OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF FACT OF GOOD STANDING

I, Jena Griswold, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

Hacienda Jalisco Family Restaurant, LLC

is a

Limited Liability Company

formed or registered on 01/07/2025 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 20251027944 .

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 01/06/2025 that have been posted, and by documents delivered to this office electronically through 01/07/2025 @ 17:37:37 .

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 01/07/2025 @ 17:37:37 in accordance with applicable law. This certificate is assigned Confirmation Number 16874473 .

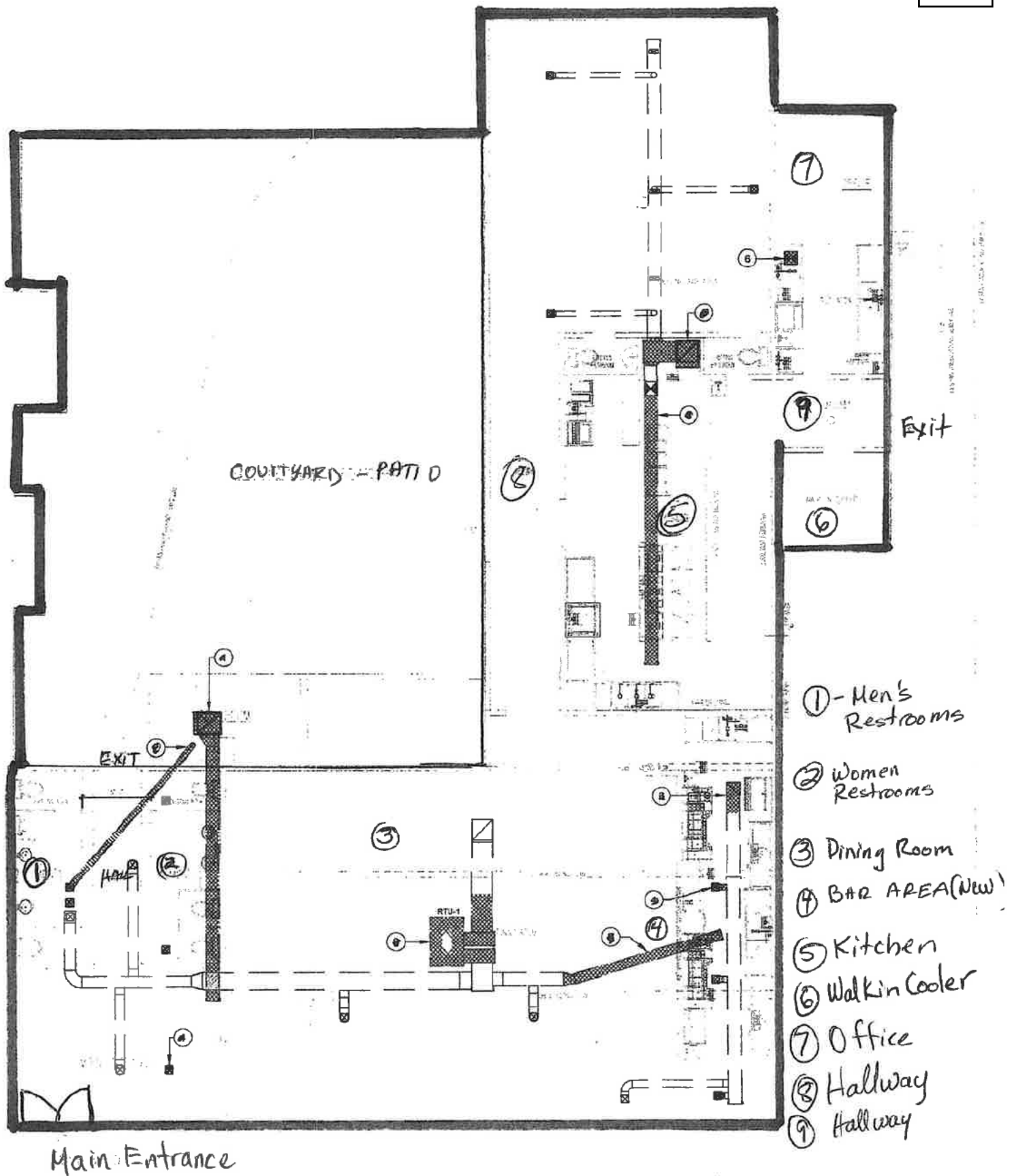


Jena Griswold

Secretary of State of the State of Colorado

*****End of Certificate*****

Notice: A certificate issued electronically from the Colorado Secretary of State's website is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State's website, <https://www.coloradosos.gov/biz/CertificateSearchCriteria.do> entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our website, <https://www.coloradosos.gov> click "Businesses, trademarks, trade names" and select "Frequently Asked Questions."



LEASE AGREEMENT

By and Between

**RANGEL COMMERCIAL PROPERTY NO. 2, LLC,
a Colorado limited liability company**

as Landlord

and

HACIENDA JALISCO FAMILY RESTAURANT, LLC, a Colorado limited liability company

as Tenant

ARTICLE 1: BASIC TERMS/DEFINITIONS

This Article One contains the Basic Terms and Definitions of this Lease between the Landlord and Tenant named below. Other Articles, Sections and Paragraphs of this Lease referred to in this Article One explain and define the Basic Terms and are to be read in conjunction with the Basic Terms.

Section 1.1 Date of Lease. January 1, 2025.

Section 1.2 Landlord. [REDACTED]
company.

Address of Landlord: [REDACTED]

Section 1.3 Tenant. Hacienda Jalisco Family Restaurant, LLC, a Colorado limited liability company ("Tenant").

Address of Tenant: [REDACTED]

Section 1.4 Property. That certain real property, including all improvements thereon, having the street address of 1220 E. Rainbow Boulevard (a/k/a 1220 E. Highway 50), Salida, Colorado, 81201 (the "Property"), legally described in the attached Exhibit A.

Section 1.5 Premises. Same as the Property (the "Premises").

Section 1.6 Commencement Date. January 1, 2025 (the "Commencement Date").

Section 1.7 Lease Term. A period of sixty (60) months, commencing on the Commencement Date and expiring on December 31, 2029 (the "Term" or "Initial Term").

Section 1.8 Pre-Condition to Delivery of Possession. Notwithstanding anything to the contrary in this Lease, prior to Landlord's delivery of possession of the Premises to Tenant, Tenant shall have provided Landlord with a promissory note in a form approved by Landlord [REDACTED]

Section 1.9 Existing License. Tenant acknowledges that (a) United Parcel Service, Inc., an Ohio corporation ("Licensee"), the lessor of the property depicted in blue on the attached Exhibit B (the "Licensee Property"), adjacent to the Premises on the north, holds a non-exclusive right and license (the "License") to access and enter upon, over and across that area of the Premises depicted in red on the attached Exhibit B (the "Access License Area") for the purposes of pedestrian and vehicular ingress, egress and access to and from the Licensee Property between the hours of 9 p.m. and 10 a.m. Mountain Time and (b) this Lease is subject to the License. Tenant shall not interfere with or obstruct in any manner Licensee's exercise of its rights under the License. Tenant shall promptly notify Landlord upon becoming aware of Licensee's use of the Access License Area outside the hours referenced in the preceding sentence.

Section 1.10 Options to Extend.

(a) If this Lease has not been terminated and no material default or breach then exists, Tenant shall have one option (the "Option") to extend the Term for a period of five (5) years (the "Renewal Term"). Tenant must exercise an Option, if at all, by giving two hundred and seventy (270) days' written notice (the "Option Notice") to Landlord prior to the last day of the Initial Term. If the Option is effectively exercised, then the Term and all terms, covenants and conditions of this Lease shall be extended with the same force and effect as if the Renewal Term had originally been included in the Term, except that (i) Base Rent during such Renewal Term shall be at Fair Market Rent as determined pursuant to Section 1.10(b), but in any event shall begin at a rate not less than the Base Rent scheduled for the final month of the Initial Term with not less than 3% annual escalations thereafter, (ii) there shall be no further right to renew the Term, (iii) no allowances, abatements or other financial concessions shall apply, (iv) the Security Deposit shall be adjusted to bear the same relationship to Base Rent as was originally agreed, and (v) Landlord may require a change to the types and/or amounts of insurance coverages to conform to what Landlord or its affiliates then require in connection with new leases; provided, however, that a Renewal Term shall not commence, at Landlord's option, despite an effective Option Notice, if Tenant shall be in material breach or default at any time thereafter and prior to commencement of such Renewal Term. If Tenant does not exercise an Option as provided in this Section 1.10, then Tenant shall be deemed to have waived the same.

(b) "Fair Market Rent" shall mean the fair market annual base rent payable from time to time for leased property comparable to the Premises, taking into consideration all relevant factors including, without limitation, creditworthiness of tenant; location, size, type, classification, and quality of premises, building, and project; annual or other periodic rental escalations; brokerage commissions payable (or not payable); the applicable rent commencement date; and applicable concessions (i.e. improvement allowances and free rent), if any. If Landlord and Tenant have not agreed on Fair Market Rent within thirty (30) days of an Option Notice, then Fair Market Rent shall be determined as follows: within thirty (30) days thereafter, each party shall give written notice to the other setting forth the name and address of an Appraiser (hereinafter defined) selected by such party who has agreed to act in such capacity to determine Fair Market Rent. Each party shall pay the fees and expenses related to its respective Appraiser. If either party fails to timely select an Appraiser, Fair Market Rent shall be determined by the Appraiser selected by the other party. Each Appraiser shall independently make his or her determination of Fair Market Rent and provide notice of the same to the other party within ninety (90) days of the Option Notice. If the difference between the two determinations is ten percent (10%) or less of the higher determination, then the average between the determinations shall be Fair Market Rent. If the difference is greater than ten percent (10%) of the higher determination, then the two Appraisers shall, within thirty (30) days of the date the second determination is submitted to the parties, designate a third Appraiser. The sole responsibility of the third Appraiser will be to determine which of the determinations made by the first two Appraisers is more accurate. The third Appraiser shall have no right to propose a middle ground or any modification of either of the determinations made by the first two Appraisers. The third Appraiser's choice shall be submitted to the parties within thirty (30) days after his or her selection. Such determination shall bind both of the parties and shall establish Fair Market Rent. Each party shall pay equal shares of the fees and expenses of the third Appraiser. "Appraiser" shall mean a real estate broker licensed in the State of Colorado who has been regularly engaged in such capacity in the business of commercial leasing in the Salida, Colorado, market for at least ten (10) years immediately preceding such person's appointment hereunder and not then representing Landlord or Tenant. As used in this Lease, "Term," "term of this Lease" and similar terms shall refer to the Initial Term together with the Renewal Term, if any.

Section 1.11 Permitted Use. Tenant may use and occupy the Premises solely for operation of a restaurant specializing in and serving Mexican food under the trade name of "Hacienda Jalisco" ("Permitted Use"). No other use of the Premises shall be permitted without the express written consent of

Landlord, to be granted or withheld in its sole discretion. Tenant shall not cause or permit the Premises to be used in any way which constitutes a violation of any law, ordinance (including but not limited to zoning ordinances) or governmental regulation, license, permit or order, or which constitutes a nuisance or waste. Tenant's use of the Premises shall be subject to and shall not violate any applicable CC&Rs or other restrictions of record. Tenant shall obtain, pay for and comply with all permits required for Tenant's occupancy of the Premises and operation of its business (including but not limited to any liquor license) and shall promptly take all actions necessary to comply with all applicable statutes, ordinances, rules, regulations, codes, orders, decrees and requirements (collectively, "Laws") regulating the use by Tenant of the Premises, including but not limited to, all Environmental Laws (defined below), the Occupational Safety and Health Act and similar state and local Laws, and all food safety Laws. During the Term, Tenant shall continuously conduct Tenant's Permitted Use in the Premises during customary business hours of businesses of like character in the county where the Premises is located and shall not discontinue use of any portion of the Premises except with the prior written consent of Landlord.

Section 1.12 Tenant's Guarantors. Leticia Pena Garcia and Raul Antonio Avila Gonzalez, each pursuant to the Unconditional Lease Guaranty attached as Exhibit C.

Section 1.13 Rent and Other Charges Payable by Tenant.

(a) **BASE RENT.** Base Rent beginning on the Commencement Date shall be as follows:



(b) **Triple Net.** This Lease is what is commonly called a "*Triple Net Lease*," it being understood and agreed that Landlord shall receive all Rent required by this Lease free and clear of any and all impositions, real estate and other taxes, liens, utility and other charges, insurance and other expenses of any kind or nature whatsoever in connection with, relating to or arising out of, in the broadest sense, the ownership and operation of the Premises. In addition to the Base Rent payable hereunder, Tenant shall pay to Landlord, as Additional Rent, any transaction privilege tax, gross receipts tax, sales tax, rent tax or any like tax (but not federal or state income tax) presently or hereafter levied, assessed, or imposed by any governmental authority upon or measured by any rents, charges or other payments required to be paid under this Lease. In addition to the Base Rent, Tenant shall also pay certain operating costs concerning, relating to or arising out of the Premises as described in Article Four, Article Six or elsewhere in this Lease.

(c) **Other Periodic Payments.** Other periodic payments that are the responsibility of Tenant include: Real Property Taxes (see Sections 4.01 and 4.06); Personal Property Taxes (see Section 4.02); Utilities (see Section 4.03); Insurance Premiums (see Sections 4.04 and 4.05); and, Maintenance, Repairs and Alterations (see Article Six), including all applicable rental and privilege taxes on said periodic payments.

Section 1.14 Additional Rent. All charges payable by Tenant to Landlord under this Lease other than Base Rent are called "Additional Rent." Unless this Lease expressly provides otherwise, Tenant shall pay all Additional Rent then due with the next monthly installment of Base Rent. The terms "rent" or "Rent" shall mean Base Rent and Additional Rent.

Section 1.15**Section 1.16**

(a)

(b)

(c)

ARTICLE 2: LEASE TERM

Section 2.1 Lease of Premises for the Term. For and in consideration of the Rent and other sums hereinafter reserved, and upon the covenants and conditions hereof, Landlord does hereby lease the Premises to Tenant, and Tenant hereby leases the Premises from Landlord, for the Term. The Term is for the period stated in Section 1.07 and shall begin and end on the dates specified in Section 1.07, unless the beginning or end of the Term is changed under any provision of this Lease. The Commencement Date shall be the date specified in Section 1.06 for the beginning of the Lease Term, unless advanced or delayed under any provision of this Lease.

Section 2.2 Holding Over. Tenant shall vacate the Premises upon the expiration or earlier termination of this Lease. Tenant shall reimburse Landlord for and indemnify Landlord against all damages which Landlord incurs from Tenant's delay in vacating the Premises. If Tenant does not vacate the Premises upon the expiration or earlier termination of this Lease and Landlord thereafter accepts Rent from Tenant, Tenant's occupancy of the Premises shall be a "month-to-month" tenancy, subject to all of the terms of this Lease, except that the Base Rent then in effect shall be increased by one hundred fifty percent (150%). Landlord's right to collect such rent shall be in addition to and shall not preclude concurrent, alternative or successive exercise of any other rights or remedies available to Landlord.

ARTICLE 3: BASE RENT

Section 3.1 Time and Manner of Payment. Upon execution of this Lease, Tenant shall pay Landlord the Base Rent and Additional Rent due for the first full month of the Lease Term, and for any initial partial month thereof if the Commencement Date is not the first day of a calendar month ("Initial Rent Payment Upon Execution"). Any such initial partial month Base Rent and Additional Rent shall be calculated on a prorated basis by multiplying the Base Rent and Additional Rent amounts applicable for the first full month of the Lease Term by a fraction, the numerator of which shall be the actual number of days from the Commencement Date to the end of month and the denominator of which shall be the total number of days in the month. Beginning on the first day of the second full month of the Lease Term and on the first day of each month thereafter, Tenant shall pay Landlord the Base Rent and Additional Rent, in advance, without offset, deduction or prior demand. The Base Rent and Additional Rent shall be payable at Landlord's address or at such other place as Landlord may designate in writing. Any payments of Base Rent and Additional Rent for any fractional calendar month shall be prorated as provided above.

(a) **Late Charges.** Tenant's failure to pay Rent promptly may cause Landlord to incur unanticipated costs. The exact amount of such costs is impractical or extremely difficult to ascertain. Therefore, if Landlord does not receive any rent payment within five (5) days after it becomes due, Tenant shall pay Landlord a late charge equal to five percent (5%) of the overdue amount. The parties agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of such late payment. Such late charge shall be in addition to and not in lieu of any other remedy of Landlord hereunder.

(b) **Interest on Past Due Obligations.** Any amount owed by Tenant to Landlord which is not paid when due shall bear interest at the rate of eighteen percent (18%) per annum from the due date of such amount. However, interest shall not be payable on late charges to be paid by Tenant under this Lease. The payment of interest on such amounts shall not excuse or cure any default by Tenant under this Lease. If the interest rate specified in this Lease is higher than the rate permitted by law, then the interest rate is hereby decreased to the maximum legal interest rate permitted by law. Such interest shall be in addition to and not in lieu of any other remedy of Landlord hereunder.

Section 3.2 Security Deposit. Upon the execution of this Lease, in addition to payment of the Initial Rent Payment Upon Execution, Tenant shall deposit with Landlord a cash Security Deposit in the amount set forth in Section 1.15, as security for the full performance by Tenant of its obligations hereunder. If Tenant defaults under any provision hereof, Landlord shall be entitled, at its option, to apply or retain all or any part of the Security Deposit for the payment of any Base Rent, Additional Rent, other sum owing by Tenant to Landlord, or any amount which Landlord may become obligated to spend because of Tenant's default, or to compensate Landlord for any loss or damage which Landlord may suffer because of Tenant's default. If any portion of the Security Deposit is so used or applied, Tenant shall, within five (5) days after written demand therefor, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its full amount. Tenant's failure to do so shall be a material default under this Lease. Landlord shall not be required to keep the Security Deposit separate from its other accounts, and no trust relationship is created with respect to the Security Deposit. The Security Deposit shall be held in a non-interest-bearing account of Landlord. If Tenant fully performs every provision of this Lease to be performed by it, then the Security Deposit or any balance thereof shall be returned to Tenant at the expiration of the Term of this Lease or any period of holding over. Landlord's rights with respect to the Security Deposit shall be in addition to and shall not preclude concurrent, alternative or successive exercises of any other rights or remedies available to Landlord.

Section 3.3 Rental/Privilege Taxes. Tenant shall pay Landlord any and all privilege, commercial rental tax, transactional, excise or other taxes (not including Landlord's income taxes) imposed or levied by any taxing authority against Landlord for, or on Landlord's right to receive or the receipt by Landlord of, Base Rent, Additional Rent and any other charges or sums payable by Tenant under this Lease, said taxes to be paid and due at the time provided for payment of said Base Rent, Additional Rent or other sums or charges by Tenant. As of the Commencement Date, the rental tax is not applicable.

ARTICLE 4: OTHER CHARGES PAYABLE BY TENANT

Section 4.1 Real Property Taxes.

(a) **Real Property Taxes.** In addition to the Base Rent, Tenant shall pay to Landlord (who shall pay to the taxing authority) all real property taxes on the Property (including any fees, taxes or assessments against, or as a result of, any tenant improvements installed on the Property by or for the benefit of Tenant) during the Lease Term in accordance with Section 4.06. Landlord shall reimburse Tenant for any real property taxes paid by Tenant covering any period of time prior to or after the Lease Term.

(b) **Definition of "Real Property Tax."** "Real Property Tax" means: (i) any fee, license fee, license tax, business license fee, commercial rental tax, levy, charge, assessment, penalty or tax imposed by any taxing authority against the Property; (ii) any tax against Landlord's business of leasing the Property; (iii) any tax or charge for fire protection, streets, sidewalks, road maintenance, refuse or other services provided to the Property by any governmental agency; (iv) any tax imposed upon this transaction or based upon a re-assessment of the Property due to a change of ownership, as defined by applicable law, or other transfer of all or part of Landlord's interest in the Property; and (v) any charge or

fee replacing any tax previously included within the definition of real property tax. "Real Property Tax" does not, however, include Landlord's federal or state income or franchise taxes.

- (c) Intentionally deleted.

Section 4.2 Personal Property Taxes.

(a) Tenant shall pay all taxes charged against trade fixtures, furnishings, equipment, or any other personal property belonging to Tenant. Tenant shall use Tenant's best efforts to have personal property taxed separately from the Property and pay such taxes directly to the taxing authority.

(b) If any of Tenant's personal property is taxed with the Property, Tenant shall pay Landlord the taxes for the personal property together with the next due installment of Base Rent.

Section 4.3 Utilities and Services to the Premises. Tenant shall transfer all utility accounts into its name and pay, directly to the appropriate supplier, the cost of all utilities and services supplied to the Premises (including without limitation, as applicable, natural gas, heat, light, power, sewer, telephone, internet, water, refuse disposal, janitorial services and other utilities and services supplied to the Premises).

Section 4.4 Insurance Policies.

(a) **Liability Insurance.** During the Lease Term, Tenant shall maintain a policy of commercial general liability insurance (sometimes known as broad form commercial general liability insurance) insuring Tenant against liability for bodily injury, property damage (including loss of use of property) and personal injury arising out of the operation, use or occupancy of the Premises, with an endorsement for liquor liability. Tenant shall name Landlord and upon notification by Landlord to Tenant, Landlord's members, managers, trustees, officers, employees, agents and subagents, and such other related parties as Landlord may request, individually and collectively, as additional insureds under such policy. Tenant shall also name any lender whose loan is secured by a loan against the Property. The initial amount of such insurance shall be Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate and shall be subject to commercially reasonable periodic increase consistent with the increases required by other landlords of similar buildings, similar premises and similar tenants in similar markets. The liability insurance obtained by Tenant under this Section 4.04(a) shall (i) be primary and non-contributing; (ii) contain cross-liability clauses; and (iii) insure Landlord against Tenant's performance under Sections 5.06 and 12.01. The amount and coverage of such insurance shall not limit Tenant's liability nor relieve Tenant of any other obligation under this Lease. Tenant shall be liable for payment of any deductible amount under Tenant's insurance policies maintained pursuant to this Section 4.04. Landlord may also obtain and maintain commercial general liability insurance in an amount and with coverage determined by Landlord insuring Landlord against liability arising out of ownership, operation, use or occupancy of the Premises. The policy obtained or maintained by Landlord shall not be contributory and shall not provide primary insurance for the Premises. Tenant shall also obtain such other insurance and in such amounts as may from time to time be reasonably required by Landlord against other insurable hazards which at the time are customarily insured against in the case of premises similarly situated in Chaffee County, Colorado, with due consideration for the height and type of building and improvements, their construction, use and occupancy.

(b) **Property Insurance.** During the Lease Term, Landlord shall maintain policies of insurance covering loss of or damage to the Premises in the full amount of its replacement value. Such policy may contain an Inflation Guard Endorsement and Boiler and Machinery Endorsement and provide protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, special extended perils (Special Form), sprinkler leakage and any other perils which

Landlord deems reasonably necessary. Landlord shall have the right to obtain flood and earthquake insurance if required by any lender holding a security interest in the Property. Landlord shall not obtain insurance for Tenant's fixtures or equipment or any tenant improvements on the Premises. Tenant shall be liable for the payment of any deductible amount under Landlord's insurance covering damage to the Premises in an amount not to exceed Ten Thousand Dollars (\$10,000). During the Lease Term, Landlord may also maintain a rental income insurance policy, with loss payable to Landlord, in an amount equal to one year's Base Rent, plus estimated real property taxes and insurance premiums. Tenant shall not do or permit anything to be done which invalidates any such insurance policies.

(c) **Tenant's Workers' Compensation Insurance.** Tenant shall keep and maintain a standard form workers' compensation and employer's liability insurance covering all Tenant's employees for injury or illness suffered in the course of or arising out of their employment, providing statutory workers' compensation benefits and employer's liability limits of not less than required by the laws of the State of Colorado.

(d) **Business Interruption Insurance.** Tenant shall maintain business interruption insurance in an amount sufficient to cover Tenant's Rent obligations under this Lease for a period of twelve (12) months.

(e) **Payment of Premiums.** Tenant shall pay all premiums for those insurance policies described in Sections 4.04(a) through (c) as to be maintained by Landlord in accordance with Section 4.05, except that Landlord shall pay all premiums for non-primary commercial general liability insurance which Landlord elects to obtain as provided in Section 4.04(a). If the Lease Term expires or is terminated before the expiration of an insurance policy described in Sections 4.04(a) through (c), the premium payable by Tenant shall be prorated.

(f) **General Insurance Provisions.**

(i) Before the Commencement Date, Tenant shall deliver to Landlord a copy of any policy of insurance which Tenant is required to maintain under this Section 4.04. At least thirty (30) days prior to the expiration of any such policy, Tenant shall deliver to Landlord a renewal of such policy. As an alternative to providing a policy of insurance, Tenant may provide Landlord a certificate of insurance, executed by an authorized officer of the insurance company, showing that the insurance which Tenant is required to maintain under this Section 4.04 is in full force and effect and containing such other information which Landlord reasonably requires.

(ii) Any insurance which Tenant is required to maintain under this Lease shall include a provision which requires the insurance carrier to give Landlord not less than thirty (30) days' written notice prior to any cancellation or modification of such coverage. If the insurer is unable or unwilling to provide such notice to Landlord, Tenant shall be required to provide notice not less than twenty (20) days prior to any cancellation or modification of such coverage.

(iii) If Tenant fails to deliver any policy, certificate or renewal to Landlord required under this Lease within the prescribed time period, or if any such policy is cancelled or modified during the Lease Term without Landlord's consent, then Landlord may obtain such insurance, in which case Tenant shall reimburse Landlord, within fifteen (15) days after receipt of a statement showing the cost of such insurance, for the cost of same along with interest at the rate provided in Section 3.01(b) from the dates of Landlord's payments.

(iv) Tenant shall maintain all insurance required under this Lease with companies holding an "A.M. Best's Financial Strength Rating" of A+ or better and a Best's Financial Size Category of VIII or better as set forth in the most current issue of "A.M. Best's Credit Rating" and

that are authorized to do business in Colorado. Coverage must be written on an occurrence basis and shall be maintained without interruption from the Commencement Date until the date of termination of this Lease. Tenant acknowledges that the insurance described in this Section 4.04 is for the primary benefit of Landlord. Landlord makes no representation as to the adequacy of such insurance to protect Landlord's or Tenant's interests.

(v) Landlord and Tenant each hereby waive any and all rights of recovery against the other, and against the officers, employees, members, agents or representatives of the other, for loss of or damage to the Premises, its property or the property of others under its control, if such loss or damage is covered by any insurance policy in force (whether or not described in this Lease) at the time of such loss or damage (or would have been covered had the insurance required by this Lease been carried). Each policy of property insurance obtained by Landlord or Tenant pursuant to the provisions of this Lease shall include a waiver of the insurer's right of subrogation against Landlord or Tenant (as the case may be) and shall contain an endorsement to the effect that any loss payable under such policy shall be payable notwithstanding any act or negligence of Landlord or Tenant (as the case may be), or any agent, contractor, employee or invitee of Landlord or Tenant (as the case may be), which might, absent such agreement, result in the forfeiture of payment for such loss. Tenant shall, upon obtaining the policies of insurance required pursuant to this Section 4.04, give notice to its insurance carrier or carriers that a waiver of subrogation is contained in this Section 4.04(e)(v) of this Lease and shall obtain, at Tenant's expense, an appropriate waiver of subrogation endorsement from such insurer(s). If a party either does not insure for full replacement value or fails to obtain the insurance required hereunder, the same shall not affect this waiver.

(vi) None of the requirements contained herein as to the types, limits, or Landlord's approval of insurance coverage to be maintained by Tenant are intended to, and shall not in any manner, limit, qualify, or quantify the liabilities and obligations assumed by Tenant under this Lease or any other agreement with the Landlord, or otherwise provided by law.

(vii) Failure of Tenant to provide insurance as herein required or failure of Landlord to require evidence of insurance or to notify Tenant of any breach by Tenant of the requirements of this Section 4.04 shall not be deemed to be a waiver of any of the terms of this Lease, nor shall the same be deemed to be a waiver of the obligation of Tenant to defend, protect, indemnify, and hold harmless Landlord and/or other parties as required in this Lease. The obligation to procure and maintain any insurance required by this Lease is a separate responsibility of Tenant and independent of the duty to furnish a copy or certificate of such insurance policies.

Section 4.5 Impounds for Insurance Premiums. Tenant shall deposit with Landlord, together with each payment of Base Rent, an amount equal to one-twelfth (1/12) of the annual insurance premiums payable by Tenant on insurance to be maintained by Landlord under this Lease, as reasonably estimated by Landlord from time to time. If these deposits by Tenant exceed the actual insurance premiums for a given year, the excess shall be credited against the next installment of Additional Rent due from Tenant. If these deposits are less than the actual amount of insurance premiums for a given year, Tenant shall pay the balance upon written notice from Landlord. Landlord may adjust the amount of the monthly deposit from time to time. Landlord shall not be required to pay interest on such deposits or to keep them separate from Landlord's funds, and such deposits shall be considered part of the rent payable by Tenant hereunder. If Tenant defaults under this Lease, Landlord may apply any funds in the impound account to any obligation then due under this Lease. The initial monthly deposit for insurance premiums shall be **\$700.00/month**.

Section 4.6 Impounds for Real Property Taxes. Tenant shall deposit with Landlord, together with each payment of Base Rent, an amount equal to one-twelfth of the annual Real Property Taxes to be levied against the Property, as reasonably estimated by Landlord from time to time. If these

deposits by Tenant exceed the actual real property taxes for a given year, the excess shall be credited against the next installment of Additional Rent due from Tenant. If these deposits are less than the actual amount of real property tax for a given year, Tenant shall pay the balance upon written notice from Landlord. Landlord may adjust the amount of the monthly deposit from time to time. Landlord shall not be required to pay interest on such deposits or to keep them separate from Landlord's funds, and such deposits shall be considered part of the rent payable by Tenant hereunder. If Tenant defaults under this Lease, Landlord may apply any funds in the impound account to any obligation then due under this Lease. The initial monthly deposit for real property taxes shall be **\$775.00/month**.

ARTICLE 5: USE OF PREMISES

Section 5.1 Permitted Use. Tenant may use the Premises only for the Permitted Use set forth in Section 1.11.

Section 5.2 Manner of Use/Compliance with Laws. Tenant shall not cause or permit the Premises to be used in any way which constitutes a violation of any law, ordinance, or governmental regulation or order, which constitutes a nuisance or waste or which would cause an increase in insurance rates for the Premises or Property. Tenant shall be responsible for ensuring that its use of the Premises is permitted by all applicable zoning and land use regulations and restrictions of record. Tenant shall obtain and pay for all permits required for Tenant's occupancy of the Premises and its operations and shall promptly take all actions necessary to comply with all applicable laws, rules, regulations, ordinances and other requirements of a governmental agency or body regulating Tenant's operations and the use by Tenant of the Premises, including the Occupational Safety and Health Act and all Environmental Laws. Tenant shall further be responsible to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12181, et seq.) and all regulations promulgated thereunder (the "ADA"), as provided in Section 5.09.

Section 5.3 Waste, Nuisance, Etc. Tenant shall not commit or permit any waste or nuisance on the Premises or in any manner deface or injure the Premises.

Section 5.4 Signs, Exterior, Etc. Tenant may not install signage at the Premises except with the prior written consent of Landlord, which may be granted or withheld in its sole discretion. Tenant shall not install any objects upon the roof or exterior of the Premises. Failure to comply with this Section 5.04 shall be a material breach of this Lease.

Section 5.5 Hazardous Materials.

(a) As used in this Lease, the term "Hazardous Material(s)" means: (i) those substances included within any one or more of the terms "hazardous materials," "hazardous wastes," "hazardous substances," "extremely hazardous substances," "industrial wastes," and "pollutants" and "contaminants," as those terms are defined under any Environmental Law (defined below); (ii) petroleum and petroleum products, including, without limitation, crude oil and any fractions thereof, gasoline, diesel fuel and other petroleum hydrocarbons; (iii) natural gas, synthetic gas and any mixtures thereof; (iv) asbestos and or any material which contains any hydrated mineral silicate, including, without limitation, chrysotile, amosite, crocidolite, tremolite, anthophyllite and/or actinolite, whether friable or non-friable; (v) polychlorinated biphenyl ("PCBs") or PCB-containing materials or fluids; (vi) per- and polyfluoroalkyl substances ("PFAS") or PFAS-containing materials or fluids; (vii) radon; (viii) urea formaldehyde; (ix); lead, paints, solvents, cyanide, DDT, printing inks, acids, pesticides, ammonia compounds; (x) any other hazardous, toxic, corrosive, ignitable, explosive, flammable, infectious, carcinogenic, mutagenic, dangerous, reactive or radioactive substance, material, pollutant, contaminant, chemical or waste; and (xi) any other substance with respect to which any Environmental Law or governmental authority requires investigation, monitoring, reporting or remediation or is subsequently found to have adverse effects on the environment or the health and safety of persons. "Release" means

any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of any Hazardous Substances. "Environmental Law" means, as amended and in effect from time to time, any federal, state or local law, statute, ordinance, code, rule, regulation, judicial decision, or the judgment, order or decree of a governmental authority, arbitrator or other private adjudicator by which Tenant or the Property is bound, relating to, or imposing liability or standards of conduct or requiring action concerning, the protection of the environment (including without limitation, as to reporting, discharge, spillage, storage, uncontrolled loss, seepage, filtration, disposal, removal, use or existence of Hazardous Materials) or the effect of the environment on human health, including, without limitation, the Comprehensive Environmental Response, Compensation & Liability Act of 1980, the Resource, Conservation & Recovery Act of 1976, the Emergency Planning and Community Right-to-Know Act of 1986, the Clean Water Act, Colorado environmental statutes, and all rules and regulations adopted and guidelines promulgated pursuant to the foregoing.

(b) Tenant shall not cause or permit any Hazardous Material to be generated, produced, brought upon, used, stored, treated or disposed of in or about the Premises by Tenant, its agents, employees, contractors, subtenants, invitees or licensees without the prior written consent of Landlord, to be granted or withheld in its sole discretion. In no event shall Landlord be required to consent to the installation or use of any storage tanks in or on the Premises.

(c) To the extent Tenant is allowed to or otherwise stores or uses any Hazardous Materials in or about the Premises, Tenant shall be responsible for any and all costs, penalties and fines incurred for any environmental contamination and subsequent remediation at the Premises caused by such storage and use of Hazardous Materials. If Tenant, its agents, employees, contractors, subtenants, invitees or licensees, causes or permits a Release of Hazardous Materials or otherwise contaminates the Premises, Tenant shall forthwith cause such contamination to be fully corrected and remediated at Tenant's expense. Tenant, following the expiration or termination of this Lease, shall be allowed access to the Premises only to the extent necessary to remove or otherwise correct and remediate any such environmental contamination and shall conduct no gainful business activity whatsoever at the Premises. The provisions of this Section 5.05 shall survive the expiration or any termination of this Lease.

(d) Without limiting the generality of the foregoing, any flammable materials used or stored by Tenant on the Premises must be used and stored in accordance with all applicable state, federal and local laws and regulations, including without limitation, Environmental Laws.

Section 5.6 Indemnity. To the fullest extent permitted by law, Tenant shall indemnify, defend, protect and hold Landlord harmless for, from, and against any and all costs (including, without limitation, attorneys' fees and court costs), claims, losses, damages, expenses, obligations or liabilities (collectively, "Claims") arising from: (a) Tenant's use of the Premises; (b) the conduct of Tenant's business or anything else done or permitted by Tenant to be done in or about the Premises, including any contamination of the Premises or any other property resulting from the presence, use or Release of any Hazardous Material caused or permitted by Tenant; (c) any breach or default in the performance of Tenant's obligations under this Lease; (d) any misrepresentation or breach of warranty by Tenant under this Lease; or (e) other acts or omissions of Tenant. Tenant shall defend Landlord against any such Claim at Tenant's expense with counsel reasonably acceptable to Landlord or, at Landlord's election, Tenant shall reimburse Landlord for any legal fees or costs incurred in connection with any such Claim. As a material part of the consideration to Landlord, Tenant assumes all risk of damage to property or injury to persons in or about the Premises arising from any cause, and Tenant hereby waives all claims in respect thereof against Landlord. As used in this Section 5.06, the term "Tenant" shall include Tenant's employees, agents, contractors, subtenants, customers, invitees and licensees, as applicable, and the term "Landlord" shall include Landlord's members, officers, employees, agents, contractors, representatives and lenders. The provisions of this Section 5.06 shall survive the expiration or any termination of this Lease.

Section 5.7 Landlord's Entry. Landlord or its agents may enter the Premises at all reasonable times to (i) show the Premises to potential buyers, investors, tenants or other parties, (ii) in connection with its plans and any future development of the Premises, (iii) to inspect the Premises or perform repairs as required or permitted by this Lease or (iv) for any other purpose Landlord reasonably deems necessary. Landlord shall give Tenant prior notice of such entry, except in the case of an emergency. Landlord may place customary "For Sale" or "For Lease" signs on the Premises, as applicable.

Section 5.8 Quiet Possession. If Tenant pays the Rent and complies with all other terms of this Lease, Tenant may occupy and enjoy the Premises for the full Lease Term, subject to the provisions of this Lease free from interference by Landlord. Landlord shall not be responsible for the acts of third parties, including other tenants, if any.

Section 5.9 Tenant ADA Obligations. At all times during the Term of this Lease, Tenant, at Tenant's sole cost and expense, shall cause all alterations and improvements on the Premises, Tenant's use and occupancy of the Premises, and Tenant's performance of its obligations under this Lease, to comply with the ADA, and all amendments, revisions or modifications thereto now or hereafter adopted or in effect in connection therewith and to take such actions and make such alterations and improvements as are necessary for such compliance; provided, however, that Tenant shall not make any such alterations or improvements except upon Landlord's prior written consent pursuant to the terms and conditions of this Lease. If Tenant fails to diligently take such actions or make such alterations or improvements as are necessary for such compliance, then Landlord may, but shall not be obligated to, take such actions and make such alterations and improvements and may recover all of the costs and expenses of such actions, alterations and improvements from Tenant as Additional Rent along with interest at the rate provided in Section 3.01(b) from the dates of Landlord's payments. Notwithstanding anything in this Lease to the contrary, no act or omission of Landlord, including any approval, consent or acceptance by Landlord or Landlord's agents, employees or other representatives, shall be deemed an agreement, acknowledgment, warranty or other representation by Landlord that Tenant has complied with the ADA or that any action, alteration or improvement by Tenant complies or will comply with the ADA or shall constitute a waiver by Landlord of Tenant's obligations to comply with the ADA under this Lease or otherwise.

ARTICLE 6: CONDITION OF PREMISES; MAINTENANCE, REPAIRS AND ALTERATIONS

Section 6.1 Existing Conditions. The electrical and plumbing systems at the building located on the Premises shall be warranted by the Landlord for a period of three (3) months following the Commencement Date. Except as stated in the preceding sentence, Tenant accepts the Premises "as is," in its condition as of the execution of this Lease, subject to all recorded deed restrictions, covenants, easements and other matters, laws, ordinances, and governmental regulations and orders. Tenant accepts the Premises subject to all apparent and hidden defects, regardless of whether such defects are known to Landlord. Tenant waives all claims for undisclosed defects, whether based on contract, tort, fraud, or otherwise. Except as set forth in the first sentence of this Section 6.01, Tenant acknowledges that neither Landlord nor its agents have made any representation or warranty, express or implied, in fact or by law, as to the condition or size of the Premises, the suitability of the Premises for Tenant's intended use, or the compliance of the Premises with the ADA or other applicable laws, rules and regulations, including but not limited to zoning laws. Tenant represents and warrants that Tenant has made its own inspection of and inquiry regarding the condition and suitability of the Premises and is not relying on any representations of Landlord or any agent of Landlord with respect thereto.

Section 6.2 Exemption of Landlord from Liability. Landlord shall not be liable for any damage or injury to the person, business (or any loss of income therefrom), goods, wares, merchandise,

raw materials, work-in-progress or other property of Tenant, Tenant's employees, agents, contractors, subtenants, invitees or licensees or any other person in or about the Premises, whether such damage or injury is caused by or results from: (a) fire, steam, electricity, water, gas, wind, lightning or rain; (b) the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures or any other cause; (c) conditions arising in or about the Premises or in the vicinity of the Premises, or from other sources or places; or (d) any act or omission of any other person, including but not limited to theft or vandalism. Landlord shall not be liable for any such damage or injury even though the cause of or the means of repairing such damage or injury are not accessible to Tenant.

Section 6.3 Landlord's Obligations. Landlord shall maintain in good condition and repair only the structural portions of the building located on the Premises, including exterior walls (excluding the interior faces thereof), structural elements of interior walls, floor slab, foundation, roof and roof membrane. Tenant shall reimburse Landlord for the cost of such maintenance and repair as an item of Additional Rent upon receipt of an invoice of the same from Landlord. Tenant waives the benefit of any present or future law which might give Tenant the right to repair the Premises at Landlord's expense or to terminate this Lease due to the condition of the Premises.

Section 6.4 Tenant's Obligations.

(a) Except as otherwise expressly provided in Section 6.03 (Landlord's Obligations), Tenant shall maintain all portions of the Premises, interior and exterior, in good order, condition and repair and in a state of cleanliness, including but not limited to: HVAC units; mechanical, electrical, gas and plumbing systems; fire sprinklers; parking lot, including striping; landscaping; hoods; coolers; grease traps; interior walls (nonstructural elements) and interior faces of exterior walls; floors and ceilings; doors and windows, including frames and glass; and signs. Tenant shall be responsible for all snow removal at the Premises. Tenant shall properly dispose of all garbage and refuse and not allow the same to accumulate at the Premises. Tenant shall maintain the inside of the Premises at a temperature sufficiently high to prevent freezing of water in pipes and fixtures. Tenant shall be responsible for termite and pest extermination and shall arrange for such services to be provided to the Premises at regular intervals. Tenant shall contract with a servicer or servicers approved by Landlord to service the following every three (3) months: HVAC units; hoods; coolers; and grease traps. If any portion of the Premises or any system or equipment in the Premises which Tenant is obligated to repair cannot be fully repaired or restored, then Tenant shall promptly replace such portion of the Premises or system or equipment in the Premises (upon notice to and receipt of Landlord's approval for capital replacements as defined under generally accepted accounting principles), regardless of whether the benefit of such replacement extends beyond the Lease Term. If any part of the Premises is damaged or destroyed by any act or omission of Tenant, its employees, agents, contractors, subtenants, customers, invitees or licensees (including but not limited to grease damage to the roof), then Tenant shall pay Landlord the cost of repairing or replacing such damaged property, whether or not Landlord would otherwise be obligated to pay the cost of maintaining or repairing such property. All repairs, maintenance, improvements, and replacements shall be done with new materials or equipment in a quality and workmanlike manner in accordance with prevailing standards of quality and in accordance with all applicable building codes. It is the intention of Landlord and Tenant that at all times Tenant shall maintain the Premises in an attractive, first-class and fully operative condition and that Tenant shall turn the Premises over to Landlord in such condition at the expiration or termination of this Lease.

(b) Tenant shall fulfill all of Tenant's obligations under this Section 6.04 at Tenant's sole expense. If Tenant fails to maintain, repair or replace the Premises, its systems or equipment as required by this Section 6.04, then Landlord may, upon ten (10) days' prior notice to Tenant (except that no notice shall be required in the case of an emergency), perform such maintenance, repair or replacement on behalf of Tenant. In such case, Tenant shall reimburse Landlord for all costs incurred in performing

such maintenance, repair or replacement immediately upon demand along with interest at the rate provided in Section 3.01(b) from the dates of Landlord's payments, plus fifteen percent (15%) to cover Landlord's time and overhead.

Section 6.5 Alterations, Additions, and Improvements.

(a) Tenant shall not make any alterations, additions, or improvements to the Premises without Landlord's prior written consent, to be granted or withheld in Landlord's sole discretion. All alterations, additions, and improvements shall be done in a good and workmanlike manner, in conformity with applicable laws and regulations, and by a licensed contractor approved by Landlord. Landlord may require Tenant to provide demolition and/or lien and completion bonds in form and amount satisfactory to Landlord. Tenant shall promptly remove any alterations, additions, or improvements constructed in violation of this Section 6.05(a) upon Landlord's written request. Upon completion of any such work, Tenant shall provide Landlord with "as built" plans, copies of all construction contracts, and proof of payment for all labor and materials including appropriate lien releases. Landlord shall have no responsibility or liability for any death or injury to persons, including but not limited to Tenant, Tenant's officers, directors, members, employees, agents, personnel, contractors, invitees, licensees and/or any third persons in or upon the Premises, or for damage to property caused by alterations, additions or improvements made to the Premises by Tenant, whether or not made pursuant to Landlord's prior written consent as required herein.

(b) Tenant shall pay when due all claims for labor and material furnished to the Premises for Tenant's alterations, additions, or improvements to the Premises. Tenant shall give Landlord at least twenty (20) days' prior written notice of the commencement of any work on the Premises. Tenant shall keep the Premises free and clear of any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Tenant. If any such lien is filed against the Premises, then Tenant shall, within ten (10) days thereafter, cause the lien to be fully discharged by either paying the obligation secured thereby or obtaining and recording a payment bond in accordance with applicable law. Tenant is not authorized to act for or on behalf of Landlord as its agent, or otherwise, for the purpose of constructing any improvements to the Premises, and neither Landlord nor Landlord's interest in the Premises shall be subject to any obligations incurred by Tenant. Landlord shall be entitled to record and post on the Premises during the course of any construction by Tenant such notices of non-responsibility as Landlord deems appropriate for the protection of Landlord and its interest in the Premises. If Tenant fails to fully discharge any such lien within a 10-day period, then Landlord may (but shall not be so obligated) pay the claim secured by such lien, and the amount so paid, together with any costs and reasonable attorneys' fees incurred in connection therewith, shall be immediately due and owing from Tenant to Landlord, and Tenant shall pay the same to Landlord with interest at the rate provided in Section 3.01(b) from the dates of Landlord's payments. Should any claims of lien be filed against the Premises or any action affecting the title to the same be commenced, the party receiving notice of such lien or action shall forthwith give the other party written notice thereof.

(c) Unless Landlord requires the removal thereof upon the termination of this Lease, all alterations, additions or improvements to the Premises by Tenant (except movable furniture, equipment and trade fixtures) shall become a part of the Premises and the property of Landlord immediately upon installation thereof. Notwithstanding the foregoing, Tenant shall remove at the expiration or termination of this Lease all movable trade fixtures and personal property belonging to Tenant. Any alteration, addition or improvement which Tenant is permitted or required to remove hereunder, together with any movable furniture, equipment and trade fixtures belonging to Tenant, shall be removed at Tenant's expense upon the expiration or termination of this Lease, and Tenant shall promptly repair any damage to the Premises caused by such removal. In no event, however, shall Tenant remove any of the following materials or equipment (which shall be deemed Landlord's property) without Landlord's prior written consent: any power wiring or power panels; lighting or lighting fixtures; wall

coverings; window coverings; carpets or other floor coverings; heaters, air conditioners or any other heating or air conditioning equipment; fencing or security gates; or other similar building operating equipment.

Section 6.6 Condition upon Termination or Expiration. Upon the expiration or termination of this Lease, except as otherwise provided in Section 6.05(c) or in this Section 6.06, Tenant shall surrender the Premises and all alterations, additions and improvements to Landlord, broom clean and in the same condition as received, except for ordinary wear and tear which Tenant was not otherwise obligated to remedy, repair or replace under any provision of this Lease. In addition, Landlord may require Tenant to remove any alterations, additions or improvements made by or on behalf of Tenant (whether or not made with Landlord's consent) prior to the expiration of this Lease and to restore the Premises to its prior condition, all at Tenant's expense. However, Tenant shall not be obligated to repair any damage which Landlord is required to repair under Article Seven (Damage or Destruction) or Article Eight (Condemnation).

ARTICLE 7: DAMAGE OR DESTRUCTION

Section 7.1 Partial Damage to Property. Tenant shall notify Landlord in writing immediately upon the occurrence of any damage to the Premises. If the Premises suffers only minor damage (i.e., less than Twenty Thousand Dollars (\$20,000.00) to repair), then this Lease shall remain in effect and Landlord shall repair the damage as soon as reasonably possible, subject to Section 7.03. Landlord is not required to repair any damage to Tenant's fixtures, equipment, or improvements.

Section 7.2 Substantial or Total Destruction. If the Premises is substantially or totally destroyed by any cause whatsoever (i.e., the damage to the Premises is greater than minor damage as described in Section 7.01), and regardless of whether Landlord receives any insurance proceeds, this Lease shall terminate as of the date the destruction occurred. Notwithstanding the preceding sentence, if the Landlord determines that the Premises can be rebuilt or repaired within nine (9) months after the date of destruction, then Landlord may elect to rebuild or repair the Premises, in which case this Lease shall remain in full force and effect. Landlord shall notify Tenant of such election within forty-five (45) days after Tenant's notice of the occurrence of total or substantial destruction. If Landlord so elects, Landlord shall rebuild or repair the Premises at Landlord's sole expense, except that if the destruction was caused by an act or omission of Tenant, its employees, agents, contractors, subtenants, invitees or licensees, Tenant shall pay Landlord the difference between the actual cost of rebuilding and any insurance proceeds received by Landlord.

Section 7.3 Uninsured Loss. Notwithstanding the other sections of this Article Seven, if the insurance proceeds received by Landlord are not sufficient to pay the entire cost of repair (except for the deductible amount), or if the cause of the damage is not covered by the insurance policies which Landlord maintains under Section 4.04(b), then Landlord may elect either to (i) repair the damage as soon as reasonably possible, provided that Landlord has determined that the damage may be repaired within nine (9) months of its occurrence, in which case this Lease shall remain in full force and effect, or (ii) terminate this Lease as of the date the damage occurred. Landlord shall notify Tenant within forty-five (45) days after receipt of notice of the occurrence of the damage whether Landlord elects to repair the damage or terminate this Lease. If Landlord elects to repair the damage, and if the damage was due to an act or omission of Tenant, its employees, agents, contractors, subtenants, invitees or licensees, then Tenant shall pay the difference between the actual cost of repair and any insurance proceeds received by Landlord. If Landlord elects to terminate this Lease, then Tenant may elect to continue this Lease in full force and effect, in which case Tenant shall repair any damage to the Premises. In such case, Tenant shall pay the cost of such repairs, except that upon satisfactory completion of such repairs, Landlord shall deliver to Tenant any insurance proceeds received by Landlord for the damage repaired by Tenant. Tenant shall give

Landlord written notice of such election within ten (10) days after receiving Landlord's termination notice.

Section 7.4 Damage Near End of Term. If the damage to the Premises occurs during the last six (6) months of the Lease Term and such damage will require more than thirty (30) days to repair, either Landlord or Tenant may elect to terminate this Lease as of the date the damage occurred, regardless of the sufficiency of any insurance proceeds. The party electing to terminate this Lease shall give written notification to the other party of such election within fifteen (15) days after Tenant's notice to Landlord of the occurrence of the damage. Landlord shall retain any insurance proceeds.

Section 7.5 Abatement of Rent. If the Premises is destroyed or damaged, then rent shall abate in proportion to the interference with Tenant's use of the Premises until the damage or destruction is repaired.

Section 7.6 Waiver. Tenant waives the protection of any statute, code or judicial decision which grants a tenant the right to terminate a lease in the event of the substantial or total destruction of the Premises. Tenant agrees that the provisions of this Article Seven shall govern the rights and obligations of Landlord and Tenant in the event of any substantial or total destruction of the Premises.

ARTICLE 8: CONDEMNATION

If all or any portion of the Premises is taken under the power of eminent domain or sold under the threat of that power (either of which is called "Condemnation"), then this Lease shall terminate as to the part taken or sold on the date the condemning authority takes title or possession, whichever occurs first. If it is not feasible for Tenant to continue to conduct its business on the Premises after the Condemnation, then either Landlord or Tenant may terminate this Lease as of the date the condemning authority takes title or possession, by delivering written notice to the other within ten (10) days after receipt of written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority takes title or possession). If neither Landlord nor Tenant terminates this Lease, then this Lease shall remain in effect as to the portion of the Premises not taken, except that the Base Rent shall be reduced in the proportion that the value of the Premises taken bears to the whole Premises. Any Condemnation award or payment shall be distributed in the following order: (a) first, to any ground lessor, mortgagee or beneficiary under a deed of trust encumbering Landlord's fee interest in the Premises, the amount of its interest in the Premises; (b) second, to Tenant, only the amount of any award specifically designated for loss of or damage to Tenant's removable trade fixtures or removable personal property; and (c) third, to Landlord, the remainder of such award, whether as compensation for reduction in the value of the leasehold, the taking of the fee, or otherwise. Tenant assigns to Landlord any claim for the value of Tenant's leasehold estate. If this Lease is not terminated, Landlord shall repair any damage to the Premises caused by the Condemnation, except that Landlord shall not be obligated to repair any damage for which Tenant has been reimbursed by the condemning authority, and Landlord shall have no obligation to spend more on such repairs than Landlord receives for severance damages. If the severance damages received by Landlord are not sufficient to pay for such repair, then Tenant shall have the right either to terminate this Lease or make such repair at Tenant's expense.

ARTICLE 9: ASSIGNMENT AND SUBLETTING

Section 9.1 Landlord's Consent Required. No right to occupy all or any portion of the Premises and no portion of Tenant's interest in this Lease may be acquired by any other person or entity, whether by sale, assignment, mortgage, sublease, transfer, encumbrance, operation of law, or act of Tenant (each, a "Transfer"), without Landlord's prior written consent, to be granted, withheld or conditioned in its sole discretion. Any attempted Transfer without consent shall be void and shall constitute a non-curable breach of this Lease. If Tenant is an entity, then a cumulative Transfer of fifty percent (50%) or more of

the ownership interests in Tenant or a cumulative Transfer of a controlling interest of the voting interests in Tenant shall be deemed a Transfer and shall require Landlord's consent.

Section 9.2 No Release of Tenant. No transfer permitted by this Article Nine, whether in a single transaction or series of transactions, or with or without Landlord's consent, shall release Tenant or any Guarantor or change Tenant's primary liability to pay the rent and to perform all other obligations of Tenant under this Lease. Landlord's acceptance of rent from any other person is not a waiver of any provision of this Article Nine. Consent to one Transfer is not a consent to any subsequent Transfer. If Tenant's transferee defaults under this Lease, then Landlord may proceed directly against Tenant and/or any Guarantor without pursuing remedies against the transferee. Landlord may consent to subsequent assignments or modifications of this Lease by Tenant's transferee, without notifying Tenant or obtaining its consent. Such action shall not relieve Tenant's liability under this Lease.

Section 9.3 Documentation. Tenant's request for consent to any Transfer shall set forth in writing (i) the details of the proposed Transfer, (ii) name and address of the prospective transferee, (iii) reasonable satisfactory information about its business and business history, (iv) its proposed use of the Premises, (v) banking, financial and other credit information, (vi) general references sufficient to enable Landlord to determine the proposed transferee's creditworthiness and character, (vii) financial details of the proposed Transfer (e.g., the term of and the rent and any security deposit payable under any proposed assignment or sublease), and (viii) any other information Landlord deems relevant. Tenant's request for consent to a Transfer shall be accompanied by a fee of One Thousand Dollars (\$1,000.00) to defray Landlord's costs in reviewing the request, and Tenant shall additionally reimburse Landlord immediately upon request for its reasonable attorneys' fees incurred in connection therewith.

Section 9.4 No Merger. No merger shall result from Tenant's sublease of the Premises under this Article Nine, Tenant's surrender of this Lease or the termination of this Lease in any other manner. In any such event, Landlord may terminate any or all subtenancies or succeed to the interest of Tenant as sublandlord under any or all subtenancies.

Section 9.5 Excess Rent. If Tenant receives any consideration (including rent, lump sum payments, or other consideration however denominated) from any transferee of the Premises over and above the Base Rent payable to Landlord (plus any brokerage fees payable on account of said transfer, assignment, or sublease), then Tenant shall pay one-half of such excess consideration to Landlord within ten (10) days after receipt, in each case. If a portion of the Premises is subleased, then excess consideration shall be calculated on a proportionate basis based on the percentage of the area of the Premises subleased.

ARTICLE 10: DEFAULTS; REMEDIES

Section 10.1 Covenants and Conditions. Tenant's performance of each of Tenant's obligations under this Lease is a condition as well as a covenant. Tenant's right to continue in possession of the Premises is conditioned upon such performance. Time is of the essence in the performance of all covenants and conditions.

Section 10.2 Defaults. Tenant shall be in material default under this Lease:

- (a) If Tenant abandons the Premises;
- (b) If Tenant fails to pay Rent or any other charge when due hereunder and such failure continues for five (5) days thereafter;

(c) If Tenant fails to perform any of Tenant's non-monetary obligations under this Lease for a period of thirty (30) days after written notice from Landlord; provided, that if more than thirty (30) days are required to complete such performance, Tenant shall not be in default if Tenant commences such performance within such thirty (30)-day period and thereafter diligently pursues its completion and completes the same in no more than sixty (60) days. However, Landlord shall not be required to give such notice if Tenant's failure to perform constitutes a non-curable breach of this Lease. The notice required by this Section 10.02(c) is intended to satisfy any and all notice requirements imposed by law on Landlord and is not in addition to any such requirement.

(d) (i) if Tenant or Guarantor makes a general assignment or general arrangement for the benefit of creditors; (ii) if a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by or against Tenant or Guarantor and is not dismissed within thirty (30) days; (iii) if a trustee or receiver is appointed to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease and possession is not restored to Tenant within thirty (30) days; or (iv) if substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease is subjected to attachment, execution or other judicial seizure which is not discharged within thirty (30) days. If a court of competent jurisdiction determines that any of the acts described in this subparagraph (d) are not a default under this Lease, and a trustee is appointed to take possession (or if Tenant remains a debtor in possession) and such trustee or Tenant transfers Tenant's interest hereunder, then Landlord shall receive, as Additional Rent, the excess, if any, of the rent (or any other consideration) paid in connection with such assignment or sublease over the rent payable by Tenant under this Lease.

Section 10.3 Remedies. On the occurrence of any material default by Tenant, Landlord may, at any time thereafter, with or without notice or demand and without limiting Landlord in the exercise of any right or remedy which Landlord may have:

(a) Re-enter and terminate Tenant's right to possession of the Premises by any lawful means, in which case Tenant shall immediately surrender possession of the Premises to Landlord. In such event, Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default, including: (i) the unpaid Base Rent, Additional Rent and other charges and interest due at the time of termination of possession; (ii) the amount by which the Base Rent, Additional Rent and other charges and interest due after termination of possession until the time of the award exceeds the amount of such rental loss that Tenant proves Landlord could have reasonably avoided; (iii) the worth at the time of the award of the amount by which the unpaid Base Rent, Additional Rent and other charges which Tenant would have paid for the balance of the Lease Term after the time of award exceeds the amount of such rental loss that Tenant proves Landlord could have reasonably avoided; (iv) continuing interest on the amounts set forth in subparagraphs (i) and (ii) above at the rate of interest provided in Section 3.01(b); and (v) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to: any costs or expenses Landlord incurs in maintaining, repairing, or preserving the Premises after such default; the cost of recovering possession of the Premises; expenses of reletting, including necessary renovation or alteration of the Premises; any real estate commission paid or payable; and reasonable attorneys' fees incurred in connection with such default, including, but not limited to, in connection with the obtaining of relief from any stay in bankruptcy restraining any action to evict Tenant or the pursuing of any action with respect to Landlord's right to possession of the Premises. All such damages suffered (apart from Base Rent, Additional Rent and other charges payable hereunder) shall constitute pecuniary damages which must be reimbursed to Landlord prior to assumption of this Lease by Tenant or any successor to Tenant in any bankruptcy or other proceeding. As used in subpart (iii) above, the "worth at the time of the award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%);

(b) Terminate this Lease, and recover accrued and Base Rent, Additional Rent and other charges and interest and such other amounts as shall be permitted by law, including but not limited to, damages as specified in subparts (ii) through (v) of Section 10.03(a);

(c) Pursue recovery of any damages against any property, real or personal, subject to a security interest, mortgage, pledge, landlord's lien or other lien of Landlord provided by statute or provided for under the terms of this Lease in favor of Landlord against the property of Tenant; and/or

(d) Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the state in which the Premises is located. No remedy herein conferred upon Landlord shall be considered exclusive of any other remedy, and the same shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute, including, but not limited to, the right to maintain an action to recover all amounts due hereunder. Landlord may exercise its rights and remedies at any time, in any order, to any extent, and as often as Landlord deems advisable. No delay or omission of Landlord to exercise any right or power arising from any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein. No waiver of a default shall be effective unless it is in writing.

Section 10.4 No Acceptance of Surrender. No act or conduct of Landlord, whether consisting of the acceptance of the keys to the Premises, or otherwise, shall be deemed to be or constitute an acceptance by Landlord of the surrender of the Premises by Tenant prior to the expiration of the Term hereof, and such acceptance by Landlord of surrender by Tenant shall only flow from, and must be evidenced by, written acknowledgement of acceptance of surrender signed by Landlord.

Section 10.5 Removal of Tenant and Tenant's Property. Pursuant to any right of re-entry available to Landlord in this Section 10 or at law or in in equity, including limitation upon any abandonment or attempted surrender of the Premises before the scheduled expiration of the Term of this Lease, Landlord shall have the right to remove all persons from the Premises and shall have the right (but not the obligation) to: (a) deem all personal property located on or about the Premises to be abandoned; (b) remove all such personal property therefrom; (c) enforce any rights Landlord may have against such personal property; (d) store such personal property in any public or private warehouse or elsewhere at the cost and for the account of Tenant or the owner or owners thereof; and (e) dispose of all or part of such personal property in any manner permitted by any applicable Laws or in any other reasonable manner. Any and all costs or expenses incurred by Landlord in connection with any of the foregoing, including without limitation attorneys' fees and costs, shall be deemed to be reasonable and foreseeable damages incurred by Landlord as a result of Tenant's default under this Lease. Except as required by applicable Laws, Landlord shall have absolutely no duty of inquiry or investigation with respect to the legal owner of any such personal property. Tenant shall hold Landlord free and harmless from any liability for the removal, storage and/or disposal of any such personal property, whether of Tenant or any third party. Any such action by Landlord shall not be deemed to be an election by Landlord to terminate this Lease.

Section 10.6 Termination. Notwithstanding any other term or provision of this Lease to the contrary, no act by Landlord shall terminate this Lease except notice from Landlord to Tenant in writing affirming Landlord's intent to terminate this Lease.

Section 10.7 Tenant Property; Landlord Liens; Security Interests. In consideration of Landlord entering into this Lease of the Premises, Tenant hereby acknowledges the existence in favor of Landlord of a landlord's lien as provided for under A.R.S. § 33-361(D) and A.R.S. § 33-362. In addition, in accordance with the Uniform Commercial Code as adopted and in effect in Colorado, Tenant hereby grants to Landlord a security interest in and to: all materials, fixtures, equipment and personal property now or hereafter incorporated into the Premises by Tenant, including but not limited to trade fixtures and any and all other fixtures, equipment and personal property in which Tenant has an interest which are now

or may hereafter be appropriated for use on or located on the Premises (hereinafter collectively "Collateral"). Landlord, in addition to any other rights with respect to such Collateral, shall have any and all rights afforded to a secured party under the Colorado Uniform Commercial Code ("UCC"). Landlord is hereby authorized to file and/or record one or more financing statements as required or permitted under the UCC covering such Collateral.

Section 10.8 No Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than the rent or other sum due hereunder shall be deemed to be other than on account of the earliest rent or any other sum due and payable under this Lease, nor shall any endorsement or statement on any check or in any letter accompanying any check or payment as rent or other sum due and payable be deemed an accord and satisfaction, unless expressly agreed to, in writing, by Landlord. Landlord may accept any such check or payment without prejudice to Landlord's right to recover the balance of such rents or pursue any other remedy provided in this Lease.

ARTICLE 11: PROTECTION OF LENDERS

Section 11.1 Subordination. This Lease and Tenant's interest in the Premises shall be subject and subordinate to all mortgages, deeds of trusts or other security agreements which now or hereafter affect the Premises and to any and all advancements to be made thereunder and to all renewals, modifications, consolidations, replacements, and extensions thereof, whenever made or recorded. Tenant shall cooperate with Landlord and any lender which is acquiring a security interest in the Premises or this Lease. Tenant shall execute such further documents and assurances as such lender may require, provided that such documents stipulate that Tenant's right to quiet possession of the Premises during the Lease Term shall not be disturbed if Tenant pays the Rent and performs all of Tenant's obligations under this Lease and is not otherwise in default. If any beneficiary or mortgagee elects to have this Lease superior to the lien of its deed of trust or mortgage and gives written notice thereof to Tenant, then this Lease shall be deemed superior to such deed of trust or mortgage whether this Lease is dated prior or subsequent to the date of said deed of trust or mortgage or the date of recording thereof.

Section 11.2 Attornment. If Landlord's interest in the Premises is acquired by any beneficiary under a deed of trust, mortgagee, or purchaser at a foreclosure sale, then Tenant shall attorn to the transferee of or successor to Landlord's interest in the Premises and recognize such transferee or successor as Landlord under this Lease. Tenant waives the protection of any statute or rule of law which gives or purports to give Tenant any right to terminate this Lease or surrender possession of the Premises upon the transfer of Landlord's interest.

Section 11.3 Signing of Documents. Within ten (10) days after written request, Tenant shall sign and deliver any instrument or documents necessary or appropriate to evidence any such attornment or subordination or agreement to do so. If Tenant fails to do so within ten (10) days after written request, then Tenant hereby makes, constitutes and irrevocably appoints Landlord, or any transferee or successor of Landlord, the attorney-in-fact of Tenant to execute and deliver any such instrument or document.

Section 11.4 Tenant's Financial Condition. Within ten (10) days after written request from Landlord, Tenant shall deliver to Landlord such financial statements as Landlord reasonably requires to verify the net worth and net income of Tenant or any assignee, subtenant, or guarantor of Tenant. In addition, Tenant shall deliver to any lender or purchaser designated by Landlord any financial statements required by such lender or purchaser to facilitate the financing, refinancing, or sale of the Premises. Tenant represents and warrants to Landlord that each such financial statement is a true and accurate statement as of the date of such statement. All financial statements shall be confidential and shall be used only for the purposes set forth in this Lease.

Section 11.5 Estoppel Certificates.

(a) Upon Landlord's written request, Tenant shall execute, acknowledge and deliver to Landlord a written statement certifying: (i) that none of the terms or provisions of this Lease have been changed (or if they have been changed, stating how they have been changed); (ii) that this Lease has not been cancelled or terminated; (iii) the last date of payment of the Base Rent and other charges and the time period covered by such payment; (iv) that Landlord is not in default under this Lease (or, if Landlord is claimed to be in default, stating why); and (v) such other representations or information with respect to Tenant or this Lease as Landlord may reasonably request or which any prospective purchaser or encumbrancer of the Premises may require. Tenant shall execute and deliver such statement to Landlord within ten (10) days after Landlord's request. Landlord may give any such statement by Tenant to any prospective purchaser or encumbrancer of the Premises. Such purchaser or encumbrancer may rely conclusively upon such statement as true and correct.

(b) If Tenant does not deliver such statement to Landlord within such ten (10) day period, then Landlord, and any prospective purchaser or encumbrancer, may conclusively presume and rely upon the following facts: (i) that the terms and provisions of this Lease have not been changed except as otherwise represented by Landlord; (ii) that this Lease has not been cancelled or terminated except as otherwise represented by Landlord; (iii) that not more than one month's Base Rent or other charges have been paid in advance; and (iv) that Landlord is not in default under this Lease. In such event, Tenant shall be estopped from denying the truth of such facts.

ARTICLE 12: LEGAL COSTS

Section 12.1 Legal Proceedings. If any action for breach of or to enforce the provisions of this Lease is commenced, then the court in such action shall award to the party in whose favor a judgment is entered a reasonable sum as attorneys' fees and costs. The losing party in such action shall pay such attorneys' fees and costs. Tenant shall also indemnify Landlord against, protect, defend and hold Landlord harmless from all costs, expenses, demands and liability Landlord may incur if Landlord becomes or is made a party to any claim or action: (a) instituted by Tenant against any third party, or by any third party against Tenant, or by or against any person holding any interest under or using the Premises by license or consent of or agreement with Tenant; (b) for foreclosure of any lien for labor or material furnished to or for Tenant or such other person; (c) otherwise arising out of or resulting from any act or transaction of Tenant or such other person; or (d) necessary to protect Landlord's interest under this Lease in a bankruptcy proceeding, or other proceeding under Title 11 of the United States Code, as amended. Tenant shall defend Landlord against any such claim or action at Tenant's expense with counsel reasonably acceptable to Landlord or, at Landlord's election, Tenant shall reimburse Landlord for any legal fees or costs Landlord incurs in any such claim or action. The provisions of this Article 12 shall survive the expiration or any termination of this Lease.

Section 12.2 Landlord's Consent. Tenant shall pay Landlord's reasonable attorneys' fees incurred in connection with Tenant's request for Landlord's consent under Article Nine (Assignment and Subletting), or in connection with any other act which Tenant proposes to do and which requires Landlord's consent, in addition to any fee payable to Landlord.

ARTICLE 13: MISCELLANEOUS PROVISIONS

Section 13.1 Landlord's Liability; Certain Duties.

(a) As used in this Lease, the term "Landlord" means only the current owner or owners of the fee title to the Premises at the time in question. Each landlord is obligated to perform the obligations of Landlord under this Lease only during the time such landlord owns such interest or title. Any landlord which transfers its title or interest is relieved of all liability with respect to the obligations of Landlord under this Lease to be performed on or after the date of transfer. However, each landlord shall

deliver to its transferee all funds that Tenant previously paid if such funds have not yet been applied under the terms of this Lease.

(b) Tenant shall give written notice of any failure by Landlord to perform any of its obligations under this Lease to Landlord and to any mortgagee or beneficiary under any deed of trust encumbering the Premises whose name and address have been furnished to Tenant in writing. Landlord shall not be in default under this Lease unless Landlord (or such mortgagee or beneficiary) fails to cure such non-performance within sixty (60) days after receipt of Tenant's notice to Landlord specifying the nature of such default. However, if such non-performance reasonably requires more than sixty (60) days to cure, then Landlord shall not be in default if such cure is commenced within such sixty (60)-day period and thereafter diligently pursued to completion. In the event of a default by Landlord under this Lease, Tenant shall use reasonable efforts to mitigate its damages and losses arising from any such default.

(c) Notwithstanding any term or provision herein to the contrary, (i) the liability of Landlord for the performance of its duties and obligations under this Lease is limited to Landlord's interest in the Premises and shall in no event include any consequential, speculative or punitive damages of any kind or nature, and (ii) neither Landlord nor its partners, members, managers, shareholders, officers or other principals shall have any personal liability under this Lease.

Section 13.2 Severability. A determination by a court of competent jurisdiction that any provision of this Lease or any part thereof is illegal or unenforceable shall not cancel or invalidate the remainder of such provision or this Lease, which shall remain in full force and effect.

Section 13.3 Interpretation. The captions of the Articles or Sections of this Lease are to assist the parties in reading this Lease and are not a part of the terms or provisions of this Lease. Whenever required by the context of this Lease, the singular shall include the plural, and vice versa, and the masculine, feminine and neuter genders shall each include each of the others. In any provision relating to the conduct, acts or omissions of Tenant, the term "Tenant" shall include Tenant's agents, employees, contractors, invitees, subtenants, licensees, successors or others using the Premises with Tenant's expressed or implied permission. This Lease is the result of negotiations between Landlord and Tenant, and therefore the language contained in this Lease shall be construed as a whole according to its fair meaning and not strictly for or against either Landlord or Tenant. If there is more than one Tenant, then the obligations to be performed by Tenant are joint and several. References to Landlord's "sole discretion" shall be interpreted to mean Landlord's "sole and absolute" discretion.

Section 13.4 Incorporation of Prior Agreements; Modifications. This Lease is the only agreement between the parties pertaining to the lease of the Premises, and no other agreements are effective. All amendments to this Lease shall be in writing and signed by all parties. Any other attempted amendment shall be void. All prior and contemporaneous agreements, representations, and understandings of the parties, oral or written, pertaining to the subject matter hereof, are hereby superseded and merged herein.

Section 13.5 Notices. All notices required or permitted under this Lease or otherwise given between Landlord and Tenant shall be in writing and shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid or nationally recognized overnight delivery service. Notices to Tenant shall be delivered to the address specified in Section 1.03, except that upon Tenant's taking possession of the Premises, the Premises shall be Tenant's address for notice purposes. Except as provided above for notice to Tenant at the Premises, either party may change its notice address upon written notice to the other party.

Section 13.6 Business Day. The term "business day" as used in this Lease means any day except Saturday, Sunday or any other day on which commercial banks located in Salida, Colorado, are authorized or required by law or executive order to be closed for business.

Section 13.7 Waivers. All waivers must be in writing and signed by the waiving party. Landlord's failure to enforce any provision of this Lease or its acceptance of rent shall not be a waiver and shall not prevent Landlord from enforcing that provision or any other provision of this Lease in the future. No statement on a payment check from Tenant or in a letter accompanying a payment check shall be binding on Landlord. Landlord may, with or without notice to Tenant, negotiate such check without being bound to the conditions of such statement.

Section 13.8 Binding Effect; Choice of Law. This Lease binds any party who legally acquires any rights or interest in this Lease from Landlord or Tenant. However, Landlord shall have no obligation to Tenant's successor unless the rights or interests of Tenant's successor are acquired in accordance with the terms of this Lease. The laws of the state in which the Premises is located shall govern this Lease. The exclusive jurisdiction and venue for any action or proceeding brought by either party shall be the County Court of Chaffee County, Colorado, or the 11th Judicial District Court of Colorado.

Section 13.9 Entity Authority. If Tenant is a corporation, partnership or limited liability company, each person signing this Lease on behalf of Tenant represents and warrants that he has full authority to execute and deliver this Lease and that this Lease binds the corporation, partnership or limited liability company. If requested by Landlord, Tenant shall deliver to Landlord a certified copy of a resolution of Tenant's board of directors, partners, managers or members, as applicable, authorizing the execution of this Lease or other evidence of such authority reasonably acceptable to Landlord.

Section 13.10 Force Majeure. Landlord will have no liability to Tenant, nor will Tenant have any right to terminate this Lease or abate rent or assert a claim of partial or total actual or constructive eviction, because of Landlord's failure to perform any of its obligations in this Lease if the failure is due in part or in full to reasons beyond Landlord's reasonable control, including without limitation, strikes or other labor difficulties, inability to obtain necessary governmental permits and approvals (including building permits or certificates of occupancy), epidemics, war, riot, civil insurrection, accidents, acts of God and governmental preemption in connection with a national emergency (collectively referred to as "Force Majeure"). Except for the payment of Rent or other charges or sums due hereunder, Tenant shall not have liability to Landlord to the extent performance of an obligation hereunder is delayed or becomes impossible as a result of an event of Force Majeure.

Section 13.11 Execution of Lease. This Lease may be executed in counterparts and, when all counterpart documents are executed, the counterparts shall constitute a single binding instrument. Landlord's delivery of this Lease to Tenant shall not be deemed to be an offer to lease and shall not be binding upon either party until executed and delivered by both parties. A fully executed copy of this Agreement shall be treated as an original.

Section 13.12 Survival. All representations and warranties of Landlord and Tenant shall survive the termination of this Lease.

Section 13.13 Time is of the Essence. Time is of the essence for all provisions of this Lease.

Section 13.14 Independent Covenants. All covenants of Tenant under this Lease are independent and not contingent upon any covenant of Landlord under this Lease.

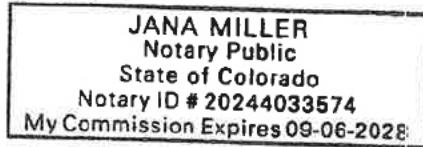
Section 13.15 No Third-Party Rights/Partnership. Except as expressly provided herein, no term or provision of this Lease is intended to or shall be for the benefit of any person not a party hereto, and no such other person shall have any right or cause of action hereunder. Nothing contained in this Lease shall create any partnership, joint venture, or other arrangement between Landlord and Tenant.

Section 13.16 OFAC. Each of Landlord and Tenant hereby represents its compliance with all applicable anti-money laundering laws, including, without limitation, the USA Patriot Act, and the laws administered by the United States Treasury Department's Office of Foreign Assets Control, including, without limitation, Executive Order 13224. Each of Landlord and Tenant further represents that (i) it is not, and it is not owned or controlled directly or indirectly by, any person or entity on the SDN List published by the United States Treasury Department's Office of Foreign Assets Control and (ii) it is not a person otherwise identified by government or legal authority as a person with whom a U.S. Person is prohibited from transacting business.

[signature page follows]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease Agreement to be executed and delivered by their duly authorized representatives as of the date written above.

Notary Jana Miller 1/16/25
09/06/2028



LANDLORD

Rangel Commercial Property No. 2, LLC, a Colorado limited liability company

By: Martine Rios
Name: Martine Rios
Its: Authorized Agent

TENANT

Hacienda Jalisco Family Restaurant, LLC, a Colorado limited liability company

By: Leticia Pena Garcia
Name: Leticia Pena Garcia
Its: Authorized Agent

By: Raul Antonio Avila Gonzalez
Name: Raul Antonio Avila Gonzalez
Its: Authorized Agent

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

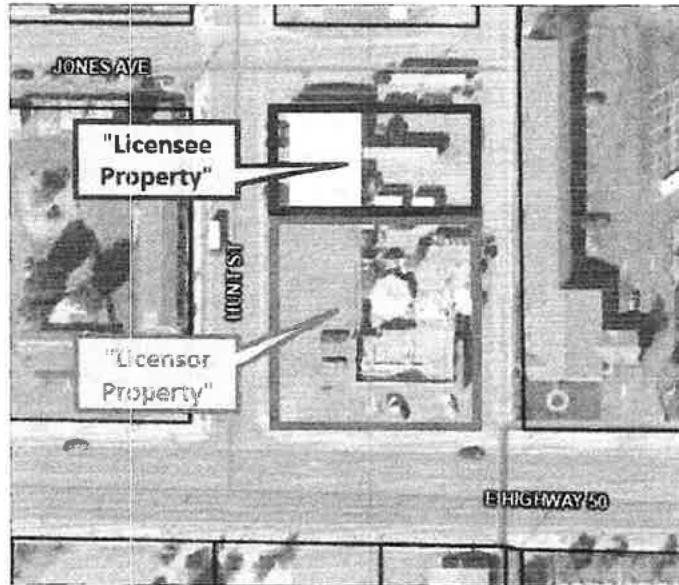
Lots 4, 5, 6, 7, 8 and 9, Block No. 28, ROBERD'S THIRD ADDITION to the Town (now City) of Salida, Chaffee County, Colorado, as set forth in the Warranty Deed recorded at Reception No. 496443 in the Official Records of Chaffee County.

Assessor's Parcel No: 380705428097

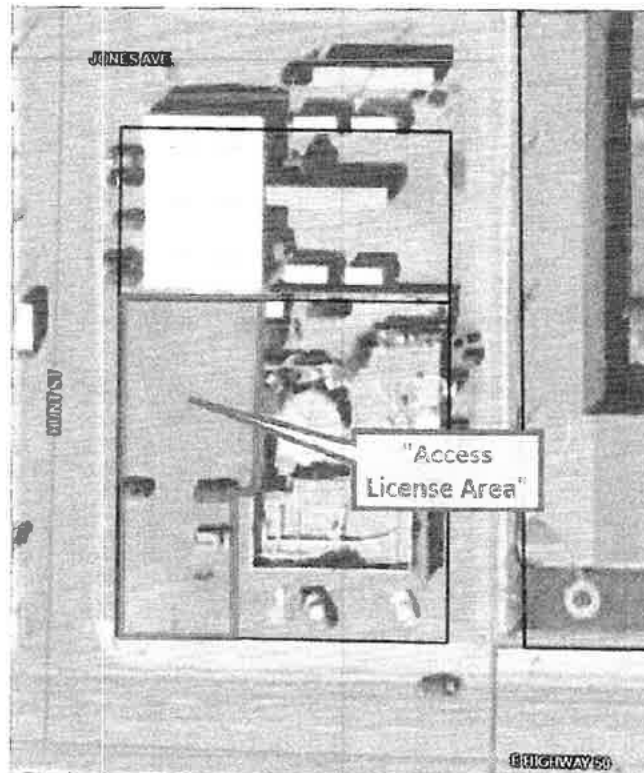
EXHIBIT B

DEPICTION OF LICENSEE PROPERTY AND ACCESS LICENSE AREA

Licensee Property



Access License Area





CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Administration	Christy Doon - City Administrator	March 4, 2025

AGENDA ITEM

Ordinance 2025 - 4, An Ordinance of the City Council of the City of Salida, Colorado, Granting a Non-Exclusive Franchise to Atmos Energy Corporation for the Purpose of Providing, Selling, and Delivering Natural Gas to the City and its Residents, and Approving a Gas Utility Franchise Agreement Concerning the Same, second reading and public hearing.

BACKGROUND

The current franchise agreement with Atmos Energy expired on October 1, 2023. The new agreement is attached. This document updates the terms of the agreement, including the new expiration date of April 3, 2040. The Fee of 5% of revenues derived annually is consistent with prior agreements.

STAFF RECOMMENDATION

Staff recommends Council approve the Ordinance.

FISCAL IMPACT

Historically the City received between \$234,408 and \$158,134 annually from Atmos.

MOTION

A City Councilmember should state "I move to _____ Ordinance 2025 - 4, An Ordinance of the City Council of the City of Salida, Colorado, Granting a Non-Exclusive Franchise to Atmos Energy Corporation for the Purpose of Providing, Selling, and Delivering Natural Gas to the City and its Residents, and Approving a Gas Utility Franchise Agreement Concerning the Same, on second reading", followed by a second and a roll call vote.

**CITY OF SALIDA, COLORADO
ORDINANCE NO. 04
(Series of 2025)**

**AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF SALIDA, COLORADO
GRANTING A NON-EXCLUSIVE FRANCHISE TO ATMOS ENERGY CORPORATION
FOR THE PURPOSE OF PROVIDING, SELLING, AND DELIVERING NATURAL GAS
TO THE CITY AND ITS RESIDENTS, AND APPROVING A GAS UTILITY FRANCHISE
AGREEMENT CONCERNING THE SAME**

WHEREAS, the City of Salida, Colorado (the "City") is a statutory city, duly organized and existing under the laws of the state of Colorado;

WHEREAS, consistent with C.R.S. §§ 31-32-101, *et seq.*, the City has the authority to grant franchises for use of the public right-of-way by ordinance;

WHEREAS, the Atmos Energy Corporation (the "Company") has previously been granted a non-exclusive franchise granting the Company the right to erect, construct, operate, and maintain a natural gas distribution system within the corporate boundaries of the City to provide natural gas service to persons, businesses, industries, governmental agencies, and the residents of the City;

WHEREAS, the Company seeks renewal of its non-exclusive franchise to continue providing natural gas distribution service within the City;

WHEREAS, the City and Company have negotiated a Utility Franchise Agreement, attached hereto as **Exhibit A** and incorporated herein by this reference (the "Franchise Agreement") that outlines the terms, conditions, and mutual covenants concerning the Company's provision of natural gas distribution service within the City, including the Company's use of public rights-of-way and dedicated public utility easements;

WHEREAS, the City Council for the City of Salida, Colorado (the "Council") desires to grant to Company, and Company desires to accept, the terms and conditions set forth in the Franchise Agreement;

WHEREAS, the public has had adequate notice and opportunity to comment on the Company's proposal to continue to provided electricity service within the City and a public hearing on approval of the Franchise Agreement was lawfully noticed and held before the Council; and

WHEREAS, consistent with State law the Council has determined that it is in the best interest of the City and its residents to grant a non-exclusive franchise to Company for the term provided in the Franchise Agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF SALIDA, COLORADO AS FOLLOWS:

Section 1. The foregoing recitals are hereby incorporated as conclusions, facts, determinations, and findings by the City Council.

Section 2. The City Council hereby approves the Franchise Agreement attached hereto as **Exhibit A**. The Mayor and other City officials are hereby authorized to execute the Franchise Agreement by and on behalf of the City.

Section 3. Severability: The provisions of this Ordinance are severable and the invalidity of any section, phrase, clause, or portion of this Ordinance as determined by a Court of competent jurisdiction shall not affect the validity or effectiveness of the remainder of the Ordinance.

Section 4. City officials are hereby authorized to take such action as appropriate to implement the Franchise Agreement.

Section 5. The City Council finds and declares that this Ordinance is promulgated and adopted pursuant to the City's police power to preserve and protect the public health, safety, and welfare of the City and its residents, and bears a rational relation to the legislative objects sought to be obtained.

INTRODUCED ON FIRST READING on this 18th day of February, 2025, ADOPTED and ORDERED PUBLISHED IN FULL in a newspaper of general circulation by the City Council on this 18th day of February, 2025, and set for second reading and public hearing on the 4th day of March, 2025.

INTRODUCED ON SECOND READING, FINALLY ADOPTED and ORDERED PUBLISHED BY TITLE ONLY, by the City Council on the 4th day of March, 2025.

City of Salida

Mayor Dan Shore

[SEAL]

ATTEST: _____
City Clerk

PUBLISHED IN FULL in the Mountain Mail after First Reading on the ____ day of _____, 20__, and BY TITLE ONLY, after final adoption on the ____ day of _____, 20__.

City Clerk/Deputy City Clerk

FRANCHISE AGREEMENT

This Franchise Agreement is entered into this __ day of _____, 2025 between the City of Salida, a Colorado statutory City and Atmos Energy Corporation, a Texas and Virginia corporation.

The parties, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

ARTICLE I

Definitions

For the purpose of this franchise, the following words and phrases shall have the meaning given in this Article. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined in this Article shall be given their common and ordinary meaning.

1.1 "City" refers to and is the City of Salida, Chaffee County, Colorado, and includes the territory as currently is or may in the future be included within the boundaries of the City of Salida.

1.2 "City Council" refers to and is the legislative body of the City of Salida.

1.3 "Company" refers to and is Atmos Energy Corporation, a Texas and Virginia corporation, and its successors and assigns.

1.4 "Distribution Facilities" refer to and are only those facilities reasonably necessary to provide gas within the City.

1.5 "Facilities" refer to and are all facilities reasonably necessary to provide gas into, within and through the City, including but not limited to, plants, works, systems, distribution lines, equipment, pipes, mains, underground links, gas

compressors, meters, meter reading devices, communication and data transfer equipment, control equipment, and gas regulator stations.

1.6 "Gas" or "Natural Gas" refers to and is such gaseous fuels as natural, artificial, synthetic, liquefied natural, liquefied petroleum, manufactured, hydrogen, or any mixture thereof.

1.7 "Other City Property" refers to the surface, the air space above the surface and the area below the surface of any property owned or hereafter owned by the City, that would not otherwise fall under the definition of Public Rights-of-Way, but which could provide a suitable location for the placement of Company facilities, as specifically provided in writing by the City as set forth in section 2.1 of this franchise. Other City Property includes parks and open space.

1.8 "Private Project" refers to any project which is not covered by the definition of public project.

1.9 "Public Project" refers to: (1) any public work or improvement within the City that is wholly or beneficially owned by the City; or (2) any public work or improvement within the City where 50 percent or more of the funding is provided by any combination of the City, the federal government, the State of Colorado, any Colorado county, or other political subdivision of the state of Colorado, but excluding all other entities established under C.R.S. tit. 32. Special District Act.

1.10 "Public Rights of Way" refer to and are streets, alleys, viaducts, bridges, roads, lanes, and easements in said City on and under which the right exists to install and maintain Facilities.

1.11 "PUC" refers to and is The Public Utilities Commission of the State of

Colorado or other authority succeeding to the regulatory authority of The Public Utilities Commission of the State of Colorado.

1.12 "Revenues" refer to and are those amounts of money which the Company receives from its customers within the City for the sale of Gas under rates, temporary or permanent, authorized by the PUC and represents amounts billed under such rates as adjusted for refunds, the net write-off of uncollectible accounts, corrections, or other regulatory adjustments.

ARTICLE II

Grant of Franchise

2.1 The City hereby grants to the Company, for the period specified and subject to the conditions, terms and provisions contained in this Agreement, the non-exclusive right to furnish, transport, sell, and distribute gas to the City and to all persons, businesses and industries within the City, the non-exclusive right to acquire, construct, install, locate, maintain, operate and extend into, within and through the City all facilities reasonably necessary to provide gas to the City and to all persons, businesses, and industries within the City and in the territory adjacent thereto; and the non-exclusive right to make reasonable use of all Public Rights of Way as may be necessary to carry out the terms of the Agreement.

2.2 Company Facilities in Other City Property as of the Effective Date of this Franchise. Company Facilities currently located in Other City Property shall be subject to the terms and conditions set forth in City license agreements, permits, or other written agreements granting the Company the right to place its Facilities in such Other City Property. To the extent that such Company Facilities in Other City Property are not specifically authorized by separate license agreements, permits or other written agreements, the Company may continue use of such

Company Facilities in Other City Property under the terms of this Franchise.

2.3 New Company Facilities in Other City Property. For all Other City Property, the City's grant to the Company of the right to locate Company Facilities in, on, over or across such Other City Property shall be subject to the Company's receiving from the City a revocable license, permit, or other agreement approving the location of such Company Facilities, which the City may grant or deny in its sole reasonable discretion; and (2) the terms and conditions of the use of such Other City Property shall be governed by this Franchise as may be reasonably supplemented in such revocable license, permit or other agreement to account for the unique nature of such Other City Property. Nothing in this subsection (C) shall modify or extinguish pre-existing Company property rights.

2.4 Terms of Franchise. The term of this franchise shall be for fifteen (15) years, beginning _____, 2025, and expiring _____, 2040.

ARTICLE III

Conditions and Limitations

3.1 Scope of Franchise. This grant shall extend to all areas within the corporate boundaries of the City as it is now or hereafter constituted that are within the Company's PUC-certificated service territory; however, nothing contained in this franchise shall be construed to authorize the Company to engage in activities other than activities consistent with the provision of gas service, nor does it affect the Company's rights and obligations pursuant to any certificate of public convenience and necessity granted by the PUC.

3.2 Subject to City Usage. The right to make reasonable use of Public Rights-of-Way to provide gas service to the City and its residents under this franchise is

subject to and subordinate to any City usage of said streets and public utility easements.

3.3 Prior Grants not Revoked. This grant does not, and is not intended to revoke any prior license, grant, or right to use the Public Right-of-Way or Other City Property.

3.4 Franchise not Exclusive. The rights granted by this franchise are not, and shall not be deemed to be, granted exclusively to the Company, and the City reserves the right to make or grant a gas franchise to any other person, firm, or corporation.

3.5 Police Powers. The Company expressly acknowledges the City's right to adopt, from time to time, in addition to the provisions contained herein, such laws, including ordinances and regulations, as it may deem necessary in the exercise of its governmental powers. If the City considers making any substantive changes in its local codes or regulations that in the City's reasonable opinion will significantly impact the rights granted pursuant to this franchise or Company's operations in the City, it will make a good faith effort to advise the Company of such consideration; provided, however, that lack of notice shall not be justification for the Company's noncompliance with any applicable local requirements. If the City makes a substantive change in its local code or regulations that significantly impacts the rights granted pursuant to this franchise or Company's operations in the City and Company may renegotiate this Agreement.

3.6 Regulation of Streets and Public Utility Easements. The Company expressly acknowledges the City's right to enforce applicable regulations concerning the Company's access to or use of the streets and public utility easements, including requirements for permits.

3.7 Compliance with Laws. The Company shall promptly and fully comply with all applicable laws, regulations, permits, and orders enacted by City.

ARTICLE IV

Franchise Fee

4.1 Franchise Fee. In consideration for the grant of this franchise, the Company shall collect and remit to the City a sum equal to five percent (5%) of the revenues derived annually from the sale of gas within the City, excluding the amount received from the City itself for gas service furnished it. Franchise fee payments shall be made in quarterly installments not more than thirty (30) days following the close of the quarter for which payment is to be made. Quarters shall end on March 31, June 30, September 30, and December 31. Payments at the beginning and end of the franchise shall be prorated. All payments shall be made to the City Finance Director.

4.2 Audit of Franchise Fee Payments.

(A) Access to Documents. The City Finance Director, or other representatives authorized by the City, shall have access to the books of the Company for the purpose of auditing or checking to ascertain that the franchise fee has been correctly computed, upon at least ten (10) business days' notice by the City. City agrees that any information marked by Company as confidential and proprietary shall be treated by the City as confidential and proprietary in accordance with applicable law, including the Colorado Open Records Act, § 24-72-203, C.R.S., to the extent that such statute applies.

(B) Company Response to Audit. If an audit contemplated by this section reveals the Company has underpaid the City, then City shall provide Company written notification regarding the existence of such underpayment, and Company shall proceed in good faith to verify the existence of the underpayment. Company shall have thirty (30) days within which to examine the City's findings. If Company agrees with the City's findings, it shall remit the amount of underpayment to City, plus interest on the past due amount computed at the rate set by the PUC for customer security deposits held by the Company within ten business (10) days after the end of the 30-day period. The cost of the audit shall be borne by the City unless the audit discloses that the Company has underpaid the franchise fee by 103% or more, in which case the reasonable costs of the audit shall be reimbursed to the City by the Company. If the Company disputes the underpayment, it shall provide the City with its formal response and make available documentation in support of its position at the end of the 30-day period. If an audit contemplated by this section reveals Company has overpaid the City, then Company shall provide City written notification regarding the existence of such overpayment, and City shall proceed in good faith to examine the Company's findings and determine if it agrees with the claim of an overpayment. The City shall have 30 days within which to examine the Company's findings. If City agrees with the Company's finding of an overpayment, it shall remit the amount of overpayment to Company within ten (10) days after the end of the 30-day period; provided however that if the overpayment exceeds \$5,000.00 the City may, in its discretion repay the overpayment in monthly installments over a period of time equal to the time period that the overpayments were made. If the parties are not able to agree on the findings of an underpayment or overpayment, each party reserves all rights it may have to collect on any

monies owed pursuant to this Franchise and/or any applicable law.

4.3 Correction of Franchise Fee Payments. In the event that either the City or the Company discovers that there has been an error in the calculation of the franchise fee payment to the City, it shall provide written notice to the other party of the error. If the party receiving written notice of error does not agree with the written notice of error, that party may challenge the written notice of error pursuant to Section 4.4 of this Article; otherwise, the error shall be corrected in the next monthly payment that has not yet been processed by the Company. However, if the error results in an overpayment of the franchise fee to the City, and said overpayment is in excess of \$5,000.00, credit for the overpayment shall be spread over the same period the error was undiscovered. All franchise fee underpayments shall be corrected in the next monthly payment, together with interest computed at the rate set by the PUC for customer security deposits held by the Company, from the date when due until the date paid. In no event shall either party be required to fund or refund any overpayment or underpayment made as a result of a Company error which occurred more than three (3) years prior to the discovery of the Company error.

4.4 Fee Disputes. Either party may challenge any written notification of error as provided for in Section 4.4 of this Article by filing a written notice to the other party within 30 days of receipt of the written notification of error. The written notice shall contain a summary of the facts and reasons for the party's notice. The parties shall make good faith efforts to resolve any such notice of error before initiating any formal legal proceedings for the resolution of such error.

4.5 Franchise Fee Payment in Lieu of Other Fees. Payment of the franchise fee by the Company is accepted by the City in lieu of any occupancy tax, license tax or similar tax, permit charge, inspection fee, assessment or excise upon the

pipes, mains, meters or other personal property of the Company or on the privilege of doing business or in connection with the physical operation thereof, but does not exempt the Company from any lawful taxation upon its real property or any other tax not related to the franchise or the physical operation thereof.

4.6. Change of Franchise Fee. Once during each calendar year of the franchise, the City Council, upon giving thirty (30) days' notice to the Company, may review and change the franchise fee that the City may be entitled to receive as a part of the franchise; provided, however, that the Council may only change the franchise fee amount such as to cause the City to receive a franchise fee under this franchise not greater than the franchise fee that the Company may pay to any other city or City in any other franchise under which the Company renders gas service in Colorado.

4.7. Contract Obligation. If the franchise fee specified in this Article is declared illegal, unconstitutional, or void for any reason by any court of proper authority, the Company is contractually bound to pay the City an amount that would be, as near as practicable, equivalent to the amount which would have been paid by the Company as a franchise fee hereunder, prior to such declaration.

ARTICLE V

Conduct of Business

5.1 The Company may establish, from time to time, such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and perform its obligations under this franchise; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the laws of the State of Colorado.

5.2 Tariffs on File. The Company shall keep on file in its nearest office copies of all its tariffs currently in effect and on file with the PUC. Said tariffs shall be available for inspection by the public.

5.3 Compliance with PUC Regulations. The Company shall comply with all rules and regulations adopted by the PUC.

5.4 Compliance with Company Tariffs. The Company shall furnish gas within the City to the City and to all persons, businesses, and industries within the City at the rates and under the terms and conditions set forth in its tariffs on file with the PUC.

5.5 Applicability of Company Tariffs. The City and the Company recognize that the lawful provisions of the Company's tariffs on file and in effect with the PUC are controlling over any inconsistent provision in this franchise dealing with the same subject matter. If PUC changes or voids any portion of this Agreement City and Company shall renegotiate this Agreement.

ARTICLE VI

Construction, Installation & Operation of Company Facilities

6.1 Location of Facilities. Company facilities shall not interfere with the City's water mains, sewer mains or other municipal and utility use of streets and other public places. Company facilities shall be located so as to cause minimum interference with public use of streets and other public places and shall be maintained in good repair and condition and in compliance with all federal, state and local statutes, ordinances, rules, and regulations.

6.2 Excavation and Construction. All construction, excavation, maintenance

and repair work done by the Company shall be done in a timely and expeditious manner that minimizes the inconvenience to the public and individuals. All such construction, excavation, maintenance and repair work done by the Company shall comply with all applicable local, state and federal codes including compliance with the City's standard permits applicable to work in the Public Rights-of-Way. The Company shall furnish to the City the plans for such work and shall obtain all necessary building permits and shall conform to all applicable zoning and subdivision regulations. Such plans shall be reviewed by the City to ascertain, inter alia, that the Company is in compliance with the following requirements: (1) that all applicable laws, including building and zoning codes and air and water pollution regulations, are complied with; (2) that aesthetic and good planning principles have been given due consideration and (3) that adverse impact on the environment has been minimized. The Company shall incorporate all reasonable changes requested by the City. The Company shall comply with the City's requests for reasonable and prompt action to remedy all damage to private property adjacent to streets or dedicated easements where the Company is performing construction, excavation, maintenance or repair work. The City reserves the right to restore property and remedy damages caused by Company activities at the expense of the Company in the event the Company fails to perform such work within a reasonable time after notice from the City and to charge the Company the cost of such restoration and remedial action and such charges shall be paid by the Company to the City within thirty (30) days.

6.3 Restoration. When the Company does any work in or affecting the Public Rights-of-Way or Other City Property, it shall, at its own expense, promptly remove any obstructions placed thereon or therein by the Company and restore such Public Rights-of-Way or Other City Property, to a condition that is substantially the same as existed before the work and meets applicable City standards for restoration contained within the City's standard Public Rights-of-Way permits. If

weather or other conditions do not permit the complete restoration required by this section, the Company may, with the approval of the City, temporarily restore the affected Public Rights-of-Way or Other City Property, provided that such temporary restoration is not at the City's expense, and provided further that the Company promptly undertakes and completes the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Upon the request of the City, the Company shall restore the Public Rights-of-Way or Other City Property to a better condition than existed before the work was undertaken, provided that the City shall be responsible for any incremental costs of such restoration if not required by then-current City standards and provided that the City seeks or grants, as applicable, any additional required approvals. If the Company fails to promptly restore the Public Rights-of-Way or Other City Property as required by this section, and if, in the reasonable discretion of the City immediate action is required for the protection of public health and safety, the City may restore such Public Rights-of-Way or Other City Property, or remove the obstruction therefrom; provided however, City actions do not interfere unreasonably with Company Facilities. The Company shall be responsible for the reasonable cost incurred by the City to restore such Public Rights-of-Way or Other City Property, or to remove any obstructions therefrom. In the course of its restoration of the Public Rights-of-Way or Other City Property under this section, the City shall not perform work on Company facilities unless specifically authorized by the Company in writing on a project-by-project basis and subject to the terms and conditions agreed to in such authorization.

6.4 Relocation of Company Facilities.

(A) *Relocation Obligation.* The Company shall temporarily or permanently remove, relocate, change, or alter the position of any Company facility (collectively, "relocate(s)," "relocation(s)," or "relocated") in Public Rights-of-Way at no cost or expense to the City whenever the City

determines such relocation is necessary for the completion of any Public Project. In the case of relocation that is necessary for the completion of any Public Project in an easement held by the Company or other third-party for the benefit of the Company (excluding City streets and public utility easements), the Company shall not be responsible for any relocation costs. For all relocations, the Company and the City agree to cooperate on the location and relocation of the Company facilities in the Public Rights-of-Way or Other City Property in order to achieve relocation in the most efficient and cost-effective manner possible. Notwithstanding the foregoing, once the Company has relocated any Company Facility at the City's direction, if the City requests that the same Company Facility be relocated within one year, the subsequent relocation shall not be at the Company's expense. Nothing provided herein shall prevent the Company from recovering its relocation costs and expenses from third parties.

(B) *Private Projects.* The Company shall not be responsible for the expenses of any relocation required by Private Projects, and the Company has the right to require the payment of estimated relocation expenses from the affected private party before undertaking the relocation.

(C) *Relocation performance.* The relocations set forth in 6.6(A) above shall be completed within a reasonable time with respect to the scope of the project, not to exceed ninety (90) days from the later of the date on which the City requests, in writing, that the relocation commence, or the date when the Company is provided all supporting documentation, subject to the parties' ability to negotiate a longer period given specific circumstances affecting the project. The Company shall notify the City within twenty (20) days of receipt of the request if the supporting documentation is insufficient to complete the project. The Company shall

receive an extension of time to complete a relocation where the Company's performance was delayed due to force majeure, the actions of a third party that is not a contractor or subcontractor or otherwise working on behalf of the Company, or the failure of the City to provide adequate supporting documentation. The Company has the burden of presenting evidence to reasonably demonstrate the basis for the delay. Upon written request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

(D) Completion. Each relocation shall be complete only when the Company actually relocates the Company Facilities, restores the relocation site in accordance with Section 6.3 of this Article or as otherwise agreed with the City, and removes from the site or properly abandons on-site (with City permission which shall not be unreasonably withheld or delayed) all unused facilities, equipment, material and other impediments.

(E) Scope of obligation. Notwithstanding anything to the contrary in this franchise, the Company shall not be required to relocate any Company Facilities from property: (a) owned by the Company in fee; or (b) in which the Company has a property right, grant, or interest, including without limitation an easement, but excluding public utility easements.

(F) Coordination. When requested in writing, the City and the Company shall meet to share information regarding coordination of anticipated projects that will require relocation of Company Facilities in the City. Such meetings shall be for the purpose of minimizing conflicts where possible and to facilitate coordination with any reasonable timetable established by the City for any public project. The City shall provide the

Company with one year's advance notice of any planned street repaving to the extent the City has such information. The Company shall make reasonable best efforts to complete any necessary or anticipated repairs or upgrades to Company Facilities that are located underneath the street within the one-year period if practicable.

(G) City revision of supporting documentation. Any revision by the City of supporting documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding facility relocation shall be deemed good cause for a reasonable extension of time to complete the relocation under this franchise.

(H) Delays. Should the City believe that the Company has failed to comply with any of its obligations contained in this Section, where the alleged delay has caused damages to be incurred by the City, the City will pursue its claim through the Company's internal claims process in an attempt to resolve the issues. The Company will process the claim in accordance with its policies and pay any amount the parties agree is due pursuant to the terms of a written settlement agreement. If the parties are unable to resolve the disputed issues through the Company's internal claims process, the City reserves all rights to seek compensation from the Company for any alleged damages and the Company reserves the right to assert no damages are owed to the City.

(I) Underground relocation. Underground facilities shall be relocated underground unless underground location is no longer the accepted standard for gas utilities. Above ground facilities shall be relocated above ground. Service to new areas shall be performed with Distribution Facilities located below ground, unless otherwise approved by the City.

6.5 Service to New Areas. If during the term of this franchise the boundaries of the City are expanded, the City will promptly notify Atmos in writing of any geographic areas annexed by the City during the term hereof ("Annexation Notice"). Any such Annexation Notice shall be sent to Atmos by certified mail, return receipt requested, or may be personally delivered in writing to Atmos and shall contain the effective date of the annexation, maps showing the annexed area and such other information as Atmos may reasonably require in order to ascertain whether there exist any customers of Atmos receiving natural gas service in said annexed area. To the extent there are such Atmos customers therein, then the gross revenues of Atmos derived from the sale and distribution of natural gas to such customers shall become subject to the franchise fee provisions hereof effective on the first day of Atmos' billing cycle immediately following Atmos' receipt of the Annexation Notice. The failure by the City to advise Atmos in writing through proper Annexation Notice of any geographic areas which are annexed by the City shall relieve Atmos from any obligation to remit any franchise fees to City based upon gross revenues derived by Atmos from the sale and distribution of natural gas to customers within the annexed area until City delivers an Annexation Notice to Atmos in accordance with the terms hereof.

6.6 Restoration of Service. In the event the Company's gas system, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore its system to satisfactory service within the shortest practicable time.

6.7 Supply and Quality of Service. The Company shall take all reasonable steps to make available an adequate supply of gas to provide service in the City. The Company's facilities shall be of sufficient quality, durability and redundancy to provide adequate and efficient gas service to the City.

6.8 Safety Regulations by the City. The City reserves the right to adopt, from time to time, reasonable regulations in the exercise of its police power which are necessary to ensure the health, safety, and welfare of the public, provided that such regulations are not in conflict of the rights granted herein. The Company agrees to comply with all such regulations, in the construction, maintenance and operation of its facilities and in the provision of gas within the City.

6.9 Inspection, Audit and Quality Control. The City shall have the right to inspect, at all reasonable times, any portion of the Company's system used to serve the City and its residents. The City also shall have the right to inspect and conduct an audit of Company records relevant to compliance with any terms of this Agreement at all reasonable times. The Company agrees to cooperate with the City in conducting the inspection and/or audit and to correct any discrepancies affecting the City's interest in a prompt and efficient manner.

6.10 City Not Required to Advance Funds. Upon receipt of the City's authorization for billing and construction, the Company shall extend its facilities to provide gas service to the City for municipal uses within the City limits or for any major municipal facility outside the City limits, without requiring the City to advance funds prior to construction.

ARTICLE VII

Purchase or Condemnation

7.1 City's Right to Purchase or Condemn. The right of City to construct, purchase or condemn any public utility works or ways, and the rights of the Company in connection therewith, as provided by the Colorado Constitution and statutes, are hereby expressly reserved.

7.2 Continued Cooperation by Company. In the event the City exercises its option to purchase or condemn, the Company agrees that, at the City's request, it will continue to supply any service it supplies under this franchise, for the duration of the term of this franchise pursuant to terms and conditions negotiated for such continued operation.

ARTICLE VIII

Removal of Company Facilities at End of Franchise

8.1. Limitations of Company Removal. In the event this franchise is not renewed at the expiration of its term or the Company terminates any service provided herein for any reason whatsoever, the City has not purchased or condemned the system and has not provided for alternative gas service, the Company shall not be required nor shall it have the right to remove said system pending resolution of the disposition of the system. The Company further agrees it will not withhold any temporary services necessary to protect the public and shall be entitled only to monetary compensation in no greater amount than it would have been entitled to were such services provided during the term of this franchise. However, in the event the obligation to maintain the facilities continues beyond the expiration of the franchise agreement, the Company and City shall negotiate the terms and conditions for such continued operation. Only upon receipt of written notice from the City stating that the City has adequate alternative gas sources to provide for the people of the City shall the Company be entitled to remove any or all of said systems in use under the terms of this franchise.

ARTICLE IX

Small Gas Production

9.1 Company to Purchase. The City expressly reserves the right to engage in

the production of gas. The Company agrees to negotiate for the purchase of City-produced gas in accordance with its tariffs and applicable Public Utilities Commission Rules and Regulations, provided that such gas is of equal quality, its source is reliable, it is produced in commercially marketable quantities, and its composition is compatible with other gas being purchased by the Company.

ARTICLE X

Termination and Cure

10.1 Notice / Cure / Remedies. Except as otherwise provided in this franchise, if a party (the "breaching party") to this franchise fails or refuses to perform any of the terms or conditions of this franchise (a "breach"), the other party (the "nonbreaching party") may provide written notice to the breaching party of such breach. Upon receipt of such notice, the breaching party shall be given a reasonable time, not to exceed thirty (30) days, in which to remedy the breach, or, if such breach cannot be remedied in thirty (30) days, such additional time as reasonably needed to remedy the breach, but not exceeding an additional thirty (30) day period, or such other time as the parties may agree. If the breaching party does not remedy the breach within the time allowed in the notice, the nonbreaching party may exercise the following remedies for such breach:

- (A) Specific performance of the applicable term or condition; and
- (B) Recovery of actual damages (excluding special or consequential damages) from the date of such breach incurred by the nonbreaching party in connection with the breach.

10.2 Termination of Franchise by City. In addition to the foregoing remedies, if

the Company fails or refuses to perform any material term or condition of this franchise (a "material breach"), the City may provide written notice to the Company of such material breach. Upon receipt of such notice, the Company shall be given a reasonable time, not to exceed ninety (90) days, in which to remedy the material breach or, if such material breach cannot be remedied in ninety (90) days, such additional time as reasonably needed to remedy the material breach, but not exceeding an additional ninety (90) day period, or such other time as the parties may agree. If the Company does not remedy the material breach within the time allowed in the notice, the City may, at its sole option, terminate this franchise. This remedy shall be in addition to the City's right to exercise any of the remedies provided for elsewhere in this franchise. Upon such termination, the Company shall continue to provide utility service to the City and its residents (and shall continue to have associated rights and grants needed to provide such service) until the City makes alternative arrangements for such service and until otherwise ordered by the PUC and the Company shall be entitled to collect from residents and shall be obligated to pay the City, at the same times and in the same manner as provided in this franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the Public Rights-of-Way.

10.3 Judicial Review. Any such termination shall be subject to judicial review as provided by law.

10.4 No Limitation. Except as provided herein, nothing in this franchise shall limit or restrict any legal rights or remedies that either party may possess arising from any alleged breach of this franchise.

ARTICLE XI

Indemnification of the City

11.1. City Held Harmless. The Company shall indemnify, defend, and save the City harmless from and against all liability or damage and all claims or demands whatsoever in nature arising out of the operations of the Company within the City pursuant to this franchise and the securing of and the exercise by the Company of the franchise rights granted in this Agreement and shall pay all reasonable expenses, including any reasonable attorney fees incurred by City in defense of any such claim or demand, arising therefrom. In fulfilling its obligation to defend and indemnify City, Company shall have the right to select defense counsel, subject to City's approval, which will not be unreasonably withheld. The City will provide prompt written notice to the Company of the pendency of any claim or action against the City arising out of the exercise by the Company of its franchise rights. The Company will be permitted, at its own expense, to appear and defend or to assist in defense of such claim. Notwithstanding any provision to the contrary, neither the City nor the Company shall be obligated to indemnify, defend or hold the other party harmless to the extent any claim, demand or lien arises out of or in connection with any negligent act or failure to act of the other party or any of its officers or employees. In the event of joint and concurrent negligence or fault of both the Company and the City, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Colorado without, however, waiving any governmental immunity available to the City under Colorado law and without waiving any of the defenses of the parties under Colorado law. If litigation arises between the parties, the substantially prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

11.2. Payment of Expenses Incurred by City in Relation to Agreement. At the

City's option, the Company shall pay in advance or reimburse the City for actual expenses incurred in the publication of notices and ordinances, and for photocopying of documents arising out of the negotiations or the process of obtaining the franchise.

11.3. Financial Responsibility. At the time of the execution of this Agreement, and from time to time at the City's request, not more frequently than annually, the Company shall submit to the City, as a confidential document, proof of its ability to meet its obligations under this Agreement, including its ability to indemnify the City as a required by this article. This proof may take the form of proof of insurance coverage, adequate funding of self-insurance, or the provision of a bond. The Company shall supply the City with a list of its insurance companies with the types of coverage, but not maximum levels of insurance. However, Company shall certify that such insurance provides a minimum of coverage equal to \$5,000,000. Said list shall be kept current by annual revisions during the term of the franchise and given to the City when requested. The City may require, from time to time, and the Company agrees to provide, additional reasonable proof of funding of the Company's indemnification obligations as a self-insured, if Company is acting as a self-insurer. Company shall cause its insurer to be required to notify City of any lapse or reduction in insurance coverage and Company shall produce to City evidence that it has completed this obligation.

11.4 Governmental Immunity. Nothing in this section or any other provision of this franchise shall be construed as a waiver of the notice requirements, defenses, immunities, and limitations the City may have under the Colorado Governmental Immunity Act (C.R.S. § 4-10-101 et seq.) or of any other defenses, immunities, or limitations of liability available to the City by law.

ARTICLE XII

Assignment; Saving Clause

12.1 Assignment. The Company shall not transfer or assign any rights under this franchise to a third party, excepting only corporate reorganizations of the company not including a third party, unless the City shall approve such transfer or assignment as required by law. Approval of the franchise or assignment shall not be unreasonably withheld by the City. However, City shall not be obligated to approve any assignment if Company is in default of any of its material obligations hereunder or if the Assignee is materially weaker than Company. For the purpose of this section, "materially weaker" means that the long-term unsecured debt rating of the Assignee is less than investment grade as rated by both S&P and Moody's. If the Assignee is materially weaker, the City may request additional documents and information reasonably related to the transaction and the legal, financial, and technical qualifications of the Assignee. Any such assignment or transfer shall require that said Assignee assume all obligations of Company be bound to the same extent as Company hereunder. If within the first 90 days after assignment to Assignee, City identifies a failure to comply with a material provision of this Franchise Agreement, City shall have the right to terminate this Franchise Agreement in accordance with the provisions of Article X.

11.2 Saving Clause. If a court of competent jurisdiction declares any portion of this franchise to be illegal or void, the remainder of the Agreement shall survive and not be affected thereby.

ARTICLE XIII

Force Majeure

Notwithstanding anything expressly or impliedly to the contrary contained herein, in the event Company is prevented, wholly or partially, from complying with any obligation or undertaking contained herein by reason of any event of force majeure, then, while so prevented, compliance with such obligations or undertakings shall be suspended, and the time during which Company is so prevented shall not be counted against Company for any reason. The term "force majeure," as used herein, shall mean any cause not reasonably within Company control and includes, but is not limited to, acts of God, strikes, lockouts, wars, terrorism, riots, orders, or decrees of any lawfully constituted federal, state or local body (other than the City); contagions or contaminations hazardous to human life or health; fires, storms, floods, wash-outs, explosions, breakages or accidents to machinery or lines of pipe; inability to obtain or the delay in obtaining rights-of-way, materials, supplies, or labor permits; and temporary failures of gas supply.

ARTICLE XIV

Amendments

14.1 **Proposed Amendments.** At any time during the term of this franchise, the City or the Company may propose amendments to this franchise by giving thirty (30) days' written notice to the other of the proposed amendment(s) desired, and both parties thereafter will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). However, nothing contained in this section shall be deemed to require either party to consent to any amendment proposed by the other party.

14.2 **Effective Amendments.** No alterations, amendments or modifications to this

franchise shall be valid unless executed by an instrument in writing by the parties, adopted with the same formality used in adopting this franchise, to the extent required by law. Neither this franchise, nor any term hereof, may be changed, modified or abandoned, in whole or in part, except by an instrument in writing, and no subsequent oral agreement shall have any validity whatsoever.

ARTICLE XV

Miscellaneous

15.1 **No Waiver**. Neither the City, nor the Company shall be excused from complying with any of the terms and conditions of this franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions, to insist upon or to seek compliance with any such terms and conditions.

15.2 **Successors and Assigns**. The rights, privileges, and obligations, in whole or in part, granted and contained in this franchise shall inure to the benefit of and be binding upon the Company, its successors and assigns, to the extent that such successors or assigns have succeeded to or been assigned the rights of the Company pursuant to Article XII of this franchise. Upon a transfer or assignment pursuant to Article XII, the Company shall be relieved from all liability from and after the date of such transfer.

15.3 **Third Parties**. Nothing contained in this franchise shall be construed to provide rights to third parties.

15.4 **Conflict of Interest**. The parties agree that no official, officer, or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and the Company further agrees not to hire or

contract for services any official, officer or employee of the City to the extent prohibited by law, including ordinances and regulations of the City.

15.5 Certificate of Public Convenience and Necessity. The City agrees to support the Company's application to the PUC to obtain a certificate of public convenience and necessity to exercise its rights and obligations under this franchise.

15.6 Authority. Each party represents and warrants that except as set forth below, it has taken all actions that are necessary or that are required by its ordinances, regulations, procedures, bylaws, or applicable law, to legally authorize the undersigned signatories to execute this franchise on behalf of the parties and to bind the parties to its terms. The persons executing this franchise on behalf of each of the parties warrant that they have full authorization to execute this franchise. The City acknowledges that notwithstanding the foregoing, the Company requires a certificate of public convenience and necessity from the PUC in order to operate under the terms of this franchise.

15.7 Representatives. Both parties shall designate from time to time in writing representatives for the Company and the City who will be the persons to whom notices shall be sent regarding any action to be taken under this franchise. Notice shall be in writing and forwarded by certified mail or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party, delivered in person or by certified mail. Until any such change shall hereafter be made, notices shall be sent to the City Administrator and to the Atmos Energy Manager of Public Affairs.

15.8 Parks and Open Space. The Company shall offer to grant to the City use of transmission right-of-way which it now, or in the future, owns or has an interest in within the City for the purposes set forth in and pursuant to the provisions of the

Park and Open Space Act of 1984, provided that the Company shall not be required to make such an offer in any circumstance where such offer would interfere with public safety or the Company's use of the transmission right-of-way. The Company's standard easement document shall be used. If the Company's offer is accepted by the City, then any improvements deemed appropriate by the City, approved by the Company, and consistent with the purpose of the Park and Open Space Act of 1984 shall be made by the City at its expense.

15.9 Governing Law, Venue, and Enforcement. This Agreement shall be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement shall be in the appropriate court in Colorado.

THE CITY OF SALIDA, COLORADO

By:

Mayor

ATTEST:

City Clerk

DATE: _____, 2025.

ACCEPTED AND AGREED TO:

ATMOS ENERGY CORPORATION

By:

Kathleen Ocanas
Vice President (Colorado-Kansas
Division)

City's Mailing Address and Phone Number:

City of Salida
448 E 1st St #112,
Salida, CO 81201

(719) 539-4555



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Administration	Christy Doon - City Administrator	March 4, 2025

AGENDA ITEM

Ordinance 2025 - 5, An Ordinance of the City Council of the City of Salida, Colorado, Approving Tenderfoot Communications Site Lease with Visionary Broadband, second reading and public hearing.

BACKGROUND

The current Tenderfoot Communications Site Lease is currently held with Colorado Central Telecom. CCT was purchased by Aristata Communications and subsequently sold to Visionary Broadband. A new lease is required to update the necessary terms including rent, ensure the proper business is identified and accurately reflect the existing conditions of the site.

At the time of first reading, staff requested Council approval of the ordinance based on staff approval of exhibits, prior to second reading. All exhibits have been submitted and meet staffs' approval.

STAFF RECOMMENDATION

Staff recommends Council approve the Ordinance.

FISCAL IMPACT

Rent in the amount of \$1,5000 shall be paid to the City monthly.

MOTION

A City Councilmember should state "I move to _____ Ordinance 2025 - 5, An Ordinance of the City Council of the City of Salida, Colorado, Approving Tenderfoot Communications Site Lease with Visionary Broadband, on second reading", followed by a second and a roll call vote.

**CITY OF SALIDA, COLORADO
ORDINANCE NO. 05
(Series of 2025)**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO
APPROVING TENDERFOOT COMMUNICATION SITE LEASE WITH VISIONARY
BROADBAND**

WHEREAS, the City of Salida, Colorado (the “City”) is a statutory city, duly organized and existing under the laws of the state of Colorado; and

WHEREAS, in 2012 the City of Salida constructed a communications site including a tower and equipment shelter (“Tenderfoot Communications Site”) in order to facilitate additional broadband service within Salida and the surrounding area; and

WHEREAS, Chaffee County Telecom d/b/a Colorado Central Telecom, LLC entered into a lease agreement with the City of Salida via Ordinance 2013-33 to lease space at the Tenderfoot Communication Site; and

WHEREAS, Chaffee County Telecom d/b/a Colorado Central Telecom, LLC was purchased by Aristata Communications and Aristata Communications was purchased by Visionary Broadband; and

WHEREAS, Visionary Broadband wishes to lease space on the Tenderfoot Communications Site and the City of Salida wishes the same.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, THAT:

Section 1. The foregoing recitals are incorporated herein as conclusions, facts, determinations, and findings by Council.

Section 2. The City Council for the City of Salida hereby authorizes and approves the lease with Visionary Broadband on the terms and conditions contained as Exhibit A attached hereto and incorporated herein. The Mayor and other City officials are hereby authorized to execute the Lease by and on behalf of the City.

Section 3. Severability: The provisions of this Ordinance are severable and the invalidity of any section, phrase, clause, or portion of this Ordinance as determined by a Court of competent jurisdiction shall not affect the validity or effectiveness of the remainder of the Ordinance.

Section 4. City officials are hereby authorized to take such action as appropriate to implement the Lease Agreement.

Section 5. The City Council finds and declares that this Ordinance is

promulgated and adopted pursuant to the City's police power to preserve and protect the public health, safety, and welfare of the City and its residents, and bears a rational relation to the legislative objects sought to be obtained.

INTRODUCED ON FIRST READING on this 18th day of February, 2025, ADOPTED and ORDERED PUBLISHED IN FULL in a newspaper of general circulation by the City Council on this 18th day of February, 2025, and set for second reading and public hearing on the 4th day of March, 2025.

INTRODUCED ON SECOND READING, FINALLY ADOPTED and ORDERED PUBLISHED BY TITLE ONLY, by the City Council on the 4th day of March, 2025.

CITY OF SALIDA, COLORADO

Mayor

[SEAL]

ATTEST:

City Clerk/Deputy Clerk

PUBLISHED IN FULL in the Mountain Mail after First Reading on the ____ day of _____, 20__, and BY TITLE ONLY, after final adoption on the ____ day of _____, 20__.

City Clerk/Deputy City Clerk

TOWER LEASE AGREEMENT

THIS TOWER LEASE AGREEMENT (“Agreement”), dated as of the latter of the signature dates below (the “Effective Date”), is entered into by the City of Salida, a Colorado statutory city (“Landlord”), and Visionary Communications LLC, a Wyoming limited liability company authorized to do business in the State of Colorado, with its principal office located at 1001 S. Douglas Highway, Suite 201, Gillette, Wyoming 82716 (“Tenant”).

BACKGROUND

Landlord is the owner of land and facilities located at the crest of Tenderfoot Mountain in the City of Salida, Chaffee County, State of Colorado (the “Property”), as further described on Exhibit A. Landlord is also the owner of a communications tower which is situated on a portion of the Property (the “Tower”). Tenant is a broadband communications provider and is permitted, licensed, or otherwise authorized by the applicable federal or state governmental authority to operate in all or some areas of the City of Salida. Landlord desires to permit use by Tenant and the Tenant desires to use a portion of the Property and Tower as described below in order to enable Tenant to erect, operate and maintain certain communication equipment of Tenant in connection with its broadband communications business.

1. RIGHT TO LEASE. Landlord grants to Tenant the right to lease a portion of the Property consisting of 1) physical space on the Tower to install wireless antennas, 2) space within the existing communications shelter (the “Shelter”) to install the necessary network rack, equipment and power infrastructure, and 3) space within the communications conduit to install and maintain fiber optic cable, together with a non-exclusive easement for ingress and egress and as further described on Exhibit B (collectively, the “Leased Premises”). The Leased Premises, and the specific Tenant facilities and equipment located at and on the Leased Premises as of the Effective Date are depicted on Exhibit B.

2. PERMITTED USE.

(a) Tenant shall use the Leased Premises solely for the purposes of providing broadband communications services, for which it has received all necessary approvals from either the Colorado Public Utilities Commission, the Federal Communications Commission (“FCC”), or as otherwise allowed by law.

(b) The Leased Premises may be used for the transmission and reception of communications signals and the installation, construction, maintenance, repair and operation of communications fixtures and related equipment, cables, accessories and improvements, which may include associated antennas, equipment shelters or cabinets and any other items necessary to the successful and secure use of the Leased Premises (collectively, the “Communications Facilities”). Tenant has the right to install and operate transmission cables from the Shelter to the antennas, electric lines from the main feed to the Shelter or cabinet and communication lines from the main entry point to the Shelter or cabinet in the locations depicted on Exhibit B. Tenant may also install and maintain a fiber-optic cable within the conduit that runs from the Shelter to the power infrastructure as noted in Exhibit B. It is acknowledged that Landlord owns the existing

conduit. Tenant accepts the Leased Premises, including, without limitation, the existing conduit “As-Is, Where-Is” with all faults. It is understood and agreed that when another tenant of the Landlord locates cabling in trenches along the roadway to the Tower site and removes all of the existing exposed conduit, Tenant shall supply its own new conduit and relocate its Communications Facilities into these trenches at Tenant’s expense, whereupon Tenant shall own such conduit. Tenant may upgrade or exchange any equipment that is like kind, and of the same size, location and general appearance as that equipment being replaced. Tenant agrees to comply with all applicable governmental laws, rules, statutes and regulations, relating to its use of the Communications Facilities on the Property and/or Tower. Tenant shall be responsible for the cost of any repairs for any damage caused to the Tower or any other part of the Property during installation, use, maintenance and removal of Tenant’s Communications Facilities.

(c) All existing Communications Facilities shall be specifically identified in the drawings attached as Exhibit C. Except as provided herein, prior to any alteration or modification to Tenant’s Communications Facilities Tenant shall submit copies of the site plan, floor plan, sections, elevations, structural plans, and specifications to Landlord for prior approval. Landlord shall give such written approval or provide Tenant with its requirements for changes upon completion of the development application review process. Notwithstanding the foregoing, prior approval of Landlord is not required for routine maintenance, repairs, the like-kind replacement of the Communications Facilities, or any modifications to the interior of the equipment shelter or items housed therein, so long as the resulting Communications Facilities are of comparable size and exterior appearance, do not extend beyond the space indicated for any of the Communications Facilities identified on Exhibit B, and are in full compliance with this Agreement and all applicable laws and regulations.

(d) Smoking; Solicitations; Dangerous Activities. The Leased Premises are a smoke-free environment. Tenant shall not permit any smoking, canvassing, soliciting or peddling on the Leased Premises. Tenant shall not permit dangerous activities on the Leased Premises.

3. TERM.

(a) The Initial Term of this Agreement shall be five (5) years commencing on April 3, 2025 (the “Commencement Date”), unless it is terminated earlier as expressly provided in this Agreement. The Initial Term will terminate on the fifth (5th) annual anniversary of the Commencement Date.

(b) This Agreement will automatically renew for three (3) additional five (5) year terms (the “Extension Terms”), upon the same terms and conditions, unless either the Tenant or Landlord notifies the other in writing of their respective intention not to renew this Agreement no more than one-hundred and eighty (180) days and no less than ninety (90) days prior to the end of the Initial Term of this Agreement or any Extension Term, whichever is applicable.

(c) The Initial Term and any Extension Terms are collectively referred to as the “Term.”

4. RENT.

(a) Tenant shall pay to Landlord an annual rental in the amount of Eighteen Thousand Dollars (\$18,000.00) (the "Rent") in monthly installments of One Thousand Five Hundred Dollars (\$1,500.00) at the address set forth below. The annual rental and monthly installments shall be increased each year as set forth in Section 4(b) below. The first monthly installment of Rent shall be paid by Tenant to Landlord upon the Commencement Date and subsequent monthly installments of Rent shall be due and payable on or before the first day of each calendar month thereafter during the Term. Rent shall be payable to Landlord at City of Salida, 448 E. First Street, Suite 112, Salida, CO 81201; Attention: Payables/Finance Department.

(b) The Rent and monthly installments shall increase four percent (4%) annually during the Term on each anniversary of the Commencement Date.

(c) Tenant shall pay Landlord a late payment charge equal to ten percent (10%) of the late payment for any payment 30-days past due. Any amounts not paid when due shall bear interest until paid at the rate of one and one half percent (1.5%) per month.

5. APPROVALS.

(a) Landlord agrees that Tenant's ability to use the Leased Premises is contingent upon the suitability of the Leased Premises for Tenant's permitted use and Tenant's ability to obtain and maintain all government approvals. Landlord authorizes Tenant to prepare, execute and file any required applications to obtain government approvals for Tenant's permitted use under this Agreement and further agrees to cooperate with Tenant, at no cost to Landlord, in making such applications for and with obtaining and maintaining the government approvals required for the provision of communication services.

(b) Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of Tenant's choice, and Tenant shall be responsible for any costs or fees incurred in connection therewith. In the event Tenant determines, in its reasonable discretion, due to the title report results or survey results, that the condition of the Leased Premises will not permit the use granted under this Agreement, Tenant will have the right to terminate this Agreement upon thirty (30) days' written notice to Landlord.

6. TERMINATION. This Agreement may be terminated as follows:

(a) by either party on ten (10) days' prior written notice, if the other party remains in default after the applicable cure period expires;

(b) by either party upon six (6) months prior written notice to the other party;

(c) by Landlord if any government body, other than Landlord, passes an ordinance, law, or regulation that would interfere or render impossible performance of this Agreement or if the structure to which Tenant's equipment is attached is scheduled for removal or deconstruction. If permissible, Landlord shall provide Tenant with ninety (90) days' notice to surrender the Leased

Premises and all interests to the Landlord. Tenant shall have no claim against the Landlord for any loss or damage; or

(d) by Landlord upon sixty (60) days' written notice if it determines, (i) based on a certified structural review that there exists structural damage or (ii) destruction of all or part of the Property from any source, provided that Landlord shall first undertake reasonable efforts, as determined by Landlord, to recover any applicable damages from the party causing such damage or destruction and thereafter if Landlord is unable to recover such damages after undertaking such efforts to collect such amounts, Tenant shall then be offered the opportunity to repair the damage. All structural repairs performed by Tenant shall become the property of the Landlord immediately upon completion of such repairs. The cost of such repairs shall be applied towards future monthly Rent charges.

(e) This Agreement shall terminate automatically if events occur and notice is provided as described in Sections 18 and 19 of this Agreement.

(f) Force Majeure. Neither party shall be liable for its inability to perform its obligations under this Agreement, excluding, however, any payment obligations, which payment obligations must always be performed, if caused by conditions beyond its reasonable control including but not limited to acts of terrorism, environmental conditions, pandemics, epidemics, labor strikes, protests, perils and hazards, and acts of God. In the event either party is prevented or delayed in the performance of any of its obligations under this Agreement by reason beyond its reasonable control, that party shall have a reasonable time, under the circumstances, to perform the affected obligation under this Agreement or to procure a substitute for such obligation which is satisfactory to the other party. If either party believes that a reason beyond its reasonable control has prevented or delayed its compliance with the terms of this Agreement, that party shall provide documentation as reasonably required by the other party to substantiate the claim. If the party has not yet cured the deficiency, it shall also provide the other party with its proposed plan for remediation, including the timing for such cure. In order to be entitled to an excuse for any delay or failure to perform under this Agreement pursuant to this subsection (f), the party claiming such excuse shall promptly give written notice to the other party to this Agreement of any event or occurrence which it believes falls within the contemplation of this subsection, and shall not be in default so long as that party is diligently working toward complying with its obligations under this Agreement at the earliest possible time.

(g) If an event causing damage to the Tower and/or Shelter renders the Tenant unable to operate its Communications Facilities, all Tenant payment obligations outlined in the Agreement shall be maintained so long as the Landlord is making a good faith effort to restore the Tower and/or Shelter to a usable state. If the required repairs to render the Tower and/or Shelter usable take longer than sixty (60) days, and if other temporary options to allow for operation of the Communication Facilities at a level of performance that is comparable to the levels obtained from the Communication Facilities on the Tower are not available to Tenant, the monthly Rent owed by Tenant shall be suspended until its Communications Facilities can be utilized. Notwithstanding the foregoing, if the event causing damage to the Tower and/or Shelter was caused by Tenant or its contractors' acts or omissions, Tenant's payment obligations outlined in this Agreement shall continue uninterrupted and Tenant shall be solely responsible for any required

repairs to render the Tower and/or Shelter usable.

7. **INSURANCE.**

(a) During the Term of the Agreement, Tenant shall maintain, or cause to be maintained, in full force and effect and at its sole cost and expense, the following types and limits of insurance:

(i) Worker's compensation insurance meeting applicable statutory requirements and employer's liability insurance with limits of One Hundred Thousand Dollars (\$100,000.00) for each accident/disease/policy limit.

(ii) Commercial general liability insurance with limits of Two Million Dollars (\$2,000,000.00) per occurrence for bodily injury (including death) and property damage and Five Million Dollars (\$5,000,000.00) general aggregate, including for bodily injury, blanket contractual liability insurance for all written contracts, products and completed operations liability, and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage.

(iii) Automobile liability insurance covering all owned, hired, and non-owned vehicles in use by Tenant, its employees, or agents, with limits of One Million Dollars (\$1,000,000.00) combined single limit each accident for bodily injury and property damage.

(b) All policies other than those for Worker's Compensation and Employer's Liability shall be written on an occurrence and not on a claims made basis.

(c) The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated above.

(d) All policies, except for the Worker's Compensation and Employer's Liability policies, shall name Landlord and its officers, boards, commissions and employees as additional insureds (collectively, the "Additional Insureds").

(e) Certificates of insurance for each insurance policy required to be obtained by Tenant in compliance with this Section 7 shall be provided to the Landlord annually during the Term of the Agreement. Tenant shall immediately advise Landlord of any claim or litigation that may result in liability to Landlord.

(f) **Cancellation of Policies of Insurance.** All insurance policies required pursuant to this Agreement shall contain the following endorsement:

"At least thirty (30) days prior written notice of cancellation or change of any required coverage shall be given to the City of Salida, 448 E. First Street, Suite 112, Salida, CO 81201; Attention: City Administrator."

(g) Insurance Companies. All insurance shall be effected under valid and enforceable policies, issued by insurers licensed, authorized or permitted to do business by the State of Colorado or surplus line carriers on the State of Colorado Insurance Commissioner's approved list of companies qualified to do business in the State of Colorado. All insurance carriers and surplus line carriers shall be rated A-:VII or better by A.M. Best Company.

(h) Deductibles. Tenant agrees to indemnify and hold harmless Landlord and the Additional Insureds from and against the payment of any deductible and from and against the payment of any premium on any insurance policy required to be obtained and maintained by Tenant under this Agreement.

(i) Contractors. Tenant shall require that every one of its contractors and their subcontractors who perform work on the Leased Premises and/or the Tower carry, in full force and effect, substantially the same coverage with substantially the same limits as required of Tenant.

(j) Review of Limits. Landlord may periodically review the insurance coverages to be carried by Tenant. If Landlord reasonably determines that higher limits of coverage are necessary to protect the interests of Landlord or the Additional Insureds then upon prior written notice to Tenant, Tenant shall obtain the additional limits of insurance, at its sole cost and expense.

8. INTERFERENCE.

(a) Upon the written request of the Tenant, where there are existing radio frequency user(s) on the Property and/or the Tower, the Landlord (to the best of its abilities) will provide Tenant with a list of all existing radio frequency user(s) on the Property and/or the Tower to allow Tenant to evaluate the potential for interference. Tenant warrants that its use of the Leased Premises will not interfere with existing radio frequency user(s) on the Property and/or the Tower so disclosed by Landlord, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations. Tenant further agrees that it will cooperate with Landlord and with any other radio frequency user(s) Landlord permits to be on the Property and/or the Tower, by sharing the requisite information to determine what potential interference issues may exist and to take all reasonable steps necessary to avoid such interference.

(b) Landlord will not grant, after the date of this Agreement, a lease, license or any other right to any third party for use of the Property, if such use may in any way adversely affect or interfere with the Communications Facilities, the operations of Tenant or the rights of Tenant under this Agreement.

(c) The Tenant's Communications Facilities shall be of the type and frequency which will not cause measurable interference, as defined by the FCC, to any currently leased and legally operating communications equipment of the Landlord, other existing entities on the Property, or adjacent landowners. In the event Tenant's Communications Facilities cause such interference, Tenant shall take all reasonable steps necessary to correct and eliminate the interference.

(d) Prior to commencing operations of its Communications Facilities, Tenant shall provide written assurance, in a format reasonable and customarily accepted by the federal government, ensuring that Tenant's Communications Facilities comply with all federal requirements for radio frequency ("RF") emissions, and that Tenant's Communications Facilities will not cause measurable interference with the equipment located on the Property and/or adjacent property. The Landlord may, at the commencement of any Extension Term, in response to a formal interference claim, or at any other time in its reasonable discretion not to exceed one (1) time in any calendar year, require Tenant to engage in testing through a qualified radio frequency engineer, to determine Tenant's RF emissions levels at the Property, as they relate to the total RF environment related to operations on the Tower. All costs of testing and compliance shall be borne equally by Tenant and such other tenants that are similarly situated. Notwithstanding the foregoing, tenants operating equipment, all of which is below the 500Mhz threshold, and tenants operating exclusively equipment on the Tower that is used for public safety and/or emergency communications shall be exempt from paying any of the foregoing testing and compliance costs.

(e) Tenant understands that no use of the Leased Premises and/or Property will be permitted which exceeds federal RF emissions standards within and at the boundaries of the Leased Premises and/or Property. If the cumulative RF emissions levels ever exceed federal standards, all users of the Leased Premises and/or Property that are not public sector entities, including Tenant, will be required to modify operations on a reasonably comparable level, in order to bring the overall RF emissions into compliance.

(f) Notwithstanding any other provision to the contrary, Tenant's activities shall not interfere with the peaceful enjoyment of the Property by Landlord and/or any other tenants, lessees, or licensees, or endanger the health or safety of Landlord's employees and/or such other tenants, lessees, or licensees.

9. INDEMNIFICATION.

(a) Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage, or liability (or any claims in respect of the foregoing), costs or expenses arising from the installation, use, maintenance, repair, or removal of the Communications Facilities or Tenant's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Landlord, its employees, or agents.

(b) Notwithstanding anything to the contrary in this Agreement, Tenant and Landlord each waives any claims that each may have against the other with respect to consequential, incidental, or special damages.

(c) The provisions of this Section 9 shall survive the expiration or earlier termination of this Agreement.

10. WARRANTIES. Tenant and Landlord each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power and authority to enter into this Agreement and bind itself hereto through the party set forth as signatory for the party below.

11. HAZARDOUS SUBSTANCES.

(a) Tenant represents and warrants that its use of the Leased Premises and/or Tower will not generate any Hazardous Substance, and it will not store or dispose of on the Leased Premises and/or Tower nor transport to or over the Leased Premises and/or Property any Hazardous Substance. Tenant further represents and warrants that its installation and maintenance of its Communications Facilities will not involve the bringing of any asbestos containing material onto the Property. Tenant further agrees to hold Landlord harmless from and indemnify Landlord against any release of any such Hazardous Substance and any damage, loss, expense, or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof except any release caused by the negligence of Landlord, its employees, or agents. Landlord shall be responsible for any release of a Hazardous Substance caused by Landlord, including any damage, loss, expense, or liability resulting from such release. "Hazardous Substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous, or other similar term, by any federal, state, or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations, or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death, or disease.

(b) Tenant's indemnification obligations set forth in this Section 11 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Property conditions or any clean-up, remediation, removal, or restoration work required by any governmental authority.

(c) In the event Tenant becomes aware of any Hazardous Substance on the Property that was not caused by Tenant, its employees, agents, or contractors, or any environmental or industrial hygiene condition or matter relating to the Property that, in Tenant's reasonable determination, renders the condition of the Leased Premises unsuitable for Tenant's use that was not caused by Tenant, its employees, agents, or contractors, or if the leasing or continued leasing of the Leased Premises would expose Tenant to undue risks of government action, intervention, or third-party liability, which action, intervention, or third-party liability was not caused by Tenant, its employees, agents, or contractors, Tenant will have the right, in addition to any other rights it may have at law or in equity, to terminate the Agreement upon written notice to Landlord.

(d) Notwithstanding anything to the contrary herein, Tenant shall have the right to store and use standard quantities of batteries, diesel fuel for backup generators, and any other substances required for the operation of Tenant's Communications Facilities so long as it does so in full compliance with all applicable laws.

12. ACCESS.

(a) At all times throughout the Term of this Agreement, and at no additional charge to Tenant, Tenant and its employees, agents, and contractors, will have reasonable access, including emergency access, twenty-four (24) hours per day, seven (7) days per week pedestrian and

vehicular access to and over the Property, to the Leased Premises, for the installation, maintenance and operation of the Communications Facilities and any utilities serving the Leased Premises. All work to the maximum extent possible however, shall be performed by Tenant on non-holiday weekdays between 7:00 am and 5:00 pm. Tenant shall immediately call Chaffee County Dispatch at (719) 539-2596, or such other number as may be provided by Landlord to Tenant, to report any emergency to Landlord. Tenant shall provide to the Landlord a twenty-four (24) hour per day, seven (7) day per week, emergency contact name and telephone number. Notwithstanding the foregoing, Tenant understands and acknowledges that the Landlord may install Christmas lights above the road leading to the Tower at a height of approximately ten (10) feet during the months of November through January. In connection with accessing the Leased Premises during this time period, Tenant is solely responsible for ensuring that its vehicles and equipment can safely access the Leased Premises without causing any damage, including, without limitation, damage to the Christmas lights. Should Tenant, its employees or contractors cause any damage, including, without limitation damage to the Christmas lights, Tenant shall immediately repair such damage to Landlord's reasonable satisfaction at Tenant's sole cost and expense. Tenant shall additionally post such emergency contact information in a visible location at the Leased Premises. Tenant and its contractors' vehicles shall be clearly marked with a company logo or shall be otherwise reasonably identifiable. Landlord grants to Tenant a license for such access and Landlord agrees to provide to Tenant such codes, keys and other instruments necessary for such access at no additional cost to Tenant. In the event any public utility is unable to use the access provided to Tenant then the Landlord agrees to work with Tenant to identify and grant additional access in a location acceptable to both parties either to Tenant or to the public utility, for the benefit of Tenant.

(b) Security and Invitees. Landlord does not represent that the Property or Leased Premises are safe from theft, injury, or damage to Tenant or Tenant's property. Landlord does not represent that locks or security services or equipment, if any, are provided to protect Tenant's safety, property, or the Leased Premises. Notwithstanding any provision to the contrary, Landlord is not liable for any lack of security with respect to the Property or Leased Premises or for any damages caused by any error or other action regarding the admission to or exclusion from the Property of any person. Tenant is solely responsible for the security of the Leased Premises and its personal property on the Leased Premises. Tenant shall make good faith efforts to monitor and control the conduct of its staff and agents while on the Leased Premises. Tenant shall at all times bear the entire risk of loss to Tenant's property and equipment.

13. REMOVAL/RESTORATION. All portions of the Communications Facilities brought onto the Leased Premises by Tenant will be and will remain Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during the Term. Landlord covenants and agrees that no part of the Communications Facilities constructed, erected, or placed on the Leased Premises by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of the Landlord that all improvements of every kind and nature constructed, erected, or placed by Tenant on the Leased Premises will be and remain the property of the Tenant and may be removed by Tenant at any time during the Term. Within ninety (90) days following the expiration or earlier termination of this Agreement, Tenant will remove all of Tenant's improvements and Tenant will restore the Leased Premises to its condition immediately preceding the installation of such improvements. Any property not removed within such ninety (90) day period shall be deemed abandoned and thereafter, Landlord shall have a right to keep,

dispose, or sell such property in its sole discretion and to recover, if applicable, any expenses it may have in connection therewith from Tenant.

14. MAINTENANCE/UTILITIES.

(a) Tenant will keep and maintain the Leased Premises in good condition. Tenant shall maintain the outward appearance of any equipment shelter or other ground equipment.

(b) Landlord will maintain and repair the Property and access thereto, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements. Notwithstanding the foregoing, it is acknowledged that Tenant along with other tenants at the Property store certain of their equipment in the Shelter owned by the Landlord, which Shelter is located on a portion of the Leased Premises. Landlord will from time to time during the Term of this Agreement renovate, make repairs to and maintain all components of such Shelter in its sole discretion. Landlord may request that Tenant perform and pay for any costs associated with updates or maintenance in return for equal credits towards the monthly Rent.

(c) Notwithstanding any other provision to the contrary and at Landlord's sole discretion, Landlord may at any time examine, inspect and protect the Property and make alterations, renovations, restorations, repairs, and/or improvements to the Property as long as they do not interfere with Tenant's ability to operate its Communications Facilities.

(d) In addition to the payment of Rent to Landlord, Tenant shall pay to the Landlord Forty Dollars (\$40.00) per month as its share of the utilities used at the Tower site (the "Monthly Utilities Expense"). The first Monthly Utilities Expense payment shall be paid by Tenant to Landlord upon the Commencement Date and subsequent Monthly Utilities Expense payments shall be due and payable on or before the first day of each calendar month thereafter during the Term. The Monthly Utilities Expense shall increase ten percent (10%) during each Extension Term.

(e) Tenant shall pay Landlord a late payment charge equal to ten percent (10%) of the late payment for any payment 30 days past due. Any amounts not paid when due shall bear interest until paid at the rate of one and one half percent (1.5%) per month.

15. DEFAULT AND RIGHT TO CURE.

(a) The following will be deemed a default by Tenant and a breach of this Agreement: (i) non-payment of Rent if such Rent remains unpaid for more than ten (10) days after receipt of written notice from Landlord of such failure to pay; (ii) Tenant's failure to perform any other term or condition under this Agreement within thirty (30) days after receipt of written notice from Landlord specifying the failure; or (iii) if Tenant is adjudicated as bankrupt, makes any assignment for the benefit of creditors, or if Tenant becomes insolvent. No such failure, however, except for payment of Rent, will be deemed to exist if Tenant has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default, except for payment of Rent, will be excused if due to causes beyond the reasonable control of Tenant. If Tenant remains in default beyond any applicable cure period,

Landlord will have the right to exercise any and all rights and remedies available to it at law or in equity.

(b) The following will be deemed a default by Landlord and a breach of this Agreement: (i) Landlord's failure to provide access to the Leased Premises or cure any interference problem within twenty-four (24) hours after written notice of such default or (ii) Landlord's failure to perform any term, condition, or breach of any warranty or covenant under this Agreement within thirty (30) days after receipt of written notice from Tenant specifying the failure. No such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, Tenant will have the right to exercise any and all rights available to it at law or in equity.

16. ASSIGNMENT.

(a) Tenant may not assign, sublet or otherwise transfer any portion of its interest in this Agreement or the Communications Facilities, by operation of law or otherwise, without the prior written consent of Landlord, which may be withheld in Landlord's sole and absolute discretion. An assignment, subletting, or transfer in violation of this section shall be null and void and unenforceable against Landlord. Notwithstanding the immediately preceding sentences, Tenant may assign its interest under this Agreement and to the Communications Facilities without Landlord's consent but upon at least thirty (30) days prior written notice to Landlord to (a) one or more entities which shall control, be controlled by, or be under common control with, Tenant, or (b) to any entity which acquires all or substantially all of Tenant's stock or assets in the market defined by the FCC in which the Property is located, in connection with any merger, consolidation or reorganization of Tenant.

(b) Except with respect to any pending claim of default under this Agreement, effective upon transfer by Landlord of Landlord's interest in the Property and/or Tower, Landlord shall be released from all obligations and liabilities arising out of this Agreement.

(c) The parties hereby expressly agree and acknowledge that it is the intention of both parties that in the event that during the Term of this Agreement, Tenant shall become a debtor in any voluntary or involuntary bankruptcy proceeding under the United States Bankruptcy Code, 11 U.S.C. 101, et seq. (the "Code"), for the purposes of proceeding under the Code, this Agreement shall be treated as an unexpired lease of nonresidential real property under Section 365 of the Code, as it may be amended, and, accordingly, shall be subject to the provisions of subsections (d)(3) and (d)(4) of Section 365 of the Code. Any person or entity to which this Agreement is assigned pursuant to the provisions of the Code, shall be deemed without further act to have assumed all of the obligations of the Tenant arising under this Agreement both before and after the date of such assignment. Any such assignee shall upon demand execute and deliver to the Landlord an instrument confirming such assumption. Any monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid to the Landlord, shall be the exclusive property of the Landlord, and shall not constitute property of the Tenant or of the estate of the Tenant within the meaning of the Code. Any monies or other considerations constituting

the Landlord's property under the preceding sentence not paid or delivered to the Landlord shall be held in trust for the benefit of the Landlord and be promptly paid to the Landlord.

17. NOTICES. All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, postage prepaid, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused, or returned undelivered. Notice will be addressed to the parties as follows:

If to Tenant: Visionary Communications LLC
1001 S. Douglas Highway, Suite 201
Gillette, WY 82716
Attention: Brian Shepherd, VP – Grant Engagement

If to Landlord: City of Salida, Colorado
448 E. First Street, Suite 112
Salida, CO 81201
Attention: City Administrator

Either party hereto may change the place for the giving of notice to it by thirty (30) days written notice to the other party given in the manner as provided for herein.

18. CONDEMNATION AND EMINENT DOMAIN.

(a) In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within fifteen (15) days. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's reasonable determination, to render the Leased Premises unsuitable for Tenant's permitted use, this Agreement will terminate as of the date the title vests in the condemning authority. Tenant shall have the right at its sole option and at its sole cost and expense, to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant on account of any and all damage to Tenant's business and any costs or expenses incurred by Tenant in moving/removing its equipment, personal property and leasehold improvements.

(b) If the entire Property or a portion sufficient to render the Leased Premises unfit for occupancy or make it impossible for Tenant to conduct its business is taken by the power of eminent domain, this Agreement shall terminate as of the date of taking. Tenant shall immediately surrender the Leased Premises and all interests to the Landlord. Tenant shall have no claim against Landlord for any loss or damage.

19. CASUALTY. Landlord will provide notice to Tenant of any casualty affecting the Property within seven (7) days of the casualty if the casualty is not caused by Tenant, its employees, agents, or contractors, and if such casualty renders the Leased Premises unsuitable for Tenant's operations. If any part of the Communications Facilities or Property is damaged by fire or other casualty so as to render the Leased Premises unsuitable, in Tenant's reasonable determination, then Tenant may terminate this Agreement by providing written notice to the

Landlord, which termination will be effective as of the date of such damage or destruction so long as such damage was not caused by Tenant, its employees, agents, or contractors. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof. Tenant shall have no other claims against Landlord for any loss by fire, the elements, or other cause. If notice of termination is not given, and should Landlord or Tenant undertake to rebuild the Communications Facilities and/or Tower, Landlord agrees to use its reasonable efforts to permit Tenant to place temporary transmission and reception facilities on the Property and Rent shall be abated until such time as Tenant is able to activate a replacement transmission facility at another location or the reconstruction of the Communications Facilities and/or Tower are completed.

20. WAIVER OF LANDLORD'S LIENS. Landlord waives all lien rights it may have, statutory or otherwise, concerning the Communications Facilities or any portion thereof. The Communications Facilities shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law, and Landlord consents to Tenant's right to remove all or any portion of the Communications Facilities from time to time in Tenant's sole discretion and without Landlord's consent.

21. MECHANICS' AND MATERIALMANS' LIENS. Tenant shall not permit any mechanics' or materialmen's liens to be filed against the Leased Premises or the Property by reason of work, labor, services, or materials performed or furnished to or for the benefit of Tenant, its transferees, successors, or permitted assigns. If any such lien is filed, Tenant may contest the same in good faith, but notwithstanding contest, Tenant shall, within thirty (30) days after the filing thereof, cause such lien to be released of record by payment, bond, entry of an order of court of competent jurisdiction, or otherwise. The provisions of this Section 21 shall survive the expiration or earlier termination of this Agreement.

22. TAXES.

(a) Landlord is exempt from paying taxes. Tenant shall be solely responsible for and shall timely pay all personal property taxes levied and assessed against it or its personal property.

(b) Tenant shall have the right to, at its sole option and at its sole cost and expense, to contest all taxes, assessments, charges and impositions assessed against its personal property or improvements.

23. MISCELLANEOUS.

(a) **Amendment; Waiver.** This Agreement cannot be amended, modified, or revised unless done so in writing and then signed by an authorized agent of the Landlord and an authorized agent of the Tenant. No provision, benefit, or obligation under this Agreement shall be deemed waived, unless such waiver is in writing and signed by the party charged with such waiver. No course of dealing between the parties nor any failure by either party at any time, or from time to time, to enforce any term or condition of this Agreement shall constitute a waiver of such term or condition, nor shall such course of dealing or failure affect such term or condition in any way, or

affect the right of the parties at any time to avail themselves of such remedies as they may have for any breach of such term or condition.

(b) **Inurement.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

(c) **Third Party Rights.** This Agreement does not create a standard of care for Landlord and does not enlarge Landlord's duties under any applicable law, regulation, or ordinance. This Agreement is for the sole benefit of the parties and their respective successors and permitted assigns. This Agreement affords no claim, benefit, or right of action to any third party. Any party besides Landlord or Tenant receiving services or benefits under this Agreement is only an incidental beneficiary.

(d) **Entire Agreement.** This Agreement together with the exhibits attached hereto constitutes the entire agreement of the parties hereto and supersede all prior offers, negotiations, and agreements with respect to the subject matter of this Agreement.

(e) **Governing Law; Venue.** The provisions of this Agreement shall be governed by the laws of the State of Colorado, without giving effect to any conflict of law provisions. Any judicial proceeding brought hereunder shall be brought exclusively in Chaffee County, Colorado. Each party hereby consents to the jurisdiction of such county and waives any defense or objection to such jurisdiction and/or venue.

(f) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "including" will be interpreted to mean "including, without limitation"; (iii) whenever a party's consent is required under this Agreement, except as otherwise stated in the Agreement, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of the Agreement and are incorporated by reference into this Agreement; (v) use of the terms "termination" or "expiration" are interchangeable; and (vi) reference to a default will take into consideration any applicable notice, grace and cure periods.

(g) **Estoppel.** Either party will, at any time upon twenty (20) business days prior written notice from the other, execute, acknowledge and deliver to the other a statement in writing (i) certifying that this Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying this Agreement, as so modified, is in full force and effect) and the date to which the Rent and other charges are paid in advance, if any, and (ii) acknowledge that there are not, to such party's knowledge, any uncured defaults on the part of the other party hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Property. The requested party's failure to deliver such statement within such time will be conclusively relied upon by the requesting party that (i) this Agreement is in full force and effect, without modification except as may be properly represented by the requesting party, (ii) there are no uncured defaults in either party's performance, and (iii) no more than one month's Rent has been paid in advance.

(h) **W-9.** Landlord agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Agreement and at such other times as may be reasonably requested by Tenant.

(i) **Severability.** If any term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein.

(j) **Counterparts; Signatures.** This Agreement may be executed in two (2) or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties. It being understood that all parties need not sign the same counterpart. Signatures on this Agreement delivered by facsimile or electronically in a portable document format (pdf) shall be deemed to constitute original signatures.

(k) **Survival of Provisions.** Any obligation of the parties relating to monies owed, as well as those provisions relating to limitations on liability and actions, shall survive the expiration or earlier termination of this Agreement.

(l) **Subordination.** Tenant accepts this Agreement subject and subordinate to any mortgage, deed of trust, or other lien presently existing or hereafter arising upon the Property and to any renewals, modifications, consolidation, refinancing, and extensions thereof, but Tenant agrees that any such mortgagee shall have the right at any time to subordinate such mortgage, deed of trust, or other lien to this Agreement on such terms and subject to such conditions as such mortgagee may deem appropriate in its discretion. This provision is hereby declared to be self-operative and no further instrument shall be required to effect such subordination of this Agreement.

(m) **Attorney's Fees.** In the event of any action filed in relation to this Agreement, the prevailing party in such matter shall be entitled to recover from the other party its reasonable attorney's fees and costs.

(n) **TABOR.** Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the City of Salida not performed during the current fiscal year is subject to annual appropriation by the City of Salida, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt, or liability beyond the current fiscal year.

(o) **Governmental Immunity.** The City of Salida is relying on and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the City of Salida.

(p) **Open Records.** The parties understand and agree that as a public entity, the City is subject to the Colorado Open Records Act, C.R.S. § 24-72-200, *et seq.*, as amended, and as such, this Agreement is subject to public disclosure.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of the last signature below.

LANDLORD
City of Salida, Colorado

DATE: _____

By: _____
Print Name: _____
City Administrator

TENANT
Visionary Communications LLC,
a Wyoming limited liability company

DATE: _____

By: _____
Print Name: _____
Title: _____

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

[INSERT]

EXHIBIT B

**Description of Leased Premises with Drawings and Description/Location of Permitted
Tower Use and Related Utility Easements**

[INSERT]

EXHIBIT C

Existing Communication Facilities

[INSERT]

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

The Property is situated on a portion of Parcel ID 368133200001 as recorded with the Chaffee County Assessor's Office, which is located on County Road 176 in unincorporated Chaffee County, Colorado.

The Property includes the Tower and Shelter, which is located at the high point of County Road 176 at the crest of Tenderfoot Mountain. The location of the Tower and Shelter are identified in the below graphics.

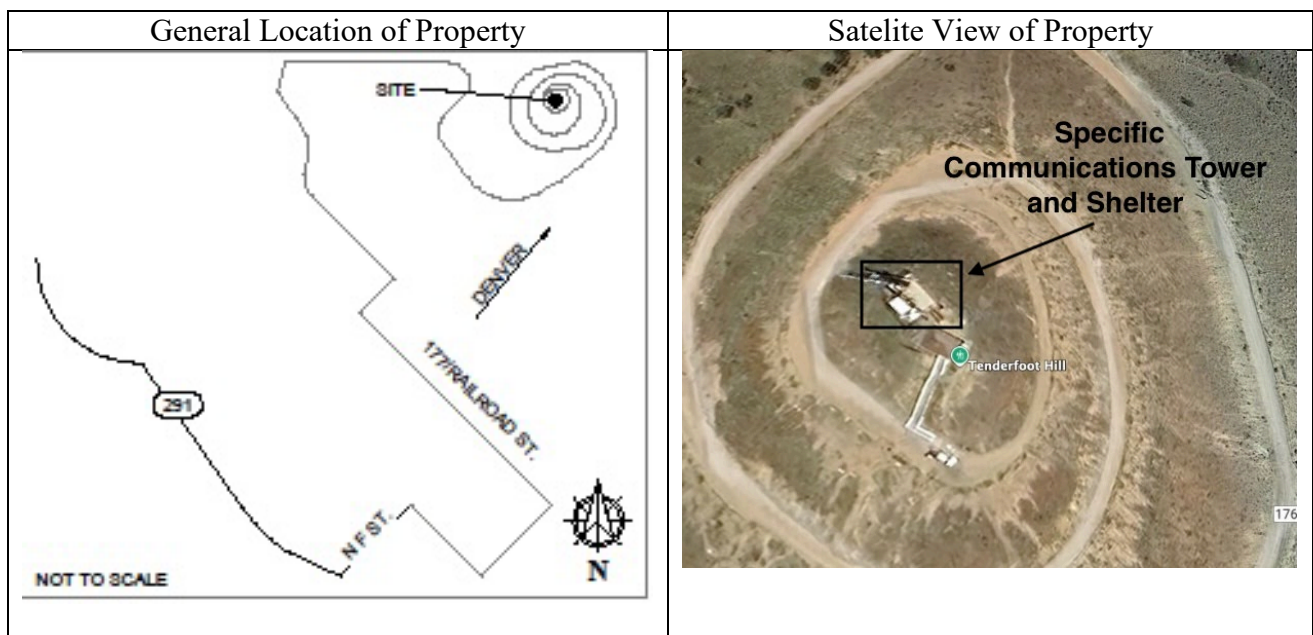
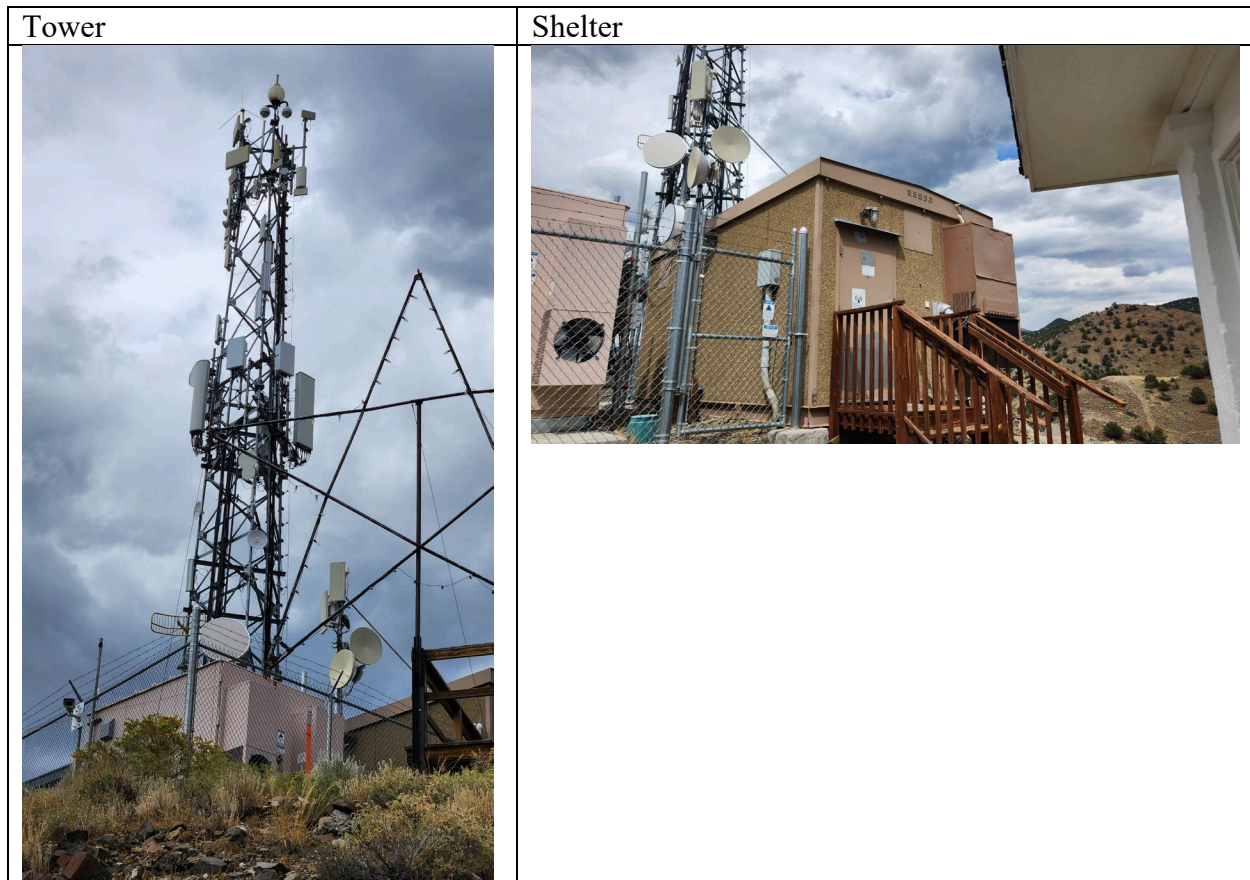


EXHIBIT B

Description of Leased Premises with Drawings and Description/Location of Permitted Tower Use and Related Utility Easements

- The Leased Premises consists of:
 - Specific locations on the Tower where the existing equipment of Tenant is located as further outlined in Exhibit C.
 - The Agreement authorizes Tenant to run the necessary cabling from its existing equipment on the Tower into the network rack within the Shelter.
 - Space within the Shelter for:
 - Tenant's existing standard networking rack and any equipment that fits within it.
 - Floor space for Tenant's existing battery box and batteries to provide backup power.
 - Space for the Tenant's existing power cabling from the electrical breaker box to the networking rack to provide the required power.
- The Agreement includes authorization to access and maintain the Leased Premises for purposes of operating and maintaining Tenant's communications equipment subject, however, to the terms and conditions of the Agreement.



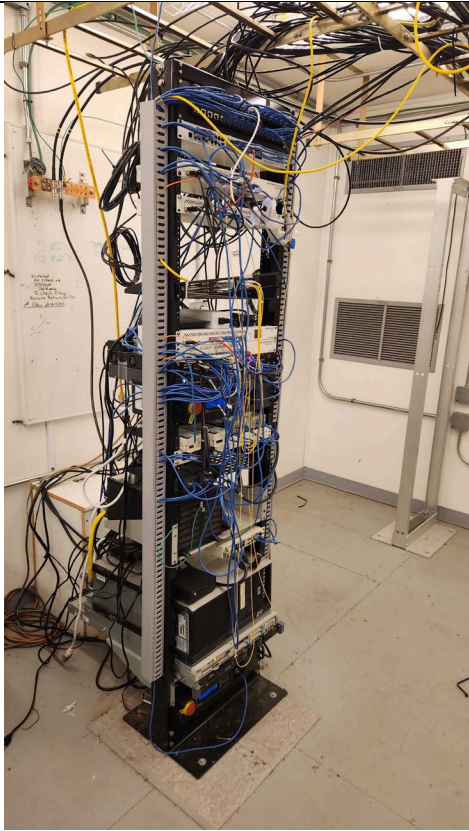
Tenant's Existing Networking Rack and Batteries	
	

EXHIBIT C

Existing Communication Facilities

The following is a comprehensive list of Tenant's equipment that is installed and operational at the time of the Agreement's execution. Note this list does include the necessary wires, cables, brackets and other hardware necessary to connect and operate the equipment.

Equipment on the Tower:

Equipment	Quantity	Height	Dimensions (each)
Aviat 80/11	2	18'	2.5' diameter antenna
Ubiquity AirFiber 11	1	13'	3' diameter antenna
Cambium PMP 450m	2	62' and 65'	20" x 26" x 4.5"
Cambium ePMP 3000	4	6.5', 2 @ 60' and 65'	9" x 5" x 2"
Cambium ePMP 2000	1	62'	9" x 12.5" x 2"
Radwin RW5k HBS-Pro Jet 5.8	3	60', 61' and 65'	14" x 9" x 4"
Rocket M5 – AM-V6G-Ti	1	65'	6" x 3" x 1"
RF Element 5.8 6" Horn	4	3 @ 60' and 61.5'	17" x 14" x 10"
Ubiquiti WAVE AP	7	2 @ 60', 61', 62', 63', 64' and 65'	8" x 8" x 7.5"

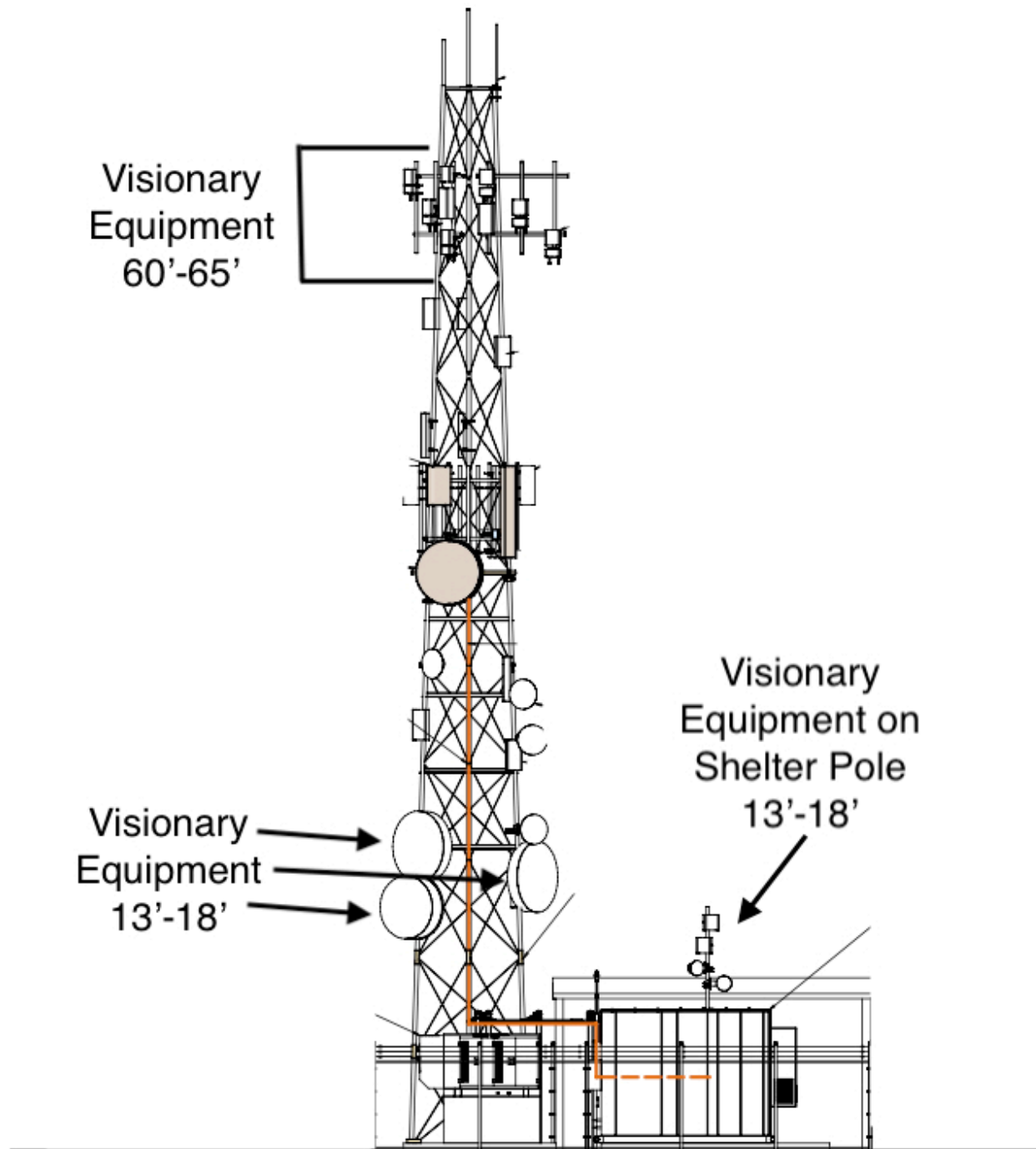
Located on Poles Attached to the Shelter:

Equipment	Quantity	Height	Dimensions
Telrad Breeze Compact 1000	2	17' and 18.5'	
Siklu Etherhaul	2	12' and 14'	2' diameter antenna (each)

In the Shelter:

- 8x 200 Ah batteries
- 2x Alpha FXM 2000 UPS
- 1x WCPS web control power switch
- 1x Mikrotik CRS125 switch
- 1x Netonix WS-26-400-AC
- 1x Netonix WS-26-400A
- 2x Tripplite PDU
- 2x Mikrotik 1036 routers
- 1x Cisco ASR920 router
- 1x Fiberstore S5860-20SQ switch
- 2x Mikrotik 317 switches
- 1x raspberry pi
- 2x 1U fiber optic patch panels
- 1x Ubiquiti webcam
- 1x Linksys E1200 router
- 1x 1U SYS-510D-8C-FN6P Micro Server

General Locations of Existing Visionary Equipment





CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Administration	Kristi Jefferson - City Clerk	March 4, 2025

AGENDA ITEM

Amplified Sound Permit – High Side! Bar and Grill – Public Hearing

BACKGROUND

Per City Council direction, certain amplified Sound Permits are subject to public hearings as they relate to dates, hours of operation, and decibel levels. The City has received an application from High Side! Bar and Grill, located at 300 West Sackett Avenue, to host the Monarch Mountain Ski Patrol Party on March 28^h, 2025 from 6-10pm. Amplified Sound Permits are allowed to be approved by the City Administrator between the dates of May 1 and November 1 annually; as the proposed date is outside of that window, a public hearing shall be held to receive feedback from the public.

Public notice was posted at the property. The permit application is also attached for review.

RECOMMENDATION

Staff recommends approval of the High Side! Bar and Grill amplified Sound Permit application for the the Monarch Mountain Ski Patrol Party on March 28^h, 2025, between the hours of 6:00 p.m. and 10:00 p.m.

FISCAL IMPACT

None

MOTION

Following a public hearing, a City Councilmember should state, "I move to _____ an amplified Sound Permit for High Side! Bar and Grill, located at 300 West Sackett Avenue, for the Monarch Mountain Ski Patrol Party on March 28^h, 2025, between the hours of 6:00 p.m. and 10:00 p.m.", followed by a second and a roll call vote.

TO ALL MEMBERS OF THE PUBLIC AND INTERESTED PERSONS

PLEASE TAKE NOTICE: On March 4, 2025 at or about the hour of 6:00 p.m. a public hearing will be conducted by the City of Salida City Council at City Council Chambers, 448 East First Street, Suite 190, Salida, Colorado and online at the following link:

https://www.uswebinar/register/WN_Ham9Tqr1tDmzh85A

The hearing concerns the Amplified Sound Application filed by Hallie Whittington: High Side Bar & Grill, located at 300 W Sackett Ave, Salida, CO, 81201.

The applicant is requesting to provide amplified sound outdoors from approximately 6:10pm on March 28, 2025 which cannot be administratively approved since it is out of season and out of hours of operation. As such, it must go to a Council public hearing.

Interested persons are encouraged to attend the public hearings. Further information on the application may be obtained from the City Clerk at 719-530-7826.

*Please note that it is inappropriate to personally contact individual City Councilors or Planning Commissioners, outside of the public hearing, while an application is pending. Such contact is considered ex parte communication and will have to be disclosed as part of the public hearings on the matter. If you have any questions/comments, you should email or write a letter to staff, or present your concerns at the public meeting via the above GoToWebinar link to your comments can be made part of the record.

Grill
10 - 7pm
James - 7pm
e - 7pm
Tone & Coleman

Tone & Bruce

randall - 7pm

Sherrill

Sweets Duo - 7pm

Scan QR Code
for More Event



ONDERGRA



MARCH 2, 2025

BY TURTLES
ITCHEN LEFTOVER
VELLERS SALMON
O'S SAM BUSH
TRY BAND
IN THE BROTHERS
COMATOSE
KYLE JON
TUTTLE STICKLEY

CRASS WINTERWONDERWOMEN

Rob Eaton (Dark Star Orchestra)
(String Cheese Incident)

ERS THE PO' RAMBLIN' BOYS
THE LANGAN BAND DIGGIN DIRT

MSAUCE SILAS HERMAN

THE DAPH TALL BUILDINGS JACK CLOONAN



CITY OF SALIDA

OVERVIEW OF LOCAL NOISE REGULATIONS & PERMITTING

Chapter 10, Article IX of the Salida Municipal Code (the “Code”) establishes regulations and standards for noise within the City of Salida (the “City”) to reduce and eliminate unnecessary and excessive noise which would otherwise be detrimental to residents and the community in the enjoyment of life, property, and the conduct of business. Of note, Section 10-9-30(c) of the Code provides that it is “unlawful for any person to emit or cause to be emitted any noise which leaves the premises on which it originates, inclusive of a public premises, crosses a property line and enters onto any other premises in excess” of the specified levels.

Pursuant to Sections 10-9-40(14) and 10-9-80 of the Code, however, the City may specifically exempt a particular noise from this prohibition through the issuance of a noise permit. Such a permit may include limitations and conditions to minimize the adverse impacts of the proposed noise may have on the community or surrounding neighborhood. Such limitations and conditions include, but are not limited to, the following: the hours of operation, maximum decibels, the type of sound amplification equipment, and the type of sound that may be amplified. No permit shall be issued for noise after 10:00 PM, with allowances to go until midnight on the Fridays and Saturdays of Memorial Day weekend, 4th of July weekend, and Labor Day weekend, and on the Thursday, Friday, and Saturday during the FIBArk Festival.

The issuance of a noise permit is at the sole discretion of the City Administrator or City Council, and the issuance of such permit does not confer any rights upon the permittee other than those expressly authorized by the permit. Violation of any of the conditions or limitations set forth in the noise permit may result in immediate revocation of the permit. Revocation of the noise permit does not preclude the City from seeking any remedies otherwise available under federal, state, or local law.

Applications for a noise permit must be submitted on the attached “Application for a Noise Permit” form and submitted at least five (5) working days prior to the date for which the permit is sought.

**CITY OF SALIDA****NOISE PERMIT APPLICATION**

Please fill out the form completely, including by signing and dating the application. Submitting an incomplete application is a basis for denial of a noise permit. Listing a particular type of audio amplification equipment, hours of operation, or any other information below does not guarantee the applicant's right to use such equipment or have an event at a particular time. Whether such application requests have been granted will be indicated in the issued permit.

Applicants may apply for events which are recurring (*i.e.*, live music every Thursday). Any such events should be clearly described as recurring in the event description and should identify all dates on which the event will occur.

Completed applications should be submitted via email to deputyclerk@cityofsalida.com. If that is not possible, they can be submitted in-person to 448 E 1st Street Suite 112. Applications must be submitted at least five (5) working days prior to the date for which the permit is sought.

I. Applicant Information.

Applicant Name:	<u>Hallie Whittington</u>
Applicant Business/Organization:	<u>High Side! Bar and Grill</u>
Applicant Phone:	<u>719-207-5034</u>
Applicant Email:	<u>halliehighside@gmail.com</u>
Applicant Address:	<u>300 W Sackett Ave.</u> <u>Salida, CO. 81201</u>
Sound Supervisor ¹ :	<u>Hallie Whittington, Johnny Shepard</u>
Sound Supervisor Phone:	<u>719-207-5034, 719-207-5423</u>

II. Event Information.

Description of Event:	<u>Live music and speeches for the Monarch Mountain Ski Patrol Party</u>
	<u></u>
	<u></u>
	<u></u>
	<u></u>
Estimated Attendance:	<u>60-80</u>
Date(s):	<u>March 28th, 2025</u>
Hours of Event:	<u>6pm - 10pm, Unless its possible to get an extension on this timeline)</u>
Location of Event:	<u>300 W Sackett Ave.</u> <u>Salida, CO. 81201</u>

¹ The sound supervisor will be responsible for responding to and immediately addressing noise or other complaints in the absence of the applicant/permittee.



III. Noise Information.

Type of Noise (e.g., live music, parade):
Live Music

Type of Sound Amplification Equipment:
PA System, speakers

IV. Agreement.

As the applicant for this noise permit, I, Hallie Whittington, hereby agree and understand that it is my responsibility to ensure compliance with the conditions and limitations set forth in the permit and all laws, rules, and regulations of the City of Salida, the state, and the federal government. I further agree and understand that any violations of the permit or applicable laws may result in the immediate revocation of the permit. Violations of the conditions and limitations set forth in the permit or applicable laws shall also be grounds for denial of future permit applications. I further understand and agree that the permit and application fee are non-refundable and non-transferrable.

Signature: _____ (Typed or Digital signature accepted)

Date: _____

2/8/2025

For use by the City Clerk only:

Application fee received: ☐ Yes ☐ No ☐ N/A

Signature: _____

Date: _____



CITY OF SALIDA NOISE PERMIT

Signature by the City Administrator on this noise permit indicates that the noise permit has been deemed granted to the applicant and the requested noise has been so authorized, subject to the conditions and limitations set forth below. Where the conditions or limitations set forth below contradict or conflict with the information contained in the application, the conditions and limitations will control.

I. Conditions and Limitations Applicable to All Permits.

The following conditions and limitations are applicable to all noise permits:

- No noise is permitted after 10:00 PM, unless specifically authorized by the City Council following a public hearing. No noise is permitted after midnight on the Fridays and Saturdays of Memorial Day weekend, 4th of July weekend, and Labor Day weekend. No noise is permitted after midnight on the Thursday, Friday, and Saturday during the FIBArk festival.
- No noise is authorized in excess of the maximum limit of 85 dB(A), as measured from any point along the property line or within the property line of the receiving premises. Measuring devices shall be those specifically utilized by the City of Salida.
- All amplification equipment shall be arranged so as to minimize the disturbance to neighboring properties, and permittees shall take reasonable measures to baffle or reduce noise impacts to neighbors.
- No outdoor amplified sound shall be permitted between November 1 through May 1.
- A maximum of sixty (60) amplified sound permits may be granted to same location during a single calendar year, unless additional permits are specifically authorized by the City Council following a public hearing.

II. Conditions and Limitations Applicable to this Permit.

The following conditions and limitations are applicable to this noise permit:

- _____
- _____
- _____

III. Expiration.

This noise permit is issued for the following dates and expires on the following date:

Date(s): _____

Expiration: _____

For use by the City Administrator only:

Application granted: [] Yes [] No

Signature: _____

Date: _____



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Parks and Recreation	Diesel Post - Parks and Recreation Director	March 4, 2025

AGENDA ITEM

Resolution 2025 -09 - A Resolution of the City Council for the City of Salida, Colorado, to appoint a member to the PROST advisory board to serve the remainder of Jessica Downing's term.

BACKGROUND

In February of 2025, PROST board chairperson Jessica Downing announced her resignation from the PROST after being appointed to the County Planning Commission. The PROST board met at their regular meeting on 2/25/25 and unanimously voted to recommend Ricki Garder be appointed to the board to serve the remainder of Jessica Downing's term. Ms. Garden was an applicant from the interview process conducted on 11/15/24, in which a workgroup consisting of Suzanne Fontana, Aaron Stephens, Jess Smith, Rob White, Anissa Caiazza, Nate Mohrmann, and Diesel Post met and interviewed 6 applicants. Along with an application and resume review the group asked each applicant 5 questions:

- How do you use the Salida Parks and Recreation system and/or programs?
- What would you advise that City staff in the department focus their time and efforts on?
- What would you work on in your free time to bring to the advisory committee?
- What is your experience on or with an advisory committee?
- Can you explain your understanding of how the Department of Parks and Recreation is funded?
- Is there anything else that you would like us to know?

At the time the workgroup interviewed selected 3 current members, Kristi Falcon, Stacy Falk, and Jon Terbush, as well as a new applicant, John Vanderwalle, to be recommended for appointment to the PROST Board.

RECOMMENDATION

The recommendation is to appoint Ricki Garden to the PROST Board.

FISCAL IMPACT

There is no fiscal impact.

MOTION

A City Councilmember should state, "I move to _____ Resolution 2025-09, a resolution of the City Council for the City of Salida, Colorado appointing Ricki Garden to serve the remainder of Jessica Downings term on the PROST Board," followed by a second and a roll call vote:

**CITY OF SALIDA, COLORADO
RESOLUTION NO. 09
(Series of 2025)**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, APPROVING CITIZEN APPOINTMENTS TO THE PARKS, RECREATION, OPEN SPACE, AND TRAILS PURSUANT TO SECTION 2-14-20 a. OF THE SALIDA MUNICIPAL CODE.

WHEREAS, in accordance with Section 2-14-20 a. of the Salida Municipal Code (“SMC”), the City Council shall appoint person(s) to serve as members of the Parks, Recreation, Open Space and Trails Advisory Board; and

WHEREAS, one vacancy for a regular member need to be filled; and

WHEREAS, six applications were received, and all six applicants were interviewed by a selection committee, which has provided recommendations for the appropriate appointments; and

WHEREAS, the City Council appreciates the service members of the community have devoted to bettering Salida through participation on the Parks, Recreation, Open Space and Trails Advisory Board; and

WHEREAS, in accordance with Section 2-14-20 a. of the Salida Municipal Code (“SMC”), the City Council shall confirm appointments by majority vote.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO THAT:

The City Council hereby appoints the following individuals to serve on the Parks, Recreation, Open Space, and Trails Advisory Board in the following capacity and term:

1. Appoint Ricki Garden as a regular member to serve the remainder of Jessica Downing’s term, to expire in June 2025.

RESOLVED, APPROVED AND ADOPTED this 4th day of March, 2025.

CITY OF SALIDA, COLORADO

By _____
Mayor

[SEAL]

[ATTEST] _____
City Clerk/Deputy City Clerk



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Parks and Recreation	Diesel Post - Parks and Recreation Director	March 4, 2025

AGENDA ITEM

Resolution 2025-10: A Resolution of the City Council for the City of Salida, Colorado to adopt a Park Development Manual.

BACKGROUND

On January 6th 2025 the director of Parks and Recreation presented a draft of a park development manual to be used by land owners and developers to guide the development of Parkland and open space dedication. At that work session staff discussed the rationale for the manual answered some questions and is now back to formally adopt the manual via resolution.

RECOMMENDATION

The recommendation is to adopt the Park Development manual.

FISCAL IMPACT

There is no fiscal impact.

MOTION

A City Councilmember should state "I move to _____ Resolution 2025-10 approving the adoption of a Park Development Manual for the City of Salida", followed by a second and a roll call vote.

PARK DEVELOPMENT MANUAL

CITY OF SALIDA



**PREPARED BY
CITY OF SALIDA
DEPARTMENT OF PARKS AND RECREATION**

City of Salida Park development types and standards

Background

Chapter 16 of the Salida Municipal code states that developers will “dedicate and develop land or pay fee-in-lieu”. City staff will work with developers in the pre-application phase through the approval process to identify desirable land based on:

- The attached “Preferred Park and Amenities figure”
- Current need
- The 2019 PROST Master Plan
- The Trust for Public Lands ParkServe Park location needs map, and
- Other applicable information

All proposed parks are to be discussed and vetted with city staff prior to the initial platting of any development.

Dedication and development vs. Fee-in-lieu

City staff will determine the most appropriate or desired park for a given location and whether or what percentage of fees will be accepted in lieu of dedicated and developed parkland. The Director of Parks and Recreation will determine if the City will require dedication or the paying of the fee-in-lieu. The P&R Director and the Department of Community Development can negotiate a combination of dedication and development and fee-in-lieu payment. Negotiating reduced requirements of land or fee amount is not permitted under the Land use Code. Any development whose dedicated and developed park is under the size required by the code will pay the remaining proportion of fees-in-lieu.

Design Criteria

Design criteria for parks, trails and open space. Land dedicated for public parks, trails and open space and land set aside for common open space shall meet the following design criteria, as applicable:

- 1) Acceptable land.
 - a) Acceptable land is relatively level, accessible, free from significant environmental constraints like wetlands or steep slopes, and suitable for the intended recreational use, meaning it can be developed into usable park space with features like playgrounds, walking paths, or open green areas; most jurisdictions

will not accept land with features like floodplains, steep inclines, or heavily contaminated areas as credit towards parkland dedication requirements.

2) Connectivity required.

- a) To the maximum extent practicable, parks, trails and open space shall be organized to create integrated systems of open areas that connect with the following types of lands located within or adjacent to the development:
- b) Dedicated public parks or trails;
- c) Dedicated school sites;
- d) Other dedicated or common open spaces;
- e) Regional parks, trails or open lands as specified in Master Plans and the TPL ParkServe map;
- f) Neighborhood shopping and activity centers; and
- g) Adjacent employment centers.

3) Regular shaped and contiguous.

- a) Parks, trails and open space shall be shaped to provide a critical mass for usable park and open space functions and shall be contiguous unless the land is used as a continuation of an existing trail or other linear park or unless specific topographic features require a different configuration. An example of such topographic features would be the provision of open space along a stream.
- b) Wherever possible, public parks should be regularly shaped, with a minimum dimension of three hundred (300) feet.

4) Accessible to residents.

- a) Parks, trails and open space shall be reasonably accessible to all of the residents.
- b) To make them visible to the general public, all public (dedicated) parks shall be bounded on at least one (1) side by a public street. In addition, to the maximum extent practicable, private lots should not back onto a public (dedicated) park, but should be separated from the park by public streets.
- c) Access to dedicated or common open space shall be a minimum of twenty-five (25) feet wide.

5) Recreational facilities.

- a) Recreational facilities constructed in parks and open space shall comply with all applicable County construction standards and specifications.

6) Landscaping and fences/walls on perimeter.

- a) All open space should be left in its natural or existing condition except as determined by the City. Existing trees and vegetation shall be preserved wherever practicable.
 - b) Where public parks or open space are bordered predominantly by private rear or side yards, only open fences (e.g., split rail fences) no higher than forty-eight (48) inches may be erected on the common boundaries with the park or open space. Opaque fences and walls (e.g., privacy fences) are prohibited in yards bordering the park or open space.
- 7) Drainage detention areas dedicated to the City or used as part of a pocket park or common open space.
 - a) If a proposal is made to dedicate a detention area to the City, the City shall determine if the detention area serves the public interest. Public interest shall be based on ease of maintenance, potential use of the area for open space or recreation uses by the public, whether the area would complement the Town's park or trail system and/or whether the applicant will provide cash escrow for ongoing maintenance of the facility.
 - b) If the City accepts dedication of a detention area or if the detention area is intended to be part of a pocket park or common open space area, regardless of ownership or maintenance, the following standards shall apply:
 - i) Slopes shall comply with City construction standards and specifications, but in no case shall exceed a slope of 4:1.
 - ii) Adequate access shall be provided to the detention area for pedestrians, the physically disabled and maintenance equipment.
 - iii) Drainage structures shall be designed and located to facilitate maximum use of the detention area for recreational use.
- 8) Landscaping shall be provided.
 - a) Landscaping shall be appropriately designed for the location with the consideration of sun angles and wind exposure.
 - b) Landscaping shall be able to be reasonably maintained.
- 9) Amenities, such as benches, play equipment, game courts and playing fields appropriate to the size and location of the park, shall be required and shall be based on proposed/existing adjacent uses unless design cannot reasonably accommodate the amenities.
 - a) On one (1) acre or less, fewer amenities are required.

- b) The applicant shall be responsible for installing all amenities per the City's construction standards and specifications, in coordination with the Parks and Recreation Department.

Park classifications and associate amenities required

As per the 2019 City of Salida Parks, Recreation, Open Space, and Trails Master Plan, there are four classifications of parks in the City of Salida. Each classification has different service goals and characteristics. City staff determines the types of parks desired in any location, and can up or downscale parks according to current needs.

All parks.

The following amenities are required for all parks.

- a) Landscaping shall be provided for all impervious areas not used for other amenities.
- b) Tables and seating shall be provided, such as benches, chairs, picnic tables, and ADA seating. The make and model of these amenities must be approved by City staff.
- c) Internal access pathways shall be provided to and between park amenities, parking areas, and the perimeter.
- d) Open turf play areas shall be provided unless agreed upon by staff at the initial concept development of the park.
- e) Universal and inclusive play elements shall be provided to accommodate all ages and abilities. The make and model of play structures must be approved by City staff.
- f) Dog waste stations shall be provided at all pedestrian access points into the park, with a minimum of three (3) per park. The make and model of waste stations must be approved by City staff.
- g) Trash receptacles shall be provided at all seating areas with a minimum of three (3) per park. Trash receptacle make and model must be approved by City staff.
- h) Will be built per the City of Salida Standard of Construction in Parks.

Pocket parks

Pocket parks shall be:

- a) less than 1 acre in size;
- b) centrally located within neighborhoods served;
- c) bordered on at least one (1) side by public streets (excluding collector and arterial streets) to provide easy public access, visual surveillance, and parking;
- d) accessible from the surrounding neighborhoods using sidewalks and/or trails;
- e) owned and maintained by the City, an HOA or metropolitan district;
- f) platted with a dedicated public access easement; and
- g) constructed to City standards and specifications for design and construction of public improvements (per Land Use Code and Parks Construction Standards and Specifications document).

Provide opportunities for passive outdoor recreation at a sub-neighborhood scale. Pocket parks shall be located within 1/4 mile of the residences they are intended to serve and may include:

- lawn areas,
- picnic shelters and tables,
- play equipment,
- artwork or
- other amenities that are appropriate for the demographics and types of activities that the neighborhood may desire.

Neighborhood parks

Neighborhood parks shall be:

- a) not less than a minimum size of one (1) acre;
- b) centrally located within or adjacent to the neighborhood(s) served;
- c) bordered on at least two (2) sides by public streets (excluding arterial streets) providing easy access, visual surveillance and parking;
- d) accessible by sidewalks and/or trails;
- e) accessible from the surrounding neighborhoods using sidewalks and/or trails;
- f) owned and maintained by the City, an HOA or metropolitan district;
- g) platted with a dedicated public access easement; and

- h) constructed to City standards and specifications for design and construction of public improvements (per Land Use Code and Parks Construction Standards and Specifications document).

Provide places for recreation and social gathering within approximately 1/2 mile from most residences being served. Neighborhood parks may Include:

- multi-use lawn areas,
- picnic areas,
- playground,
- small game courts,
- community gardens,
- open playing fields and facilities as appropriate.

Community parks

Serve multiple neighborhoods and focus on the recreational needs and interests of the entire community. They provide opportunities for organized recreational activities as well as community events and gatherings. Community parks shall be:

- (A) a minimum size of 5 acres;
- (B) sited in an area level enough to accommodate play fields or recreational facilities as needed;
- (C) able to maintain a balance between programmed activity facilities and other community activity areas, such as performance areas, festival spaces, gardens, water features, etc. that have broad appeal to the community;
- (D) accessible from a collector or arterial street;
- (E) integrated into the City's trail system;
- (F) owned by the City; and
- (G) constructed to City standards and specifications for design and construction of public improvements (per Land Use Code and Parks Construction Standards and Specifications document).

Regional parks

Serve an entire community and focus on a broad range of recreational needs. They provide opportunities for organized recreational activities as well as community events and gatherings and offer both passive and active recreation and leisure opportunities. Regional parks shall be:

- a) a minimum size of 25+ acres (with exceptions based on use characteristics, special features, etc.) Large tracts of land are often necessary to provide natural resource-based recreation opportunities and protect the natural resources for longterm use for outdoor recreation. This criterion will not be exclusively used to determine whether a park is regional. Parks of less than 25 acres may still be determined regional based upon other criteria.
- b) able to serve a regional clientele (as opposed to mostly local) including drawing tourists from outside the local area.
- c) able to provide outdoor recreation facilities and activities that are primarily natural resource based (camping, picnicking, hiking, swimming, boating, canoeing, fishing, nature study).
- d) able to provide for unique or unusual geologic features, historically significant sites, watersheds, or parks containing characteristics which may be of regional or statewide significance.
- e) accessible from a major arterial street;
- f) integrated into the City's trail system;
- g) owned by the City, State or Federal government; and
- h) constructed to City standards and specifications for design and construction of public improvements (per Land Use Code and Parks Construction Standards and Specifications document).

Exceptional Dedications, Recreational facilities, and Sports Complexes

Any Exceptional Dedications, Recreational facilities, or Sports Complexes negotiated between the Developer and City staff will be contingent on approval by City Council.

Construction standards

All dedicated and developed parks must adhere to the City of Salida Park Construction Standards and Specifications document and following standards:

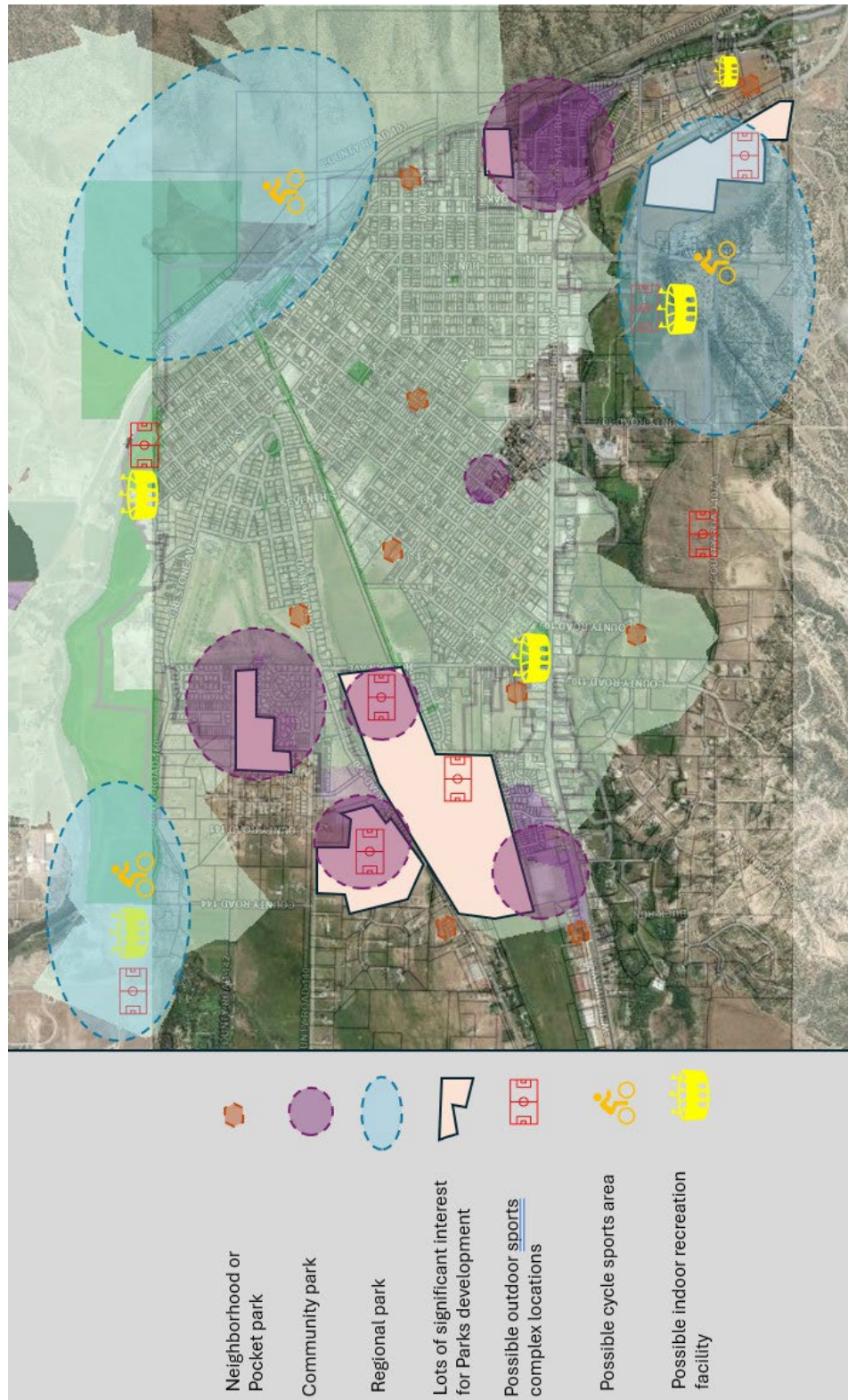
- a. Construction scheduled to avoid construction activity impact
- b. Have irrigation design and engineering approved by a landscape architect (City approval required)

- i. Must follow Salida irrigation manual standards
- c. Trail construction must follow the City of Salida standards
- d. All water taps are commercial grade and appropriately sized.
- e. All installed electrical service is commercial grade.
- f. Any amenity (playground, bench, lights) must be approved by staff
- g. Provide "as built" documents upon completion of the project
- h. Adhere to the attached exhibits.

Acceptance and Maintenance

Parks are accepted as City owned parks upon approval of the Director of Parks and Recreation via formal letter.

Future Park development planning map



**CITY OF SALIDA, COLORADO
RESOLUTION NO. 10
(Series of 2025)**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO,
APPROVING THE ADOPTION OF A PARK DEVELOPMENT MANUAL FOR THE CITY
OF SALIDA**

WHEREAS, Article VI. of the Salida Municipal Code (“SMC”), speaks to Parks, Recreation, Open Space and Trails; and

WHEREAS, there is no reference for how parks are developed in Salida; and

WHEREAS, it is best practice to have standards and guidance for the development of parks; and

WHEREAS, the City Council wish to adopt a parks development standard.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY
OF SALIDA, COLORADO THAT:**

The City Council hereby adopts a Park Development Manual.

RESOLVED, APPROVED AND ADOPTED this 4th day of March, 2025.

CITY OF SALIDA, COLORADO

By _____
Mayor

[SEAL]

[ATTEST] _____
City Clerk/Deputy City Clerk



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Administration	Sara Law – PIO/Sustainability Coordinator	March 4, 2024

ITEM

Resolution 2025-11 – A Resolution of the City Council of the City of Salida, Colorado Approving a Citizen Appointment to the Sustainability Committee Pursuant to Section 2-18-10 of the Salida Municipal Code

BACKGROUND

In 2023, the City Council passed Ordinance 2023-15 to establish the Sustainability Committee as an official advisory body to the City Council. In accordance with Section 2-18-10 of the Salida Municipal Code, the City Council shall select and appoint person(s) to serve as members of the City of Salida Sustainability Committee.

Committee Member Keyser resigned his position on the committee on February 21st, 2025. The Chair and Vice Chair of the Sustainability Committee reviewed the applications from the interviews conducted in January 2025 and recommended that applicant, Barrett Donovan, fulfill the rest of David Keyser's term.

STAFF RECOMMENDATION

Staff is recommending Council appoint Barrett Donovan to the Sustainability Committee.

FISCAL IMPACT

There is no fiscal impact.

MOTION

A Council person should state "I move to _____ Resolution 2025-11, a Resolution of the City Council for the City of Salida, Colorado approving the following citizen appointments to the Sustainability Committee" followed by a second and roll call vote:

1. The City Council hereby appoints Barrett Donovan as a member of the Sustainability Committee; term to expire January 2, 2026.

**CITY OF SALIDA, COLORADO
RESOLUTION NO. 11
(Series of 2025)**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO,
APPROVING A CITIZEN APPOINTMENT TO THE SUSTAINABILITY COMMITTEE
PURSUANT TO SECTION 2-18-10 OF THE SALIDA MUNICIPAL CODE**

WHEREAS, in accordance with Section 2-18-10 of the Salida Municipal Code (“SMC”), the City Council shall select and appoint person(s) to serve as members of the City of Salida Sustainability Committee and

WHEREAS, the Sustainability Committee (the “Committee”) shall consist of five to nine appointed members, eight of whom shall be appointed by the City Council and one who shall be appointed by the Board of County Commissioners. Further, one member shall be a youth representative, the City Council wishes to fill the vacancy for prescribed terms; and

WHEREAS, the City Council appreciates the service these members of the community have devoted to bettering Salida through participation on the Sustainability Committee; and

WHEREAS, in accordance with Section 2-18-10 of the Salida Municipal Code (“SMC”), the City Council shall confirm the appointments by majority vote.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO THAT:

1. The City Council hereby appoints Barrett Donovan as a member of the Salida Sustainability Committee; term to expire January 2, 2026.

RESOLVED, APPROVED AND ADOPTED this 4th day of March, 2025.

CITY OF SALIDA, COLORADO

By _____

Mayor

[SEAL]

[ATTEST] _____
City Clerk/Deputy City Clerk