



REGULAR MEETING OF THE CITY COUNCIL

448 E. 1st Street, Room 190

Salida, Colorado 81201

Tuesday, June 4, 2019 - 6:00 p.m.

AGENDA

1. Call to Order
 - a. Pledge of Allegiance – Led by Mayor Wood
 - b. Roll Call
2. Consent Agenda
 - a. Approval of Agenda
 - b. Approval of Meeting Minutes – May 21, 2019
 - c. Approval of Asphalt Chip Sealing Project
 - d. Approval to Update the Existing Raw Water Study Professional Services Agreement
 - e. Approval of Revocable License Agreement – Grazing Lease
 - f. Approval of Letter to Salida School District Board of Education
3. Citizen Comment – 3 minute time limit
4. New Business / Action Items
 - a. First Reading and Setting a Public Hearing for Ordinance 2019-10 Amending Chapters 2 and 16 of the Salida Municipal Code Regarding the Powers and Duties of the Historic Preservation Commission and the Process for Approval of Minor and Major Activity (Kristi Jefferson)
 - b. First Reading and Setting a Public Hearing for Ordinance 2019-11 Amending Chapter 5, Article 1, of the Salida Municipal Code Regarding Charter Franchise Agreement (Nina Williams)
 - c. Resolution 2019-32 Approving a Supplemental Lease Agreement between the City of Salida and the Union Pacific Railroad for Parking Lot Expansion
5. Councilmembers, Mayor and City Treasurer Reports
 - Councilors Bowers, Shore, Templeton, Critelli, Brown-Kovacic, Kasper, Mayor Wood
 - Treasurer Pappenfort

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

7. Adjourn

[SEAL]

City Clerk/Deputy City Clerk

Mayor P.T. Wood



REGULAR MEETING OF THE CITY COUNCIL
448 E. 1st Street, Room 190
Salida, Colorado 81201
Tuesday, May 21, 2019 - 6:00 p.m.
MINUTES

1. Call to Order
 - a. Pledge of Allegiance – Led by Mayor Wood
 - b. Roll Call - Present: Mayor Wood, Bowers, Shore, Critelli, Templeton, Kasper, Brown-Kovacic
2. Proclamation Regarding Sister City of Higashinaruse Village, Akita Prefecture, Japan
3. Introduction of Aimee Tihonovich, Finance Director
4. Consent Agenda
 - a. Approval of Agenda
 - b. Approval of Meeting Minutes – May 7, 2019
 - c. GARNA – Fee Waiver Request
 - d. Approve Lease Purchase Agreement for Street Sweeper
 - e. Approval of State Lease for Touber Building

Shore made a motion to combine and approve the items of the Consent Agenda. Seconded by Bowers. With all in favor, THE MOTION PASSED.

5. Citizen Comment –
 - Jim Miller spoke in favor of the update of the attorney’s scope of work, and encouraged Council to look into updating those of the Mayor, Mayor Pro Tempore and City Administrator.
 - Monica Griesenbeck spoke in opposition to Resolution 2019-29 and Ordinance 2019-09.
6. Unfinished Business / Action Items
 - a. Second Reading and Public Hearing of Ordinance 2019-09 Amending Chapter 13, Article III of the Salida Municipal Code Entitled “Water and Wastewater Fees, Rates and Charges” to Create New User Classes, and Amending Chapter 13, Article II of the Salida Municipal Code Entitled “Water and Wastewater Regulations” (Bill Almquist)

Council asked for clarification from staff. The Mayor opened the public hearing at which Paige Judd spoke in opposition of the Ordinance because it does not encourage building of affordable units nor addresses the difference between fees for units selling for much more than the average wage earner can afford. John Diesslin also spoke in opposition of the Ordinance to the same effect as Judd as well as how the classification does not differentiate enough. Monica Griesenbeck thinks the Ordinance is unfair, fiscally unsound and potentially illegal. The Mayor then closed the public hearing.

Bowers feels that the Ordinance is discriminatory. Kasper feels it is a step in the right direction but wants more flexibility for ADUs. Critelli thinks multi-family units encompasses such a wide range that it needs more clarification. Brown-Kovacic stated this is good first step, but also that the multi-family classification is too broad. Templeton said that the Ordinance is a good first step. Shore also has difficulty of the multi-family classification.

Kasper made a motion to approve Ordinance 2019-09 on second reading. Seconded by Critelli. Bowers made a motion to amend the Ordinance to include a sunset clause of three years. Seconded by Shore. Shore and Bowers voted to approve the amendment; Templeton, Brown-Kovacic, Critelli and Kasper dissented; THE MOTION TO AMEND THE ORDINANCE FAILED. With Bowers dissenting, THE MOTION TO PASS ORDINANCE 2019-09 PASSED.

7. New Business / Action Items

- a. Resolution 2019-29 Amending the Fees and Charges for Water and Wastewater Services (Bill Almquist)

Kasper made a motion to approve Resolution 2019-29. Seconded by Critelli. With Bowers dissenting, THE MOTION PASSED.

- b. Resolution 2019-30 Attorney Scope of Work (Drew Nelson)

Kasper made a motion to approve Resolution 2019-30. Seconded by Shore. With all in favor, THE MOTION PASSED.

- c. Resolution 2019-31 A Proposed Amendment to the Conditions of Resolution 2017-33 Approving the Transfer of Sewer Taps at 7251 County Road 105 (Glen Van Nimwegen)

Bowers made a motion to approve Resolution 2019-31. Seconded by Kasper. With all in favor, THE MOTION PASSED.

- d. Conditional Lease Agreement with PowderMonarch LLC for Lighting on Tenderfoot Mountain

Brown-Kovacic made a motion to approve a conditional lease agreement with PowderMonarch LLC. Seconded by Kasper. With all in favor, THE MOTION PASSED.

8. Councilmembers, Mayor and City Treasurer Reports

- Bowers questioned who is paying for the trip to Japan. Brown-Kovacic clarified that the sister city has taken care of it.
- Shore introduced the idea of sister city Chhekma, Nepal.
- Critelli visited the CCI Summit to see what Ridgeway, Trinidad and Paonia are doing with their Space to Create projects.
- Brown-Kovacic attended a Communities That Care meeting that focused on drug/alcohol use for youth and how to address ease of access, substance abuse corrective curriculum and working with parents and parent attitudes. Communities That Care asked that the City remind businesses how important it is to follow laws regarding minors and drug access. Also, neighbors of Alpine Park have expressed their concerns about the basketball court upgrade.
- Kasper suggested that owners of ADUs, in exchange for paying for tap fees, sign an agreement for long-term rental at 70% AMI.
- Mayor Wood praised the CCI Summit. Also, the Mayor noted that the City will be getting a Small Business Development Center. The Colorado Consortium of Prescription Drug Abuse Prevention Group asked the City to participate in discussions.
- Treasurer Pappenfort mentioned that she and the Finance Director will get together to start the Finance Committee, and that sales tax was up again in March.
- Staff Reports

9. Adjourn

[SEAL]

City Clerk/Deputy City Clerk

Mayor P.T. Wood



REQUEST FOR CITY COUNCIL ACTION

Meeting Date: June 4, 2019

AGENDA ITEM NO. Choose an item.	ORIGINATING DEPARTMENT: Public Works	PRESENTED BY: David Lady
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ITEM:

Consent Agenda

Council Action Award 2019 Asphalt Maintenance Seal Coat Project, Project No 2019-004

BACKGROUND:

The City of Salida roadways consist of asphalt paving. Asphalt maintenance is necessary to reduce life cycle costs and maintain a higher level of service. Asphalt maintenance generally consists of crack sealing, chip sealing, slurry seals, and other types of point repairs.

Crack sealing work was completed in 2019 as a separate project. Seal costs consisting of chip sealing are identified on the attached exhibit. Asphalt point repairs are also proposed. Completing these prior to chip sealing are anticipated to provide a longer life to the pavement surface.

The project was advertised and bids were received on May 30th, 2019 as follows.

A-1 Chipseal	\$ 198,366.80
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A-1 Chipseal completed the 2018 Asphalt Maintenance Project and other prior work for the City of Salida. They have provided a satisfactory product. Costs are comparable to past unit pricing.

FISCAL NOTE:

The 2019 budget for Asphalt Maintenance is \$350,000 (31-30-6012-3)

The 2019 Asphalt Crack Sealing Project had a budget of \$39,850.00. Adequate budget remains for this project.

STAFF RECOMMENDATION:

Staff is recommending award of the construction contract for the 2019 Asphalt Maintenance Seal Coat Project and authorizing the City Administrator to enter into a Construction Agreement between the City and A-1 Chipseal in the amount of **\$198,366.80**

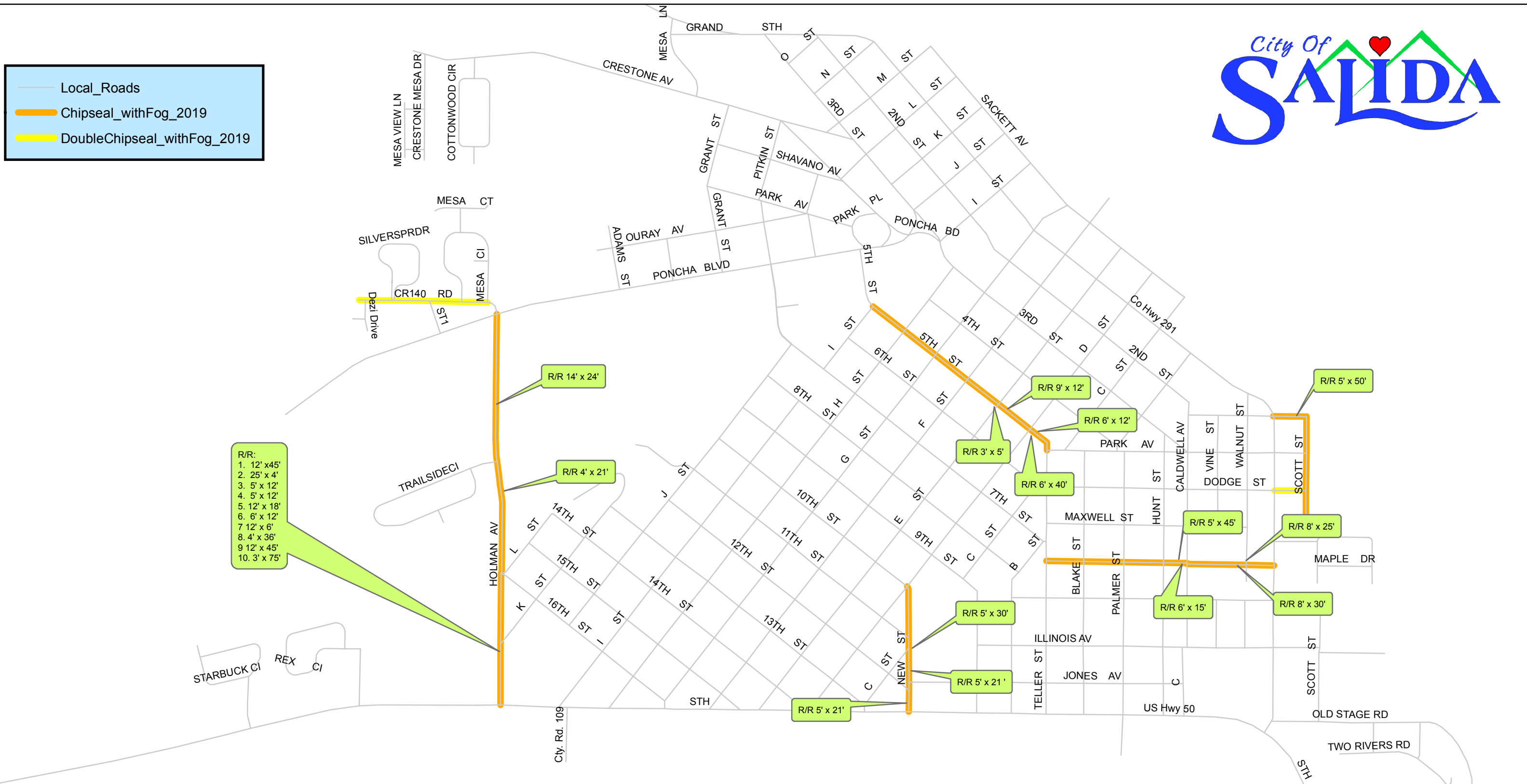
SUGGESTED MOTIONS:

A Council person should make a motion to “combine and approve the items on the consent agenda.”

Followed by a second and then a voice vote.

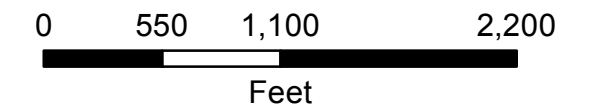


— Local_Roads
— Chipseal_withFog_2019
— DoubleChipseal_withFog_2019



2019 Asphalt Maintenance

Date: 5/9/2019





REQUEST FOR CITY COUNCIL ACTION

Meeting Date: June 4, 2019

AGENDA ITEM NO	ORIGINATING DEPARTMENT:	PRESENTED BY:
Consent Agenda.	Public Works	David Lady

ITEM:

Consent Agenda

Council Action To Approve Updating the Raw Water Study Professional Services Agreement.

BACKGROUND:

The City of Salida has an existing Raw Water Supply Plan that was last updated in 2009. The purpose of a Raw Water study is for review and guidance of the City's long-range water planning needs that may include water rights and accounting, raw water storage, diversions, system redundancy considerations, and regulatory components. Salida's water counsel has suggested that the City consider updating this plan in consideration of municipal planning needs. Other considerations include The Colorado Water Plan (2017), Chaffee County planning efforts underway, current growth, and watershed health.

Updates to the Raw Water Supply Plan are provided on the attached proposal provided by Hendrix Wai Engineering, Inc. (HWE). These updates are anticipated to address planning needs for a 50-year projection as well as full build-out considerations.

Randy Hendrix with (HWE) is the City of Salida's water right's engineer. He works with staff on a regular basis by reviewing monthly water accounting records, leases, and other data. Randy would work closely with Salida's staff and water counsel in completing the updates to the Raw Water Study. These updates are anticipated be completed by the end of 2019.

FISCAL NOTE:

Completion of all scope of work items is estimated at \$36,410.00

A budget allocation of \$10,000 is included in the 2019 budget (20-34-5241-0). Staff originally anticipated budgeting for this project in 2020. Due to the health of the water fund, a budget amendment is not anticipated for the overall 20/34 water utility fund at this time.

STAFF RECOMMENDATION:

Staff is recommending approval of the professional services agreement with Hendrix Wai Engineering, Inc. in the amount of \$36,410.00 to update The City of Salida's Raw Water Study.

SUGGESTED MOTIONS:

A Council person should make a motion to "combine and approve the items on the consent agenda." Followed by a second and then a voice vote.

Hendrix Wai Engineering, Inc.

Water Resources, Water Rights and GIS/Computer Modeling

P.O. Box 4487
Parker, CO 80134

Telephone: (720) 930-4360
E-Mail: Randy@Hendrix-Wai.com

To: Drew Nelson – City of Salida
David Lady – City of Salida

From: Randy L. Hendrix, Ayrton M. Hendrix

Date: May 8, 2019

Subject: Scope of Work – Update to Raw Water Study

At your request, we have prepared this scope of work to summarize the tasks and projected costs associated with an update to the City of Salida's Raw Water Master Plan (RWMP), which was initially completed by Applegate Group, Inc. (Applegate) in April 2009. The purpose of a raw water study such as the RWMP is to give Salida the tools needed to determine whether current water supplies are sufficient to meet the City's demands over a 50-year planning horizon, or whether changes in the City's supplies or operations will be needed to firm up the municipal supply. In light of changing hydrological conditions, changing administration of water rights in Water Division 2, an approaching deadline for Salida to make decisions with respect to its lease of capacity in North Fork Reservoir, and municipal growth, the Applegate RWMP needs to be updated so that City Council and City staff may rely on the RWMP to develop protective water rights and water infrastructure planning for the next 50 years.

The following are the tasks necessary for the above-described update to the Raw Water Master Plan. Estimated costs are based on projected number of engineer hours x Hendrix Wai Engineering, Inc.'s 2019 billing rates (\$165.00 per hour for Randy Hendrix and \$55.00 per hour for Ayrton Hendrix).

1. Perform a thorough review of the Applegate RWMP to determine which data and assumptions remain valid and which data and assumptions need to be updated, including key assumptions and goals for the updated planning horizon. Projected engineer time: 10 hours by Randy Hendrix and 10 hours by Ayrton Hendrix. The estimated cost for this task would be \$2,200.
2. Travel to Salida to inspect all structures identified in the Applegate RWMP and all other structures currently included in Salida's overall municipal system, and to investigate potential sites for additional water infrastructure. The goal of this inspection will be to determine current status, projected longevity, and efficiency of existing infrastructure and to evaluate potential sites for additions or changes to the existing system. This site visit would include inspections of North Fork Reservoir, potential sites north of Salida for delivery of Project Water into the Salida water treatment plant, possible locations for wells on the Arkansas River mainstem for potential use as a backup water supply, and all existing infrastructure. This would occur over a 2-day period in late June or early July for both Randy Hendrix and

- Ayrton Hendrix. Projected engineer time: 16 hours by Randy Hendrix and 16 hours by Ayrton Hendrix. The estimated cost for this task would be \$3,520.00.
3. Collect and review data including relevant diversion records, storage records, population growth projections, water court decrees, Salida's agreements with other parties, and any engineering or other reports relevant to Salida's water supply (e.g., climate studies and projections). Projected engineer time: 16 hours by Randy Hendrix and 32 hours by Ayrton Hendrix. The estimated cost for this task would be \$4,400.00.
 4. After completing task #3, if there are any legal questions or issues that need to be resolved, HWE may consult with Salida's water attorneys at Moses, Wittemyer, Harrison and Woodruff, P.C. to discuss items of concern raised in the review. Projected engineer time: 8 hours by Randy Hendrix and 8 hours by Ayrton Hendrix. The estimated cost for this task would be \$1,760.00.
 5. Develop a point flow mode of the Arkansas River – South Arkansas River system to understand how current river administration (which differs from historical administration) impacts Salida's water rights on the South Arkansas River. This model will be used to determine when and potentially how long Salida's water rights on the South Arkansas River could be called out by senior water rights on the Arkansas River downstream of the confluence. Projected engineer time: 40 hours by Randy Hendrix and 40 hours by Ayrton Hendrix. The estimated cost for this task would be \$8,800.00.
 6. Update any existing analyses developed by Applegate that are relevant to the updated study. Incorporate other engineering work and analyses already performed by HWE that would be relevant to the updated study such as the Harrington Ditch best management practices memorandum. Projected engineer time: 20 hours by Randy Hendrix and 10 hours by Ayrton Hendrix. The estimated cost for this task would be \$3,850.00.
 7. Meet with personnel from the Division Engineer's Office, Southeastern Colorado Water Conservancy District, Upper Arkansas Water Conservancy District, and/or Salida, and/or with other water engineers with knowledge of the South Arkansas River system. Discussions will also both existing practices and potential changes in administration and operations in the future. These meetings and discussions may be in person or via telephone conversations. Projected engineer time: 16 hours by Randy Hendrix and 16 hours by Ayrton Hendrix. The estimated cost for this task would be \$3,520.00
 8. After preparing and circulating drafts of the updated RWMP to City staff for comment, finalize the updated RWMP, to include recommendations for meeting future demands and for addressing potential "extreme" drought situations under current river administration. HWE recommendations will also address the potential for a Colorado River Compact call that could reduce or eliminate future Project water deliveries. Projected engineer time: 40 hours by Randy Hendrix and 32 hours by Ayrton Hendrix. The estimated cost for this task would be \$8,360.00.
 9. Any additional work that may be necessary to follow up the final updated RWMP will be billed at the hourly rate only upon approval from Salida.

All tasks and charges are described and documented in a monthly billing cycle. Billing for this work would be separate from current engineering work performed for Salida by HWE. It is estimated that the tasks described above would be between \$36,000 and \$38,000 with a completion of the scope of work described above by the end of 2019. Every effort will be made to complete this work as economically and efficiently as possible. If you have any questions regarding these tasks or wish to include additional tasks not listed please let me know.



REQUEST FOR CITY COUNCIL ACTION

Meeting Date: June 4, 2019:

AGENDA ITEM NO. Consent Agenda	ORIGINATING DEPARTMENT: Administration	PRESENTED BY: Drew Nelson
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ITEM:

Revocable License Agreement – Grazing Lease for Vandaveer Ranch

BACKGROUND:

The City of Salida has been approached by Jon White requesting permission to allow cattle grazing of approximately 30 head of cattle on the Vandaveer Ranch property recently acquired by the City. The prior owners of the property – including the City at one point – have allowed for grazing leases in the past, including in 2018. Mr. White has requested the ability for his cattle to graze the property until mid-July; the attached draft agreement would allow a little wiggle room of up to sixty (60) days following approval of the lease. Mr. White has indicated that there would be no more than 30 head grazing at any particular time, and that he would install any and all necessary fencing to keep the cattle in the location noted on Exhibit A in the attached Agreement.

FISCAL NOTE:

The attached Revocable License Agreement requires payment of \$300 for grazing during the term of the agreement.

STAFF RECOMMENDATION:

Staff recommends approval of the Revocable License Agreement, which has been reviewed and approved as to form by the City Attorney.

SUGGESTED MOTIONS:

A City Councilperson should make a motion to combine and approve the items on the consent agenda, followed by a second and a voice vote.

REVOCABLE LICENSE AGREEMENT

THIS REVOCABLE LICENSE AGREEMENT (hereinafter “Agreement”) is made and entered into this 4th day of June, 2019, by and between the City of Salida, Colorado, Colorado a municipal corporation (hereinafter “City”) and Jon White (“Licensee”), together referred to herein as “Parties;

WITNESSETH:

WHEREAS, the City holds in the public trust all streets, rights-of-ways, parks, public lands and open space which it owns and which is dedicated to the public use, including Vandaveer Ranch, located within the City of Salida; and

WHEREAS, Licensee is a local cattle rancher searching for local grazing lands for a herd of approximately 30 head of cattle; and

WHEREAS, the City has recently acquired Parcels B, C, E, F2 and F3 (encompassing approximately 95 acres) of the former Vandaveer Ranch (the “Licensed Premises”), of which the Licensee has leased from prior owners in the past; and

WHEREAS, Licensee desires to obtain a revocable and non-exclusive license from the City to use and occupy a portion of the Vandaveer Ranch property, shown in Exhibit A, solely to provide grazing space for their herd;

WHEREAS, the City is willing to grant Licensee a revocable license for such limited purpose upon the Licensed Property, upon the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the payment to the City by the Licensee of three hundred fifty dollars (\$300) and other good and valuable consideration, the delivery and receipt and acceptance of which are hereby acknowledged and confessed, the City and Licensee agree as follows:

1. Licensed Premises. The City hereby grants to Licensee a revocable and non-exclusive license to occupy, use, and maintain, subject to all of the terms and conditions of this Agreement, the following described Licensed Premises: that portion of Vandaveer Ranch encompassing 95 acres, referred to as Parcels B, C, E, F2 and F3, as more particularly shown in Exhibit A, attached hereto and incorporated herein by reference.

2. Term. The term of the license shall be for sixty (60) days starting from the date of approval of this Agreement or until terminated by either party. The agreement will not be renewed and is only for the limited purposes of grazing. The Licensee agrees to pay for any cost to install, maintain and use the Licensed Premises, in consideration for its use of the Premises. Either party may terminate this Agreement upon thirty (30) days written notice with or without cause. Notwithstanding the foregoing, the City may revoke the License at any time without notice should Licensee violate or breach any terms or conditions of this Agreement.

3. Purpose and Conduct of Use. The Premises may be occupied and used by Licensee during the term of this Agreement for the sole purpose of grazing at the Licensed Premises. Except as specifically allowed by this Agreement, Licensee shall not place, build, expand, or add any other structures, improvements, or items on the Licensed Premises. In its use and occupancy of the Premises, Licensee shall strictly comply with the following standards and requirements:

- (a) The City shall be able to access the Licensed Premises at any time the City deems necessary or desirable.
- (b) Licensee shall not place or permit any signs or banners on the Premises.
- (c) No additional structures, improvements or items shall be installed on the Premises other than what is necessary to keep cattle within the Premises.
- (d) Licensee shall not place or permit any hazardous materials in or about the Premises.
- (e) Licensee shall at its sole expense promptly remove from the Premises and any adjacent areas all snow and trash generated by its operation and maintenance of the Premises.
- (f) Licensee shall be responsible for maintaining the Premises in the manner and state in which Licensee found the Premises, and for returning the Premises to the manner and state in which it found the Premises at the effective date of this Agreement.
- (g) Licensee agrees to maintain all improvements upon the Premises in good repair and safe condition. All repairs shall be made at Licensee's sole expense, and the City shall have no monetary obligation whatsoever to maintain the Premises, all which shall be maintained solely at Licensee's expense. Licensee shall maintain the Premises reasonably free from unsightly debris or accumulations of trash or other items in compliance with the standards set by the City ordinances.
- (h) Upon termination of this License for any reason, Licensee shall remove any and all improvements made to the Premises at Licensee's sole expense.
- (i) Licensee's use of the Premises shall always and continuously be in compliance with all applicable federal, state and local rules and regulations, including but not limited to those contained in the Municipal Code of the City of Salida.

4. General Use and Care of Premises. Licensee agrees to take such actions as are necessary to maintain the improvements and Premises in good and safe condition at all times. Licensee further agrees to comply at all times with the ordinances, resolutions, rules, and regulations of the City in Licensee's use and occupancy of the Premises.

5. No Estate in Premises. Licensee agrees that it does not have or claim, and shall not at any time in the future have or claim, any ownership interest or estate in the Premises, or any other interest in real property included in the Premises, by virtue of this Agreement or by virtue of Licensee's occupancy or use of the Premises

6. Compliance. If Licensee fails to comply with its obligations under this Agreement, the City may at its sole option terminate this Agreement as provided herein or take such measures as it determines necessary to bring the Premises into compliance with the terms hereof, and the cost of any such measures shall be paid by Licensee.

7. Acknowledgment of General Condition. Licensee acknowledges that its use and occupancy hereunder is of the Premises in its present, as-is condition with all faults, whether patent or latent, and without warranties or covenants, express or implied. Licensee acknowledges the City shall have no obligation to repair, replace, or improve any portion of the Premises in order to make such Premises suitable for Licensee's intended uses.

8. Acknowledgment and Acceptance of Specific Matters. Licensee specifically acknowledges that the Premises may not currently meet standards under federal, state or local law for Licensee's intended use, including but not limited to accessibility standards under the Americans with Disabilities Act and Uniform Building Code and adopted and in force in the City of Salida. Compliance with such standards, if required for Licensee's use, shall be at the sole cost and expense of Licensee. If Licensee determines that compliance with such standards for Licensee's use is not feasible or economical, then Licensee may terminate this Agreement and the parties shall be released from any further obligations hereunder.

9. Taxes. The Premises are presently exempt from any real property taxation. In the event the County Assessor determines that the Premises is subject to the lien of general property taxes due to Licensee's use or occupancy, Licensee shall be responsible for the payment of taxes.

10. Liens. Licensee shall be solely responsible for and shall promptly pay for all services, labor or materials furnished to the Premises at the instance of Licensee. The City may at Licensee's expense discharge any liens or claims arising from the same.

11. Licensee and City's Property. The City shall have no responsibility, liability, or obligation with respect to the safety or security of any personal property of Licensee placed or located on, at, or in the Premises, it being acknowledged and understood by Licensee that the safety and security of any such property is the sole responsibility and risk of Licensee.

12. Right of Entry. Notwithstanding any other provisions of this Agreement to the contrary, the City shall at all times have the right to enter the Premises to inspect, improve, maintain, alter or utilize the Premises in any manner authorized to the City. If such entry requires disturbance of any items placed upon the Premises under this Agreement, the City shall not be required to repair or replace any such disturbance. In the exercise of its rights pursuant to this Agreement, Licensee shall avoid any damage or interference with any City installations, structures, utilities, or improvements on, under, or adjacent to the Premises.

13. Indemnity and Release. Licensee shall be solely responsible for any damages suffered by the City or others as a result of Licensee's use and occupancy of the Premises. Licensee agrees to indemnify and hold harmless the City, its elected and appointed officers, agents, employees and insurers harmless from and against all liability, claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of, resulting from, or in any way connected with (a) Licensee's use and occupancy of the Premises; (b) the conduct of Licensee's operations or activities on the Premises; (c) any liens or other claims made, asserted or recorded against the Premises as a result of Licensee's use or occupancy thereof; and (d) the rights and obligations of Licensee under this Agreement. Licensee hereby further expressly releases and discharges the City, its elected and appointed officers, agents, employees, and insurers, from any

and all liabilities for any loss, injury, death, or damages or any person or property that may be sustained by reason of the use or occupancy of the Premises under this Agreement, excepting only those arising solely from willful and wanton conduct of the City's officers or employees.

14. Insurance. Licensee shall at its expense obtain, carry, and maintain at all times, and shall require each contractor or subcontractor of Licensee performing work on the Premises to obtain, carry, and maintain, a policy of comprehensive general liability insurance insuring the City and Licensee against any liability arising out of or in connection with Licensee's use, occupancy or maintenance of the Premises or the condition thereof. The City, its elected and appointed officers, agents and employees shall be named as additional insureds on such policies. The policies required above shall be primary insurance, and any insurance carried by the City shall be excess and not contributory insurance. Such policies shall contain a severability of interests provision. Licensee shall be solely responsible for any deductible losses under each of the policies required above. A certificate of insurance shall be completed by Licensee's insurance agent(s) as evidence that a policy or policies providing the coverages, conditions, and minimum limits required herein are in full force and effect, and shall be subject to review and approval by the City prior to commencement of Licensee's occupancy of the Premises, or whenever City requests such evidence. As between the parties hereto, the limits of such insurance shall not limit the liability of Licensee. No required coverage shall be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to the City. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto. Failure on the part of Licensee to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach hereof upon which the City may immediately terminate this Agreement.

15. No Waiver of Immunity or Impairment of Other Obligations. The City 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, and protections provided by the Colorado Governmental Immunity Act, C.R.S. §24-10-101 *et seq.*, as from time to time amended, or otherwise available to the City, and its officers and employees.

16. Restoration of Premises. At the termination of this Agreement by lapse of time or otherwise, Licensee shall deliver up the Premises in as good a condition as when Licensee took possession, excepting only ordinary wear and tear. At the time of such termination, Licensee at its sole expense shall remove from the Premises all improvements and other items placed on the Premises. If any such improvements or items are not removed at the termination of this Agreement, the City may remove them at Licensee's sole expense, and Licensee shall reimburse the City for all costs incurred, including but not limited to staff time and administrative overhead, within 15 days of receipt of a City invoice for same.

17. Notices. Any notices or communication required or permitted hereunder shall be given in writing and shall be personally delivered, or sent by facsimile transmission or by United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

City:

LICENSEE:

City of Salida
Attn: City Administrator
448 E 1st Street
Salida, CO 81201

or to such other address or the attention of such other person(s) as hereafter designated in writing by the parties. Notices given in the manner described above shall be effective, respectively, upon personal delivery, upon facsimile receipt, or upon mailing.

18. Existing Rights. Licensee understands that the license granted hereunder is granted subject to prior franchise agreements and subject to all easements and other interests of record applicable to the Premises. Licensee shall be solely responsible for coordinating its activities hereunder with the holders of such franchise agreements or of such easements or other interests of record, and for obtaining any required permission for such activities from such holders if required by the terms of such franchises or easements or other interests.

19. No Waiver. Waiver by the City of any breach of any term of this Agreement shall not be deemed a waiver of any subsequent breach of the same or any other term or provision thereof.

20. Agreement Personal. This Agreement is personal to the parties hereto. Licensee shall not transfer or assign any rights hereunder without the prior written approval of the City, which approval shall be at the City's sole option and discretion.

21. Entire Agreement; Authority. This Agreement is the entire agreement between the City and Licensee and may be amended only by written instrument subsequently executed by the City and Licensee. The undersigned signatory of Licensee represents that he or she has been duly authorized to execute this Agreement on behalf of Licensee and has full power and authority to bind Licensee to the terms and conditions hereof.

22. Survival. All of the terms and conditions of this Agreement concerning release, indemnification, termination, remedies and enforcement shall survive termination of this Agreement.

23. No Third Party Beneficiaries. The Parties expressly agree that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties. The Parties expressly intend that any person other than the Parties who receives services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date first above written.

CITY OF SALIDA, COLORADO

By:

P.T. Wood, Mayor

ATTEST:

City Clerk/Deputy City Clerk

LICENSEE

By: _____
Jon White

STATE OF COLORADO)
) ss.
COUNTY OF _____)

Acknowledged, subscribed and sworn to before me this ____ day of _____, 2019, by _____.

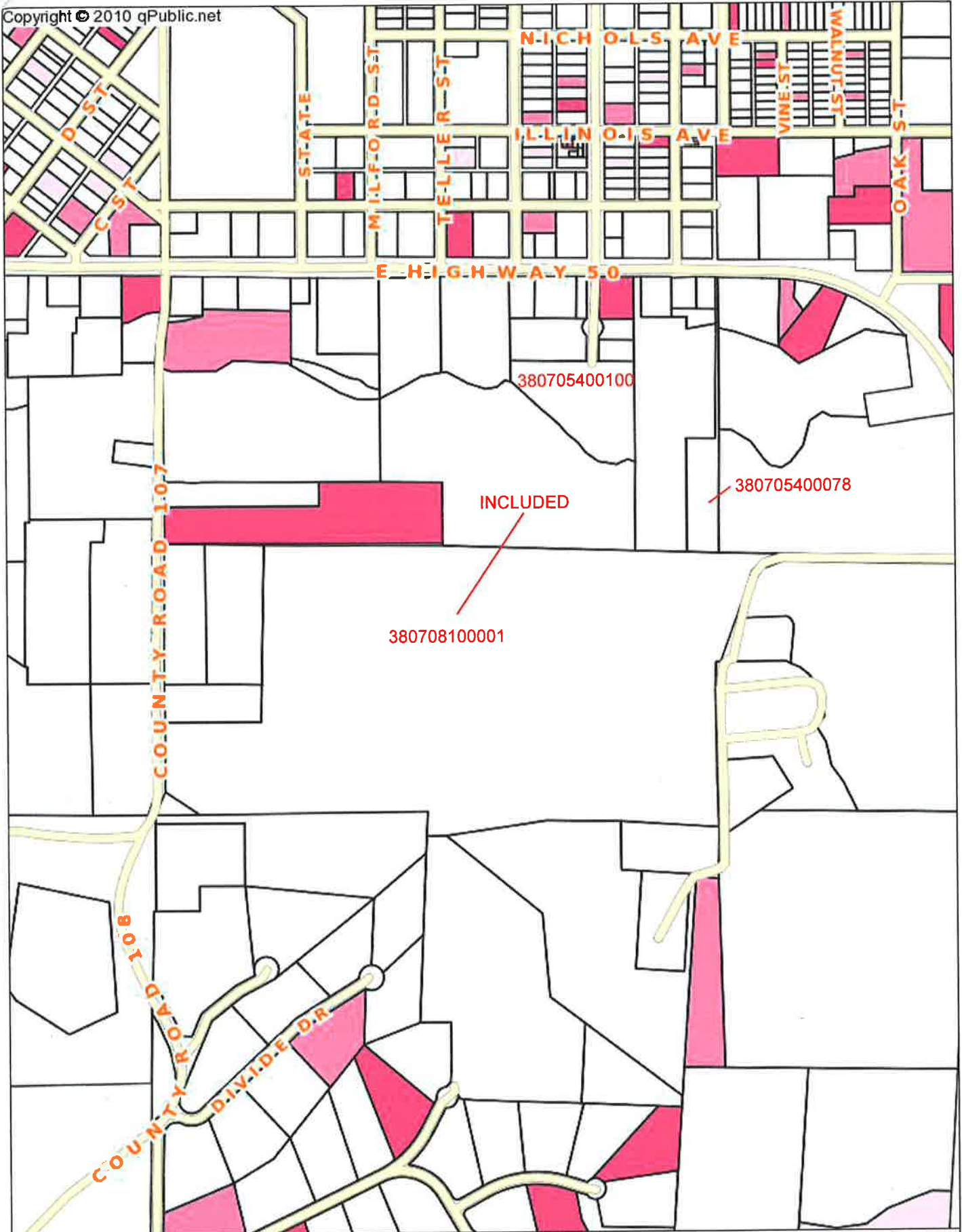
WITNESS my hand and official seal.

My Commission expires: _____.

Notary Public (SEAL)

List of Exhibits:

Exhibit A: Description and Depiction of Licensed Premises





Google Earth

© 2017 Google

1000 ft



June 4, 2019

Salida School District R-32-J
Board of Education
349 East 9th Street
Salida, CO 81201

RE: Request for Assistance – Programming and Infrastructure

Dear President Earhart and Members of the Board of Education,

The Salida City Council is grateful for your letter dated April 16, 2019 requesting assistance with programming and infrastructure necessary for future educational growth. We appreciate your attendance at the City Council's worksession on May 6th; it was an informative and thought-producing session and kicked off the right conversation about whether and how to leverage community assets for communal purposes. We look forward to this conversation continuing in the ensuing months and years with the Salida School District as a primary stakeholder and partner in community development.

To the specific items in the April 16th letter, the City Council would like to address the three requests for both recreation programming and land dedication as follows:

1. Recreational Activity Programming – The City is currently entering into a planning process related to an update to the Parks, Recreation, Open Space and Trails Master Plan. We anticipate that this planning effort will occur over the next six months (completing in early 2020), and one of the primary facets of the Master Plan will be recreation programming engagement with the community. As a primary stakeholder in our planning process, the District will have a front-row seat to help guide and form the community's desired direction of the City's recreation activities. We heartily support having this discussion as part of the PROST Master Plan.
2. Marvin Park Land Sale/Swap – At this time, the City Council believes any determination on selling or swapping Marvin Park may be premature. Alternative locations for the activities that take place at Marvin Park have not been identified and would take considerable time and expense to implement. We believe a slow and measured approach – in conjunction with community engagement – is the best course as it relates to any changes in status with Marvin Park.
3. Vandaveer Ranch Land Dedication – As you are aware, the City Council recently reacquired portions of the former Vandaveer Ranch property. At this time, the City has not had the opportunity to enter into any public planning processes to determine best uses in conjunction with the community. However, we anticipate that the 2020 Annual Budget process for the City will include consideration for funding planning and community outreach efforts for the property. In addition, the community will have had the opportunity to discuss and potentially

vote on whether to annex into the Colorado Mountain College district. These future actions will help shape the City's approach to potential uses on the Vandaveer Ranch property, including educational, institutional, and recreational opportunities. We believe that a guided and formal planning process can commence quickly after the community's voice is heard on the desired path forward.

The Salida City Council greatly appreciates your service and dedication to the community. Students and families in Salida have been the direct beneficiaries of the Board of Education's investment in pursuing visionary and exceptional educational opportunities. We believe that continuing and enhancing the partnership between the City Council and Board of Education on matters of community development are critical to the future of Salida. We look forward to jointly pursuing these opportunities with you in the months and years to come.

Sincerely,

P.T. Wood
Mayor

Cc: Salida City Council
David Blackburn, Superintendent



REQUEST FOR CITY COUNCIL ACTION

Meeting Date: June 4, 2019

AGENDA ITEM NO. 5. a	ORIGINATING DEPARTMENT: Community Development	PRESENTED BY: Kristi Jefferson
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ITEM:

Ordinance 2019-10, First Reading and Setting a Public Hearing on the Proposed Ordinance Amending Chapter 2 and Chapter 16 of the Salida Municipal Code as they relate to the Historic Preservation Commission and the review of preservation related applications.

REQUEST / BACKGROUND:

Over the past couple of years the Historic Preservation Commission has been discussing their desire to be returned to a decision making body.

The Ordinance will return the decision making authority back to the Historic Preservation for major certificate of approval applications. The Historic Preservation Commission and City Council held a joint work session on the proposed amendments on March 18, 2019.

At their May 01, 2019 meeting the Historic Preservation Commission reviewed the amendments and a motion was made to forward a recommendation of approval to the Planning Commission.

On May 28, 2019 the Planning Commission held a public hearing and made a recommendation that City Council approve the proposed ordinance.

NOTICE AND PUBLIC INPUT:

Staff advertised the proposed ordinance in the May 9, 2019 Mountain Mail for the May 28th Planning Commission public hearing and the June 18, 2019 City Council public hearing.

DISCUSSION:

According to Chapter 16, a text amendment should comply with the following standards:

- (1) Consistency with Purposes. The proposed amendment shall be consistent with the purposes of this Chapter.
 - The proposed amendment revises the process for review of certificates of approval to ensure protection of the City's historic resources while allowing for reasonable reuse and development.
- (2) No Conflict with Other Provisions. The proposed amendment shall not conflict with any other applicable provisions of this Chapter, or shall repeal or amend provisions of this Chapter which are inconsistent, unreasonable or out-of-date.
 - The proposed ordinance changes do not appear to conflict with other provisions of the code.
- (3) Consistency with Comprehensive Plan. The proposed amendment shall be consistent with the Comprehensive Plan, shall implement a new portion of the Comprehensive Plan or shall implement portions of the Comprehensive Plan which have proven difficult to achieve under the existing provisions of this Land Use Code.
 - The Comprehensive Plan advises the protection of the historic downtown and the proposed code changes support that direction.



REQUEST FOR CITY COUNCIL ACTION

Meeting Date: June 4, 2019

AGENDA ITEM NO. 5. a	ORIGINATING DEPARTMENT: Community Development	PRESENTED BY: Kristi Jefferson
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(4) Public Health, Safety and Welfare. The proposed amendment shall preserve the public health, safety, general welfare and environment and contribute to the orderly development of the City.

- The amendment protects public health, safety, general welfare and contributes to the orderly development of the City by protecting the historic downtown while allowing for reuse and new development in accordance with clearly identified standards and review processes.

STAFF RECOMMENDATION:

Staff supports the proposed amendments to Chapter 2 and Chapter 16 of the Salida Municipal Code because the amendments protect public health, safety, general welfare and contributes to the orderly development of the City by protecting the historic downtown while allowing for reuse and new development in accordance with clearly identified standards and review processes.

Therefore, staff recommends the City Council approve Ordinance 2019-10 on first reading and set the public hearing for June 18, 2019, as recommended by the Planning Commission.

PLANNING COMMISSION RECOMMENDATION:

On May 28, 2019 the Planning Commission held a public hearing on the proposed amendments to Chapter 16 and recommended the City Council adopt the proposed amendments.

RECOMMENDED MOTION:

"I make a motion to pass Ordinance 2019-10 on first reading and set the public hearing for June 18, 2019."

Attachments:

Ordinance 2019-10, Proposed amendments to Chapter 2, Article 11 and Chapter 16, Articles II, III and XII

Advertisement

CITY OF SALIDA, COLORADO
ORDINANCE NO. 10
(Series of 2019)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, AMENDING THE POWERS AND DUTIES OF THE HISTORIC PRESERVATION COMMISSION AND REVIEW OF PRESERVATION RELATED APPLICATIONS IN CHAPTERS 2 AND 16 OF THE SALIDA MUNICIPAL CODE.

WHEREAS, after working with the HPC governing regulations for several years, City staff recommends certain revisions be made to Chapter 2, Article XI to better reflect the evolving structure and mission of the HPC; and

WHEREAS, governing regulations for the HPC are established at Chapter 2, Article XI of the Salida Municipal Code; and

WHEREAS, after working with the HPC governing regulations for several years, certain revisions are suggested be made to Chapter 2, Article XI to better reflect the evolving structure and mission of the HPC; and

WHEREAS, the City of Salida has adopted regulations concerning development within the Downtown Historic District which are contained within Chapter 16 of the Salida Municipal Code including Articles II, III and XII; and

WHEREAS, the HPC and City Council wish to revise the process to review preservation related applications and related public notice and appeal processes; and

WHEREAS, the City Council wishes to adopt the following regulations in order to promote the health, welfare and safety of the inhabitants of the City of Salida by maintaining and protecting the City's Downtown Historic District without creating an undue hardship on property owners.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF SALIDA, COLORADO as follows:

Section 1. The aforementioned recitals are hereby fully incorporated herein.

Section 2. Section 2-11-20 of the Salida Municipal Code is hereby amended to read as follows, with language to be removed noted with strikethroughs and new text in bold and double-underline.

Sec. 2-11-20. Membership, organization, terms.

- (e) Not less than ~~three (3)~~ **four (4)** members must be present at a regular or special meeting to transact business, and all questions coming before the Historic Preservation Commission.

- (f) The Historic Preservation Commission shall regularly schedule ~~four (4) regular meetings per year~~ **one (1) meeting per month** and shall adopt such rules of procedure as it deems necessary to conduct business. **The Historic Preservation Commission shall also elect a Chairperson; and Vice Chairperson from among its members by majority vote. Each member so elected shall serve a term of one (1) year per Salida Municipal Code section 2-7-60.**

Section 3. Section 2-11-30 of the Salida Municipal Code is hereby amended to read as follows, with language to be removed noted with strikethroughs and new text in bold and double-underline.

Sec. 2-11-30. Powers and Duties

- (1) **Assist in the review of surveys and identifying buildings, sites, structures and neighborhoods of historic and/or architectural significance within the City.**
- (2) Provide advice and recommendations to the ~~City Administrator~~ **City Council** regarding the designation of buildings, sites, structures and neighborhoods as historic landmarks or historic districts.
- (3) **Assist staff with the Compile compilation, maintain maintenance, prioritize and prioritization and** regularly updates **of the an** inventory of historic buildings, sites, structures and neighborhoods within the City and its immediate environs.
- (~~4~~3) ~~Make recommendations to staff regarding the issuance of certificates of approval~~ **Issue major certificate of approval** for the addition to or demolition, moving, exterior alteration, renovation or restoration of designated historic landmark buildings, sites or structures, and/or other buildings or structures within historic districts.
- (~~5~~5) Develop, analyze and recommend to the City ~~Administrator~~ **Council** ordinances and/or other regulations or policies, including design and/or architectural guidelines, for the preservation, regulation, enhancement and protection of historic structures and neighborhoods within the City.
- (~~6~~5) Develop and implement public education programs regarding historic preservation and historic buildings, sites, structures and neighborhoods within the City.
- (~~7~~6) Assist the City Administrator in pursuing public and private grants and other financial resources for the support and/or implementation of historic preservation programs and efforts within the City.
- (~~8~~7) Undertake such special tasks or functions as may be assigned to the Historic Preservation Commission by the City Council.

Section 4. Section 16-2-30 of the Salida Municipal Code is hereby amended to read as follows, with the new text in bold and double-underline.

Sec. 16-2-30 Public Notice

- (a) For all actions of the City described in this Chapter requiring public hearings, the applicant shall provide public notice and shall demonstrate that such public notice conforms to the following requirements.

(1) Exception for major certificates of approval. Publication of notice shall not be required when a major certificate of approval is requested. The site must be posted in accordance with 16-12-80(b)(1).

Section 5. Section 16-2-70 Table 16-A of the Salida Municipal Code is hereby amended to read as follows, with the new text in bold and double-underline.

TABLE 16-A Appealing Body From Specific Orders, Decisions or Interpretations		
Decision Appealed From:	Type of Land Development Application	Decision Appealed To:
Administrator or their designee	Interpretation Verification of zoning compliance Reuse, change in use or further development Sign permits and comprehensive sign plans	Planning Commission
Board of Adjustment	Variance	Court system
Board of Appeals	Appeal	Court system
Building Official	Interpretation of codes enforced by the Building Official	Board of Appeals*
City Council	Amendment to Official Zoning Map or text of Code Annexation Major Impact Review Designation of a historic district or landmark Off-premises sign	Court system
Fire Chief	Interpretation of codes enforced by the Fire Chief	Board of Appeals*
Administrator or their designee <u>Historic Preservation Commission</u>	Certificate of Approval – minor	<u>Historic Preservation Commission</u>
	Certificate of Approval – major	City Council
Planning Commission	Creative sign Comprehensive sign plans for multiple owners Limited Impact Review	City Council
Planning Chair	Subdivision exemption	Planning Commission
* Refer to Chapter 18, Article VIII, Building Regulations, Appeals Process for additional information		

Section 6. Section 16-3-110 Table 16-C of the Salida Municipal Code is hereby amended to read as follows, with language to be removed noted with strikethroughs and new text in bold and double-underline.

TABLE 16-C Decision-Making Bodies and Public Hearing Requirements for Development Applications		
Application Type	Decision-Making Bodies	Public Hearing Required? When?
Interpretation	Administrator	No
Administrative Review	Administrator	No
Limited Impact Review	Planning Commission	Yes
Major Impact Review	Planning Commission recommendation to City Council	Yes - for Planning Commission review and for Council review or ordinance adoption
Appeal of specific orders, decisions or interpretations	Designated body as outlined in Table 16-A	Yes – if appeal is from a decision rendered during a public hearing
Designation of historic district or landmark	Administrator or their designee recommendation to Council <u>Historic Preservation Commission</u>	Yes – for <u>Historic Preservation Commission review and</u> Council ordinance adoption
Minor certificate of approval	Administrator or their designee <u>Staff and two Historic Preservation Commission members as needed</u>	No
Major certificate of approval	Administrator or their designee with advice from at least three HPC members <u>Historic Preservation Commission</u>	No <u>Yes – Posting of the site only, not by mail or newspaper</u>
Text Amendment	Planning Commission recommendation to City Council	Yes – for Council ordinance adoption
Sign Permit	Administrator	No
Creative Sign Permit	Planning Commission	Yes
Verification of zoning compliance	Administrator	No
Annexation	Planning Commission recommendation to Council	Yes - for Planning Commission review and for Council ordinance adoption
Appeal (Board of Appeals)	Board of Appeals	No

Section 7. Article XII, Historic Preservation - Sec. 16-12-40 of the Salida Municipal Code is hereby amended as follows, with language to be removed noted with strikethroughs and new text in bold and double-underline.

(a) Procedure. A local historic district or landmark may be designated by the submission of a nomination petition. The petition shall follow the stages of the City Land Development Process outlined below. No building permit, demolition permit or other permit required to undertake an external improvement or alteration on any lot, building, structure or site under consideration for designation or within an area under consideration for designation as a historic district shall be processed, issued or allowed pending the final processing and determination of the historic district or landmark designation petition by the City Council.

(4) Public Notice by HPC. Public Notice that a nomination for establishment of a historic district or landmark is being considered by the HPC shall be provided as specified in Paragraph 16-2-30(a), Publication of Notice, of this Chapter. Such notice shall contain a name for the new district or landmark and accurately describe the district's or landmark's proposed geographical boundaries. Additionally, written notice of the public hearing shall be mailed via certified mail to all of the owners of record, as reflected by the records of the County Assessor, of all of the property included to be designated. Mailing shall be accomplished fifteen (15) days prior to the hearing. ~~Action by Administrator. The Administrator or their designee shall conduct a meeting with the HPC to review the conformance of the nomination application with all applicable provisions of this Chapter. If the Administrator finds that the application is in conformance, it shall make a recommendation that the City Council approve the application. The Administrator shall make written findings and recommendations concerning the merits of the petition and forward the same on to the City Council.~~

(5) Action by HPC. The HPC shall conduct a public hearing to review the conformance of the nomination application with all applicable provisions of this Chapter. If the HPC finds that the application is in conformance, it shall make a recommendation that the City Council approve the application. The HPC shall make written findings and recommendations concerning the merits of the petition and forward the same on to the City Council. ~~Public Notice by City Council. Public Notice that a nomination for establishment of a historic district or landmark is being considered by the City Council shall be provided as specified in Paragraph 16-10-50(b)(1), Publication of Notice, of this Chapter. Such notice shall contain a name for the new district or landmark and accurately describe the district's or landmark's proposed geographical boundaries. Additionally, written notice of the public hearing shall be mailed via certified mail to all of the owners of record, as reflected by the records of the County Assessor, of all of the property included to be designated. Mailing shall be accomplished fifteen (15) days prior to the hearing.~~

(6) Public Notice by City Council. Notice that the City Council shall consider the nomination application to establish a historic district or landmark shall be provided as required in Section 16-2-30.

~~(7)~~ **6) Action by Council.** The City Council shall thereafter conduct a public hearing on the petition preceded by timely published notice in the form described above. A determination by the City Council to establish a historic district or landmark shall be made by written ordinance that shall, at a minimum, contain an accurate description of the district's or landmark's geographical boundaries and be accompanied by an accurate map depicting the boundaries as finally determined by the City Council and a statement of findings supporting the granting or denial of landmark designation status.

Attendance by the owner at the City Council meeting shall not, at the owner's option, be required, but shall be strongly recommended. A copy of the ordinance shall be promptly sent by certified mail, return receipt requested, or personally delivered to the owner of the subject property.

a. Designation of a landmark with a nonconsenting owner. If a property owner does not consent to the review, approval shall require the assent of at least five (5) of the six (6) City Council members. The basis for approval shall be that the property has overwhelming historic importance to the entire community. The term *overwhelming significance* shall, for the purposes of this Section, encompass the following: possessing such unusual or uncommon significance that the structure's potential demolition or major alteration would diminish the character and sense of place in the community of Salida.

(87) Actions Following Approval.

a. Recordation. The ordinance shall be promptly published in a newspaper of general circulation within the City or a certified copy of the same, inclusive of the final approved district map, shall be recorded in the real property records of the County Clerk and Recorder.

b. Copies. The final approved ordinance shall be maintained in the office of the City Clerk.

Section 8. Sec. 16-12-50(1)(c) of the Salida Municipal Code is hereby amended as follows, with language to be removed noted with strikethroughs and new text in bold and double-underline.

c. At least fifty-one percent (51%) of the property owners in the desired district must not object to the designation. A survey of support for the creation of the district must be solicited via certified mail, with each property owner in the proposed district permitted one (1) response. A lack of response will not be considered either an affirmation of support or a negative response to the creation of the district. Certified mailings must be sent at least thirty (30) days prior to action by the ~~City Council~~ **HPC**, with responses due at least fifteen (15) days prior to action by the ~~City Council~~ **HPC**.

Section 9. Sec. 16-12-80(b) of the Salida Municipal Code is hereby amended as follows, with language to be removed noted with strikethroughs and new text in bold and double-underline.

Certificates of approval may be made subject to such terms, conditions or limitations as determined necessary to protect and preserve the structural, aesthetic and/or historic integrity and value of the building, structure or site to which it pertains. A CA shall not constitute a site-specific development plan or vested property right and, unless acted upon in a substantial fashion or otherwise specifically authorized and provided for in the permit, shall automatically expire

one (1) year from its date of issuance, unless extended by order of the ~~Administrator or their designee~~ Historic Preservation Commission.

(1) Procedure. Applications for a CA shall follow the stages of the land development process outlined below:

a. Preapplication conference. Attendance at a preapplication conference is recommended for an applicant intending to submit an application for a CA.

b. Application submittal. The applicant shall submit a complete application to the Administrator containing those materials listed in Subsection 16-12-80(b)(2) below.

c. Staff review. The Administrator or their designee shall review the application to determine whether it is complete, as specified in Subsection 16-10-40(a) of this Chapter. The Administrator or their designee shall ~~compose a report which~~ forward a report to the HPC, which summarizes the application's compliance with the review standards contained in Section 16-12-90 below, and other applicable provisions of this Chapter. The technical comments and professional recommendations of other agencies, organizations and consultants shall be solicited in drafting the report, as necessary.

d. Posting of notice. Posting of notice that the HPC will hold a public hearing for major certificate of approval shall be accomplished by the City as specified in Table 16-C of this chapter. Public notice is not required for applications for a minor certificate of approval.

e. Action by the ~~Administrator or their designee~~ Historic Preservation Commission.

1. Minor activity. An application regarding minor activity shall be reviewed and ruled upon by the Community Development ~~Director~~ Department and, as needed, two (2) designated members of the HPC within ten (10) business days from the date the application was deemed complete. If it is determined that the application pertains to minor activity only or to activity that will not detrimentally impact or influence the historic integrity and/or appearance of a landmark or designated historic district, a CA shall be issued authorizing the activity. If it is determined that the application pertains to major activity, it shall be referred to the ~~major activity review procedure~~ HPC for review and determination at a regular or special meeting.

2. Major activity. An application regarding major activity shall be reviewed and ruled upon by the HPC ~~and ruled upon by the Administrator or their designee~~ at a regular or special meeting to be conducted within thirty-one (31) ~~twenty (20)~~ days from the date the application was determined complete, or within such longer time period as necessary to reasonably accommodate the application on an HPC meeting agenda. Written notice of the date, time and location

of the meeting shall be mailed by regular mail or personally delivered to the applicant not less than ~~five-~~fifteen (15) days prior to the meeting. The unexcused absence of the applicant from the meeting shall cause the ~~Administrator-HPC~~ to deny the application or, at the ~~Administrator's HPC's~~ option, continue the matter to a later meeting date of its choosing.

Section 10. The provisions of this ordinance are severable and the invalidity of any section, phrase, clause or portion of the ordinance as determined by a court of competent jurisdiction shall not affect the validity or effectiveness of the remainder of the ordinance.

INTRODUCED ON FIRST READING, ADOPTED and ORDERED PUBLISHED IN FULL in a newspaper of general circulation in the City of Salida by the City Council on the 4th day of June, 2019 and set for second reading and public hearing on the 18th day of June, 2019.

INTRODUCED ON SECOND READING, FINALLY ADOPTED and ORDERED PUBLISHED BY TITLE ONLY, by the City Council on the ____ day of _____, 2019.

CITY OF SALIDA

By:

Mayor

(SEAL)

ATTEST:

City Clerk

PUBLISHED IN FULL in the Mountain Mail after First Reading on the ____ day of _____, 20____, and **BY TITLE ONLY, OR IN FULL**, after Final Adoption on the ____ day of _____, 20__.

By: _____
City Clerk

PUBLIC NOTICE
NOTICE OF PUBLIC HEARINGS BEFORE
THE PLANNING COMMISSION AND
CITY COUNCIL FOR THE CITY OF
SALIDA CONCERNING A PROPOSED
AMENDMENT TO CHAPTER 16 LAND USE
AND DEVELOPMENT OF THE SALIDA
MUNICIPAL CODE

TO ALL MEMBERS OF THE PUBLIC AND INTERESTED PERSONS: PLEASE TAKE NOTICE that on **May 28, 2019**, at or about the hour of 6:00 p.m., public hearings will be conducted by the City of Salida City Council at City Council Chambers, 448 East First Street, Suite 190, Salida, Colorado on three (3) amendments proposed to Chapter 16 of the Salida Municipal Code, Article XII Historic Preservation:

1. **Chapter 16 - Article II Public notice and Appeals process** - would be amended to recognize the noticing requirements for certificates of approval and that the Historic Preservation Commission will make decisions on major certificate of approval applications; and
2. **Chapter 16 - Article III Application and Review Procedures** -the review process would be amended reinstating public hearing requirements by HPC; and
3. **Chapter 16 - Article XII Historic Preservation** - the amendments in this Article include requirements for certificates of approval, application requirements and review procedures.

If the Planning Commission makes a recommendation on the proposed amendments at that time, the City Council will hold a public hearing on **June 18, 2019** at City Council Chambers, 448 East First

Street, Suite 190, Salida, Colorado.
Interested persons are encouraged to attend the public hearing. Further information on the application may be obtained from the Community Development Department, (719) 530-2626.
Published in The Mountain Mail May 9. 2019



CITY COUNCIL AGENDA ITEM

MEETING DATE: June 4, 2019

AGENDA ITEM TITLE: Franchise Agreement with Bresnan Communications, LLC, locally known as Charter Communications, LLC

PRESENTED BY: Michael Varnum

AGENDA SECTION: 5.b.

REQUEST:

The request is to approve on first reading Ordinance 2019-11 regarding a franchise agreement with Bresnan Communications, LLC

BACKGROUND REVIEW:

This is a renewal of the non-exclusive cable television franchise with Bresnan Communications LLC (Grantee) granted by the City of Salida. The grantee shall pay the grantor an annual franchise fee of five percent (5%) of Grantees Gross Annual Revenues. Payment of the fee due the Grantor shall be made on a quarterly basis, within thirty (30) days of the close of calendar quarter, transmitted by electronic funds transfer to a bank account designated by Grantor. The payment period and the collection of the franchise fees that are to be paid to the Grantor pursuant to the Franchise shall commence sixty (60) days after the Effective Date of the Franchise as set forth in Section 15.13. Grantee shall provide a brief report showing the basis for the computation of the franchise fee paid.

Upon request, but not later than the first anniversary of the Effective Date of this Franchise Agreement, Grantee shall provide Grantor a one-time payment in an amount up to, but not to exceed, thirty-two thousand dollars (\$32,000) to reimburse Grantor for the purchase of PEG access equipment or other PEG-related capital expenditures.

The Franchise and the rights, privileges and authority hereby granted shall be for an initial term of fifteen (15) years, commencing upon the Effective Date of this Franchise.

RECOMMENDATION:

Staff would suggest approving on first reading Ordinance 2019-11.

ACTION:

A Councilperson should make a motion “to approve on first reading Ordinance 2019-11, an Ordinance of the City Council of the City of Salida, Colorado, repealing and replacing Ordinance 2012-29, Cable Television Franchise, of the Salida Municipal Code, and ordering the Ordinance to be published in full, and setting second reading and a public hearing for June 18, 2019.”

Followed by a second and then roll call vote.

CITY OF SALIDA, COLORADO
ORDINANCE NO. 11
(Series of 2019)

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO,
APPROVING A FRANCHISE AGREEMENT WITH
SPECTRUM PACIFIC WEST, LLC, LOCALLY KNOWN AS CHARTER
COMMUNICATIONS**

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

WHEREAS, pursuant to § 31-15-401, C.R.S., the City by and through its City Council (“Council”), possesses the authority to adopt laws and ordinances within its police power in furtherance of the public health, safety and welfare; and

WHEREAS, pursuant to this authority, the City has previously adopted Chapter 5 of the Salida Municipal Code (“Code”) concerning Franchises and Communications Systems; and

WHEREAS, Section 5-1-20 of the Code states that “no franchise shall be granted, renewed, or amended by the City Council except by ordinance;” and

WHEREAS, City Council desires to enter into a new franchise agreement with Spectrum Pacific West, LLC, locally known as Charter Communications; and

WHEREAS, City Council now wishes to approve the Franchise Agreement, attached hereto as “Exhibit A.”

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

Section 1. The aforementioned recitals are hereby fully incorporated herein.

Section 2. The Salida City Council hereby approves the Franchise Agreement, attached hereto as “Exhibit A.”

Section 3. The provisions of this ordinance are severable and the invalidity of any section, phrase, clause or portion of the ordinance or attached agreement as determined by a court of competent jurisdiction shall not affect the validity or effectiveness of the remainder of the ordinance.

INTRODUCED ON FIRST READING, on the 4th day of June 2019, ADOPTED and ORDERED PUBLISHED IN FULL in a newspaper of general circulation in the City of Salida by the City Council on the _____ and set for second reading and public hearing on the 18th day of June 2019.

INTRODUCED ON SECOND READING, FINALLY ADOPTED and ORDERED
PUBLISHED IN FULL, by the City Council on the 18th day of June 2019.

CITY OF SALIDA, COLORADO

Mayor PT Wood

[SEAL]

ATTEST:

City Clerk/Deputy Clerk

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

City Clerk/Deputy City Clerk

FRANCHISE AGREEMENT

This Franchise Agreement (“Franchise”) is between the City of Salida Colorado, hereinafter referred to as the “Grantor” and Spectrum Pacific West, LLC, locally known as CHARTER COMMUNICATIONS, hereinafter referred to as the “Grantee.”

WHEREAS, the Grantor finds that the Grantee has substantially complied with the material terms of the current Franchise under applicable laws, and that the financial, legal and technical ability of the Grantee is sufficient to provide services, facilities and equipment necessary to meet the future cable-related needs of the community; and

WHEREAS, having afforded the public adequate notice and opportunity for comment, Grantor desires to enter into this Franchise with the Grantee for the construction and operation of a cable system on the terms set forth herein; and

WHEREAS, the Grantor and Grantee have complied with all federal and State-mandated procedural and substantive requirements pertinent to this franchise renewal;

NOW, THEREFORE, the Grantor and Grantee agree as follows:

SECTION 1 Definition of Terms

1.1 Terms. For the purpose of this franchise the following terms, phrases, words and their derivations shall have the meaning ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time (the “Cable Act”), unless otherwise defined herein. When not inconsistent with the context, words used in the present tense include the future, 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 shall be given their common and ordinary meaning.

- A. “Cable System,” “Cable Service,” and “Basic Cable Service” shall be defined as set forth in the Cable Act.
- B. “Council” shall mean the governing body of the Grantor.
- C. “Cable Act” shall mean the Cable Communication Policy Act of 1984, as amended, 47 U.S.C. §§ 521, et. seq.
- D. “Channel” shall mean a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel.
- E. “Equipment” shall mean any poles, wires, cable, antennae, underground conduits, manholes, and other conductors, fixtures, equipment and other facilities used for the maintenance and operation of physical facilities located in the Streets, including the Cable System.

- F. “FCC” shall mean the Federal Communications Commission and any successor governmental entity thereto.
- G. “Franchise” shall mean the non-exclusive rights granted pursuant to this Franchise to construct operate and maintain a Cable System along the public ways within all or a specified area in the Franchise Area.
- H. “Franchise Area” shall mean the geographic boundaries of the Grantor, and shall include any additions thereto by annexation or other legal means.
- I. “Gross Revenues” shall mean any revenue, as determined in accordance with generally accepted accounting principles, received by the Grantee from the operation of the Cable System to provide Cable Service in the Service Area, provided, however, that such phrase shall not include: (1) any taxes, fees or assessments collected by the Grantee from Subscribers for pass-through to a government agency, including, without limitation, the FCC user fee, the franchise fee, or any sales or utility taxes; (2) unrecovered bad debt; (3) credits, refunds and deposits paid to Subscribers; (4) any exclusions available under applicable state law.
- J. “Person” shall mean an individual, partnership, association, organization, corporation, trust or governmental entity.
- K. “Service Area” shall mean the area described in subsection 6.1 hereto.
- L. “Standard Installation” shall mean installations to residences and buildings that are located up to 125 feet from the point of connection to Grantee’s existing distribution system.
- M. “State” shall mean the State of Colorado.
- N. “Street” shall include each of the following located within the Franchise Area: public streets, roadways, highways, bridges, land paths, boulevards, avenues, lanes, alleys, sidewalks, circles, drives, easements, rights of way and similar public ways and extensions and additions thereto, including but not limited to public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the Grantor in the Franchise Area, which shall entitle the Grantee to the use thereof for the purpose of installing, operating, extending, repairing and maintaining the Cable System.
- O. “Subscriber” shall mean any Person who is billed for and authorized to receive Cable Service from the Grantee.

SECTION 2
Grant of Franchise

2.1 Grant. The Grantor hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to erect, construct, extend, operate and maintain in, upon, along, across, above, over and under the Streets, now in existence and as may be created or established during its terms, all Equipment, including the Cable System. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by federal or State law.

2.2 Term. The Franchise and the rights, privileges and authority hereby granted shall be for a term ~~of fifteen (15) years of ten (10) years, FIFTEEN (15) YEARS~~, commencing upon the Effective Date of this Franchise.

2.3 Police Powers. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance necessary to the safety, health, and welfare of the public, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. This Franchise is a contract and except as to those changes which are the result of the Grantor's lawful exercise of its general police power, the Grantor may not take any unilateral action which materially changes the mutual promises in this contract.

2.4 Cable System Franchise Required. No Cable System shall be allowed to occupy or use the streets or public rights-of-way of the Franchise Area or be allowed to operate without a Cable System Franchise.

2.5 Reservation of Authority. Nothing in this Franchise shall (A) abrogate the right of Grantor to perform any public works or public improvements of any description; (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the Grantor; or (C) be construed as a waiver or release of the rights of the Grantor in and to the Streets.

SECTION 3
Franchise Renewal

3.1 Procedures for Renewal. The Grantor and the Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, or any such successor statute.

SECTION 4
Indemnification and Insurance

4.1 Indemnification.

A. The Grantee shall, to the extent permitted by law, indemnify and hold the Grantor, its officers, boards, commissions, agents, and employees harmless from any and all liabilities or judgments for injury to any Person or property to the extent caused by the negligent construction, repair, extension, maintenance, operation or removal of the Grantee's wires, poles or other equipment of any kind or character used in

connection with the operation of the Cable System. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify the Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of the Grantor or for the Grantor's use of the Cable System.

- B. In addition, if the Grantor is named as a defendant in a complaint, demand, claim or action ("Action") that alleges that the Grantee's actions or omissions or the Cable System was a cause of injury identified in the Action, and subject to subsection 4.1C, the Grantor shall, within ten (10) business days of receipt of such Action, give the Grantee written notice of its obligation to defend the Grantor, and tender the defense thereof to the Grantee. The Grantee shall have the right to defend, settle or compromise such Actions and the Grantor shall cooperate fully with the Grantee in such defense. Notwithstanding the foregoing, if the Grantee believes in good faith that a tendered Action has little or no merit with respect to the Grantee's liability, the Grantee may refuse the defense of such Action, in which case the Grantor will in good faith defend the Action and the Grantee shall cooperate fully with the Grantor in such defense and may participate in such defense at the Grantee's option; provided that if the Grantee is determined to be liable in such Action, the Grantee shall be responsible for indemnifying the Grantor as set forth in subsection 4.1A and reimburse the Grantor for the pro rata (with respect to any other claims made in the same Action, if any) attorney fees and other costs incurred by the Grantor associated with the defense. If the Grantor believes that any such Action should be settled or compromised in any manner that will result in liability or other obligation for or restraint on the Grantee under this Agreement or otherwise, such settlement or compromise shall only be done with the prior written consent of the Grantee.
- C. Notwithstanding subsection 4.1.B, if the Grantor determines in good faith that its interests cannot be represented by the Grantee, the Grantee shall be excused from any obligation to represent the Grantor.

4.2 Insurance.

- A. The Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

Workers' Compensation	Statutory Limits
Commercial General Liability	\$1,000,000 per occurrence, \$2,000,000 General Aggregate
Auto Liability including coverage on all owned, non-owned hired autos	\$1,000,000 per occurrence Combined Single Limit
Umbrella Liability	\$1,000,000 per occurrence

- B. The Grantor shall be added as an additional insured, arising out of work performed by Charter, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.
- C. The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage upon request.

SECTION 5 **Service Obligations**

5.1 No Discrimination. Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, Channel users, or general citizens on the basis of race, color, religion, national origin, age or sex.

5.2 Privacy. The Grantee shall fully comply with the privacy rights of Subscribers as contained in Cable Act Section 631 (47 U.S.C. § 551).

SECTION 6 **Service Availability**

6.1 Service Area. The Grantee shall make Cable Service distributed over the Cable System available to every residence within the Franchise Area where there is a minimum density of at least thirty-five (35) residences per linear strand mile of aerial cable (excluding any home subscribing to any satellite service) as measured from Grantee's closest technologically feasible tie-in point that is actively delivering Cable Service as of the date of such request for service (the "Service Area"). The Cable Service will be provided at Grantee's published rate for Standard Installations if such residence is a Standard Installation. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Franchise Area where another operator is providing Cable Service or into any annexed area which is not contiguous to the Service Area. Grantee shall not be obligated to provide service to any area where it is financially or technically infeasible to do so. Grantee at its discretion may make Cable Service available to businesses within the Service Area.

6.2 Subscriber Charges for Extensions of the Cable System. No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of Section 6.1 above, the Grantee shall only be required to extend the Cable System to Subscribers in that area if the Subscribers are willing to share the capital costs of extending the Cable System. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any Standard/non-standard Installation charges to extend the Cable System from the tap to the residence.

6.3 New Development Underground. In cases of new construction or property development where utilities are to be placed underground, the Grantor agrees to require as a condition of issuing a permit for open trenching to any developer or property owner that such developer or property owner give Grantee at least twenty (20) days prior written notice of such construction or development, and of the particular dates on which open trenching will be available for Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at Grantee's expense. Grantee shall also provide specifications as needed for trenching. Costs of trenching and easements

required to bring service to the development shall be borne by the developer or property owner; except that if Grantee fails to install its conduit, pedestals and/or vaults, and laterals within the period of time the trench would be open and available as designated in the written notice given by the developer or property owner, then should the trenches be closed after the noticed period of time the trench would be open and available, the cost of new trenching is to be borne by Grantee.

6.4 Annexation. The Grantor shall promptly provide written notice to the Grantee of its annexation of any territory which is being provided Cable Service by the Grantee or its affiliates. Such annexed area will be subject to the provisions of this Franchise upon sixty (60) days' written notice from the Grantor, subject to the conditions set forth below and Section 6.1 above. The Grantor shall also notify Grantee in writing of all new street address assignments or changes within the Franchise Area. Grantee shall within ninety (90) days after receipt of the annexation notice, pay the Grantor franchise fees on revenue received from the operation of the Cable System to provide Cable Services in any area annexed by the Grantor if the Grantor has provided a written annexation notice that includes the existing addresses that will be moved into the Franchise Area in an Excel format or in a format that will allow Grantee to change its billing system. If the annexation notice does not include the addresses that will be moved into the Franchise Area, Grantee shall pay franchise fees within ninety (90) days after it receives the annexed addresses as set forth above. All notices due under this section shall be sent by certified mail, return receipt requested to the addresses set forth in Section 15.7 with a copy to the Director of Government Affairs. In any audit of franchise fees due under this Franchise, Grantee shall not be liable for franchise fees on annexed areas unless and until Grantee has received notification and information that meets the standards set forth in this section.

SECTION 7

Construction and Technical Standards

7.1 Compliance with Codes. All construction practices and installation of equipment shall be done in accordance with all applicable sections of the National Electric Safety Code.

7.2 Construction Standards and Requirements. All of the Grantee's Equipment shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices and performed by experienced maintenance and construction personnel.

7.3 Safety Requirements. The Grantee shall, at its own cost and expense, undertake all necessary and appropriate efforts to maintain its work sites in a safe manner in order to prevent failures and accidents that may cause damage, injuries, or nuisances. All work undertaken on the Cable System shall be performed in substantial accordance with applicable FCC or other federal or state regulations. The Cable System shall not unreasonably endanger or interfere with the safety of Persons or property in the Franchise Area.

7.4 Network Technical Requirements. The Cable System shall be designed, constructed and operated so as to meet those technical standards adopted by the FCC relating to Cable Systems contained in part 76 of the FCC's rules and regulations as may be amended from time to time.

SECTION 8 **Conditions on Street Occupancy**

8.1 General Conditions. Grantee shall not construct or install any new, different, or additional poles, conduits, or other facilities on public property provided Grantee is able to access existing poles, conduits, or other facilities on reasonable terms and conditions as negotiated with the owners of those facilities.

8.2 Underground Construction. The facilities of the Grantee shall be installed underground in those Service Areas where existing telephone and electric services are both underground at the time of system construction. In areas where either telephone or electric utility facilities are installed aerially at the time of system construction, the Grantee may install its facilities aerially with the understanding that at such time as the existing aerial facilities are required to be placed underground by the Grantor, the Grantee shall likewise place its facilities underground. Grantee shall use reasonable best efforts to participate in the planning and relocation of its aerial and underground facilities contemporaneously with other utilities. In the event Grantor or any agency thereof directly or indirectly reimburses any utility for the placement of cable underground or the movement of cable, Grantee shall be similarly reimbursed.

8.3 Construction Codes and Permits. Grantee shall obtain all legally required permits before commencing any construction work, including the opening or disturbance of any Street within the Franchise Area, provided that such permit requirements are of general applicability and such permitting requirements are uniformly and consistently applied by the Grantor as to other telecommunications and electric companies operating in the Franchise Area. The Grantor shall cooperate with the Grantee in granting any permits required, providing such grant and subsequent construction by the Grantee shall not unduly interfere with the use of such Streets. Notwithstanding the above, the Grantee may set off any administrative permit fees or other fees required by the Grantor related to the Grantee's use of Grantor rights-of-way against the franchise fee payments required under Section 10.1 of this Franchise.

8.4 System Construction. All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. The Grantee shall, at all times, employ ordinary care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any public way by the Grantee shall be placed in such a manner as not to interfere with the usual travel on such public way.

8.5 Restoration of Public Ways. Grantee shall, at its own expense, replace, or restore any damage or disturbance caused to the public way as a result of its operation, construction, or maintenance of the Cable System to a condition reasonably comparable to the condition of the Streets immediately prior to such damage or disturbance.

8.6 Tree Trimming. Grantee or its designee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities. Except for

incidental trimming done by Grantee employees in the course of performing their other duties, Grantee shall make good faith efforts to notify Grantor prior to engaging in any such activity. Grantee acknowledges that any work performed pursuant to this Section 8.6 shall be covered by Section 4 of this Franchise.

8.7 Relocation for the Grantor. The Grantee shall, upon receipt of reasonable advance written notice, to be not less than ten (10) business days, protect, support, temporarily disconnect, relocate, or remove any property of Grantee when lawfully required by the Grantor pursuant to its police powers. Grantee shall be responsible for any costs associated with these obligations to the same extent all other users of the Grantor right-of-way are responsible for the costs related to the relocation of their facilities.

8.8 Relocation for a Third Party. The Grantee shall, on the request of any Person holding a lawful permit issued by the Grantor, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Street as necessary any property of the Grantee, provided that the expense of such is paid by any such Person benefiting from the relocation and the Grantee is given reasonable advance written notice to prepare for such changes. The Grantee may require such payment in advance. For purposes of this subsection, “reasonable advance written notice” shall be no less than ten (10) business days in the event of a temporary relocation and no less than one hundred twenty (120) days for a permanent relocation.

8.9 Reimbursement of Costs. If funds are available to any Person using the Streets for the purpose of defraying the cost of any of the foregoing, the Grantor shall reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the Grantor shall use reasonable best efforts to apply for such funds on behalf of the Grantee.

8.10 Emergency Use. Grantee shall comply with 47 U.S.C. 544(g) and all regulations issued pursuant thereto with respect to an Emergency Alert System (“EAS”). If the Grantee provides an EAS, then the Grantor shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee’s Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. The Grantor shall hold the Grantee, its employees, officers and assigns harmless from any claims or costs arising out of use of the EAS, including, but not limited to, reasonable attorneys’ fees and costs.

SECTION 9 **Service and Rates**

9.1 Customer Service. Grantee shall comply with the cable customer service standards of the FCC set forth in 47 CFR § 76.309, as amended.

9.2 Notification of Service Procedures. The Grantee shall furnish each Subscriber at the time service is installed, written instructions that clearly set forth information concerning the procedures for making inquiries or complaints, including the Grantee’s name, address and local telephone number. Grantee shall give the Grantor thirty (30) days prior notice of any rate increases, Channel lineup or other substantive service changes.

9.3 Rate Regulation. Grantor shall have the right to exercise rate regulation to the extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the Grantor. If and when exercising rate regulation, the Grantor shall abide by the terms and conditions set forth by the FCC. Nothing herein shall be construed to limit the Grantee's ability to offer or provide bulk rate discounts or promotions.

9.4 Continuity of Service. It shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to the Grantee are honored, and subject to Grantee's rights under Section 15.2 of this Franchise.

SECTION 10 **Franchise Fee**

10.1 Amount of Fee. Grantee shall pay to the Grantor an annual franchise fee in an amount equal to five percent (5%) of the annual Gross Revenue. Franchise fees may be passed through to Subscribers as a line item on Subscriber bills or otherwise as Grantee chooses, consistent with federal law. The amount of franchise fee and the method of calculation shall be equal when compared to the amount or method of calculation of the franchise fee in any other cable franchise or authorization to provide video service granted by Grantor. In the event any other cable franchise or authorization to provide video service provides for a lesser franchise fee than this Franchise, Grantee's obligation to pay a franchise fee under this Section 10.1 shall be reduced by an equivalent amount.

10.2 Payment of Fee. Payment of the fee due the Grantor shall be made on a quarterly basis, within thirty (30) days of the close of calendar quarter, transmitted by electronic funds transfer to a bank account designated by Grantor. The payment period and the collection of the franchise fees that are to be paid to the Grantor pursuant to the Franchise shall commence sixty (60) days after the Effective Date of the Franchise as set forth in Section 15.13. Grantee shall provide a brief report showing the basis for the computation of the franchise fee paid.

10.3 Accord and Satisfaction. No acceptance of any payment by the Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for additional sums payable as a franchise fee under this Franchise.

10.4 Limitation on Recovery. The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee was due. If any undisputed Franchise payment or recomputed payment is not made on or before the dates specified herein, Grantee shall pay an interest charge, computed from the last day of the fiscal year in which payment was due, at the annual rate of one (1%) percent over the prime interest rate.

SECTION 11 **Transfer of Franchise**

11.1 Franchise Transfer. Neither the Franchise granted hereunder nor the Cable System shall be assigned, other than by operation of law or to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Grantor, such consent not to be unreasonably withheld or delayed. No such consent shall be required, however, for a transfer in

trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the Grantor shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Grantor has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Grantor shall be deemed given.

SECTION 12 **Records**

12.1 Inspection of Records. Grantee shall permit any duly authorized representative of the Grantor, upon receipt of advance written notice, to examine during normal business hours and on a non-disruptive basis any and all of Grantee's records maintained by Grantee as is reasonably necessary to ensure Grantee's compliance with the material terms of this Franchise. Such notice shall specifically reference the subsection of the Franchise that is under review so that the Grantee may organize the necessary books and records for easy access by the Grantor. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act. The Grantor agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent Grantee makes the Grantor aware of such confidentiality. If the Grantor believes it must release any such confidential books, records, or maps in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent permitted by State and federal law, it shall deny access to any of Grantee's books, records, or maps marked confidential, as set forth above, to any Person.

SECTION 13 **Public Education and Government (PEG) Access**

13.1 PEG Channels. Grantee shall provide one (1) Government Access Channel on the Cable System for use by the Grantor or its designee for government access programming shall be produced in or by those who reside in the Service Area.

13.2 Annual Report to Grantee. Grantor agrees to provide Grantee, upon written request, with a written annual report detailing its usage of the Government Access Channels and efforts to increase the quality and quantity of such programming, which report shall be due to the Grantee within one hundred twenty (120) days after the close of each calendar year. The annual report shall contain, at a minimum, the average percent of government access programming on any consecutive twelve (12) week period consistent with the terms provided herein.

13.3 Grantee's Use. In the event the Grantor or its designee does not adequately utilize the Government Access Channel, the Grantee reserves the right to have the Government Access Channel returned to the Grantee for the Grantee's use.

13.4 Indemnification and Restrictions. The Grantor shall, to the extent permitted by law, indemnify, save, and hold harmless the Grantee from and against any and all liability resulting from the Grantor's use of any PEG Channel(s), whether Grantor or its designee operates the PEG Channel(s) from Grantor's facilities, a third party's facilities, or from Grantee's facilities (if any). Grantee shall not be responsible for operating and managing any PEG Channel(s), including approving any PEG Channel(s)' programming and/or for obtaining releases from programmers for any PEG Channel(s)' programming. Grantor reserves the right to permit a third party to operate and manage any PEG Channel(s) on the Grantor's behalf. The PEG Channel(s) shall not be used for commercial purposes, or compete with current or future video or other services provided by the Grantee.

13.5 Analog or Digital Format. To the extent required by law, Grantor shall carry the Government Access Channel on the Basic Cable Service tier.

13.6 PEG Channel Grants.

A. Upon request, but not later than the first anniversary of the Effective Date of this Franchise Agreement, Grantee shall provide Grantor a one-time payment in an amount up to, but not to exceed, thirty-two thousand dollars (\$32,000) to reimburse Grantor for the purchase of PEG access equipment or other PEG-related capital expenditures, as follows:

- i. Grantor shall submit written receipts or invoices for the PEG access equipment or other PEG-related capital expenditures within sixty (60) days after the purchase of said PEG access equipment or other PEG-related capital expenditures, but in no event after the fifth anniversary of the Effective Date.
- ii. Grantee shall pay the Grantor within ninety (90) days of Grantor submitting written receipts or invoices documenting the total cost of any such PEG access equipment or PEG-related capital expenditures.

B. The PEG capital grants paid to Grantor pursuant to this Section provided to Grantor may be passed through to Subscribers as a line item on Subscriber bills or otherwise as Grantee chooses, consistent with federal law.

13.8 PEG Channel Format. Upon written request by the Grantor, the Grantor and Grantee shall meet to discuss converting the Government Access Channel into high definition format ("HD"). If all of the following conditions are satisfied, Grantee will provide in the Government Access Channel in HD format in accordance with Section 13.8.1 below:

- A. Grantor agrees that Grantee may provide Government Access Channel programming to Subscribers utilizing switched digital video.
- B. Grantor demonstrates the ability to produce all of its government access programming in HD.

~~B.C.~~ Grantor demonstrates that it has produced at least five (5) hours per day of government access programming for a period of twelve (12) consecutive weeks during the period preceding its written request. For purposes of this Section, (i) bulletin board programming, (ii) content produced outside of the City of Salida, and (iii) programming duplicated on the same day shall not be counted toward the five (5) hour daily requirement. However, Grantor may count duplicated programming on each separated day it airs up to three (3) times in a given week toward the requirement.

~~E.D.~~ Grantor has purchased or agrees to purchase within six (6) months of its written request, all equipment necessary to produce and transmit any government access programming in HD to Subscribers, or will be purchased by the date of the launch of the HD Government Access Channel, at Grantor's cost.

~~D.E.~~ Grantor agrees to procure and provide, at its cost, all necessary transmission equipment from the government Access Channel origination point to the Grantee's headend, provided that Grantee will work cooperatively with the Grantor to ensure the necessary transport equipment complies with Grantee network requirements.

~~E.F.~~ Grantor agrees to accept responsibility for the cost of transmission of the HD signal from Grantor's origination point to Grantee's headend or hub site pursuant to the terms of a separate commercial contract with Grantee or one of its affiliates.

13.8.1 Grantee shall, within one (1) year of all the conditions set forth in 13.8 above being met, make available one (1) Government Access Channel in HD format to Grantor (the "HD Government Access Channel"). The HD Government Access Channel will replace the existing Government Access Channel described in Section 13.1, and will not constitute an additional PEG Access Channel.

Enforcement or Revocation

14.1 Notice of Violation. If the Grantor believes that the Grantee has not complied with the terms of the Franchise, the Grantor shall first informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Grantor shall notify the Grantee in writing of the exact nature of the alleged noncompliance (the "Violation Notice").

14.2 Grantee's Right to Cure or Respond. The Grantee shall have forty (40) days from receipt of the Violation Notice to (i) respond to the Grantor, contesting the assertion of noncompliance, or (ii) to cure such default, or (iii) if, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Grantor of the steps being taken and the projected date that they will be completed.

14.3 Public Hearing. If the Grantee fails to respond to the Violation Notice received from the Grantor, or if the default is not remedied within the cure period set forth above, the Council shall schedule a public hearing if it intends to continue its investigation into the default. The Grantor

shall provide the Grantee at least twenty (20) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, notice of which shall be published by the Clerk of the Grantor in a newspaper of general circulation within the Grantor in accordance with subsection 15.8 hereof. At the hearing, the Council shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a transcript, the cost of which shall be borne by Grantee, shall be made available to the Grantee within ten (10) business days. The decision of the Council shall be made in writing and shall be delivered to the Grantee. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Council *de novo*. The Grantee may continue to operate the Cable System until all legal appeals procedures have been exhausted.

14.4 Enforcement. Subject to applicable federal and State law, in the event the Grantor, after the hearing set forth in subsection 14.3 above, determines that the Grantee is in default of any provision of the Franchise, the Grantor may:

- A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or seek other equitable relief; or
- C. In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise itself in accordance with subsection 14.5 below.

14.5 Revocation.

- A. Prior to revocation or termination of the Franchise, the Grantor shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have sixty (60) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If the Grantor has not received a satisfactory response from Grantee, it may then seek to revoke the Franchise at a public hearing. The Grantee shall be given at least thirty (30) days prior written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Franchise. The public hearing shall be conducted in accordance with the requirements of Section 14.3 above.
- B. Notwithstanding the above provisions, the Grantee reserves all of its rights under federal law or regulation.
- C. Upon revocation of the Franchise, Grantee may remove the Cable System from the Streets of the Grantor, or abandon the Cable System in place.

SECTION 15
Miscellaneous Provisions

15.1 Compliance with Laws. Grantor and Grantee shall conform to all applicable state and federal laws and rules regarding cable television as they become effective. Grantee shall also conform with all generally applicable Grantor ordinances, resolutions, rules and regulations heretofore or hereafter adopted or established during the entire term of the Franchise. In the event of a conflict between Grantor ordinances, resolutions, rules or regulations and the provisions of this Franchise, the provisions of this Franchise shall govern.

15.2 Force Majeure. The Grantee shall not be held in default under, or in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes, but is not limited to, severe or unusual weather conditions, fire, flood, or other acts of God, strikes, work delays caused by failure of utility providers to service, maintain or monitor their utility poles to which Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

15.3 Minor Violations. Furthermore, the parties hereby agree that it is not the Grantor's intention to subject the Grantee to forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Franchise Area, or where strict performance would result in practical difficulties or hardship to the Grantee which outweighs the benefit to be derived by the Grantor and/or Subscribers.

15.4 Action of Parties. In any action by the Grantor or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

15.5 Equal Protection. If any other provider of cable services or video services (without regard to the technology used to deliver such services) is lawfully authorized by the Grantor or by any other State or federal governmental entity to provide such services using facilities located wholly or partly in the public rights-of-way of the Grantor, the Grantor shall within thirty (30) days of a written request from Grantee, modify this Franchise to insure that the obligations applicable to Grantee are no more burdensome than those imposed on the new competing provider. If the Grantor fails to make modifications consistent with this requirement, Grantee's Franchise shall be deemed so modified thirty (30) days after the Grantee's initial written notice. As an alternative to the Franchise modification request, the Grantee shall have the right and may choose to have this Franchise with the Grantor be deemed expired thirty (30) days after written notice to the Grantor. Nothing in this Franchise shall impair the right of the Grantee to terminate this Franchise and, at Grantee's option, negotiate a renewal or replacement franchise, license, consent, certificate or other authorization with any appropriate government entity. Nothing in this Section 15.5 shall be deemed a waiver of any remedies available to Grantee under federal, state or municipal law, including but not limited to Section 625 of the Cable Act, 47 U.S.C. § 545.

15.6 Change in Law. Notwithstanding any other provision in this Franchise, in the event any change to state or federal law occurring during the term of this Franchise eliminates the requirement for any person desiring to provide video service or Cable Service in the Franchise Area to obtain a franchise from the Grantor, then Grantee shall have the right to terminate this Franchise and operate the system under the terms and conditions established in applicable law. If Grantee chooses to terminate this Franchise pursuant to this provision, this Franchise shall be deemed to have expired by its terms on the effective date of any such change in law, whether or not such law allows existing franchise agreements to continue until the date of expiration provided in any existing franchise.

15.7 Notices. Unless otherwise provided by federal, State or local law, all notices pursuant to this Franchise shall be in writing and shall be deemed to be sufficiently given upon delivery to a Person at the address set forth below, or by U.S. certified mail, return receipt requested, nationally or internationally recognized courier service such as Federal Express or electronic mail communication to the designated electronic mail address provided below. Grantee shall provide thirty (30) days' written notice of any changes in rates, programming services or Channel positions using any reasonable written means. As set forth above, notice served upon the Grantor shall be delivered or sent to:

Grantor: [Drew Nelson](#)
City Administrator, City of Salida
448 E. First Street
Salida, CO 81201
Email: drew.nelson@cityofsalida.com

Grantee: John Lee
Senior Manager, Charter Communications
6399 S. Fiddler's Green Circle
Greenwood Village, CO 80111
Email: John.L.Lee@charter.com

Copy to: Charter Communications
Attn: Vice President, Government Affairs
12405 Powerscourt Drive
St. Louis, MO 63131

15.8 Public Notice. Minimum public notice of any public meeting relating to this Franchise or any such grant of additional franchises, licenses, consents, certificates, authorizations, or exemptions by the Grantor to any other Person(s) to provide Cable Services, video services, or other television services utilizing any system or technology requiring use of the public rights of way shall be by publication at least once in a newspaper of general circulation in the area at least ten (10) days prior to the meeting and a posting at the administrative buildings of the Grantor.

15.8.1 Grantor shall provide written notice to Grantee within ten (10) days of Grantor's receipt from any other Person(s) of an application or request for a franchise(s), license(s), consent(s), certificate(s), authorization(s), or exemption(s) to provide

Cable Services, video services, or other television services utilizing any system or technology requiring use of the public rights of way. Any public hearings to consider such application or request shall have the same notice requirement as outlined in Paragraph 15.7 above.

15.9 Severability. If any section, subsection, sentence, clause, phrase, or portion of this Franchise is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Franchise.

15.10 Entire Agreement. This Franchise and any Exhibits hereto constitute the entire agreement between Grantee and the Grantor and they supersede all prior or contemporaneous agreements, representations or understandings (whether written or oral) of the parties regarding the subject matter hereof.

15.11 Governing Law. This Franchise Agreement shall be deemed to be executed in the State of Colorado, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Colorado. Jurisdiction and venue for any litigation concerning this Franchise shall be proper and exclusive in the district court for Chaffee County, Colorado or the United States District Court for the District of Colorado.

15.12 Administration of Franchise. This Franchise is a contract and neither party may take any unilateral action that materially changes the mutual promises and covenants contained herein. Any changes, modifications or amendments to this Franchise must be made in writing, signed by the Grantor and the Grantee. Any determination by the Grantor regarding the interpretation or enforcement of this Franchise shall be subject to de novo judicial review.

15.13 Effective Date. The Franchise granted herein will take effect and be in full force from such date of acceptance by Grantee recorded on the signature page of this Franchise. If any fee or grant that is passed through to Subscribers is required by this Franchise, such fee or grant shall go into effect sixty (60) days after the Effective Date of this Franchise.

15.14 No Third Party Beneficiaries. Nothing in this Franchise is intended to confer third-party beneficiary status on any person other than the parties to this Franchise to enforce the terms of this Franchise.

Considered and approved this ____ day of _____, 20_____.

City of Salida, Colorado

Signature: _____

Name/Title: _____

Accepted this ____ day of _____, _20_____, subject to applicable federal and State law.

Spectrum Pacific West, LLC
BY: Charter Communications, Inc., its Manager

Signature: _____

Name/Title: _____



REQUEST FOR CITY COUNCIL ACTION

Meeting Date: June 4, 2019:

AGENDA ITEM NO. 5.c.	ORIGINATING DEPARTMENT: Administration	PRESENTED BY: Drew Nelson
--------------------------------	--	-------------------------------------

ITEM:

Resolution 2019-32 Approving a Supplemental Lease Agreement Between the City of Salida and the Union Pacific Railroad for Parking Lot Expansion

BACKGROUND:

Following the lease renewal and periodic reevaluation of rental rates for the existing parking area owned by Union Pacific Railroad but operated by the City of Salida near the F Street Bridge, staff has worked with UPRR to address potential expansion of parking in this area an additional 48,700 square feet (1.026 acres; see Exhibit A). It is staff's belief that this area could accommodate at least an additional 75 parking spaces in an area already impacted by parking. Expansion of the parking area could be completed in short order to possibly address parking shortages anticipated in the upcoming busy summer season. This area could also provide employee parking for downtown businesses as well as be incorporated into the parking buy-down program recently instituted in the central business district; however, it would require a sublease from UPRR.

FISCAL NOTE:

Union Pacific Railroad recently reevaluated the existing lease amount that has been in place since 2013. Initial conversations with UPRR indicated a lease amount three times larger than the amount proposed herein; however, further refinement established a lease rate of \$44,317 for the 48,700 square foot expansion. This lease amount equates to \$7 per square foot with a 13% capitalization rate annually, coming out at \$0.91 per square foot for the year. In comparison, the recent lease extension done with the Salida Bottling Company, LLC for parking on property at 323 First Street was for \$1.01 per square foot annually.

The 2019 Annual Budget included a line item in the Economic Development Fund in the amount of \$30,000 for "Construct F Street Downriver Parking Lot". The amount identified herein - \$44,317 – is in excess of the budgeted amount and would require a budget amendment. Should the City Council approve of this lease agreement, staff will prepare a budget amendment for consideration at the next regularly scheduled City Council meeting. With sales tax increases already seen in 2019, additional unallocated revenues or reserves in the Economic Development Fund can be used to offset the increased costs of the expansion area.

STAFF RECOMMENDATION:

Staff recommends approval Resolution 2019-32 approving a Supplemental Lease Agreement with Union Pacific Railroad.

SUGGESTED MOTIONS:

A City Councilperson should make a motion to approve Resolution 2019-32, followed by a second and a roll call vote.

CITY OF SALIDA, COLORADO
RESOLUTION NO. 32
(Series of 2019)

**A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF SALIDA, COLORADO,
AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO A SUPPLEMENTAL
LEASE AGREEMENT FOR PARKING WITH UNION PACIFIC RAILROAD**

WHEREAS, The City of Salida has leased property near the F Street Bridge from Union Pacific Railroad on a year-to-year basis for public parking purposes since 2013; and

WHEREAS, The City and the Union Pacific Railroad would like to continue and expand the lease arrangement to encompass an additional 44,700 square feet of area, as shown in the attached Exhibit A; and

WHEREAS, the City agrees to pay Union Pacific Railroad the sum of \$44,317 for the additional 44,700 square feet, in addition to that area already under lease since 2013, subject to the terms and conditions of the Lease of Property Agreement to be executed by the parties.

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

1. The Salida City Council incorporates the foregoing recitals as its conclusions, facts, determinations, and findings.
2. The Lease of Property Agreement is hereby approved, and the City Administrator is authorized to sign the contract on behalf of the City.

RESOLVED, APPROVED, AND ADOPTED this 4th day June, 2019.

CITY OF SALIDA, COLORADO

By _____
P.T. Wood, Mayor

[SEAL]

ATTEST:

City Clerk/Deputy City Clerk

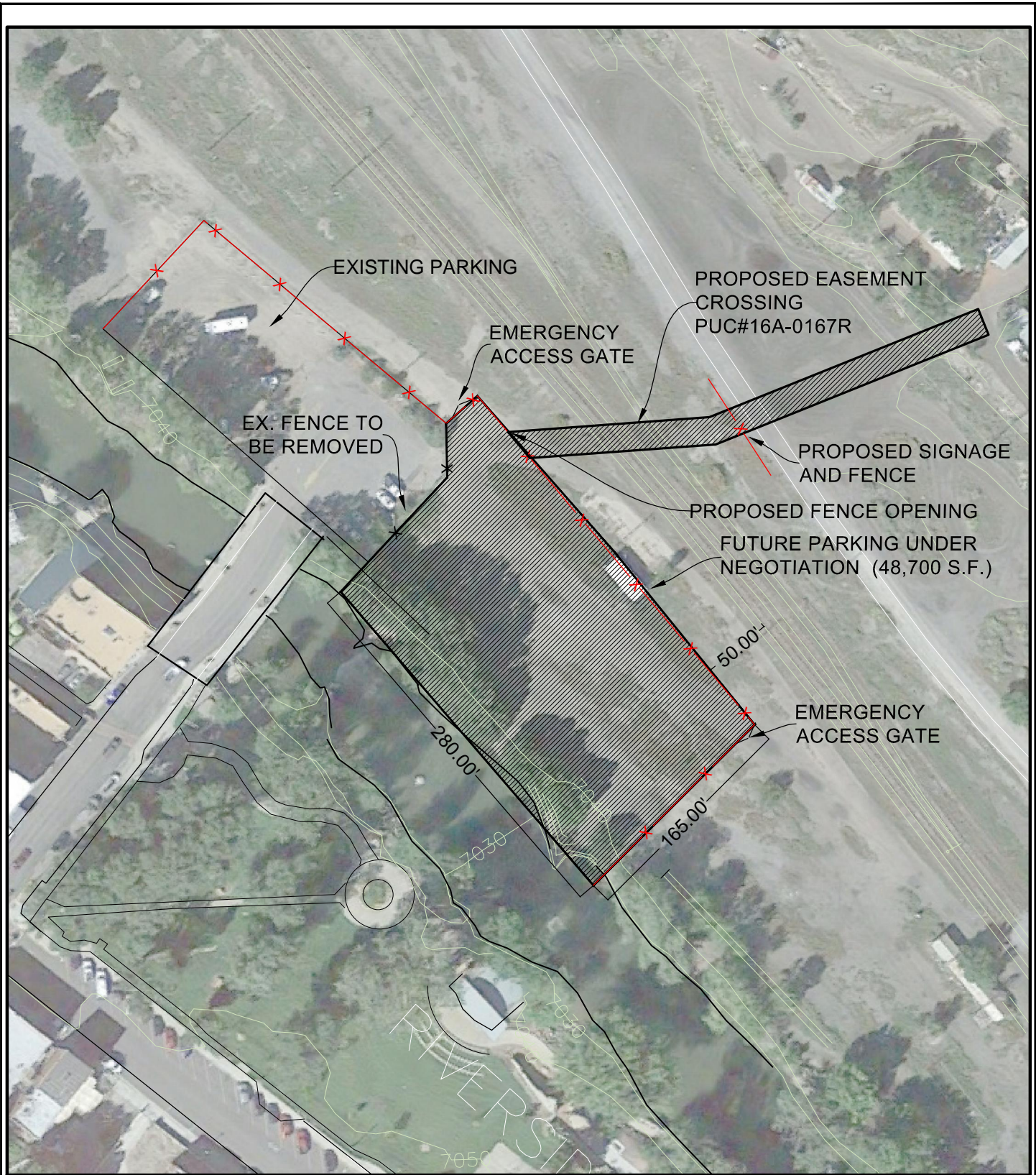
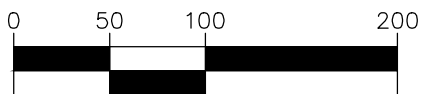


EXHIBIT A



SCALE: 1" = 100'
ORIGINAL GRAPHIC SCALE



PUC - #
SITE PLAN
WITH ADDITIONAL LEASE AREA

UPRR EASEMENT
CITY OF SALIDA, COLORADO



March 20, 2019
Folder: 02738-06

U.S. CERTIFIED MAIL
RETURN RECEIPT REQUESTED

CITY OF SALIDA
448 E. FIRST ST. STE 112
SALIDA CO 81201

Dear Gentlemen:

Reference is made to that certain Lease dated April 15, 2013, between UNION PACIFIC RAILROAD COMPANY (Lessor) and CITY OF SALIDA (Lessee) covering a portion of the Lessor's property at Salida, Colorado. Said Lease is identified in the Lessor's records as Audit No. 267409.

Article III of this Lease provides for a periodic reevaluation of rental. In conjunction with this provision, we recently reviewed the present-day land values in Salida, Colorado and, in particular, in the general vicinity of the Lease site.

The results of this study indicate that the present rental no longer represents a fair annual market rental. Taking all matters into consideration and applying present-day real estate values of the area, I am of the opinion that a rental of \$14,860.00 would reflect a fair market rental at this time.

This letter is to advise you that effective May 15, 2019 ('Effective Date'), the rent shall be Fourteen Thousand Eight Hundred Sixty Dollars (\$14,860.00) annually. Commencing twelve (12) months from the Effective Date, the rent shall automatically and without notice to the Lessee be adjusted by Three Percent (3%) annually cumulative and compounded.

You will be billed at your new lease rate on the next billing cycle.

Sincerely,

A handwritten signature in blue ink, appearing to read "Schia Cloutier".

Schia Cloutier
Mgr II Real Estate - Field Ops - Real Estate
(402) 544-2255



697108



REMS FileNet Cover Sheet

AUDIT NUMBER	267409
FOLDER NUMBER	0273806
CITY	SALIDA
STATE	CO
PARTY NAME	CITY OF SALIDA
PRIMARY PURPOSE	Lease: Public/Private Parking
EFF. DATE	5/15/2013
MP START	215.1
MP END	
PRIMARY CIRC7	MJ096
DESCRIPTION	Lease of Property
BOX NUMBER	0
BATCH	00

LEASE OF PROPERTY
(INDUSTRIAL LEASE - UNIMPROVED - YEAR TO YEAR)

THIS LEASE ("Lease") is entered into on April 15, 2013, between UNION PACIFIC RAILROAD COMPANY ("Lessor") and CITY OF SALIDA, whose address is 448 E. First Street STE 112, Salida, Colorado 81201 ("Lessee").

IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

Article 1. PREMISES; USE.

Lessor leases to Lessee and Lessee leases from Lessor the premises ("Premises") at Salida, Colorado, shown on the print dated February 26, 2013, marked **Exhibit A**, hereto attached and made a part hereof, subject to the provisions of this Lease and of **Exhibit B** attached hereto and made a part hereof. The Premises may be used for daily downtown parking, and purposes incidental thereto, only, and for no other purpose. Under no circumstances shall the Lessee allow or tolerate overnight parking or camping on the Premises and shall enact and enforce the necessary ordinances or laws to do so through Lessee's police force.

Article 2. TERM.

The term of this Lease shall commence ~~March 18~~ ^{May 15, 2013}, 2013, and, unless sooner terminated as provided elsewhere in this Lease shall extend for one year and thereafter shall automatically be extended from year to year. *DTW*
Sms/MS

Article 3. FIXED RENT.

- A. Lessee shall pay to Lessor, in advance, fixed rent of Ten Thousand Dollars (\$10,000.00) annually. The rent shall be automatically increased by Three percent (3%) annually, cumulative and compounded.
- B. Not more than once every three (3) years, Lessor may redetermine the fixed rent. If Lessor redetermines the rent, Lessor shall notify Lessee in writing of in writing of such change.

Article 4. ADMINISTRATIVE HANDLING CHARGE.

Upon execution of this Lease, Lessee shall pay to Lessor a one-time administrative handling charge of One Thousand Dollars (\$1,000.00).

Article 5. INSURANCE.

- A. Throughout the entire term of this Lease, Lessee shall maintain the insurance coverage required under **Exhibit C** hereto attached and made a part hereof.
- B. Not more frequently than once every two years, Lessor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
- C. Upon request of Lessor, Lessee shall provide to Lessor a certificate issued by its insurance carrier evidencing the insurance coverage required under **Exhibit C**.
- D. All insurance correspondence shall be directed to: Real Estate Department, 1400 Douglas Street STOP 1690, Omaha, Nebraska 68179-1690, Folder No. 02738-06.

Article 6. SPECIAL PROVISION – FENCE/BARRICADE.

- A. Lessee, at Lessee's sole cost and expense, shall construct and maintain, at all times during the term of this Lease, a fence/barricade of a design satisfactory to Lessor, in the location shown on the attached Exhibit A.
- B. Lessee, at Lessee's sole cost and expense, shall manufacture and post signs strictly prohibiting overnight parking of any vehicle or placement of any tent or other camping structure within the leased area.
- C. Lessee, at Lessee's sole cost and expense, shall manufacture and post "No Trespassing" signs in areas without fencing as designated by Lessor.
- D. This Lease is possible due to the fact that the railroad yard and tracks adjacent to the Premises are currently out of service, meaning that no trains or operating activities occur on or near the Premises at any time. In the event that the subject yard and or tracks become operational the Lessor may, at its discretion, terminate this Lease upon 30 days written notice to the Lessee. At the time of such written notice, Lessee shall commence removal of all improvements made to the Premises and once completely removed, Lessor shall cause the remaining yearly rent to be prorated and the appropriate amount shall be refunded to the Lessee.

Article 7. PAYMENTS SUBJECT TO ANNUAL APPROPRIATIONS.

Lessee's financial obligations under this Lease are subject to annual appropriation and budgeting by Lessee. This Lease is not intended to, nor does it create, a multi-year fiscal obligation as defined by Section 20, Article X of the Constitution of the State of Colorado.

Article 8. NO WAIVER OF GOVERNMENTAL IMMUNITY ACT.

No term or condition of this Lease 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.*

Article 9. MAINTENANCE AND REPAIRS.

Lessee, at Lessee's sole cost and expense, shall maintain and repair the Premises, fencing and required signage within ten (10) business days of notice that such repair or maintenance is required for public safety and security of the leased premises.

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first herein written.

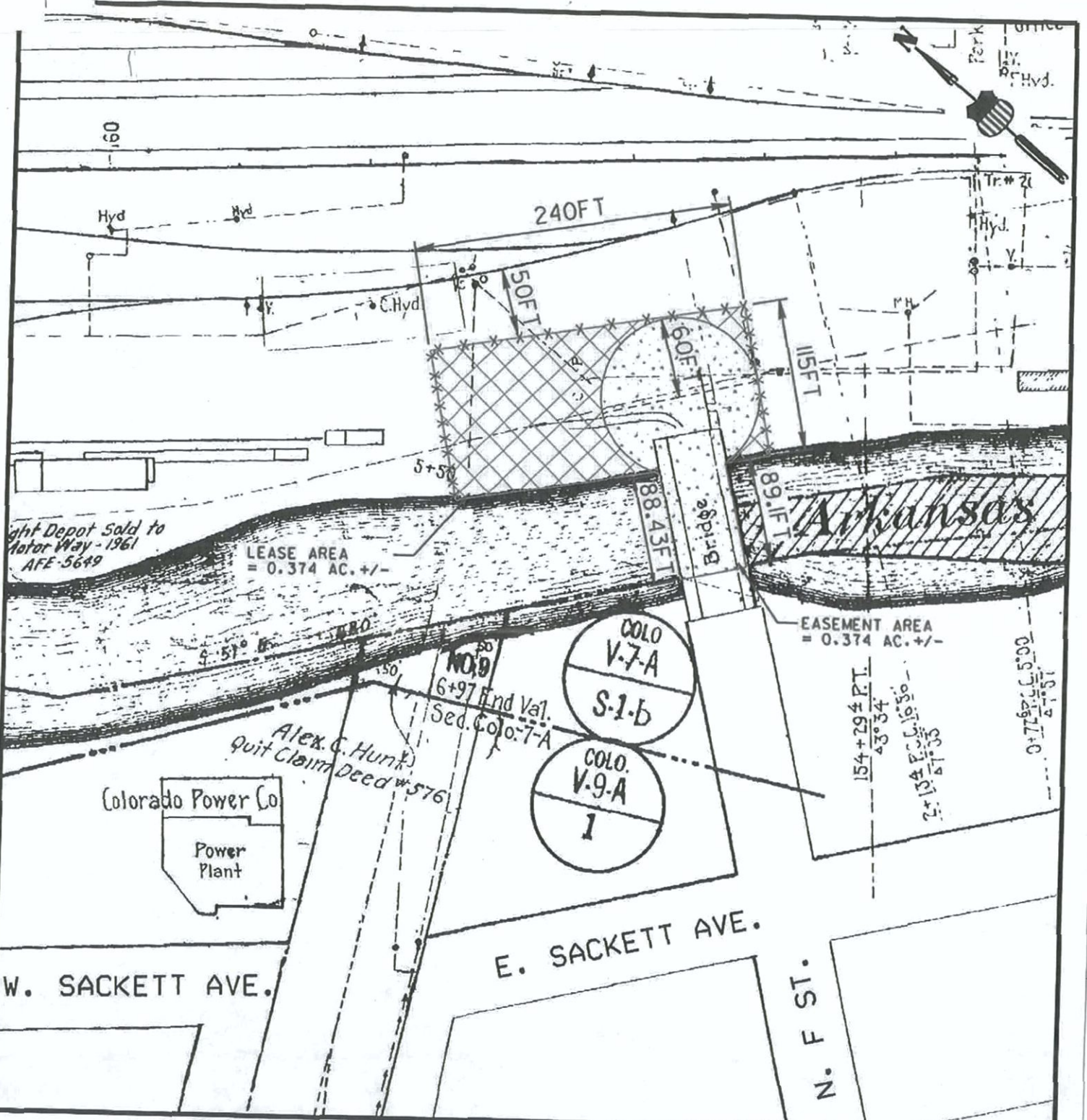
Lessor:
UNION PACIFIC RAILROAD COMPANY

Lessee:
CITY OF SALIDA


By: 
Senior Manager - Real Estate
Director

By: 
Title: MAYOR

NOTE: New lease



LEGEND:

LEASE AREA 

EASEMENT AREA 

FENCE 

UPRRCO. R/W OUTLINED 

NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISIONS.
EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

SALIDA, CHAFFEE COUNTY, CO
M.P. 215.1 - TENNESSEE SUB.

TO ACCOMPANY AGREEMENT WITH
CITY OF SALIDA

DRGW CO V-7A / S-1B
SCALE: 1" = 100'

OFFICE OF REAL ESTATE
OMAHA, NEBRASKA DATE: 2-26-2013

NLP FILE: 2738-06

CADD FILENAME	0273806.dgn
SCAN FILENAME	c:/work/cov7as1b-2738-06.cit

**EXHIBIT B
TO
INDUSTRIAL LEASE (UNIMPROVED)**

Section 1. IMPROVEMENTS.

No improvements placed upon the Premises by Lessee shall become a part of the realty.

Section 2. RESERVATIONS, TITLE AND PRIOR RIGHTS.

A. Lessor reserves to itself, its agents and contractors, the right to enter the Premises at such times as will not unreasonably interfere with Lessee's use of the Premises.

B. Lessor reserves (i) the exclusive right to permit third party placement of advertising signs on the Premises, and (ii) the right to construct, maintain and operate new and existing facilities (including, without limitation, trackage, fences, communication facilities, roadways and utilities) upon, over, across or under the Premises, and to grant to others such rights, provided that Lessee's use of the Premises is not interfered with unreasonably.

C. Lessee acknowledges that Lessor makes no representations or warranties, express or implied, concerning the title to the Premises, and that the rights granted to Lessee under this Lease do not extend beyond such right, title or interest as Lessor may have in and to the Premises. Without limitation of the foregoing, this Lease is made subject to all outstanding rights, whether or not of record. Lessor reserves the right to renew any such outstanding rights granted by Lessor or Lessor's predecessors.

D. Without limitation of Subparagraphs B. and C. above, Lessee shall not interfere in any manner with the use or operation of any signboards now or hereafter placed on the Premises or with any property uses in connection with such signboards (such as, by way of example and not in limitation, roadways providing access to such signboards). In no event may Lessee construct on the Premises any improvements that interfere in any manner with the visibility or operation of any signboards now or hereafter on the Premises or on property in proximity to the Premises.

Section 3. PAYMENT OF RENT.

Rent (which includes the fixed advance rent and all other amounts to be paid by Lessee under this Lease) shall be paid in lawful money of the United States of America, at such place as shall be designated by the Lessor, and without offset or deduction.

Section 4. TAXES AND ASSESSMENTS.

A. Lessee shall pay, prior to delinquency, all taxes levied during the life of this Lease on all personal property and improvements on the Premises not belonging to Lessor. If such taxes are paid by Lessor, either separately or as a part of the levy on Lessor's real property, Lessee shall reimburse Lessor in full within thirty (30) days after rendition of Lessor's bill.

B. If the Premises are specially assessed for public improvements, the annual rent will be automatically increased by 12% of the full assessment amount.

Section 5. WATER RIGHTS.

This Lease does not include any right to the use of water under any water right of Lessor, or to establish any water rights except in the name of Lessor.

Section 6. CARE AND USE OF PREMISES.

A. Lessee shall use reasonable care and caution against damage or destruction to the Premises. Lessee shall not use or permit the use of the Premises for any unlawful purpose, maintain any nuisance, permit any waste, or use the Premises in any way that creates a hazard to persons or property. Lessee shall keep the sidewalks and public ways on the Premises, and the walkways appurtenant to any railroad spur track(s) on or serving the Premises, free and clear from any substance which might create a hazard.

B. Lessee shall not permit any sign on the Premises, except signs relating to Lessee's business.

C. If any improvement on the Premises other than the Lessor Improvements is damaged or destroyed by fire or other casualty, Lessee shall, within thirty (30) days after such casualty, remove all debris resulting therefrom. If Lessee fails to do so, Lessor may remove such debris, and Lessee agrees to reimburse Lessor for all expenses incurred within thirty (30) days after rendition of Lessor's bill.

D. Lessee shall comply with all governmental laws, ordinances, rules, regulations and orders relating to Lessee's use of the Premises and this Lease, including, without limitation, any requirements for subdividing or platting the Premises.

Section 7. HAZARDOUS MATERIALS, SUBSTANCES AND WASTES.

A. Without the prior written consent of Lessor, Lessee shall not use or permit the use of the Premises for the generation, use, treatment, manufacture, production, storage or recycling of any Hazardous Substances, except that Lessee may use, if lawful, small quantities of common chemicals such as adhesives, lubricants and cleaning fluids in order to conduct business at the Premises. The consent of Lessor may be withheld by Lessor for any reason whatsoever, and may be subject to conditions in addition to those set forth below. It shall be the sole responsibility of Lessee to determine whether or not a contemplated use of the Premises is a Hazardous Substance use.

B. In no event shall Lessee (i) release, discharge or dispose of any Hazardous Substances, (ii) bring any hazardous wastes as defined in RCRA onto the Premises, (iii) install or use on the Premises any underground storage tanks, or (iv) store any Hazardous Substances within one hundred feet (100') of the center line of any main track.

C. If Lessee uses or permits the use of the Premises for a Hazardous Substance use, with or without Lessor's consent, Lessee shall furnish to Lessor copies of all permits, identification numbers and notices issued by governmental agencies in connection with such Hazardous Substance use, together with such other information on the Hazardous Substance use as may be requested by Lessor. If requested by Lessor, Lessee shall cause to be performed an environmental assessment of the Premises upon termination of the Lease and shall furnish Lessor a copy of such report, at Lessee's sole cost and expense.

D. Without limitation of the provisions of Section 12 of this Exhibit B, Lessee shall be responsible for all damages, losses, costs, expenses, claims, fines and penalties related in any manner to

any Hazardous Substance use of the Premises (or any property in proximity to the Premises) during the term of this Lease or, if longer, during Lessee's occupancy of the Premises, regardless of Lessor's consent to such use or any negligence, misconduct or strict liability of any Indemnified Party (as defined in Section 12), and including, without limitation, (i) any diminution in the value of the Premises and/or any adjacent property of any of the Indemnified Parties, and (ii) the cost and expense of clean-up, restoration, containment, remediation, decontamination, removal, investigation, monitoring, closure or post-closure. Notwithstanding the foregoing, Lessee shall not be responsible for Hazardous Substances (i) existing on, in or under the Premises prior to the earlier to occur of the commencement of the term of the Lease or Lessee's taking occupancy of the Premises, or (ii) migrating from adjacent property not controlled by Lessee, or (iii) placed on, in or under the Premises by any of the Indemnified Parties; except where the Hazardous Substance is discovered by, or the contamination is exacerbated by, any excavation or investigation undertaken by or at the behest of Lessee. Lessee shall have the burden of proving by a preponderance of the evidence that any of the foregoing exceptions to Lessee's responsibility for Hazardous Substances applies.

E. In addition to the other rights and remedies of Lessor under this Lease or as may be provided by law, if Lessor reasonably determines that the Premises may have been used during the term of this Lease or any prior lease with Lessee for all or any portion of the Premises, or are being used for any Hazardous Substance use, with or without Lessor's consent thereto, and that a release or other contamination may have occurred, Lessor may, at its election and at any time during the life of this Lease or thereafter (i) cause the Premises and/or any adjacent premises of Lessor to be tested, investigated, or monitored for the presence of any Hazardous Substance, (ii) cause any Hazardous Substance to be removed from the Premises and any adjacent lands of Lessor, (iii) cause to be performed any restoration of the Premises and any adjacent lands of Lessor, and (iv) cause to be performed any remediation of, or response to, the environmental condition of the Premises and the adjacent lands of Lessor, as Lessor reasonably may deem necessary or desirable, and the cost and expense thereof shall be reimbursed by Lessee to Lessor within thirty (30) days after rendition of Lessor's bill. In addition, Lessor may, at its election, require Lessee, at Lessee's sole cost and expense, to perform such work, in which event, Lessee shall promptly commence to perform and thereafter diligently prosecute to completion such work, using one or more contractors and a supervising consulting engineer approved in advance by Lessor.

F. For purposes of this Section 7, the term "Hazardous Substance" shall mean (i) those substances included within the definitions of "hazardous substance", "pollutant", "contaminant", or "hazardous waste", in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, *et seq.*, as amended or in RCRA, the regulations promulgated pursuant to either such Act, or state laws and regulations similar to or promulgated pursuant to either such Act, (ii) any material, waste or substance which is (A) petroleum, (B) asbestos, (C) flammable or explosive, or (D) radioactive; and (iii) such other substances, materials and wastes which are or become regulated or classified as hazardous or toxic under any existing or future federal, state or local law.

Section 8. UTILITIES.

A. Lessee will arrange and pay for all utilities and services supplied to the Premises or to Lessee.

B. All utilities and services will be separately metered to Lessee. If not separately metered, Lessee shall pay its proportionate share as reasonably determined by Lessor.

Section 9. LIENS.

Lessee shall not allow any liens to attach to the Premises for any services, labor or materials furnished to the Premises or otherwise arising from Lessee's use of the Premises. Lessor shall have the right to discharge any such liens at Lessee's expense.

Section 10. ALTERATIONS AND IMPROVEMENTS; CLEARANCES.

A. No alterations, improvements or installations may be made on the Premises without the prior consent of Lessor. Such consent, if given, shall be subject to the needs and requirements of the Lessor in the operation of its Railroad and to such other conditions as Lessor determines to impose. In all events such consent shall be conditioned upon strict conformance with all applicable governmental requirements and Lessor's then-current clearance standards.

B. All alterations, improvements or installations shall be at Lessee's sole cost and expense.

C. Lessee shall comply with Lessor's then-current clearance standards, except (i) where to do so would cause Lessee to violate an applicable governmental requirement, or (ii) for any improvement or device in place prior to Lessee taking possession of the Premises if such improvement or device complied with Lessor's clearance standards at the time of its installation.

D. Any actual or implied knowledge of Lessor of a violation of the clearance requirements of this Lease or of any governmental requirements shall not relieve Lessee of the obligation to comply with such requirements, nor shall any consent of Lessor be deemed to be a representation of such compliance.

Section 11. AS-IS.

Lessee accepts the Premises in its present condition with all faults, whether patent or latent, and without warranties or covenants, express or implied. Lessee acknowledges that Lessor shall have no duty to maintain, repair or improve the Premises.

Section 12. RELEASE AND INDEMNITY.

A. As a material part of the consideration for this Lease, Lessee, to the extent it may lawfully do so, waives and releases any and all claims against Lessor for, and agrees to indemnify, defend and hold harmless Lessor, its affiliates, and its and their officers, agents and employees ("Indemnified Parties") from and against, any loss, damage (including, without limitation, punitive or consequential damages), injury, liability, claim, demand, cost or expense (including, without limitation, attorneys' fees and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, Lessor, Lessee, or any employee of Lessor or Lessee) (i) for personal injury or property damage caused to any person while on or about the Premises, or (ii) arising from or related to any use of the Premises by Lessee or any invitee or licensee of Lessee, any act or omission of Lessee, its officers, agents, employees, licensees or invitees, or any breach of this Lease by Lessee.

B. The foregoing release and indemnity shall apply regardless of any negligence, misconduct or strict liability of any Indemnified Party, except that the indemnity, only, shall not apply to any Loss determined by final order of a court of competent jurisdiction to have been caused by the sole active direct negligence of any Indemnified Party.

C. Where applicable to the Loss, the liability provisions of any contract between Lessor and Lessee covering the carriage of shipments or trackage serving the Premises shall govern the Loss and shall supersede the provisions of this Section 12.

D. No provision of this Lease with respect to insurance shall limit the extent of the release and indemnity provisions of this Section 12.

Section 13. TERMINATION.

A. Lessor may terminate this Lease for Lessee's default by giving Lessee notice of termination, if Lessee (i) defaults under any obligation of Lessee under this Lease and, after written notice is given by Lessor to Lessee specifying the default, Lessee fails either to immediately commence to cure the default, or to complete the cure expeditiously but in all events within thirty (30) days after the default notice is given, or (ii) Lessee abandons the Premises for a period of one hundred twenty (120) consecutive days.

B. Notwithstanding the terms of this Lease set forth elsewhere herein, Lessor or Lessee may terminate this Lease without cause upon thirty (30) day's written notice to the other party; provided, however, that at Lessor's election, no such termination by Lessee shall be effective unless and until Lessee has vacated and restored the Premises as required in Section 15A, at which time Lessor shall refund to Lessee, on a pro rata basis, any unearned rental paid in advance. **Notwithstanding anything to the contrary in this Lease, if Lessee has not complied with the requirements of Section 15 A, this Lease, together with all terms contained herein (including payment of rent) will remain in effect until the requirements of Section 15A are met, unless Lessor, in its sole discretion, elects to terminate this Lease.**

Section 14. LESSOR'S REMEDIES.

Lessor's remedies for Lessee's default are to (a) enter and take possession of the Premises, without terminating this Lease, and relet the Premises on behalf of Lessee, collect and receive the rent from reletting, and charge Lessee for the cost of reletting, and/or (b) terminate this Lease as provided in Section 13 above and sue Lessee for damages, and/or (c) exercise such other remedies as Lessor may have at law or in equity. Lessor may enter and take possession of the Premises by self-help, by changing locks, if necessary, and may lock out Lessee, all without being liable for damages.

Section 15. VACATION OF PREMISES; REMOVAL OF LESSEE'S PROPERTY.

A. Upon termination howsoever of this Lease, Lessee (i) shall have peaceably and quietly vacated and surrendered possession of the Premises to Lessor, without Lessor giving any notice to quit or demand for possession, and (ii) shall have removed from the Premises all structures, property and other materials not belonging to Lessor, including all personal property and restored the surface to as good a condition as the same was in before such structures were erected, including, without limitation, the removal of foundations, the filling in of excavations and pits, and the removal of debris and rubbish.

B. If Lessee has not completed such removal and restoration prior to termination of this Lease, Lessor may, at its election, and at any time or times, (i) perform the work and Lessee shall reimburse Lessor for the cost thereof within thirty (30) days after bill is rendered, (ii) take title to all or any portion of such structures or property by giving notice of such election to Lessee, and/or (iii) treat Lessee as a holdover tenant at will until such removal and restoration is completed.

Section 16. FIBER OPTICS.

Lessee shall telephone Lessor during normal business hours (7:00 a.m. to 9:00 p.m., Central Time, Monday through Fridays, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried on the Premises. Lessor may change the telephone number and hours of operation by giving Lessee notice of the change. If cable is buried on the Premises, Lessee will telephone the telecommunications company(ies), arrange for a cable locator, and make arrangements for relocation or other protection of the cable. Notwithstanding compliance by Lessee with this Section 16, the release and indemnity provisions of Section 12 above shall apply fully to any damage or destruction of any telecommunications system.

Section 17. NOTICES.

Any notice, consent or approval to be given under this Lease shall be in writing, and personally served, sent by facsimile to (402) 501-0340, by email or by reputable courier service, or sent by certified mail, postage prepaid, return receipt requested, to Lessor at: Union Pacific Railroad Company, Attn: General Manager - Real Estate, Real Estate Department, 1400 Douglas Street, Stop 1690, Omaha, Nebraska 68179; and to Lessee at the above address, or such other address as a party may designate in notice given to the other party. Mailed notices shall be deemed served five (5) days after deposit in the U.S. Mail. Notices which are faxed, emailed, are personally served or sent by courier service shall be deemed served upon receipt.

Section 18. ASSIGNMENT.

A. Lessee shall not sublease the Premises, in whole or in part, or assign, encumber or transfer (by operation of law or otherwise) this Lease, without the prior consent of Lessor, which consent may be denied at Lessor's sole and absolute discretion. Any purported transfer or assignment without Lessor's consent shall be void and shall be a default by Lessee.

B. Subject to this Section 18, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

Section 19. CONDEMNATION.

If, as reasonably determined by Lessor, the Premises cannot be used by Lessee because of a condemnation or sale in lieu of condemnation, then this Lease shall automatically terminate. Lessor shall be entitled to the entire award or proceeds for any total or partial condemnation or sale in lieu thereof, including, without limitation, any award or proceeds for the value of the leasehold estate created by this Lease. Notwithstanding the foregoing, Lessee shall have the right to pursue recovery from the condemning authority of such compensation as may be separately awarded to Lessee for Lessee's relocation expenses, the taking of Lessee's personal property and fixtures, and the interruption of or damage to Lessee's business.

Section 20. ATTORNEY'S FEES.

If either party retains an attorney to enforce this Lease (including, without limitation, the indemnity provisions of this Lease), the prevailing party is entitled to recover reasonable attorney's fees.

Section 21. RIGHTS AND OBLIGATIONS OF LESSOR.

If any of the rights and obligations of Lessor under this Lease are substantially and negatively affected by any changes in the laws applicable to this Lease, whether statutory, regulatory or under

federal or state judicial precedent, then Lessor may require Lessee to enter into an amendment to this Lease to eliminate the negative effect on Lessor's rights and obligations to the extent reasonably possible.

Section 22. MODIFICATION, WAIVER OF DEFAULT, ENTIRE AGREEMENT.

No waiver, modification or amendment to this Lease, including specifically but not limited to, any indemnity and/or insurance requirement herein, shall be of any force or effect unless made in writing, signed by Lessor and Lessee and specifying with particularity the nature and extent of such waiver, modification or amendment. This Lease is the entire agreement between the parties, and supersedes all other oral or written agreements between the parties pertaining to this transaction, including, without limitation, Lease Audit No. _____ and any other lease under which all or any portion of the Premises was leased to Lessee. Notwithstanding the prior sentence, Lessee shall retain any and all obligations and liabilities which may have accrued under any other such agreements prior to the commencement of the term of this Lease.

Approved: Insurance Group
Created: 2/10/06
Last Modified: 7/2/07

EXHIBIT C
Union Pacific Railroad
Contract Insurance Requirements

Lease of Land

Lessee shall, at its sole cost and expense, procure and maintain during the life of this Lease (except as otherwise provided in this Lease) the following insurance coverage:

A. **Commercial General Liability** insurance. Commercial general liability (CGL) with a limit of not less than \$2,000,000 each occurrence and an aggregate limit of not less than \$4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage). The policy must also contain the following endorsement, which must be stated on the certificate of insurance: Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Premises" as the Designated Job Site.

B. **Business Automobile Coverage** insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$2,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Premises" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

C. **Workers Compensation and Employers Liability** insurance. Coverage must include but not be limited to:

Contractor's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.

Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Lessee is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

In any and all Claims against Lessor by any employee of Lessee, Lessee's indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable under any workers compensation acts, disability benefits acts or other **employee benefits acts**.

D. **Pollution Liability** insurance. If permitted use as defined in this Lease includes any generation, handling, enrichment, storage, manufacture, or production of hazardous materials pollution liability insurance is required. Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If hazardous materials are disposed of from the Premises, Lessee must furnish to Lessor evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

E. Umbrella or Excess insurance. If Lessee utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

Other Requirements

F. All policy(ies) required above must include Lessor as "Additional Insured" using ISO Additional Insured Endorsement CG 20 11 (or a substitute form providing equivalent coverage). The coverage provided to Lessor as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 11, provide coverage for Lessor's negligence whether sole or partial, active or passive, and shall not be limited by Lessee's liability under the indemnity provisions of this Lease.

G. Lessee waives all rights against Lessor and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the workers compensation and employers' liability or commercial umbrella or excess liability insurance obtained by Lessee required by this agreement.

H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this Lease, or (b) all punitive damages are prohibited by all states in which the Premises are located.

I. Prior to execution of this Lease, Lessee shall furnish Lessor with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Lease.

J. All insurance policies must be written by a reputable insurance company acceptable to Lessor or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the Premises are located.

K. The fact that insurance is obtained by Lessee, or by Lessor on behalf of Lessee, will not be deemed to release or diminish the liability of Lessee, including, without limitation, liability under the indemnity provisions of this Lease. Damages recoverable by Lessor from Lessee or any third party will not be limited by the amount of the required insurance coverage.