



## REGULAR MEETING OF THE CITY COUNCIL

448 E. 1<sup>st</sup> Street, Room 190

Salida, Colorado 81201

Tuesday, May 21, 2019 - 6:00 p.m.

### AGENDA

1. Call to Order
  - a. Pledge of Allegiance – Led by Mayor Wood
  - b. Roll Call
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
5. Citizen Comment – 3 minute time limit
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)
7. New Business / Action Items
  - a. Resolution 2019-29 Amending the Fees and Charges for Water and Wastewater Services (Bill Almquist)
  - b. Resolution 2019-30 Attorney Scope of Work (Drew Nelson)
  - 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)
  - d. Conditional Lease Agreement with PowderMonarch LLC for Lighting on Tenderfoot Mountain

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

8. Councilmembers, Mayor and City Treasurer Reports

- Councilors Bowers, Shore, Templeton, Critelli, Brown-Kovacic, Kasper, Mayor Wood
- Treasurer Pappenfort
- Staff Reports

9. Adjourn

[SEAL]

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City Clerk/Deputy City Clerk

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Mayor P.T. Wood



REGULAR MEETING OF THE CITY COUNCIL  
448 E. 1<sup>st</sup> Street, Room 190  
Salida, Colorado 81201  
Tuesday, May 7, 2019 - 6:00 p.m.  
**MINUTES**

1. Call to Order
  - a. Pledge of Allegiance – Led by Mayor Wood
  - b. Roll Call – Present: Mayor Wood, Critelli, Bowers, Brown-Kovacic, Shore, Kasper. Absent: Templeton
  
2. Presentations
  - a. Civility Project: Jody Bol, Jeanine Frazee, and students Madeline Townsend, Ripley Judd, Claire Shepherd presented their posters regarding their views on civility.
  - b. Arbor Day Proclamation – read by Mayor Wood
  
3. Consent Agenda
  - a. Approval of Agenda
  - b. Approval of Meeting Minutes – April 16, 2019
  - c. Approval of Special Meeting Minutes – April 26, 2019
  - d. KHEN Fundraiser
  - e. Shakespeare in the Park – Fee Waiver Request
  - f. Hooligan Alley – Street Closure
  - g. Salida Community Film Shoot – Street Closure

**Critelli made a motion to combine and approve the items on the Consent Agenda. Seconded by Brown-Kovacic. With all in favor, THE MOTION PASSED.**
  
4. Citizen Comment – no one spoke.
  
5. Unfinished Business / Action Items
  - a. Second Reading and Public Hearing of Ordinance 2019-08 Amending Article III of Chapter 6 of the Salida Municipal Code Concerning Marijuana Licensing (Nina Williams)

**Mayor Wood opened the public hearing at which no one spoke. Mayor Wood closed the public hearing. Shore made a motion to approve Ordinance 2019-**

**08 on second reading. Seconded by Brown-Kovacic. With all in favor, THE MOTION PASSED.**

- b. Resolution 2019-19 Amending the Policies Regarding Access to Public Records (Sonia Walter/Nina Williams)

**Brown-Kovacic made a motion to approve Resolution 2019-19. Seconded by Critelli. Shore made an amendment to the motion that the second sentence in section A(5) of the external policy be struck. Seconded by Kasper. All in favor of the amendment. With Bowers dissenting, THE MOTION PASSED.**

6. New Business / Action Items

- a. Resolution 2019-23 Amending the 1030 J Street Agreement (Glen Van Nimwegen)

**Brown-Kovacic made a motion to approve Resolution 2019-23. Seconded by Kasper. With Bowers dissenting, THE MOTION PASSED.**

- b. Resolution 2019-24 Approving Subdivision Improvement Agreement for Dutch Run Minor Subdivision (Glen Van Nimwegen)

**Critelli made a motion to approve Resolution 2019-24. Seconded by Bowers. With all in favor, THE MOTION PASSED.**

- c. Resolution 2019-25 to Reappoint Members to the Historic Preservation Commission (Glen Van Nimwegen)

**Shore made a motion to approve Resolution 2019-25. Seconded by Bowers. With all in favor, THE MOTION PASSED.**

- d. First Reading 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)

**Kasper made a motion to approve Ordinance 2019-09 at first reading and setting public hearing and second reading for May 21, 2019. Seconded by Brown-Kovacic. Council asked for a “sunset provision” of two to three years to revisit the fees changes. With all in favor, THE MOTION PASSED.**

- e. City Administrator Performance Review

**Kasper made a motion to approve the City Administrator’s contract and an increase of pay of \$10,000. Seconded by Shore. With Critelli and Bowers dissenting, THE MOTION PASSED.**

f. Finance Committee Appointments

**Shore and Brown-Kovacic volunteered to serve on the Finance Committee with Kasper as an alternate. Critelli made a motion to approve the Finance Committee appointments. Seconded by Bowers. With all in favor, THE MOTION PASSED.**

- g. Resolution 2019-26 Approving a Commercial Lease Agreement for 323 First Street with Salida Bottling Company LLC (Drew Nelson)

**Council discussed the increase in cost of the lease. Critelli made a motion to approve Resolution 2019-26. Seconded by Shore. With Bowers dissenting, THE MOTION PASSED.**

- h. Resolution 2019-27 Approving a Professional Services Agreement with Orion Integration Services for Information Technology Services (Drew Nelson)

**Shore made a motion to approve Resolution 2019-27. Seconded by Critelli. With all in favor, THE MOTION PASSED.**

- i. Resolution 2019-28 Approving a Third Amendment to a Real Property Lease Between the R-32-J Salida School District and the City of Salida for the Loyal Duke Dog Park (Drew Nelson)

**Kasper made a motion to approve Resolution 2019-28. Seconded by Bowers. With all in favor, THE MOTION PASSED.**

7. Councilmembers, Mayor and City Treasurer Reports

- Bowers going to Monte Vista to meet with CIRSA.
- Shore brought up the topic of food trucks and standardizing policy.
- Critelli also wants a discussion regarding food truck.
- Brown-Kovacic asked for an update of short-term rentals.
- Kasper attended a celebration of the Colorado Trail.
- Mayor Wood complemented Oveja Negra on their Wright Award. Also the City will be hosting the Colorado Creative Industries summit.
- Pappenfort thanked the Councilpersons for joining her on the Finance Committee.

8. Executive Session

- a. For the purpose of discussing the transfer or sale of real property interest, pursuant to C.R.S. section 24-6-402(4)(a); determining positions relative to matters that may be subject to negotiations, developing strategies for negotiations, and/or instructing negotiators, pursuant to C.R.S. section 24-

6-402(4)(e); and receiving legal advice on specific legal questions, pursuant to C.R.S. section 24-6-402(4)(b).

**Shore made a motion to go into Executive Session. Seconded by Critelli. All in favor. Council went into Executive Session at 8:11pm and returned at 8:51pm. Present were: Critelli, Mayor Wood, Shore, Bowers, Brown-Kovacic, Drew Nelson, Nina Williams.**

9. Adjourned at 8:52pm.

[SEAL]

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City Clerk/Deputy City Clerk

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Mayor P.T. Wood

## **PROCLAMATION**

**WHEREAS**, youth from Higashi Naruse, Akita Prefecture, Japan, visited Salida in 2017 and were struck by not only the vibrancy of our town, but the similarities with their home; and

**WHEREAS**, Higashi Naruse, Akita, Japan, is blessed with the Naruse River and richness of the adjacent Kurikoma mountain range and they wish to expand their nature tourism; and

**WHEREAS**, Salida is also rich in natural assets and there is a desire to exchange ideas and initiatives for the benefit of both communities, including how to live in harmony with the natural environment; share economic development plans; and foster river recreation; and

**WHEREAS**, Kancho Gaku Homma and the Aikido Humanitarian Active Network of Denver, a non-profit philanthropic organization dedicated to donating food, building education centers and providing medical support to children internationally since 1991, has introduced and is facilitating the Sister City relationship with Higashi Naruse, Akita, Japan; and

**WHEREAS**, Mayor Tetsuo Sasaki of Higashi Naruse, recognizing the similarities between our communities and the opportunity to learn from each other, has made a generous invitation to visit his community in hopes of developing a mutual exchange between our communities; and

**WHEREAS**, a delegation from Salida, including the Mayor Pro Tempore, Community Development Director, Marketing Director of Chaffee County Visitors Bureau and our international representatives, Richard Thompson and Cindy Knott, will be travelling to Higashi Naruse in June, 2019 to meet with Mayor Sasaki, Deputy Mayor, Superintendent of the Board of Education and Chairperson, as well as Councilmembers and staff of the Planning, General Affairs, Environment, Agriculture, Public Health, and Taxes Divisions; and

**WHEREAS**, it is our hope that a similar delegation from Higashi Naruse will soon be able to visit Salida and this relationship will continue and be prosperous for both of our beautiful cities.

**NOW, THEREFORE, I, P.T. Wood, Mayor of Salida, Colorado** do hereby acknowledge and recognize the intuitiveness of Kancho Gaku Homma and the A.H.A.N Organization to bring our communities together; and the warm invitation from Mayor Tetsuo Sasaki to enter into a Sister City relationship with Higashi Naruse, Japan, to share our cultures and experiences.

---

P.T. Wood, Mayor

**Greater Arkansas River Nature Association**  
*Nature Centered, Community Driven.*

PO Box 1522  
Salida, Colorado 81201  
  
719.539.5106  
www.garna.org  
info@garna.org



May 14, 2019

City of Salida  
448 E. First Street  
Salida, CO 81201

Dear Salida City Council,

The 21<sup>st</sup> annual Headwaters Institute is scheduled for Friday, June 7, 2019.

The Headwaters Institute is an all-day workshop for first year river guides and the public. Lectures and break-out sessions will be presented by numerous local and regional experts. Topics will include management of public lands in the Arkansas Valley, geology, the effects of global climate change on the Arkansas, wildlife in the watershed, plus stream and fire ecology.

**GARNA and AHRA are requesting use of Riverside Park and the Salida Scout Hut for the day on Friday, June 7, from 8:00 am to 3:00 pm. We appreciate any fee waivers or discounts that the city can provide for these venues.**

Thank you for your consideration.

Dominique Naccarato  
Executive Director



CITY OF SALIDA

PARK RESERVATIONS

APPLICATION A: PRIVATE PARTIES

Please review the attached Provisions for Park Rental and Rules and initial. DN

Date of application 5-14-2019

- 1. Event location(s): Riverside Park
2. Date(s) & times(s) of event: June 7, 2019 8 am -3 PM
3. Proposed activity: GARNA/AHRA Headwaters Institute
4. Estimated number of people: 130
5. Individual or organization sponsor(s): Greater Arkansas River Nature Association (GARNA)
6. Contact person: Dominique Naccarato
7. Will you need electricity? Yes [x] No
8. County Health policy REQUIRES 1 toilet/50 people.
9. Events with 50 or more participants require a professional trash service.

Date:

Park:

Signed:

Event sponsor: Dominique Riccardo

City of Salida: \_\_\_\_\_

Date: May 14, 2019

Date: \_\_\_\_\_

**Application A Fees:**

\*Park Fees: \_\_\_\_\_ \$50/4 hours or \$100/park/day or \$200/park/day if park is used overnight (for example, fencing or tents are kept up)

\*Damage Deposit: \_\_\_\_\_ \$75 All parks **except** Riverside. Please make this a separate check so it can be refunded or destroyed if the park is left in satisfactory condition.

\_\_\_\_\_ \$150 Riverside Park/Band Shell. The permit holder must pick up and sign for the band shell key at the Aquatic Center prior to the event.

**If clean-up is not satisfactory, damage deposit may not be refunded.**

Electricity Fees: \_\_\_\_\_ \$10/day

**Total Fees:** \_\_\_\_\_

\* Required fees.

**Make checks payable to the City of Salida.**

PRE-EVENT CHECKLIST:

- Fees collected
  - o Park Fees
  - o Damage Deposit
  - o Electricity
- Trash removal arranged
- Toilets arranged
- Amplified Sound Permit (if needed)

**Provisions for Park Rentals and Park Rules**



Permit #: \_\_\_\_\_

**CITY OF SALIDA  
AMPLIFIED SOUND PERMIT**

Pursuant to Article IX Section 10-9-80 S.M.C., \_\_\_\_\_ (Permittee) has been granted this permit to exceed the maximum sound levels established in Section 10-9-80, S.M.C., in accordance with the following terms and conditions:

Permittee: Greater Arkansas River Nature Association

Address: 128 E. 1<sup>st</sup> Street, Suite 205  
Salida, CO

Telephone: 719-539-5106

Individual supervising sound (if different from Permittee): Stew Pappenfort

Activity/event: GARNA/AHRA Headwaters Institute

Type of sound amplification equipment authorized (if any): amplification for educational presentations

Location: Riverside Park

Date(s): June 7, 2019

Hours of operation: 9 am to 3 pm

Additional terms/conditions (attach additional sheets if necessary): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Expiration: \_\_\_\_\_

**The Permittee shall ensure that the sound/activity authorized by this permit shall be conducted in compliance with all applicable City ordinances and regulations, and a failure by the Permittee to do so, or to comply with all terms and conditions set forth hereinabove, may result in the summary revocation of this permit.**

Approved by the City Administrator on the \_\_\_\_ day of \_\_\_\_\_ 20\_\_

City of Salida: \_\_\_\_\_  
(City Administrator)

Accepted and agreed to by the Permittee: \_\_\_\_\_

Date: \_\_\_\_\_



**REQUEST FOR CITY COUNCIL ACTION**

Meeting Date: May 21, 2019

<b>AGENDA ITEM NO.</b> Consent Agenda	<b>ORIGINATING DEPARTMENT:</b> Public Works	<b>PRESENTED BY:</b> David Lady
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**ITEM:**

Consent Agenda

Council Action To Approve the Purchase of a street sweeper for Public Works.

**BACKGROUND:**

The City of Salida Public Works Department annually upgrades vehicles that have reached the end of their useful life through a fleet vehicle replacement program identified in the annual budget. The current sweeper is approximately 13 years old and has had an increased number of repairs which have affected service, costs, and availability. Design changes with newer sweepers have increased performance and functionality.

Street sweepers are a unique type of equipment with limited dealer resources for local support and service. Additionally, each street sweeper manufacturer has unique specifications and features that serve different purposes, therefore, specifications vary.

Proposals and specifications for two different brands of sweepers were reviewed. The base pricing between the two were comparable. However, the Dulevo sweeper provided several options that offer value to typical uses in Salida for specific street maintenance needs.

The Dulevo has an auxiliary sweeper attachment that allows the operator to clean raised sections such as the stamped brick concrete parkways on the highway as well as the deep curb pans that Salida has in the downtown region. Other unique features include a GPS system for route optimization, rear cameras for safety, a tight turning radius which works ideal for downtown, and a vacuum assist system which reduces dust for the operator and the public. The Dulevo also has engine performance specifications ideal for higher altitudes.

Several municipal references were checked that have operated a variety of street sweepers. All provided positive reviews for the Dulevo. Operators cited that they were reliable, customer service was excellent, and the machine performed well.

Base Pricing: Dulevo 6000 - \$218,439, Elgin Pelican - \$237,785

Pricing including preferred options: Dulevo 6000 - \$255,835

Proposed Equipment with the preferred options for 7-year and 5-year lease purchase agreements are provided below.

Make/Model	Amount
Dulevo 6000	\$41,795.50 (7-yr annual commitment)
<b>Dulevo 6000</b>	<b>\$56,250.76 (5-yr annual commitment)</b>



**REQUEST FOR CITY COUNCIL ACTION**

Meeting Date: May 21, 2019

<b>AGENDA ITEM NO.</b> Consent Agenda	<b>ORIGINATING DEPARTMENT:</b> Public Works	<b>PRESENTED BY:</b> David Lady
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**FISCAL NOTE:**

A budget allocation of \$52,000 total is included in the 2019 budget (10-30-5544-0). Finance staff reviewed the agreement and recommended the 5-year option. A budget amendment is not anticipated for the overall 10-30 fund at this time.

**STAFF RECOMMENDATION:**

Staff is recommending approval of the lease-purchase 5-year agreement with Hardline Equipment – National Cooperative Leasing with the annual amount of **\$56,250.76**.

**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.



6000





**Concept**

Design, innovative and robust constructions, effective solutions for all applications and the unique large waste hopper make the Dulevo 6000 the perfect working tool for all seasons – everywhere and at any time - regardless of high or low temperatures, sun, rain or snow. Up to date technology and top-quality components ensure the high standards demanded by the market – a guaranty of longevity.





**REQUEST FOR CITY COUNCIL ACTION**

Meeting Date: May 21, 2019:

<b>AGENDA ITEM NO.</b> Consent Agenda	<b>ORIGINATING DEPARTMENT:</b> Administration	<b>PRESENTED BY:</b> Drew Nelson
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**ITEM:**

Lease Agreement Renewal – 448 East First Street (Touber Building), Suites 201 and 216

**BACKGROUND:**

The City currently leases Suites 201 and 216 to the State of Colorado for the Salida Workforce Center and the Division of Vocational Rehabilitation, respectively. Both leases are set to expire at the end of June, 2019, and both SWC and DVR have requested five-year extensions of the existing leases. Both existing leases are attached to this report.

The State of Colorado has proposed a 3% annual rent increase, keeping in line with prior lease increases that have occurred over the last 5-year lease term. The lease amounts are as follows:

448 East First Street, **Suite 201**      368 Sq.Ft.      4/18/2019

Proposed Rent Table

Term Dates	Annual Rent/SF	Property Taxes	Adjusted Rent/SF	Monthly Rent	Total Annual Rent
7/1/19 - 6/30/20	\$16.52	\$0.00	\$16.52	\$506.61	\$6,079.36
7/1/20 - 6/30/21	\$17.02	\$0.00	\$17.02	\$521.81	\$6,261.74
7/1/21 - 6/30/22	\$17.53	\$0.00	\$17.53	\$537.47	\$6,449.59
7/1/22 - 6/30/23	\$18.05	\$0.00	\$18.05	\$553.59	\$6,643.08
7/1/23 - 6/30/24	\$18.59	\$0.00	\$18.59	\$570.20	\$6,842.37
		\$0.00			

448 East First Street, **Suite 216**      418 Sq.Ft.

Proposed Rent Table

Term Dates	Annual Rent/SF	Property Taxes	Adjusted Rent/SF	Monthly Rent	Total Annual Rent
7/1/19 - 6/30/20	\$16.52	\$0.00	\$16.52	\$575.45	\$6,905.36
7/1/20 - 6/30/21	\$17.02	\$0.00	\$17.02	\$592.71	\$7,112.52
7/1/21 - 6/30/22	\$17.53	\$0.00	\$17.53	\$610.49	\$7,325.90
7/1/22 - 6/30/23	\$18.05	\$0.00	\$18.05	\$628.81	\$7,545.67
7/1/23 - 6/30/24	\$18.59	\$0.00	\$18.59	\$647.67	\$7,772.04
		\$0.00			





**REQUEST FOR CITY COUNCIL ACTION**

Meeting Date: May 21, 2019:

<b>AGENDA ITEM NO.</b> Consent Agenda	<b>ORIGINATING DEPARTMENT:</b> Administration	<b>PRESENTED BY:</b> Drew Nelson
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**FISCAL NOTE:**

The City would receive the revenues noted in the rent table above, totaling \$68,937.63 over the term of the combined leases.

**STAFF RECOMMENDATION:**

Staff recommends approval of the leases for Suites 201 and 216 with the rent tables as noted in this memo, which will be incorporated into a renewed lease agreement substantially similar to the two agreements attached, signed by the City Administrator and which have 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.

## Drew Nelson

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**From:** Griffin - CDLE, David <david.griffin@state.co.us>  
**Sent:** Thursday, April 18, 2019 3:04 PM  
**To:** drew.nelson@cityofsalida.com  
**Cc:** Angie Oswalt  
**Subject:** Salida Workforce Center Lease  
**Attachments:** 4 18 19\_Salida WFC\_Proposed Rent Table.xlsx; 15-62703 Salida Lease-City of Salida.pdf

Drew:

I just left you a voice message regarding the Colorado Rural Workforce Consortium's (CRWC) lease we have with the City of Salida in which we are leasing 368 square feet in the Touber Building. This lease expires on June 30, 2019 and we are looking to continue leasing this space for another 5 year period.

I would like you to review the current lease, which I have attached for your reference. I have also attached a proposed rent table beginning July 1, 2019 through June 30, 2024.

Please let us know if you are in agreement to continue this lease and/or if you have questions relative to our lease arrangements.

Thank you..  
David Griffin  
Project Manager  
Colorado Rural Workforce Consortium  
633 17th Room 700  
Denver, CO 80202  
Cell: 303-503-2739

## Drew Nelson

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**From:** Schweizer - CDLE, Colleene <colleene.schweizer@state.co.us>  
**Sent:** Friday, May 3, 2019 11:35 AM  
**To:** drew.nelson@cityofsalida.com  
**Cc:** James Smith - CDLE  
**Subject:** Fwd: State lease - distribution copy  
**Attachments:** 4 18 19\_Salida WFC\_Proposed Rent Table.xlsx

Hello Drew,

I hope this email finds you well. Dave Griffin has shared your contact information and that you will be presenting the new lease template for CRWC on May 7th for renewal of their leased space in Salida.

Heather Wright and I have spoken several times and I believe she gave you the template for both DVR and CRWC (CDLE) to review. Do you also plan on reviewing the lease for DVR on May 7th for renewal as well?

Thank you,

Colleene

----- Forwarded message -----

**From:** Griffin - CDLE, David <[david.griffin@state.co.us](mailto:david.griffin@state.co.us)>  
**Date:** Fri, May 3, 2019 at 11:20 AM  
**Subject:** Re: State lease - distribution copy  
**To:** Schweizer - CDLE, Colleene <[colleene.schweizer@state.co.us](mailto:colleene.schweizer@state.co.us)>  
**Cc:** James Smith - CDLE <[jamesd.smith@state.co.us](mailto:jamesd.smith@state.co.us)>

Colleene:

I shared the current lease with Drew and a proposed rent table, see attached, that he stated he will take to the City Council on May 7th... .

Thanks.

**David Griffin**  
**Project Manager**  
CRWC



***We Keep Colorado Working.***

**C** (303) 503-2739  
633 17th St., Suite 700, Denver, CO 80202  
[david.griffin@state.co.us](mailto:david.griffin@state.co.us) | [www.colorado.gov/cdle](http://www.colorado.gov/cdle)

On Fri, May 3, 2019 at 10:35 AM Schweizer - CDLE, Colleene <[colleene.schweizer@state.co.us](mailto:colleene.schweizer@state.co.us)> wrote:  
Dave,

Thank you, I really appreciate it. This is the person that Heather mentioned was reviewing them. Did he already review yours as I gave Heather the template for both DVR and CRWC lease renewals.

Thank you,

Colleene

**STATE OF COLORADO  
DEPARTMENT OF PERSONNEL AND ADMINISTRATION  
OFFICE OF THE STATE ARCHITECT  
REAL ESTATE PROGRAMS**



**STANDARD – [GROSS LEASE]  
LEASE AGREEMENT [IMPROVED REAL PROPERTY]**

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LANDLORD            City of Salida

TENANT              Colorado Department of Labor and Employment

LOCATION             448 East First Street, Suite 201, Salida, CO 81201

**STATE OF COLORADO  
DEPARTMENT OF PERSONNEL AND ADMINISTRATION  
OFFICE OF THE STATE ARCHITECT  
REAL ESTATE PROGRAMS**

**STANDARD LEASE AGREEMENT [IMPROVED REAL PROPERTY]**

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<b>EXHIBITS:</b>	
Exhibit A – Premises	
Exhibit B – Notice of Assignment of Lease Form	
Exhibit C – Tenant Improvements (N/A; Exhibit C is removed).	
Exhibit D – Commission Sharing Between Tenant and the Real Estate Support Services Vendor (N/A; Exhibit D is removed)	
Exhibit E - Federal Certification on Debarment and Suspension	
Exhibit F - Federal Certification Regarding Lobbying	

**LEASE AGREEMENT  
[Improved Real Property]**

The printed portions of this form, except bold additions, have been reviewed by the State of Colorado Attorney General and approved by the State Controller. All additions to this form must be in bold type. All deletions must be shown by strike-through.

THIS LEASE AGREEMENT ("Lease") entered into by and between **City of Salida, a Political Subdivision**, whose address or principal place of business is **448 East First Street, Suite 112, Salida, Colorado 81201**, hereinafter referred to as "Landlord", and **THE STATE OF COLORADO**, acting by and through the **Department of Labor and Employment**, whose address is **633 17<sup>th</sup> Street, Suite 1200, Denver, Colorado 80202**, hereinafter referred to as "Tenant". Both Landlord and Tenant shall be hereinafter referred to as "Parties" to this Lease.

**WITNESSETH:**

WHEREAS, Landlord is willing to lease the Premises, defined herein, and Tenant desires to lease the Premises pursuant to the terms of this Lease; and

WHEREAS, Authority to enter into this Lease exists in the Law, and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

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

**1. PREMISES, TERM, RENT.**

(A) Landlord hereby leases and demises unto Tenant the Premises, hereinafter referred to as "Premises" within the building located at **448 East First Street, Salida, CO 81201**, hereinafter referred to as "Building" (including land, improvements and other rights appurtenant thereto). The Premises, known and described as **Salida Workforce Center, Suite 201, Touber Building**, includes approximately **Three Hundred Sixty-Eight (368)** rentable square feet; the Premises being as shown on the plat attached hereto, made a part hereof and marked "Exhibit A".

(B) TO HAVE AND TO HOLD the same, together with all appurtenances, unto Tenant, for the term beginning the later of **August 1, 2014** or the date the Colorado State Controller approves the Lease ("Commencement Date"), and ending **June 30, 2019**, at and for a monthly rental (the "Monthly Rent") for the full term as shown below:

<u>TERM DATE(S)</u>	<u>ANNUAL RENT/ RSF</u>	<u>REAL ESTATE PROPERTY TAXES RSF</u>	<u>ADJUSTED ANNUAL RENT/ RSF</u>	<u>MONTHLY RENT</u>	<u>TOTAL TERM RENT</u>
<b>Commencement Date – 8/01/2014</b>					
<b>8/01/14 – 6/30/15</b>	<b>\$14.25</b>	<b>\$0.00</b>	<b>\$14.25</b>	<b>\$437.00</b>	<b>\$4,807.00</b>
<b>7/01/15 – 6/30/16</b>	<b>\$14.68</b>	<b>\$0.00</b>	<b>\$14.68</b>	<b>\$450.19</b>	<b>\$5,402.24</b>
<b>7/01/16 – 6/30/17</b>	<b>\$15.12</b>	<b>\$0.00</b>	<b>\$15.12</b>	<b>\$463.68</b>	<b>\$5,564.16</b>
<b>7/01/17 – 6/30/18</b>	<b>\$15.57</b>	<b>\$0.00</b>	<b>\$15.57</b>	<b>\$477.48</b>	<b>\$5,729.76</b>
<b>7/01/18 – 6/30/19</b>	<b>\$16.04</b>	<b>\$0.00</b>	<b>\$16.04</b>	<b>\$491.89</b>	<b>\$5,902.72</b>

CRS §39-3-124 exempts real property leased by the State of Colorado from the levy and collection of property taxes. ~~Therefore, the Adjusted Annual Rent/RSF as shown above does not include the Prior Year Taxes of \$\_\_\_/rsf or any tax based upon real property as defined and required by Article 15 (i);~~

~~when the Current Year Taxes are known, the Monthly Rent payment shall be adjusted accordingly.~~  
**Landlord's Tax Exemption:** Landlord is a tax exempt entity within the State of Colorado. As such, it is not subject to real property taxes and no such taxes are included in the rent to be paid by Tenant under Section 1 of this Lease.

*DTM*  
*DTM*

~~\*\*For the Term ( \_\_\_\_\_, 2010 through \_\_\_\_\_, 2010) the Total Term Rent has been reduced by a rent credit equal to \$ \_\_\_\_\_ per Exhibit D. Not applicable; Exhibit D is removed.~~

The Premises is to be used and occupied as **general office use space**. Payment of the Monthly Rent shall be made on the first of each month during the term hereof, to Landlord at:

**City of Salida  
448 East First Street, Suite 112  
Salida, CO 81201**

or at such place as Landlord from time to time designates by notice as provided herein, subject to the limitations and conditions set forth in Article 11, Fiscal Funding and Article 12, Federal Funding, herein.

If the term herein commences on a day other than the first day of a calendar month, then Tenant shall pay to Landlord the rental for the number of days that exist prior to the first day of the succeeding month, with a similar adjustment being made at the termination of the Lease.

**2. SERVICES.**

**(A) Landlord Provided Services:** Landlord shall provide to Tenant during the occupancy of said Premises, as a part of the rental consideration, the following services comparable to those provided by other office buildings of similar quality, size, age and location, in the **Chaffee County** submarket. The services shall include but not necessarily be limited to the following:

**1) Services to Premises.**

(i) Heat, ventilation and cooling as required for the comfortable use and occupancy of the Premises during normal business hours. Landlord shall at all times be responsible for heat, ventilating and air conditioning (HVAC) services in quantities and distributions sufficient for Tenant's use of the Premises, including rebalancing of the HVAC distribution system as necessary, and also including service, repair and/or replacement (which replacement shall be considered a capital improvement) of equipment, parts and accessories for the HVAC units and systems serving the Premises;

(ii) Landlord shall provide Building standard janitorial services. Janitorial services shall be **once per week**, including **trash removal from Premises to Building dumpster**, interior and exterior window washing (exterior window washing a minimum of **once per year**);

(iii) Electric power as supplied by the local utility company. Tenant shall be entitled to its pro rata share of the base Building's electrical capacity for each floor on which Tenant occupies space; **Cost for utilities to provide heat and for electricity for lighting, air conditioning, etc., is included in Lease rent payment;**

(iv) Replacement of Building standard fluorescent tubes, light bulbs and ballasts as required from time to time as a result of normal usage.

**2) Building Service.**

(i) Domestic running water, **sewer and plumbing service**, and necessary supplies in washrooms for **Tenant/public use**, sufficient for the normal use thereof by occupants in the Building;



(ii) Access to and egress from the Premises, including elevator service maintenance, repair and replacement customary for buildings of similar age and quality, if included in the Building;

(iii) Snow removal, sidewalk repair and maintenance, landscape maintenance and trash removal services;

(iv) HVAC, lighting, electric power, domestic running water and janitorial service in those areas of the Building designated by Landlord for use by Tenant, in common with all tenants and other persons in the Building during normal business hours, but under the exclusive control of Landlord;

(v) A general directory board on which Tenant shall be entitled to have its name shown, provided that Landlord shall have exclusive control thereof and of the space thereon to be allocated to each Tenant; Landlord shall provide space for Tenant to add its name to an existing exterior sign.

~~(vi) Landlord shall at all times be responsible for paying real estate taxes and assessments, including real property taxes, special improvement district taxes or fees or other special district taxes or charges for which Tenant is not eligible for a tax exemption, subject to Article 15. As long as Landlord is the owner of the Building and none of the afore-described taxes are attributed to the Building for either Landlord or Tenant, the foregoing sentence shall not apply. Tenant shall be responsible for all taxes and assessments on Tenant's personal property, if any.~~

*DTM MD*

3) Maintenance, Repair and Replacement.

(i) Landlord shall operate, maintain, repair and replace the systems, facilities and equipment necessary for the proper operation of the Building and for provision of Landlord's services under Article 2. (A) 1) and 2) above and shall maintain and repair the foundations, structure and roof of the Building and repair damage to the Building which Landlord is obligated to insure against under this Lease.

4) Additional Services.

(i) Maintenance of parking lot and/or structure, maintenance of the external lighting devices for the Building parking lot and/or structure. **Parking lot is shared by other tenants to include the Salda Police Department. Tenant shall have common use of non-reserved surface parking at no cost during term of the Lease and any extensions. Parking lot capacity is 65 spaces, including 5 that are ADA compliant.** Parking Maintenance, repair and replacement of Tenant Improvements for damage caused by shifting or leaking of the foundation or of any other structural aspect or system of the Building.

(ii) Maintain the Premises in good repair and in tenantable condition during the term of this Lease. Landlord shall have the right to enter the Premises at reasonable times for the purpose of making necessary inspections, repairs or maintenance.

(iii) The "normal business hours" of operation of the Building shall be from 8:00 a.m. to 5:00 p.m. Monday through Friday, excepting legal holidays, which shall include New Year's Day, Memorial Day, Martin Luther King, Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving and the day after, and Christmas. **Tenant shall have access to the building any day, but would be responsible for unlocking and locking exterior doors if it is a day that City Hall will not be open.**

(B) Tenant Provided Services:

(1) **Services to Premises.**

(i) Tenant shall be responsible for purchasing compatible telephones to be connected to Landlord's telephone system; Tenant shall pay for additional line installation. Monthly telephone usage shall be included in Tenant's rent and shall not be charged back to Tenant pro-rata. Tenant shall reimburse Landlord, upon receipt of invoice, for long distance charges by a charge code entered into the Building's telephone system. Tenant shall contract separately and be responsible for installation and payment of its own computer network system, equipment and services, copy machine and fax machine. Landlord shall not be responsible for payment or service of foregoing items.

3. **INTERRUPTION OF SERVICES.** Notwithstanding anything in this Lease to the contrary, if there is an interruption in essential services to the Premises (including, but not limited to HVAC, electrical service, elevator service), and such interruption continues for a period of five (5) consecutive days, Tenant shall be entitled to an abatement of rent for the period that such services are not provided to the extent that such interruption interferes with the use of the Premises by Tenant. If such interruption continues for a period of ninety (90) days, Tenant may cancel and terminate this Lease without penalty.

4. **WORK REQUIREMENTS.** All tenant finish alterations in the Premises, now and hereafter undertaken, shall be designed and constructed in accordance with the technical design specifications of the Uniform Federal Accessibility Standards, latest edition. ~~Prior to the Premises being occupied by Tenant, Landlord agrees to the tenant improvements described in Exhibit C, attached hereto and made apart hereof.~~ **NONE. Exhibit C removed.**

5. **LANDLORD'S REPRESENTATIONS.**

(A) Landlord represents that either:

1) no "asbestos response action", pursuant to that portion of the Colorado Air Quality Control Commission, Regulation 8 entitled Emission Standards for Asbestos, hereafter referred to as "Regulation 8", is contemplated as a part of the tenant finish for this Lease; or

2) in the event that an "asbestos response action" is contemplated as a part of the tenant improvements for this Lease, Landlord agrees to fully cooperate with Tenant in Tenant's exercise of its duties and responsibilities in accordance with Section V of Part B of Regulation 8.

(B) Landlord, in Landlord's sole opinion, represents that with respect to this Lease and the Premises, the Building meets the requirements of the Americans with Disabilities Act.

(C) Landlord must meet all local codes and regulations with regards to fire and life safety during the term of the State of Colorado's occupancy of the Premises as mandated by local authorities.

6. **LANDLORD'S OWNERSHIP.** Landlord warrants and represents itself to be the owner of, or the authorized representative or agent of the owner of, the Premises in the form and manner as stated herein. During the term of this Lease Landlord covenants and agrees to warrant and defend Tenant in the quiet, peaceable enjoyment and possession of the Premises. In the event of any dispute regarding Landlord's ownership, upon request from and at no cost to Tenant, Landlord shall immediately, furnish proof thereof by delivering to Tenant an "Ownership and Encumbrance Letter" issued by a properly qualified title insurance company.

7. **LEASE ASSIGNMENT.** Tenant shall not assign this Lease and shall not sublet the Premises, except to a desirable tenant for a similar use and purpose, and will not permit the use of said Premises to anyone, other than Tenant, its agents or employees, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned, or delayed.

8. EMINENT DOMAIN, TERMINATION OF LEASE. If the Premises are taken via eminent domain, in whole or in part, then either Party may cancel and terminate this Lease and the current rent shall be properly apportioned to the date of such taking. In such event the entire damages which may be awarded shall be apportioned between Landlord and Tenant, as their interests appear.

9. DAMAGE AND DESTRUCTION. If the Premises are rendered untenable or unfit for Tenant's purposes by fire or other casualty, this Lease will immediately terminate and no rent shall accrue from the date of such fire or casualty. If the Premises are damaged by fire or other casualty so that there is partial destruction of such Premises or such damage as to render the Premises partially untenable or partially unfit for Tenant's purposes, either Party may, within five (5) days of such occurrence, terminate this Lease by giving written notice to the other Party. Such termination shall be effective not less than fifteen (15) days from the date of mailing of the notice. Rent shall be apportioned to the effective date of termination.

10. HOLDING OVER. Tenant shall become a month-to-month tenant if Tenant fails to vacate the Premises upon expiration or sooner termination of this Lease. The rent to be paid by Tenant during such continued occupancy shall be the same being paid by Tenant as of the date of expiration or sooner termination. Landlord and Tenant each hereby agree to give the other Party at least thirty (30) days written notice prior to termination of any holdover tenancy.

11. FISCAL FUNDING.

(A) As prescribed by State of Colorado Fiscal Rules and §23(B) below, this Lease is dependent upon the continuing availability of funds beyond the term of the State's current fiscal period ending upon the next succeeding June 30, as financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. While the act of appropriation is a legislative act, Tenant will take appropriate actions under the laws applicable to Tenant to timely and properly budget for, request of and seek and pursue appropriation of funds from the General Assembly of the State of Colorado permitting Tenant to make payments required hereunder during the period to which such appropriation applies. If funds are not appropriated, this Lease shall terminate at the end of the then current fiscal year, with no penalty or additional cost to Tenant. Tenant shall notify Landlord of such non-allocation of funds by sending written notice thereof to Landlord forty-five (45) days prior to the effective date of termination.

(B) Tenant's obligation to pay rent hereunder constitutes a current expense of Tenant payable exclusively from Tenant's funds and shall not in any way be construed to be a general obligation indebtedness of the State of Colorado or any agency or department thereof within the meaning of any provision of §§ 1,2,3,4, or 5 of Article XI of the Colorado Constitution, or any other constitutional or statutory limitation or requirement applicable to the State concerning the creation of indebtedness. Neither Tenant, nor Landlord on its behalf, has pledged the full faith and credit of the State, or any agency or department thereof to the payment of the charges hereunder, and this Lease shall not directly or contingently obligate the State or any agency or department thereof to apply money from, or levy or pledge any form of taxation to, the payments due hereunder.

12. FEDERAL FUNDING. If any or all funds for payment of this Lease are provided by the Federal Government, this Lease is subject to and contingent upon the continuing availability of Federal funds, and if such funds are not made available, Tenant may unilaterally terminate this Lease at the end of any month after providing ninety (90) days written advance termination notice to Landlord.

13. NOTICE. Any notice required or permitted by this Lease may be delivered in person or sent by registered or certified mail, return receipt requested, to the Party at the address as hereinafter provided, and if sent by mail it shall be effective when posted in the U.S. Mail Depository with sufficient postage attached thereto:

Landlord:

Tenant:

City of Salida  
Attn: Dara MacDonald, City Administrator  
448 East First Street, Suite 112  
Salida, CO 81201  
Phone: 719-530-2629  
Email: dara.macdonald@cityofsalida.com

Colorado Department of Labor and Employment  
Attn: Lisa Eze, Purchasing & Contracts  
Director  
633 17<sup>th</sup> Street, Suite 1100  
Denver, CO 80202  
Phone: 303-318-8054; Fax: 303-318-8068  
Email: Lisa.eze@state.co.us

With copy to: CRWC Regional Director:  
John Martinez, Director, Upper Arkansas Region  
Pueblo Workforce Center  
212 W. 3<sup>rd</sup> Street, 4<sup>th</sup> Floor  
Pueblo, CO 81003  
Phone: 719-562-3775  
Email: john.martinez1@state.co.us

With a copy to:  
Office of the State Architect  
Real Estate Programs  
1525 Sherman Street, Suite 112  
Denver, CO 80203

Notice of change of address shall be treated as any other notice.

14. CONSENT. Unless otherwise specifically provided, whenever consent or approval of Landlord or Tenant is required under the terms of this Lease, such consent or approval shall not be unreasonably withheld or delayed and shall be deemed to have been given if no response is received within thirty (30) days of the date the request was made. If either Party withholds any consent or approval, such Party shall, after written request, deliver to the other Party a written statement giving the reasons therefore.

~~15. TENANT'S TAX EXEMPT STATUS. The Parties acknowledge CRS §30-3-124(1)(b), effective January 1, 2009, exempts the Premises from levy and collection of property tax including Assessed Tax, Special Assessment Tax, Maintenance District, Local Improvement Assessment, Fees and Interest (collectively "Taxes") while leased by Tenant for State purposes and that Landlord shall not receive a levy for property taxes from the County Assessor on the Premises occupied by Tenant during the term of the Lease and any extensions thereof. Tenant shall timely file a copy of the Lease, and any extensions or amendments thereof, with the County Assessor. If the Lease terminates prior to the end date provided for in Article 1(B), or any extension or amendments thereof (early termination), Tenant shall timely file notice of the early termination date with the County Assessor.~~

~~Tenant's Monthly Rent obligation, per Article 1 (B), shall be decreased by the amount of the reduction in Taxes on a monthly prorated basis. So long as Landlord receives an abatement of Taxes from the County Assessor, by reason of Tenant's operation as an agency or department of the State of Colorado:~~

- ~~i. Tenant shall receive a credit against its Monthly Rent beginning with the Commencement Date based upon the Current Year Taxes. If the Current Year Taxes (2014) are not yet available the Prior Year Taxes (2013) shall be used as an estimate until the Current Year Taxes are available. This credit shall be reconciled upon the availability of the Current Year Taxes; and~~
- ~~ii. Beginning at the availability of the Current Year Taxes Tenant shall receive an on-going credit against its Monthly Rent based upon the Current Year Taxes.~~

**As long as the Landlord is the owner of the Building and zero property taxes are attributed to the Building, Section 15, shall not apply.**

16. TENANT LIABILITY EXPOSURE. Notwithstanding any other provision of this Lease to the contrary, no term or condition of this Lease shall be construed or interpreted as a waiver of any provision of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq.. Liability for claims for injuries to persons or property arising out of the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of CRS §24-10-101,

et seq., and CRS §24-30-1501, et seq., All provisions of this Lease are controlled, limited and otherwise modified to limit any liability of Tenant in accordance with the foregoing cited statutes.

17. SECURITY DEPOSIT. Tenant shall not provide a security deposit to Landlord.

18. INSURANCE.

(A) Landlord Insurance. Landlord and Landlord's contractors shall carry and maintain the following insurance coverage with respect to the Premises during the Lease term:

1) Commercial General Liability Insurance covering operations by, or on behalf of, Landlord ~~on an occurrence~~ basis against claims for bodily injury, property damage and personal injury liability with minimum limits of (a) \$1,000,000 each occurrence; (b) \$2,000,000 general aggregate; (c) \$2,000,000 products and completed operations aggregate.

2) Property Insurance covering the Building, including the Premises, ~~its equipment,~~ and Landlord's interest in improvements and betterments on an "All Risk" basis, including where appropriate the perils of Flood and Earthquake. Coverage shall be written with a Replacement Cost valuation ~~and include an agreed value provision.~~ The deductible amount shall not exceed \$25,000 unless approved by Tenant. ~~The policy shall also include a rental income extension.~~

3) Workers' Compensation Coverage for employees of Landlord as required by law and employer's liability insurance.

All policies shall be written with carriers approved to do business in the State of Colorado ~~with an A.M. Best Rating of at least A-VII~~ and shall contain a Waiver of Subrogation on behalf of Tenant. The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 30 days prior notice to Landlord and Landlord shall forward such notice to the State within seven days of Landlord's receipt of such notice. Landlord shall provide Tenant certificates of Insurance confirming renewal of the coverage at least fifteen (15) days prior to expiration.

(B) Tenant Insurance. Tenant shall provide insurance on its inventory, equipment, and all other personal property located on the Premises against loss resulting from fire or other casualty at Tenant's sole cost. Tenant shall have the right to provide such insurance under a self-insurance program, or, at any time during the term of this Lease, to provide such insurance through an insurance company. With respect to general liability, Tenant is self insured in accordance with the provisions of the Colorado Governmental Immunity Act and the Colorado Risk Management Act, CRS §24-30-1501, et seq.

19. CONVEYANCE OF THE PREMISES, ASSUMPTION OF LEASE, ATTORNMENT AND NON-DISTURBANCE.

(A) If Landlord assigns this Lease or if the Premises are sold, transferred or conveyed, (all collectively called "Assignment"), within ten (10) days of the Assignment of the Lease, Landlord shall provide Tenant notice thereof pursuant to Article 13 of this Lease in a form substantially in conformity with that described in Exhibit B. Said notice shall include the name and address of the New Landlord (any assignee of this Lease, or any purchaser of the Premises, or any other successor owner or assignee of Landlord through foreclosure or deed in lieu of foreclosure [the "New Landlord"]), the New Landlord's Social Security or Federal Employer's Identification Number, and documentation evidencing the Lease Assignment, whether it be an assignment and assumption of Lease, deed or other transfer.

(B) If Landlord fails to provide Tenant the notice of Assignment provided for in the preceding paragraph (A) and Tenant receives written notice from a third-party claiming to be the New Landlord under a transaction constituting an Assignment of Lease, and the New Landlord provides Tenant the evidence of transfer specified in paragraph (A), Tenant shall provide Landlord written notice of the New

Landlord's claim at the address provided for in Article 13. If Landlord does not contest the New Landlord's claim in writing to Tenant within ten (10) days from the date of Tenant's written Notice to Landlord, Tenant may recognize the New Landlord as Landlord under the Lease and shall thereafter pay the monthly rent and other obligations under the Lease to the New Landlord and Landlord shall have waived any further rights under the Lease and shall be barred from further rights thereunder, including, but not limited to, the right to receive rent. In addition, any Tenant audit rights (see Article 26 B) (iii) which resulted in a monetary obligation due the Tenant shall then become the full responsibility of the New Landlord.

(C) The New Landlord's title, right and interest in the Premises, however acquired, shall be subject to all Lease provisions, including, not limited to, the non-disturbance of Tenant's possession of the Premises and Tenant shall recognize the New Landlord as Landlord under the Lease. Tenant's attornment to the New Landlord shall not waive any rights of Tenant against the prior Landlord. All payments previously made by Tenant to the prior Landlord and all other previous actions taken by Tenant under the Lease shall be considered to have discharged those obligations of Tenant under the Lease. The New Landlord's acceptance of the rent payment provided for in the Lease shall constitute the New Landlord's assumption of the Lease and obligations of the Landlord's thereunder.

20. **COLLOCATION.** If the State builds, leases, or otherwise acquires a building for the purpose of collocating State agencies in one area, with each other or with other governmental agencies or designates an existing State-owned or other government building for such collocation of Tenant, this Lease may be terminated by Tenant by giving written notice to Landlord not less than sixty (60) days prior to the termination date. Tenant shall not be liable to further perform any of its obligations under this Lease, including, but not limited to rental payments, following the date of such termination.

21. **INDEPENDENT CONTRACTOR.** 4 CCR §801-2. The Landlord shall perform its duties hereunder as an independent contractor and not as an employee. Neither Landlord nor any agent or employee of Landlord shall be or shall be deemed to be an agent or employee of the State. Landlord shall pay when due all required employment taxes and income tax and local head tax on any monies paid by the State pursuant to this Lease. Landlord acknowledges that Landlord and its employees are not entitled to unemployment insurance benefits unless Landlord or third party provides such coverage and that the State does not pay for or otherwise provide such coverage. Landlord shall not have authorization, express or implied, to bind the State to any agreements, liability, or understanding except as expressly set forth herein. Landlord shall provide and keep in force Workers' Compensation (and provide proof of such insurance when requested by the State) and unemployment compensation insurance in the amounts required by law, and shall be solely responsible for the acts of Landlord, its employees and agents.

22. **NO VIOLATION OF LAW.**

(A) CRS §18-8-301, et seq. and CRS §18-8-401, et seq. The signatories hereto aver that they are familiar with CRS §18-8-301, et seq., (Bribery and Corrupt Influences) and CRS §18-8-401, et seq., (Abuse of Public Office), and that no violation of such statutes has occurred under this Lease.

(B) CRS §24-76.5-101. Landlord, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United State pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this Lease.

23. **COLORADO SPECIAL PROVISIONS**

(A). **CONTROLLER'S APPROVAL.** CRS §24-30-202(1). This contract shall not be valid until it has been approved by the Colorado State Controller or designee.

(B) FUND AVAILABILITY. CRS §24-30-202(5.5). Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

(C). CHOICE OF LAW. Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Lease. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution. The Landlord shall strictly adhere to all applicable federal and State laws, rules, and regulations that have been or may hereafter be established, including those dealing with discrimination and unfair employment practice, in performing its obligations under the Lease.

(D) LANDLORD/VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4. Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

(E) EMPLOYEE FINANCIAL INTEREST. CRS §24-18-201 and CRS §24-50-507. The signatories aver that to their knowledge, no State employee has any personal or beneficial interest whatsoever in the service or property described herein.

~~24. BROKER REPRESENTATION: Landlord and Tenant acknowledge that \_\_\_\_\_ is acting as a Landlord Agent on behalf of Landlord in this transaction and \_\_\_\_\_ is acting as a Tenant Agent on behalf of Tenant in this transaction. Further, Landlord and Tenant acknowledge that in consideration of \_\_\_\_\_ acting, as a Tenant Agent on behalf of the State of Colorado in this transaction, will receive a leasing commission by separate agreement with \_\_\_\_\_ (Exhibit D is not applicable and is removed)~~



25. GENERAL PROVISIONS

A Binding Effect. All provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

B. Captions. The captions and headings in this Lease are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

C. Construction Against Drafter. In the event of an ambiguity in this Lease the rule of Lease construction that ambiguities shall be construed against the drafter shall not apply and the Parties hereto shall be treated as equals and no Party shall be treated with favor or disfavor.

D. Counterparts. This Lease may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

E. Entire Understanding. This Lease represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein.

Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.

**F. Jurisdiction and Venue.** All suits or actions related to this Lease shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

**G. Modification.**

i. **By the Parties.** Except as specifically provided in this Lease, modifications hereof shall not be effective unless agreed to in writing by the Parties in an amendment hereto, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies, including, but not limited to, the policy entitled MODIFICATION OF LEASES - TOOLS AND FORMS.

ii. **By Operation of Law.** This Lease is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Lease on the effective date of such change, as if fully set forth herein.

**H. Order of Precedence.** The provisions of this Lease shall govern the relationship of the State and Landlord. In the event of conflicts or inconsistencies between this Lease and its exhibits and attachments, including, but not limited to, those provided by Landlord, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. Colorado Special Provisions,
- ii. The remaining provisions of the main body of this Lease,
- iii. Exhibit A,
- iv. Exhibit B,
- v. Exhibit C, (not applicable—Exhibit C is removed)
- vi. Exhibit D, (not applicable—Exhibit D is removed)
- vii. Exhibit E,
- viii. Exhibit F.

**I. Severability.** Provided this Lease can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Lease in accordance with its intent.

**J. Survival of Certain Lease Terms.** Notwithstanding anything herein to the contrary, provisions of this Lease requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if Landlord fails to perform or comply as required.

**K. Taxes Other than Real Property.** The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services are rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. Landlord shall be solely liable for paying such taxes as the State is prohibited from paying or reimbursing Landlord for such taxes.

**L. Third Party Beneficiaries.** Enforcement of this Lease and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Lease are incidental to the Lease, and do not create any rights for such third parties.



M. Waiver. Waiver of any breach under a term, provision, or requirement of this Lease or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

26. ADDITIONAL RENT. None

27. ADDITIONAL PROVISIONS.

(A) **Cancellation by Tenant.** Tenant may, when its interests require, cancel and terminate this Lease on an annual basis and without penalty for Tenant's convenience, effective on any of the term beginning dates set forth in article 1(B) above. Tenant shall provide Landlord Sixty (60) days in advance written notice in accordance with article 13 of its intent to terminate the Lease hereunder. Exercise of this right by Tenant in no way implies that Tenant has breached the Lease by exercise of this Cancellation by Tenant clause. In the event of such termination, Tenant's obligation to pay monthly rent will cease on the effective date of the termination.

(B) **Federal Regulation on Debarment and Suspension.** Landlord agrees to comply with all applicable regulations pursuant to Executive Order 1259, including, Debarment and Suspension: Participants Responsibilities, 29 C.F.R. 98.510 (1990), and further agrees to complete the required "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tiered Covered Transaction," attached hereto, made a part hereof, and marked as "Exhibit E". A signed, original completed Certificate shall be provided to Tenant.

(C) **Federal Certification on Lobbying Activities.** Landlord agrees to comply with all applicable regulations pursuant to Section 319 of Public Law 101-121, Guidance for New Restrictions on Lobbying, including Certification and Disclosure, 29 C.F.R. 93.110 (1990), and further agrees to complete the required "Certification Regarding Lobbying," attached hereto, made a part hereof, and marked as "Exhibit F". A signed, original completed Certificate shall be provided to Tenant.

(D) **Restoration of Premises.** Upon the termination or expiration of this lease, Tenant is not required to restore the Premises to original condition, unless Tenant removes a tenant improvement or fixture. All tenant improvements left by Tenant upon the termination or expiration of this lease shall become the property of Landlord. Any construction shall be done in accordance with uniform Federal accessibility standards.

(E) **Erroneous or Incorrect Payments.** Incorrect payments to Landlord due to omission, error, fraud, defalcation, or for any other reason, shall be recovered from Landlord by any of the following methods: Landlord reimbursing Tenant; Tenant making a deduction from subsequent payments under this lease; Tenant making a deduction from other contracts between Landlord and Tenant; or, as Landlord's debt owed to Tenant, the payment of which shall be immediately due and payable upon Tenant's written demand to Landlord.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK**

28. IN WITNESS WHEREOF, the Parties hereto have executed this Lease

**LANDLORD**  
City of Salida

**TENANT**  
STATE OF COLORADO  
John W. Hickenlooper, Governor  
The Department of Labor and Employment  
Ellen Golombek, Executive Director

By:   
Dara MacDonald  
City Administrator, City of Salida, CO

By:   
William B. Dowling, Director  
Division of Employment and Training


Date: 6/23/2014

Date: 7-2-14

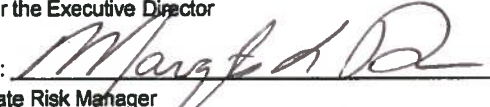
**REAL ESTATE PROGRAMS**  
STATE OF COLORADO  
John W. Hickenlooper, Governor  
DEPARTMENT OF PERSONNEL & ADMINISTRATION  
Office of State Architect, For the Executive Director

**ALL CONTRACTS MUST BE APPROVED BY THE  
STATE CONTROLLER:**

CRS 24-30-202 requires that the State Controller approve all State contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The Landlord is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the good and/or services provided.

By:   
Date: 7/8/14

STATE OF COLORADO  
John W. Hickenlooper, Governor  
STATE CONTROLLER'S OFFICE  
State Controller (or authorized Delegate)

**OFFICE OF RISK MANAGEMENT**  
STATE OF COLORADO  
John W. Hickenlooper, Governor  
DEPARTMENT OF PERSONNEL & ADMINISTRATION  
For the Executive Director  
By:   
State Risk Manager  
Date: 7-8-14

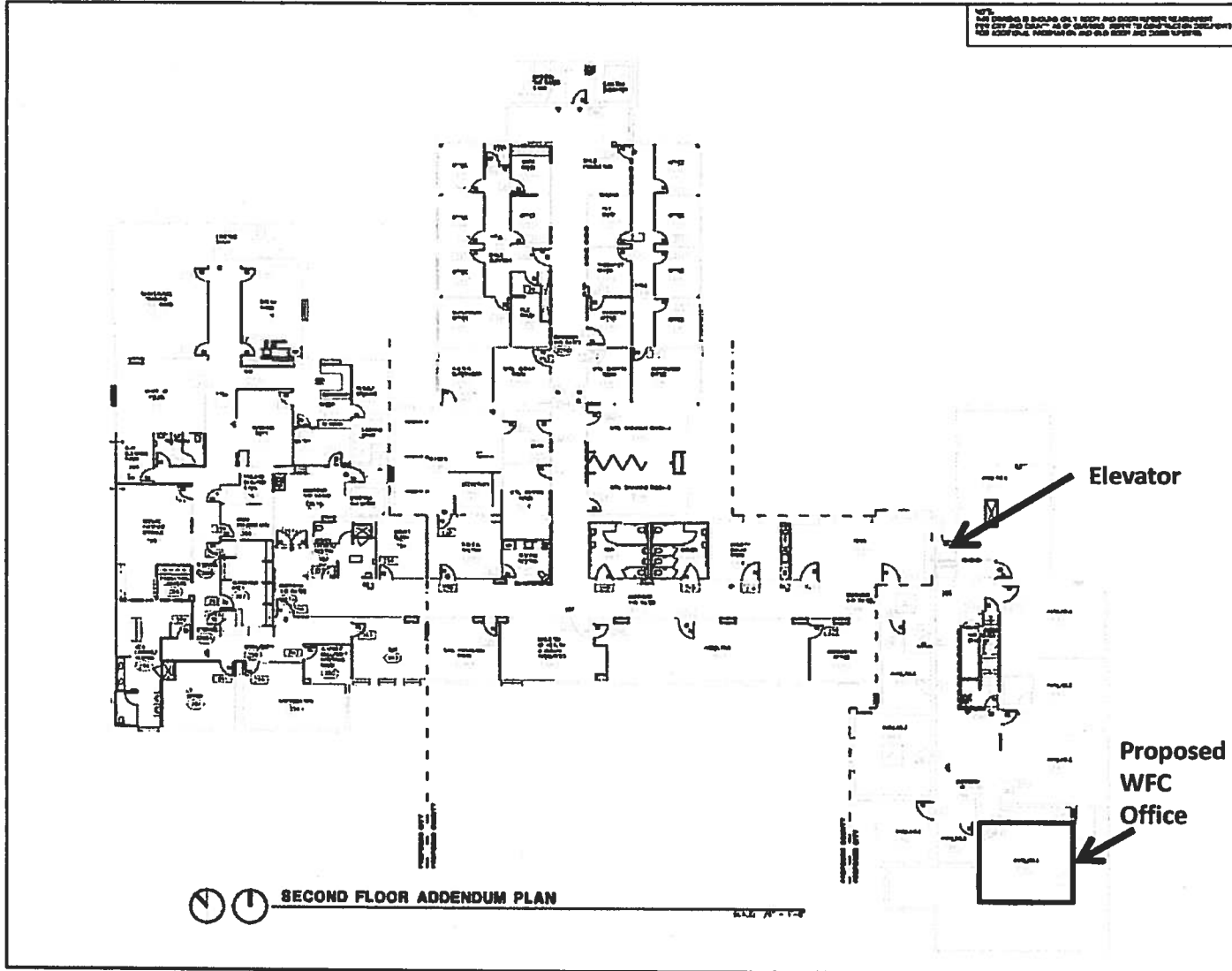
By:   
Shawn G. Milne, State Controller Delegate

Date: 7/11/14

**LEGAL REVIEW**  
DEPARTMENT OF LAW  
John Suthers, Colorado Attorney General  
ATTORNEY GENERAL (or authorized Delegate)

By: \_\_\_\_\_

Date: \_\_\_\_\_



② ① SECOND FLOOR ADDENDUM PLAN

NOT TO SCALE  
ALL DIMENSIONS IN INCHES AND FEET UNLESS OTHERWISE SPECIFIED  
THIS CITY AND COUNTY IS OF CHARGE WITH THE CONSTRUCTION OF THIS PROJECT  
FOR THE CITY AND COUNTY OF SALIDA, COLORADO

**RON MAZZEO**  
  
**ARCHITECT**  
 REGISTERED PROFESSIONAL ARCHITECT  
 423 W. FIRST STREET  
 SALIDA, COLORADO 81061  
 (719) 438-4367

PROJECT:  
**CITY AND COUNTY COMMUNITY SERVICES COMPLEX**  
 SALIDA, COLORADO



2nd FLOOR PLAN  
ROOM NUMBERS

R. MAZZEO	
09128	ADM2.08
2-11-08	
RM 62703	

EXHIBIT B

NOTICE OF ASSIGNMENT OF LEASE  
ASSUMPTION OF LEASE BY NEW LANDLORD

Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, Tenant

[Tenant]  
[Tenant's Address for Notice  
(See Art. 13 of Lease)]

Re: Lease for: \_\_\_\_\_,  
dated \_\_\_\_\_,  
\_\_\_\_\_, Landlord

[Lease Address  
(See Art. 1 of Lease)  
[Landlord]

Dear Tenant:

Pursuant to Article 13 of the above referenced Lease, Tenant is hereby notified that on \_\_\_\_\_  
\_\_\_\_\_ [date], the Lease was assigned to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, [Name/Address of New Landlord], the "New  
Landlord." The New Landlord's W-9 is attached.

Evidence of the transaction constituting the Assignment of Lease is by [mark as is appropriate]:  
\_\_\_ Assignment and Assumption of Lease; \_\_\_ Deed \_\_\_\_\_ [Type of Deed]; \_\_\_ Other [Specify] \_\_\_  
\_\_\_\_\_; dated, which document is attached and made part hereof.

Tenant's rental obligations after \_\_\_\_\_ (date) should be paid to the New Landlord  
at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The signatory below affirms the information provided in this Notice is true and acknowledges the  
New Landlord has assumed the obligations of Landlord under the Lease.

By: \_\_\_\_\_  
LANDLORD

By: \_\_\_\_\_  
NEW LANDLORD

Enclosures

---

Certification Regarding  
Debarment, Suspension, Ineligibility and Voluntary Exclusion  
Lower Tier Covered Transaction

---

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

**(BEFORE COMPLETING CERTIFICATION, READ ATTACHED INSTRUCTIONS  
WHICH ARE AN INTEGRAL PART OF THE CERTIFICATION)**

- (1) The prospective recipient of Federal assistance funds certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective recipient of Federal assistance funds is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**LANDLORD ORGANIZATION:**  
City of Salida

**PROGRAM/TITLE:**  
Lease Agreement between City of Salida,  
as Landlord, and State of Colorado,  
Department of Labor and  
Employment, as Tenant, concerning office  
space in the building located at 448 East  
First Street, Suite 201, Salida, CO 81201

By:   
**Dara MacDonald**  
City Administrator, City of Salida, CO

Date: 6/23/2014

**Instructions for Certification****Exhibit E**

1. By signing and submitting this proposal, the prospective recipient of Federal assistance funds is providing the certification as set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective recipient of Federal assistance funds knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department of Labor (DOL) may pursue available remedies, including suspension and/or debarment.
3. The prospective recipient of Federal assistance funds shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective recipient of Federal assistance funds learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective recipient of Federal assistance funds agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the DOL.
6. The prospective recipient of Federal assistance funds further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to check the List of Parties Excluded from Procurement or Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with person who is suspended, debarred, ineligible, or voluntary excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the DOL may pursue available remedies, including suspension and/or debarment.

**CERTIFICATION REGARDING LOBBYING**

**Certification for Contracts, Grants, Loans,  
and Cooperative Agreements**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying, " in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all \*subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all \*subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**LANDLORD ORGANIZATION:**

**PROGRAM/TITLE:**

**City of Salida**

**Lease Agreement between City of Salida, as Landlord, and the State of Colorado Department of Labor and Employment, as Tenant, concerning office space in the building located at 448 East First Street, Suite 201, Salida, CO 81201**

By:   
**Dara MacDonald**  
**City Administrator, City of Salida, CO**

Date: \_\_\_\_\_

\*Note: In these instances, "All," in the Final Rule is expected to be clarified to show that it applies to covered contract/grant transactions over \$100,000 (per OMB).

**LEASE AGREEMENT  
[Improved Real Property]**

The printed portions of this form, except bold additions, have been reviewed by the State of Colorado Attorney General and approved by the State Controller. All additions to this form must be in bold type. All deletions must be shown by strike-through.

THIS LEASE AGREEMENT ("Lease") entered into by and between **CITY OF SALIDA**, whose address or principal place of business is **448 EAST FIRST STREET, SUITE 112 SALIDA, CO 81201** hereinafter referred to as "Landlord", and THE STATE OF COLORADO, acting by and through the **DEPARTMENT OF HUMAN SERVICES, DIVISION OF VOCATIONAL REHABILITATION** whose address is **1575 SHERMAN ST. DENVER CO 80203**, hereinafter referred to as "Tenant". Both Landlord and Tenant shall be hereinafter referred to as "Parties" to this Lease.

**WITNESSETH:**

WHEREAS, Landlord is willing to lease the Premises, defined herein, and Tenant desires to lease the Premises pursuant to the terms of this Lease; and

WHEREAS, Authority to enter into this Lease exists in the Law, and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

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

**1. PREMISES, TERM, RENT.**

(A) Landlord hereby leases and demises unto Tenant the Premises, hereinafter referred to as "Premises" within the building located at **448 EAST FIRST STREET, SALIDA, CO 81201** hereinafter referred to as "Building" (including land, improvements and other rights appurtenant thereto). The Premises, known and described as Suite **216**, includes approximately **FOUR HUNDRED EIGHTEEN (418)** rentable square feet; the Premises being as shown on the plat attached hereto, made a part hereof and marked "**Exhibit A**".

(B) TO HAVE AND TO HOLD the same, together with all appurtenances, unto Tenant, for the term beginning the later of **JULY 1, 2014** or the date the Colorado State Controller approves the Lease ("Commencement Date"), and ending **JUNE 30, 2019** at and for a monthly rental (the "Monthly Rent") for the full term as shown below:

		REAL ESTATE	ADJUSTED		
	ANNUAL RENT/	PROPERTY TAXES	ANNUAL RENT/	MONTHLY	TOTAL
<u>TERM DATE(S)</u>	<u>RSF</u>	<u>RSF</u>	<u>RSF</u>	<u>RENT</u>	<u>TERM RENT</u>
<b>7/1/14 - 6/30/15</b>	<b>\$14.25</b>	<b>NA</b>	<b>\$14.25</b>	<b>\$496.37</b>	<b>\$5,956.44</b>
<b>7/1/15 - 6/30/16</b>	<b>\$14.67</b>	<b>NA</b>	<b>\$14.67</b>	<b>\$511.00</b>	<b>\$6,132.00</b>
<b>7/1/16 - 6/30/17</b>	<b>\$15.11</b>	<b>NA</b>	<b>\$15.11</b>	<b>\$526.33</b>	<b>\$6,315.96</b>
<b>7/1/17 - 6/30/18</b>	<b>\$15.56</b>	<b>NA</b>	<b>\$15.56</b>	<b>\$542.00</b>	<b>\$6,504.00</b>
<b>7/1/18 - 6/30/19</b>	<b>\$16.02</b>	<b>NA</b>	<b>\$16.02</b>	<b>\$558.03</b>	<b>\$6,696.36</b>



~~CRS §39-3-124 exempts real property leased by the State of Colorado from the levy and collection of property taxes. Therefore, the Adjusted Annual Rent/RSF as shown above does not include the Prior Year Taxes of \$\_\_\_/rsf or any tax based upon real property as defined and required by Article 15 (i); when the Current Year Taxes are known, the Monthly Rent payment shall be adjusted accordingly.~~

~~\*\*For the Term (\_\_\_\_\_, 2010 through \_\_\_\_\_, 2010) the Total Term Rent has been reduced by a rent credit equal to \$\_\_\_\_\_ per Exhibit D.~~

The Premises is to be used and occupied as **general office use** space. Payment of the Monthly Rent shall be made on the first of each month during the term hereof, to Landlord at:

**THE CITY OF SALIDA**  
**448 EAST FIRST STREET, SUITE 112**  
**SALIDA, CO 81201**

or at such place as Landlord from time to time designates by notice as provided herein, subject to the limitations and conditions set forth in Article 11, Fiscal Funding and Article 12, Federal Funding, herein.

If the term herein commences on a day other than the first day of a calendar month, then Tenant shall pay to Landlord the rental for the number of days that exist prior to the first day of the succeeding month, with a similar adjustment being made at the termination of the Lease.

## 2. SERVICES.

(A) Landlord Provided Services: Landlord shall provide to Tenant during the occupancy of said Premises, as a part of the rental consideration, the following services comparable to those provided by other office buildings of similar quality, size, age and location, in the SALIDA submarket. The services shall include but not necessarily be limited to the following:

### 1) Services to Premises.

(i) Heat, ventilation and cooling as required for the comfortable use and occupancy of the Premises during normal business hours. Landlord shall at all times be responsible for heat, ventilating and air conditioning (HVAC) services in quantities and distributions sufficient for Tenant's use of the Premises, including rebalancing of the HVAC distribution system as necessary, and also including service, repair and/or replacement (which replacement shall be considered a capital improvement) of equipment, parts and accessories for the HVAC units and systems serving the Premises;

(ii) Landlord shall provide Building standard janitorial services. Janitorial services one time per week, including interior and exterior window washing (exterior window washing a minimum of two (2) times per year);

(iii) Electric power as supplied by the local utility company. Tenant shall be entitled to its pro rata share of the base Building's electrical capacity for each floor on which Tenant occupies space;

(iv) Replacement of Building standard fluorescent tubes, light bulbs and ballasts as required from time to time as a result of normal usage.

(v) Telephone access and internet service.

### 2) Building Service.

(i) Domestic running water and necessary supplies in washrooms sufficient for the normal use thereof by occupants in the Building;

(ii) Access to and egress from the Premises, including elevator service maintenance, repair and replacement customary for buildings of similar age and quality, if included in the Building;

(iii) Snow removal, sidewalk repair and maintenance, landscape maintenance and trash removal services;

(iv) HVAC, lighting, electric power, domestic running water and janitorial service in those areas of the Building designated by Landlord for use by Tenant, in common with all tenants and other persons in the Building during normal business hours, but under the exclusive control of Landlord;

(v) A general directory board on which Tenant shall be entitled to have its name shown, provided that Landlord shall have exclusive control thereof and of the space thereon to be allocated to each Tenant;

(vi) Landlord shall at all times be responsible for paying real estate taxes and assessments, including real property taxes, special improvement district taxes or fees or other special district taxes or charges for which Tenant is not eligible for a tax exemption, subject to Article 15. Tenant shall be responsible for all taxes and assessments on Tenant's personal property, if any.

### 3) Maintenance, Repair and Replacement.

(i) Landlord shall operate, maintain, repair and replace the systems, facilities and equipment necessary for the proper operation of the Building and for provision of Landlord's services under Article 2. (A) 1) and 2) above and shall maintain and repair the foundations, structure and roof of the Building and repair damage to the Building which Landlord is obligated to insure against under this Lease.

### 4) Additional Services.

(i) Maintenance of parking lot and/or structure, maintenance of the external lighting devices for the Building parking lot and/or structure. Maintenance, repair and replacement of Tenant Improvements for damage caused by shifting or leaking of the foundation or of any other structural aspect or system of the Building.

(ii) Maintain the Premises in good repair and in tenantable condition during the term of this Lease. Landlord shall have the right to enter the Premises at reasonable times for the purpose of making necessary inspections, repairs or maintenance.

The "normal business hours" of operation of the Building shall be from 8:00 a.m. to 5:00 p.m. Monday through Friday, excepting legal holidays, which shall include New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas. Tenant shall have 24 hour 7 day a week access to the Building common areas and Suite 216.

### (B) Tenant Provided Services: None.

3. **INTERRUPTION OF SERVICES.** Notwithstanding anything in this Lease to the contrary, if there is an interruption in essential services to the Premises (including, but not limited to HVAC, electrical service, elevator service), and such interruption continues for a period of five (5) consecutive days, Tenant shall be entitled to an abatement of rent for the period that such services are not provided to the extent that such interruption interferes with the use of the Premises by Tenant. If such interruption continues for a period of ninety (90) days, Tenant may cancel and terminate this Lease without penalty.

4. **WORK REQUIREMENTS.** All tenant finish alterations in the Premises, now and hereafter undertaken, shall be designed and constructed in accordance with the technical design specifications of the Uniform Federal Accessibility Standards, latest edition. Prior to the Premises being occupied by

Tenant, Landlord agrees to the tenant improvements described in Exhibit C, attached hereto and made apart hereof.

5. LANDLORD'S REPRESENTATIONS.

(A) Landlord represents that either:

1) no "asbestos response action", pursuant to that portion of the Colorado Air Quality Control Commission, Regulation 8 entitled Emission Standards for Asbestos, hereafter referred to as "Regulation 8", is contemplated as a part of the tenant finish for this Lease; or

2) in the event that an "asbestos response action" is contemplated as a part of the tenant improvements for this Lease, Landlord agrees to fully cooperate with Tenant in Tenant's exercise of its duties and responsibilities in accordance with Section V of Part B of Regulation 8.

(B) Landlord, in Landlord's sole opinion, represents that with respect to this Lease and the Premises, the Building meets the requirements of the Americans with Disabilities Act.

(C) Landlord must meet all local codes and regulations with regards to fire and life safety during the term of the State of Colorado's occupancy of the Premises as mandated by local authorities.

6. LANDLORD'S OWNERSHIP. Landlord warrants and represents itself to be the owner of, or the authorized representative or agent of the owner of, the Premises in the form and manner as stated herein. During the term of this Lease Landlord covenants and agrees to warrant and defend Tenant in the quiet, peaceable enjoyment and possession of the Premises. In the event of any dispute regarding Landlord's ownership, upon request from and at no cost to Tenant, Landlord shall immediately, furnish proof thereof by delivering to Tenant an "Ownership and Encumbrance Letter" issued by a properly qualified title insurance company.

7. LEASE ASSIGNMENT. Tenant shall not assign this Lease and shall not sublet the Premises, except to a desirable tenant for a similar use and purpose, and will not permit the use of said Premises to anyone, other than Tenant, its agents or employees, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned, or delayed.

8. EMINENT DOMAIN, TERMINATION OF LEASE. If the Premises are taken via eminent domain, in whole or in part, then either Party may cancel and terminate this Lease and the current rent shall be properly apportioned to the date of such taking. In such event the entire damages which may be awarded shall be apportioned between Landlord and Tenant, as their interests appear.

9. DAMAGE AND DESTRUCTION. If the Premises are rendered untenable or unfit for Tenant's purposes by fire or other casualty, this Lease will immediately terminate and no rent shall accrue from the date of such fire or casualty. If the Premises are damaged by fire or other casualty so that there is partial destruction of such Premises or such damage as to render the Premises partially untenable or partially unfit for Tenant's purposes, either Party may, within five (5) days of such occurrence, terminate this Lease by giving written notice to the other Party. Such termination shall be effective not less than fifteen (15) days from the date of mailing of the notice. Rent shall be apportioned to the effective date of termination.

10. HOLDING OVER. Tenant shall become a month-to-month tenant if Tenant fails to vacate the Premises upon expiration or sooner termination of this Lease. The rent to be paid by Tenant during such continued occupancy shall be the same being paid by Tenant as of the date of expiration or sooner termination. Landlord and Tenant each hereby agree to give the other Party at least thirty (30) days written notice prior to termination of any holdover tenancy.

11. FISCAL FUNDING.

(A) As prescribed by State of Colorado Fiscal Rules and §23(B) below, this Lease is dependent upon the continuing availability of funds beyond the term of the State's current fiscal period ending upon the next succeeding June 30, as financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. While the act of appropriation is a legislative act, Tenant will take appropriate actions under the laws applicable to Tenant to timely and properly budget for, request of and seek and pursue appropriation of funds from the General Assembly of the State of Colorado permitting Tenant to make payments required hereunder during the period to which such appropriation applies. If funds are not appropriated, this Lease shall terminate at the end of the then current fiscal year, with no penalty or additional cost to Tenant. Tenant shall notify Landlord of such non-allocation of funds by sending written notice thereof to Landlord forty-five (45) days prior to the effective date of termination.

(B) Tenant's obligation to pay rent hereunder constitutes a current expense of Tenant payable exclusively from Tenant's funds and shall not in any way be construed to be a general obligation indebtedness of the State of Colorado or any agency or department thereof within the meaning of any provision of §§ 1,2,3,4, or 5 of Article XI of the Colorado Constitution, or any other constitutional or statutory limitation or requirement applicable to the State concerning the creation of indebtedness. Neither Tenant, nor Landlord on its behalf, has pledged the full faith and credit of the State, or any agency or department thereof to the payment of the charges hereunder, and this Lease shall not directly or contingently obligate the State or any agency or department thereof to apply money from, or levy or pledge any form of taxation to, the payments due hereunder.

12. FEDERAL FUNDING. If any or all funds for payment of this Lease are provided by the Federal Government, this Lease is subject to and contingent upon the continuing availability of Federal funds, and if such funds are not made available, Tenant may unilaterally terminate this Lease at the end of any month after providing ninety (90) days written advance termination notice to Landlord.

13. NOTICE. Any notice required or permitted by this Lease may be delivered in person or sent by registered or certified mail, return receipt requested, to the Party at the address as hereinafter provided, and if sent by mail it shall be effective when posted in the U.S. Mail Depository with sufficient postage attached thereto:

Landlord:

THE CITY OF SALIDA  
448 EAST FIRST STREET, SUITE 112  
SALIDA, CO 81201

Tenant:

DEPARTMENT OF HUMAN SERVICES,  
DIVISION OF VOCATIONAL REHABILITATION  
1575 SHERMAN ST. 4<sup>th</sup> floor  
DENVER CO 80203

DIVISION OF FACILITIES MANAGEMENT  
4112 S. KNOX COURT  
DENVER CO 80236

With a copy to:

Office of the State Architect  
Real Estate Programs  
1313 Sherman Street, Suite 319  
Denver, CO 80203

Notice of change of address shall be treated as any other notice.

14. **CONSENT.** Unless otherwise specifically provided, whenever consent or approval of Landlord or Tenant is required under the terms of this Lease, such consent or approval shall not be unreasonably withheld or delayed and shall be deemed to have been given if no response is received within thirty (30) days of the date the request was made. If either Party withholds any consent or approval, such Party shall, after written request, deliver to the other Party a written statement giving the reasons therefore.

~~15. **TENANT'S TAX EXEMPT STATUS.** The Parties acknowledge CRS §39-3-124(1)(b), effective January 1, 2009, exempts the Premises from levy and collection of property tax including Assessed Tax, Special Assessment Tax, Maintenance District, Local Improvement Assessment, Fees and Interest (collectively "Taxes") while leased by Tenant for State purposes and that Landlord shall not receive a levy for property taxes from the County Assessor on the Premises occupied by Tenant during the term of the Lease and any extensions thereof. Tenant shall timely file a copy of the Lease, and any extensions or amendments thereof, with the County Assessor. If the Lease terminates prior to the end date provided for in Article 1(B), or any extension or amendments thereof (early termination), Tenant shall timely file notice of the early termination date with the County Assessor.~~

~~Tenant's Monthly Rent obligation, per Article 1 (B), shall be decreased by the amount of the reduction in Taxes on a monthly prorated basis. So long as Landlord receives an abatement of Taxes from the County Assessor, by reason of Tenant's operation as an agency or department of the State of Colorado:~~

- ~~i. Tenant shall receive a credit against its Monthly Rent beginning with the Commencement Date based upon the Current Year Taxes. If the Current Year Taxes (Insert Current Year - Example (2013)) are not yet available the Prior Year Taxes (Insert Prior Year - Example (2012)) shall be used as an estimate until the Current Year Taxes are available. This credit shall be reconciled upon the availability of the Current Year Taxes; and~~
- ~~ii. Beginning at the availability of the Current Year Taxes Tenant shall receive an on-going credit against its Monthly Rent based upon the Current Year Taxes.~~

16. **TENANT LIABILITY EXPOSURE.** Notwithstanding any other provision of this Lease to the contrary, no term or condition of this Lease shall be construed or interpreted as a waiver of any provision of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq.. Liability for claims for injuries to persons or property arising out of the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of CRS §24-10-101, et seq., and CRS §24-30-1501, et seq., All provisions of this Lease are controlled, limited and otherwise modified to limit any liability of Tenant in accordance with the foregoing cited statutes.

17. **SECURITY DEPOSIT.** Tenant shall not provide a security deposit to Landlord.

18. **INSURANCE.**

(A) **Landlord Insurance.** Landlord and Landlord's contractors shall carry and maintain the following insurance coverage with respect to the Premises during the Lease term:

1) Commercial General Liability Insurance covering operations by, or on behalf of, Landlord on an occurrence basis against claims for bodily injury, property damage and personal injury liability with minimum limits of (a) \$1,000,000 each occurrence; (b) \$2,000,000 general aggregate; (c) \$2,000,000 products and completed operations aggregate.

2) Property Insurance covering the Building, including the Premises, its equipment, and Landlord's interest in improvements and betterments on an "All Risk" basis, including where appropriate the perils of Flood and Earthquake. Coverage shall be written with a Replacement Cost valuation and

include an agreed value provision. The deductible amount shall not exceed \$25,000 unless approved by Tenant. ~~The policy shall also include a rental income extension.~~

3) Workers' Compensation Coverage for employees of Landlord as required by law and employer's liability insurance.

All policies shall be written with carriers approved to do business in the State of Colorado with an A.M. Best Rating of at least A- VII and shall contain a Waiver of Subrogation on behalf of Tenant. The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 30 days prior notice to Landlord and Landlord shall forward such notice to the State within seven days of Landlord's receipt of such notice. Landlord shall provide Tenant certificates of Insurance confirming renewal of the coverage at least fifteen (15) days prior to expiration.

(B) Tenant Insurance. Tenant shall provide insurance on its inventory, equipment, and all other personal property located on the Premises against loss resulting from fire or other casualty at Tenant's sole cost. Tenant shall have the right to provide such insurance under a self-insurance program, or, at any time during the term of this Lease, to provide such insurance through an insurance company. With respect to general liability, Tenant is self insured in accordance with the provisions of the Colorado Governmental Immunity Act and the Colorado Risk Management Act, CRS §24-30-1501, et seq.

#### 19. CONVEYANCE OF THE PREMISES, ASSUMPTION OF LEASE, ATTORNMENT AND NON-DISTURBANCE.

(A) If Landlord assigns this Lease or if the Premises are sold, transferred or conveyed, (all collectively called "Assignment"), within ten (10) days of the Assignment of the Lease, Landlord shall provide Tenant notice thereof pursuant to Article 13 of this Lease in a form substantially in conformity with that described in Exhibit B. Said notice shall include the name and address of the New Landlord (any assignee of this Lease, or any purchaser of the Premises, or any other successor owner or assignee of Landlord through foreclosure or deed in lieu of foreclosure [the "New Landlord"]), the New Landlord's Social Security or Federal Employer's Identification Number, and documentation evidencing the Lease Assignment, whether it be an assignment and assumption of Lease, deed or other transfer.

(B) If Landlord fails to provide Tenant the notice of Assignment provided for in the preceding paragraph (A) and Tenant receives written notice from a third-party claiming to be the New Landlord under a transaction constituting an Assignment of Lease, and the New Landlord provides Tenant the evidence of transfer specified in paragraph (A), Tenant shall provide Landlord written notice of the New Landlord's claim at the address provided for in Article 13. If Landlord does not contest the New Landlord's claim in writing to Tenant within ten (10) days from the date of Tenant's written Notice to Landlord, Tenant may recognize the New Landlord as Landlord under the Lease and shall thereafter pay the monthly rent and other obligations under the Lease to the New Landlord and Landlord shall have waived any further rights under the Lease and shall be barred from further rights thereunder, including, but not limited to, the right to receive rent. In addition, any Tenant audit rights (see Article 26 B) (iii) which resulted in a monetary obligation due the Tenant shall then become the full responsibility of the New Landlord.

(C) The New Landlord's title, right and interest in the Premises, however acquired, shall be subject to all Lease provisions, including, not limited to, the non-disturbance of Tenant's possession of the Premises and Tenant shall recognize the New Landlord as Landlord under the Lease. Tenant's attornment to the New Landlord shall not waive any rights of Tenant against the prior Landlord. All payments previously made by Tenant to the prior Landlord and all other previous actions taken by Tenant under the Lease shall be considered to have discharged those obligations of Tenant under the Lease. The New Landlord's acceptance of the rent payment provided for in the Lease shall constitute the New Landlord's assumption of the Lease and obligations of the Landlord's thereunder.

20. **COLLOCATION.** If the State builds, leases, or otherwise acquires a building for the purpose of collocating State agencies in one area, or designates an existing State-owned building for such collocation of Tenant, this Lease may be terminated by Tenant by giving written notice to Landlord not less than sixty (60) days prior to the termination date. Tenant shall not be liable to further perform any of its obligations under this Lease, including, but not limited to rental payments, following the date of such termination.

21. **INDEPENDENT CONTRACTOR.** 4 CCR §801-2. The Landlord shall perform its duties hereunder as an independent contractor and not as an employee. Neither Landlord nor any agent or employee of Landlord shall be or shall be deemed to be an agent or employee of the State. Landlord shall pay when due all required employment taxes and income tax and local head tax on any monies paid by the State pursuant to this Lease. Landlord acknowledges that Landlord and its employees are not entitled to unemployment insurance benefits unless Landlord or third party provides such coverage and that the State does not pay for or otherwise provide such coverage. Landlord shall not have authorization, express or implied, to bind the State to any agreements, liability, or understanding except as expressly set forth herein. Landlord shall provide and keep in force Workers' Compensation (and provide proof of such insurance when requested by the State) and unemployment compensation insurance in the amounts required by law, and shall be solely responsible for the acts of Landlord, its employees and agents.

22. **NO VIOLATION OF LAW.**

(A) CRS §18-8-301, et seq. and CRS §18-8-401, et seq. The signatories hereto aver that they are familiar with CRS §18-8-301, et seq., (Bribery and Corrupt Influences) and CRS §18-8-401, et seq., (Abuse of Public Office), and that no violation of such statutes has occurred under this Lease.

(B) CRS §24-76.5-101. Landlord, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United State pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this Lease.

23. **COLORADO SPECIAL PROVISIONS**

(A). **CONTROLLER'S APPROVAL.** CRS §24-30-202(1). This contract shall not be valid until it has been approved by the Colorado State Controller or designee.

(B) **FUND AVAILABILITY.** CRS §24-30-202(5.5). Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

(C). **CHOICE OF LAW.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Lease. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution. The Landlord shall strictly adhere to all applicable federal and State laws, rules, and regulations that have been or may hereafter be established, including those dealing with discrimination and unfair employment practice, in performing its obligations under the Lease.

(D) **LANDLORD/VENDOR OFFSET.** CRS §§24-30-202 (1) and 24-30-202.4.. Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support

arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

(E) EMPLOYEE FINANCIAL INTEREST. CRS §24-18-201 and CRS §24-50-507. The signatories aver that to their knowledge, no State employee has any personal or beneficial interest whatsoever in the service or property described herein.

24. ~~BROKER REPRESENTATION: Landlord and Tenant acknowledge that \_\_\_\_\_ is acting as a Landlord Agent on behalf of Landlord in this transaction and \_\_\_\_\_ is acting as a Tenant Agent on behalf of Tenant in this transaction. Further, Landlord and Tenant acknowledge that in consideration of \_\_\_\_\_ acting, as a Tenant Agent on behalf of the State of Colorado in this transaction, will receive a leasing commission by separate agreement with \_\_\_\_\_.~~

25. GENERAL PROVISIONS

A Binding Effect. All provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

B. Captions. The captions and headings in this Lease are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

C. Construction Against Drafter. In the event of an ambiguity in this Lease the rule of Lease construction that ambiguities shall be construed against the drafter shall not apply and the Parties hereto shall be treated as equals and no Party shall be treated with favor or disfavor.

D. Counterparts. This Lease may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

E. Entire Understanding. This Lease represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.

F. Jurisdiction and Venue. All suits or actions related to this Lease shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. Modification.

i. By the Parties. Except as specifically provided in this Lease, modifications hereof shall not be effective unless agreed to in writing by the Parties in an amendment hereto, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies, including, but not limited to, the policy entitled MODIFICATION OF LEASES - TOOLS AND FORMS.

ii. By Operation of Law. This Lease is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Lease on the effective date of such change, as if fully set forth herein.



H. Order of Precedence. The provisions of this Lease shall govern the relationship of the State and Landlord. In the event of conflicts or inconsistencies between this Lease and its exhibits and attachments, including, but not limited to, those provided by Landlord, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. Colorado Special Provisions,
- ii. The remaining provisions of the main body of this Lease,
- iii. Exhibit A,
- iv. Exhibit B,
- v. Exhibit C, (where applicable)
- vi. Exhibit D, (where applicable)

I. Severability. Provided this Lease can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Lease in accordance with its intent.

J. Survival of Certain Lease Terms. Notwithstanding anything herein to the contrary, provisions of this Lease requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if Landlord fails to perform or comply as required.

K. Taxes Other than Real Property. The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services are rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. Landlord shall be solely liable for paying such taxes as the State is prohibited from paying or reimbursing Landlord for such taxes.

L. Third Party Beneficiaries. Enforcement of this Lease and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Lease are incidental to the Lease, and do not create any rights for such third parties.

M. Waiver. Waiver of any breach under a term, provision, or requirement of this Lease or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

26. ADDITIONAL RENT. None

27. ADDITIONAL PROVISIONS. None

IN WITNESS WHEREOF, the Parties hereto have executed this Lease

**LANDLORD**  
**THE CITY OF SALIDA**  
**8 EAST FIRST STREET, SUITE 112**  
**SALIDA, CO 81201**

**TENANT**  
**STATE OF COLORADO**  
**JOHN W. HICKENLOOPER, GOVERNOR**  
**DEPARTMENT OF HUMAN SERVICES**  
**DIVISION OF VOCATIONAL REHABILITATION**

By:   
Authorized Signatory

By:   
For the Executive Director

Date: 6/9/14

JIM DICKSON      MAYOR  
Name (Print)      Title (Print)

**REAL ESTATE PROGRAMS**  
STATE OF COLORADO  
John W. Hickenlooper, Governor  
DEPARTMENT OF PERSONNEL & ADMINISTRATION  
Office of State Architect, For the Executive Director

**ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER:**

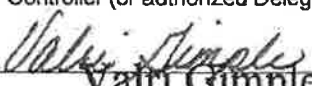
CRS 24-30-202 requires that the State Controller approve all State contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The Landlord is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the good and/or services provided.

By: 

Date: 6/19/14

**OFFICE OF RISK MANAGEMENT**  
STATE OF COLORADO  
John W. Hickenlooper, Governor  
DEPARTMENT OF PERSONNEL & ADMINISTRATION  
For the Executive Director

STATE OF COLORADO  
John W. Hickenlooper, Governor  
STATE CONTROLLER'S OFFICE  
State Controller (or authorized Delegate)

By:   
Vain Gimple

Date: 6/30/2014

By: NA  
State Risk Manager

Date: \_\_\_\_\_

**LEGAL REVIEW**  
DEPARTMENT OF LAW  
John Suthers, Colorado Attorney General  
ATTORNEY GENERAL (or authorized Delegate)

By: NA

Date: \_\_\_\_\_

**EXHIBIT A**  
**PREMISES**



## REQUEST FOR CITY COUNCIL ACTION

Meeting Date: May 21, 2019:

<b>AGENDA ITEM NO.</b> 6.a	<b>ORIGINATING DEPARTMENT:</b> Community Development	<b>PRESENTED BY:</b> Bill Almquist
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### **ITEM:**

Ordinance No. 2019-09 Amending Chapter 13 of the Salida Municipal Code regarding user classes and timing of system development fee payments, especially for multi-family, accessory dwelling units, and affordable housing development.

### **REQUEST / BACKGROUND:**

The proposed ordinance addresses the following:

1. Amends the “Residential Single-Family” customer class to also include “Duplexes,” which is more consistent with Chapter 16 of the Salida Municipal Code.
2. Creates a new “Accessory Dwelling Unit” customer class for the purposes of charging water and wastewater system development fees separate from those for single-family residential.
3. Creates a new “Multi-Family Residential” customer class for the purpose of charging water and wastewater system development fees separate from those for single-family residential.
4. Creates a new “Legally-Restricted Affordable Housing” customer class for the purpose of charging water and wastewater system development fees separate from those for single-family residential.
5. Clarifies the definition of the “Commercial” customer class for mixed-use residential developments for the purposes of charging water and wastewater system development fees.
6. Clarifies the timing of system development fee payments and provides multi-family, accessory dwelling units, and affordable housing developments an option to defer payments until the latter stages of construction to assist with financing.

The attached Chapter 13 amendments show the changes in **BOLD** and **UNDERLINED**, with most recent changes in **RED**. There are no increases in fees proposed, and this proposal does not address any changes of fees for water or wastewater *usage*.

**Note:** Proposed Resolution No. 2019-29 amends the fee sheet for some of the above-mentioned user classes in accordance with relative system impacts as analyzed by staff and consultants.

### **RECOMMENDED MOTION:**

A Councilor should make the motion to “Approve Ordinance No. 2019-09 on second reading.”

### **ATTACHMENTS:**

Ordinance No. 2019-09

**CITY OF SALIDA, COLORADO**  
**ORDINANCE NO. 09**  
(Series of 2019)

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, AMENDING CHAPTER 13, ARTICLE III OF THE SALIDA MUNICIPAL CODE ENTITLED “WATER AND WASTEWATER FEES, RATES AND CHARGES” TO AMEND EXISTING USER CLASSES AND CREATE NEW USER CLASSES; AND AMENDING CHAPTER 13, ARTICLE II OF THE SALIDA MUNICIPAL CODE ENTITLED “WATER AND WASTEWATER REGULATIONS”**

**WHEREAS**, the City Council has identified water and wastewater system development fees as one of the barriers to building affordable housing, including multi-family rental units; and

**WHEREAS**, each affordable housing unit and multi-family unit is currently charged the same system development fee (SDF) as a single-family unit; and

**WHEREAS**, analyses conducted by an independent consultant have shown that the average wintertime water use (and therefore impact on the water and wastewater systems) of multi-family units is ~~approximately 75% less than~~ that of single-family units; and

**WHEREAS**, there is a need to create separate user classes in order to assess different fees.

**WHEREAS**, City Council directed staff to reduce the system development fees for affordable housing with the adoption of Ordinance 2018-14, which requires affordable housing with new development as a further incentive to meet the demand for workforce housing; and

**WHEREAS**, City Council desires to remove barriers to the construction of multi-family development ~~and accessory dwelling units~~, ~~an~~ important ~~element of opportunities~~ for housing our workforce, without unduly impacting the City’s ability to grow its water and wastewater infrastructure, in compliance with state and federal mandates; and

**WHEREAS**, City Council finds the proposed text amendments are consistent with the purposes of Chapter 13; does not conflict with other applicable provisions of the Chapter; is consistent with the Comprehensive Plan for the City of Salida; and the proposed amendment shall preserve the public health, safety, general welfare and environment and contribute to the orderly development of the City.

**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.** Chapter 13, Article III “Water and Wastewater Fees, Rates and Charges,” Section 13-3-10, entitled “Customer classes/definitions” is hereby amended as shown on the attached Exhibit A.

**Section 3.** Chapter 13, Article II “Water and Wastewater Regulations,” Section 13-2-180, entitled “Water and wastewater permits and fees” is hereby amended as shown on the attached Exhibit B.

**Section 4.** 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, on the 7th day of May 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 21<sup>st</sup> day of May 2019.

INTRODUCED ON SECOND READING, FINALLY ADOPTED and ORDERED PUBLISHED IN FULL, by the City Council on the 21<sup>st</sup> day of May 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

## EXHIBIT A

Sec. 13-3-10. – Customer classes/definitions.

- (a) For the purpose of establishing **SYSTEM DEVELOPMENT FEES, USAGE** rates and charges for water and wastewater services, the following classes of customers are hereby established:
- (1) Residential ~~S~~single-~~F~~family **AND DUPLEXES**. Water and/or wastewater services provided to exclusively residential property upon which one **PRIMARY** dwelling unit ~~only or a primary dwelling unit with an accessory dwelling unit not available for rental~~ **OR DUPLEX** is located;
  - (2) **ACCESSORY DWELLING UNIT. WATER AND/OR WASTEWATER SERVICES PROVIDED TO RESIDENTIAL PROPERTY UPON WHICH AN ACCESSORY DWELLING UNIT AVAILABLE FOR RENTAL IS LOCATED;**
  - ~~(2)~~(3) Residential ~~M~~multi-~~F~~family. Water and/or wastewater services provided to exclusively residential property upon which the structure or structures served contain ~~more than one (1)~~ **THREE (3) OR MORE** living unit~~S~~, ~~including a primary dwelling unit with an accessory dwelling unit available for rental~~ **INCLUDING APARTMENTS, TRIPLEXES/QUADPLEXES/ETC.**
  - (4) **LEGALLY-RESTRICTED AFFORDABLE HOUSING. WATER AND/OR WASTEWATER SERVICES PROVIDED TO EXCLUSIVELY RESIDENTIAL PROPERTY UPON WHICH THE STRUCTURE OR STRUCTURES SERVED ARE LEGALLY-RESTRICTED FOR AFFORDABLE HOUSING AT LESS THAN OR EQUAL TO 80% AREA MEDIAN INCOME;**
  - ~~(3)~~(5) Commercial. Water and/or wastewater services provided to property which is neither single-family residential, multi-family residential, nor for irrigation only, as those classes are defined herein. **INCLUDES ATTACHED MIXED-USE DEVELOPMENTS WHERE 50% OR MORE OF THE GROUND FLOOR IS USED FOR COMMERCIAL, PERSONAL SERVICE AND OFFICE USES, AND OTHER USES AS APPROVED BY CITY COUNCIL;**
  - ~~(4)~~(6) Irrigation. Water services only provided to property solely for the purpose of irrigation; and
  - ~~(5)~~(7) Bulk water. Water provided through a hydrant meter or from a bulk water fill station.
- (b) The City Administrator shall determine the appropriate class to be applied to each customer.
- (c) Changes in use shall be administered pursuant to Section 13-2-230.

## **EXHIBIT B**

Sec. 13-2-180. – Water and wastewater permits and fees.

No building permit shall be issued until all applicable water and wastewater permit requirements **AND ONE-HALF OF THE** fees as required by Article III of this Chapter have been satisfied as determined by the City Administrator. **THE REMAINING HALF OF THE FEES SHALL BE PAID PRIOR TO CONNECTION TO THE MAIN AND ISSUANCE OF THE METER. MULTI-FAMILY AND LEGALLY-RESTRICTED AFFORDABLE HOUSING DEVELOPMENTS MAY DEFER PAYMENT OF ALL REQUIRED SYSTEM DEVELOPMENT FEES UNTIL CONNECTION TO THE MAIN AND SETTING OF THE METER. ACCESSORY DWELLING UNITS MAY DEFER PAYMENT OF ALL REQUIRED SYSTEM DEVELOPMENT FEES UNTIL PRIOR TO CERTIFICATE OF OCCUPANCY.**





**REQUEST FOR CITY COUNCIL ACTION**

Meeting Date: May 21, 2019:

<b>AGENDA ITEM NO.</b> 7.a	<b>ORIGINATING DEPARTMENT:</b> Community Development	<b>PRESENTED BY:</b> Bill Almquist
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**ITEM:**

Resolution No. 2019-29 amending the sheet entitled "Fees and Charges for Water and Wastewater Services" to account for updated user classes and system development charges.

**REQUEST / BACKGROUND:**

Resolution No. 2019-29 will align the water and wastewater fee sheet with the user classes defined in Ordinance No. 2019-09 and sets system development fees approximately equal to the average relative impact for multi-family units and accessory dwelling units (ADUs), and incentivizes legally-restricted affordable housing units.

On May 7, 2019, City Council approved on first reading a draft of Ordinance No. 2019-09 and also directed staff to do the following as part of a resolution regarding specific water and wastewater system development fees:

- Set the system development fees for multi-family units to 75% of those for single-family and duplex units, roughly equal to the wintertime water use of the average multi-family unit relative to single-family and duplex units;
- Set the system development fees for legally-restricted affordable housing units ( $\leq 80\%$  AMI) at 40% of those for single-family and duplex units
- Provide options for assessing system development fees for ADUs at a similar rate to affordable housing units.
- Provide for the payment of system development fees for multi-family and affordable housing developments in the later stages of the development process to assist with financing.

**DISCUSSION:**

Following the May 7 meeting, staff looked closer at data provided by Providence Infrastructure Consultants regarding ADUs. Although the water use of most ADUs cannot be determined individually because they do not have their own water meters, the water use of single-family homes with ADUs was calculated to be approximately 140% of single-family units alone. Assuming that the single-family units associated with ADUs use roughly the same amount of water, on average, as other single-family units throughout the City, one can deduce that ADUs use approximately 40% of the water of single-family homes.

**RECOMMENDATION REGARDING SDFs for ADUs:**

Reduce system development fees for unrestricted (may be rented long-term) ADUs from 50% to 40% of those charged for single-family and duplex units, which is equal to those of legally-restricted affordable housing units. These numbers are represented in the proposed revised fee sheet.



**REQUEST FOR CITY COUNCIL ACTION**

Meeting Date: May 21, 2019:

<b>AGENDA ITEM NO.</b> 7.a	<b>ORIGINATING DEPARTMENT:</b> Community Development	<b>PRESENTED BY:</b> Bill Almquist
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**FUTURE ACTIONS:**

Over the next few months, staff expects to receive further data from Providence Infrastructure Consultants and have other resources to analyze system development fees, rates, growth projections, and the impact on capital resources. At that time, we would be prepared to discuss additional actions brought up during the May 7 meeting, including temporary reductions for rental apartments and ADUs.

**RECOMMENDED MOTION:**

A Councilor should make the motion to “Approve Resolution No. 2019-29, a resolution of the City Council for the City of Salida, Colorado to amend the fee sheet entitled ‘Fees and Charges for Water and Wastewater Services’.”

**ATTACHMENTS:**

- Resolution No. 2019-29
- Exhibit A: “Fees and Charges for Water and Wastewater Services” Sheet

**CITY OF SALIDA, COLORADO**  
**RESOLUTION NO. 29**  
**(Series of 2019)**

**A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF SALIDA, COLORADO, AMENDING THE “FEES AND CHARGES FOR WATER AND WASTEWATER SERVICES”.**

**WHEREAS**, the City Council has identified water and wastewater system development fees as one of the barriers to building affordable housing, including multi-family units; and

**WHEREAS**, analyses conducted by an independent consultant have shown that the average wintertime water use (and therefore impact on the water and wastewater systems) of multi-family units is approximately 75% of that of single-family units; and

**WHEREAS**, staff analysis of data provided by an independent consultant has shown that the average wintertime water use (and therefore impact on the water and wastewater systems) of accessory dwelling units (ADUs) is approximately 40% of that of single-family units; and

**WHEREAS**, City Council directed staff to reduce the system development fees for affordable housing with the adoption of Ordinance 2018-14, which requires affordable housing with new development as a further incentive to meet the demand for workforce housing; and

**WHEREAS**, City Council finds the proposed amendments are consistent with the purposes of Chapter 13; does not conflict with other applicable provisions of the Chapter; is consistent with the Comprehensive Plan for the City of Salida; and the proposed amendments shall preserve the public health, safety, general welfare and environment and contribute to the orderly development of the City.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council for the City of Salida that:

The amendments provided and highlighted in Exhibit A attached below (“Fees and Charges for Water and Wastewater Services”) are hereby approved.

**RESOLVED, APPROVED AND ADOPTED on this 21<sup>st</sup> day of May, 2019.**

CITY OF SALIDA, COLORADO

\_\_\_\_\_  
Mayor PT Wood

[SEAL]

ATTEST:

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City Clerk/Deputy Clerk

## Exhibit A: Fees and Charges for Water and Wastewater Services

Description of Fee, Rate or Charge	Code Section	Fixed Fees					Commercial Fees (3)					
		Special Charges	Residential Single-Family and Duplexes (1)	Residential Multi-Family (1)	Accessory Dwelling Units (2)	Legally-Restricted Affordable Housing (1)	3/4" line	1.0" line	1.5" line	2.0" line	3.0" line	4.0" line
<b>Water System Development &amp; Associated Fees</b>												
System Development Fee	13-3-20 (c)		\$ 8,512	\$ 6,384	\$ 3,405	\$ 3,405	\$ 8,512	\$ 14,270	\$ 28,316	\$ 52,472	\$ 106,742	\$ 217,534
Surcharge in High Zone	13-3-20 (d)		\$ 1,936	\$ 1,452	\$ 774	\$ 774	\$ 1,936	\$ 2,904	\$ 4,352	\$ 6,530	\$ 9,797	\$ 14,695
Irrigation only (plus 50% of applicable surcharge above)	13-3-20 (c)		\$ 4,256	\$ 4,256	-	\$ 4,256	\$ 4,256	\$ 7,135	\$ 14,158	\$ 26,236	\$ 53,371	\$ 108,767
Water Meter - Disc	13-2-90		\$ 352	\$ 352	-	\$ 352	\$ 352	\$ 469	\$ 770	\$ 1,477	-	-
Water Meter - Turbine	13-2-90		-	-	-	-	-	-	\$ 1,629	\$ 1,928	\$ 2,319	\$ 3,387
Water Meter - Compound	13-2-90		-	-	-	-	-	-	-	\$ 3,382	\$ 4,081	\$ 5,623
Note: Meter prices are based on supplier prices and, therefore, are subject to change outside of the City's control.												
<b>Wastewater System Development Fees</b>												
System Development Fee for water & sewer customer	13-3-20 (c)		\$ 5,206	\$ 3,905	\$ 2,082	\$ 2,082	\$ 7,808	\$ 16,918	\$ 30,190	\$ 42,199	\$ 79,834	\$ 132,732
Fee per 1.0 EQR if no municipal water service	13-3-20 (c)	\$ 5,206	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
							150%	217%	178%	140%	189%	166%
<b>Monthly Water Rates and Charges for Service *</b>												
Service charge **	13-3-30 (b)		\$ 18.11	\$ 18.11	\$ 9.05	\$ 18.11	\$ 18.11	\$ 24.08	\$ 36.21	\$ 48.16	\$ 72.24	\$ 96.32
Water maintenance charge			\$ 6.28	\$ 6.28	\$ 3.14	\$ 6.28	-	-	-	-	-	-
Volume (usage) charge (based on 1,000 gallons water delivered)												
Tier I (up to 13,333 gallons/month) *			\$ 1.66	\$ 1.66	\$ 1.66	\$ 1.66	\$ 1.66	\$ 1.66	\$ 1.66	\$ 1.66	\$ 1.66	\$ 1.66
Tier II (over 13,333 gallons/month)			\$ 2.21	\$ 2.21	\$ 2.21	\$ 2.21	\$ 2.21	\$ 2.21	\$ 2.21	\$ 2.21	\$ 2.21	\$ 2.21
** 2,000 gallons usage included in residential service charge												
Demand fee up to 100,000 gallons			-	-	-	-	\$ 6.28	\$ 6.28	\$ 6.28	\$ 6.28	\$ 6.28	\$ 6.28
Demand fee 101,000 to 500,000 gallons			-	-	-	-	\$ 18.85	\$ 18.85	\$ 18.85	\$ 18.85	\$ 18.85	\$ 18.85
Demand fee 501,000 to 1,000,000 gallons			-	-	-	-	\$ 47.12	\$ 47.12	\$ 47.12	\$ 47.12	\$ 47.12	\$ 47.12
Demand fee over 1,000,000 gallons			-	-	-	-	-	-	\$ 62.83	\$ 62.83	\$ 62.83	\$ 62.83
<b>Monthly Wastewater Rates and Charges for Service *</b>												
Service charge	13-3-30 (b)		\$ 18.96	\$ 18.96	\$ 9.48	\$ 18.96	\$ 19.64	\$ 27.41	\$ 40.91	\$ 61.36	\$ 77.72	\$ 96.13
Residential volume charge (based on winter water usage)			\$ 1.25	\$ 1.25	\$ 1.25	\$ 1.25	\$ 1.25	\$ 1.25	\$ 1.25	\$ 1.25	\$ 1.25	\$ 1.25
** 2,000 gallons usage included in residential service charge												
Commercial volume charge (based on actual water usage)			\$ 2.32	\$ 2.32	\$ 2.32	\$ 2.32	\$ 2.32	\$ 2.32	\$ 2.32	\$ 2.32	\$ 2.32	\$ 2.32
Sewer only service charge - per equivalent living unit		\$ 32.71										
<b>Other</b>												
Permanent disconnection of water line	13-2-210	\$ 50.00	(1) All fixed fees are multiplied by the number of such units associated with each account.									
Accessory Structure Service Charge Suspension Agreement	13-3-10(a)(1)	\$ 40.00	(2) Fees for accessory dwelling unit apply unless use of property is legally restricted for non-rental use.									
System Development Fee Deferral Agreement	13-3-10(a)(1)	\$ 40.00	(3) Includes mixed-use developments in a single building where 50% or more of the ground floor is used for commercial, personal service and office uses, and other uses as approved by City Council.									
Bulk water - untreated for construction within the City of Salida (per 1,000 gallons)	13-3-30 (a)	\$ 2.50										
Bulk water - treated (up to 1,000 & per each add'l 1,000 gallons)	13-3-30 (a)	\$ 6.00										
Bulk water - set hydrant meter	13-3-30 (a)	\$ 50.00										
Inactive account (sewer only customers) per month	13-3-30 (g)	\$ 6.38										
Returned check charge	13-3-30 (i)	\$ 21.00										
Final billing and new account charge	13-3-30 (i)	\$ 62.00										
Sewer only final billing and new account charge	13-3-30 (i)	\$ 31.00										
Temporary water disconnection fee - once annually	13-3-50	\$ -										
Temporary water disconnection fee - more than 1x per year	13-3-50	\$ 40.00										
Delinquent Charge - water service	13-3-50 (b)	\$ 3.50										
Delinquent Charge - wastewater service	13-3-50 (b)	\$ 3.50										
Period of time after which service is subject to termination	13-3-50 (c)	45 days										
Water termination (shut-off) fee	13-3-70 (d)	\$ 40.00										
Account reinstatement charge (waived if shut-off fee paid)	13-3-80	\$ 40.00										





**REQUEST FOR CITY COUNCIL ACTION**

Meeting Date: May 21, 2019:

<b>AGENDA ITEM NO.</b> 7.b.	<b>ORIGINATING DEPARTMENT:</b> Administration	<b>PRESENTED BY:</b> Drew Nelson
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**ITEM:**

Resolution 2019-30 Rescinding Resolution 2016-51 Regarding a Scope of Work for the City Attorney

**BACKGROUND:**

In May of 2016 the City Council approved Resolution 2016-51 regarding a Scope of Work for the City Attorney. In December of 2017, the City Council suspended the Scope of Work in Resolution 2016-51 and relied on a new Scope of Work in the Legal Services Agreement that was approved in the Legal Services Agreement with Murray Dahl Kuechenmeister & Renaud, LLP (now Murray Dahl Beery & Renaud, LLP). Per direction from the City Council at the February 4, 2019 Worksession, staff has been working to clear out unnecessary and duplicative documents while adjusting roles and responsibilities where required (such as the City Treasurer duties).

Since December of 2017, the City has relied on the Scope of Work in the current Legal Services Agreement, rendering Resolution 2016-51 unnecessary. Resolution 2016-51 clearly contemplated changes and modifications by the Salida City Council, as noted in the fourth recital of the Resolution.

**FISCAL NOTE:**

None.

**STAFF RECOMMENDATION:**

Staff recommends approval Resolution 2019-30 rescinding Resolution 2016-51.

**SUGGESTED MOTIONS:**

A City Councilperson should make a motion to approve Resolution 2019-30, followed by a second and a roll call vote.

**CITY OF SALIDA, COLORADO**  
**RESOLUTION NO. 30**  
**(Series of 2019)**

**A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF SALIDA, COLORADO,  
RESCINDING RESOLUTION NO. 2016-51 REGARDING A SCOPE OF WORK FOR THE  
CITY ATTORNEY**

**WHEREAS**, on May 17, 2016, by Resolution No. 51, Series of 2016, the Salida City Council approved a Scope of Work for the City Attorney; and

**WHEREAS**, Resolution 2016-51 states that “the Scope of Work for the City Attorney can be modified at any time by the City Council of Salida to the extent that doing so is consistent with existing legal parameters or subject to any associated implementation needs”; and

**WHEREAS**, on December 11, 2017, the City Council approved a Legal Services Agreement with Murray Dahl Kuechenmeister & Renaud LLP (now Murray Dahl Beery & Renaud LLP) ; and

**WHEREAS**, the approved Legal Services Agreement includes a Scope of Work for the City Attorney; and

**WHEREAS**, on December 11, 2017, the City Council suspended the Scope of Work in Resolution 2016-51 and has since used the Scope of Work in the Legal Services Agreement; and

**WHEREAS**, the Salida City Council hereby finds Resolution No. 2016-51 unnecessary.

**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 City Council hereby rescinds Resolution 2016-51.

RESOLVED, APPROVED, AND ADOPTED this 21<sup>st</sup> day May, 2019.

CITY OF SALIDA, COLORADO

By \_\_\_\_\_  
**P.T. Wood, Mayor**

[SEAL]

**ATTEST:**

\_\_\_\_\_  
City Clerk/Deputy City Clerk



MEETING OF THE CITY COUNCIL  
City Council Chambers  
448 East 1<sup>st</sup> Street, Room 190  
City of Salida, Colorado  
**Monday, December 11, 2017 6:00 p.m.**

*The City Council may take action on any of the following agenda items as presented or modified prior to or during the meeting, and items necessary or convenient to effectuate the agenda items.*

- I. REGULAR MEETING CALLED TO ORDER**
- II. PLEDGE OF ALLEGIANCE** – Led by Mayor Wood
- III. ROLL CALL**

Council members: Critelli, Shore, Kasper, Granzella, Brown-Kovacic, Bowers, Mayor Wood, City Administrator Lorentzen and Deputy City Clerk Lynda Travis were all present for roll call.

**1) Vandaveer Dry up**

Wood announced council members had received a memo submitted by Jennifer DiLalla regarding what could be discussed in open session. The memo was entered into the public record.

Wood opened the floor for discussion and asked the council how they wanted to proceed with the matter.

Granzella requested a cost analysis, the water credits being lost per year, and if any credits will have to be repaid from past years since total dry up was claimed. Granzella would also like to see the costs of full dry up, what defines a full dry up and what benefits there might be with dry ups.

Kasper stated dry ups are a difficult situation that financially affects both parties involved. He stated moving forward with the lawsuit is a waste of money.

Shore stated the dry up would be substituting one problem for another.

Brown-Kovacic stated a dry up is unrealistic. She provided information about how a dry up might affect landowners and water rights. She then suggested withdrawing the motions that are pending at this time.

Bowers stated there may be several legal ramifications and suggested utilizing water attorneys. He thanked Mr. Stone for his research on the matter and encouraged him to forward his findings to the Water attorneys.

*The order of agenda items listed above are approximate and intended as a guideline for the City Council. Individuals with disabilities needing auxiliary aid(s) may request assistance by contacting the City Clerk, 448 E. 1 Street, Ste. 112, Salida, CO 81201, 719-530-2630 at least 48 hours in advance.*



Critelli stated it is time to cease from quarreling on the matter and thanked Mr. Stone for the information he provided.

Mayor asked if the council wants to withdraw the two motions, do a cost analysis on the matter, and ask Jennifer DiLalla if there is a different course of action for the City. Granzella added that he would like to at least see if a dry up is possible.

**Brown-Kovacic moved that the City withdraw the two motions that are pending in the water court and that time be given to investigate alternative solutions outside of the court context. Kasper seconded the motion. With all in favor, THE MOTION CARRIED.**

## **2) Interim Attorney Letter of Engagement**

Mayor stated the Interim Letter of Engagement includes an updated scope of work that supersedes existing scope of work. He further states the scope of work is standard for municipal attorneys and will allow more time for a permanent city attorney search.

Brown-Kovacic stated it is important to have additional time to review the scope of work for City Attorneys.

Granzella asked if the current scope of work would require a vote to change. Wood provided clarification stating that a vote would not be necessary but that the previous scope of work would come back when a permanent attorney is hired.

Mayor provided background information regarding the firm chosen: Murray Dahl Kuechenmeister & Renaud LLP ("Law Firm") and Geoff Wilson. He stated Wilson was previously a CML attorney for almost 30 years.

Mayor confirmed the contract for services would commence 12.12.2017.

**Brown-Kovacic moved to confirm the legal services agreement with Murray Dahl Kuechenmeister & Renaud as our interim attorney and suspend for the time being the previous scope of work for the attorney and use the scope of work in the legal services agreement. Shore seconded the motion.**

**Mayor restated the motion to accept the legal services agreement with Murray Dahl Kuechenmeister & Renaud and using their scope of work in said agreement. With all in favor, THE MOTION CARRIED.**

## **IV. ADJOURN - 6:20 p.m.**

A Special Meeting was called by Mayor Wood and all were in consensus, during the 12.05.2017 Regular City Council Meeting, in accordance with Section 2-2-70 (b) of the Salida Municipal Code.

[SEAL]

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City Clerk/Deputy City Clerk

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Mayor

*The order of agenda items listed above are approximate and intended as a guideline for the City Council. Individuals with disabilities needing auxiliary aid(s) may request assistance by contacting the City Clerk, 448 E. 1 Street, Ste. 112, Salida, CO 81201, 719-530-2630 at least 48 hours in advance.*

## **LEGAL SERVICES AGREEMENT**

THIS AGREEMENT is between the City of Salida, a Colorado statutory city ("City"), and Murray Dahl Kuechenmeister & Renaud LLP ("Law Firm") under which the Law Firm shall perform legal services for the City.

WHEREAS, pursuant to Sec. 2-3-10 and Sec. 2-3-60 of the City of Salida Municipal Code, the City Council of the City has appointed the Law Firm as its Acting City Attorney; and

NOW THEREFORE, the City and the Law Firm agree as follows:

1. Scope of Legal Services. The Law Firm will provide any and all legal services requested of it by the Mayor, City Council, City Administrator, and any boards or employees of the City authorized by the Mayor, City Council or City Administrator to request legal services of the Law Firm. Such services shall include, but are not limited to the following:

a. Attend regular and special meetings of the City Council; attend work session meetings of the City Council as requested.

b. Attend meetings and conferences with City Council, City boards and commissions, City staff and officers as directed by the Mayor, City Council or the City Administrator.

c. Prepare and/or review ordinances and resolutions.

d. Prepare and/or review contracts for services, materials and real estate involving the City.

e. Respond to all inquiries and communications of a general legal nature from the Mayor, members of the City Council, City Administrator, and City staff.

f. Represent the City in its dealings and negotiations with federal, state and local governmental entities and agencies, special improvement districts and utilities, affecting the City.

g. Represent the City in litigation matters involving the City.

h. Enter an appearance in and/or monitor litigation matters that are being actively handled by outside counsel.

i. Perform such other duties as may be prescribed by the Mayor, City Council, or City Administrator.

The Law Firm agrees to exert its best efforts on behalf of the City and to handle the matters for which representation has been requested of it faithfully and with due diligence. The Law Firm cannot and does not guarantee or agree that a result favorable to or satisfactory to the City will be achieved. No settlement or compromise will be made without the City's consent.

2. Identification of Client. It is understood that the Law Firm's client for purposes of its representation is the City of Salida, and not any of its individual members or constituents, or any other entities whose interests are being represented by those individuals.

3. Term. It is understood that the Acting City Attorney serves at the pleasure of the Mayor and City Council, and this Agreement shall therefore be for an indefinite term.

4. Performance Review. The parties agree that the performance of the Acting City Attorney shall be reviewed by the City Council and City Administrator annually.

5. Designated City Attorney. Subject to other direction from the City, Acting City Attorney services will be provided principally by Geoffrey Wilson and Carmen Beery. The Acting City Attorney may delegate certain research or drafting projects or other matters to other attorneys in the Law Firm who have expertise in the area of the legal services requested; however, any such delegated work will be performed directly under their supervision and responsibility.

6. Management. At least quarterly, the Acting City Attorney will confer with the City Administrator to identify legal service priorities, and to plan for the management of the legal services budget.

7. Compensation and Expenses. The City will compensate Law Firm for professional legal services as indicated below. Expenses such as photo copying will be charged at the rates set forth on the attached **Schedule of Costs**.

<u>Attorney</u>	<u>Hourly Municipal Rate</u>
Geoffrey Wilson	\$ 200.00
Carmen Beery	\$ 200.00
Partners	\$ 200.00
Paralegals/Support staff	\$ 95.00

a. Other Expenses. In addition to the foregoing hourly rates for legal services fee, The Law Firm shall charge and the City shall pay all costs incurred by the Law Firm in providing legal services to the City. Examples of such costs include charges for filing fees, depositions, expert witnesses, consultants, travel, long distance

telephone, computer research, photocopies, scanning, color printer, messenger service, etc. The City shall, upon request of the Law Firm, advance to the Law Firm the payment of any single item of cost that exceeds Five Hundred Dollars (\$500.00). A copy of the Schedule of Costs is attached hereto as Exhibit A.

b. *Monthly Billings.* The Law Firm will bill the City on a regular basis, normally each month, for both fees and disbursements. All bills will reflect services already performed and disbursements already made and are due upon receipt. Any amounts not paid within 60 days of the date of the bill shall be subject to a late payment charge of 1-1/2% per month (18% per year). If the City fails to pay any charges within 90 days of the date of the bill the Law Firm may elect to stop all work for the City. The City's obligation to make prompt payment of all charges does not depend upon achievement of any specific result. Payments will be applied first to the oldest amounts outstanding.

c. *Rates Generally.* The Law Firm agrees that it shall not raise nor seek to raise the hourly rates for legal services provided under this agreement for a period of four (4) years from the effective date of this agreement.

8. Billing Statement. The Law Firm will provide a computer generated billing statement each month setting forth the following information in a readable, detailed format:

- a. The date services are provided.
- b. The description of those services.
- c. The legal professional performing those services.
- d. The applicable hourly rate.
- e. The amount of time expended.
- f. A total of the cost of those services.

g. With respect to disbursements and other expenses, the billing statement will indicate the date, the item of expense and the cost of that expense in a cumulative total of all expenses that month.

9. Miscellaneous. The City may terminate this Agreement at any time. If the City discharges the Law Firm, the City shall pay all fees and costs incurred to the date of termination. Subject to the Colorado Rules of Professional Conduct and any applicable court rules, the Law Firm may, after reasonable advance written notice to the City, terminate this Agreement. If the Law Firm terminates this Agreement, the City shall pay all fees and costs incurred to the date of termination.

10. Arbitration. Although we do not expect that any dispute between us will arise, in the unlikely event of any dispute under this Agreement, including a dispute regarding the amount of legal fees or costs owed to the Law Firm or the quality of the Law Firm's services, including any claim of malpractice, such dispute shall be subject to binding arbitration. The City and Law Firm acknowledge that they are waiving their right to seek remedies in court, including the right to a jury trial. (This clause does not prevent the City and the Law Firm from trying to resolve any dispute through voluntary mediation, but there is no requirement to do so.)

Any dispute concerning fees or costs shall be submitted to the Legal Fee Arbitration Committee of the Denver Bar Association and the decision of the Committee shall be final and binding on both parties. Any dispute concerning the quality of the Law Firm's services, including malpractice claims, shall be submitted to a single arbitrator and the decision of the arbitrator shall be final and binding on both parties. A final judgment can be entered on the arbitration award by a court of competent jurisdiction. The arbitrator shall be selected from the Judicial Arbiter Group, Denver, Colorado unless the parties agree otherwise. If the parties do not agree on the selection of a single arbitrator within ten days after a demand for arbitration is made, then the arbitrator shall be selected by the Judicial Arbiter Group from among its available professionals.

All arbitrations shall be held in Denver, Colorado unless the parties mutually agree on some other location. All arbitrations shall proceed under the Commercial Arbitration Rules of the American Arbitration Association, except as modified in this Agreement, unless otherwise agreed by the parties. The arbitrator shall have the discretion to order that the costs of arbitration, fees (including expert witness and reasonable attorney fees), and other costs shall be borne by the losing party. Any filing fees or other administrative costs of arbitration shall be divided equally between the City and the Law Firm. Arbitration of all disputes, and the outcome of the arbitration, shall remain confidential between the parties.

11. Document Retention. The City acknowledges that the files the Law Firm creates and compiles for work on the City's matters, including notes, correspondence, pleadings, research, and documents which we prepare, will not be kept indefinitely. It is the Law Firm's policy to destroy all files (including all documents and materials therein), seven (7) years after we send such files to remote storage upon completion of each matter. However, if some legal restriction on destruction is imposed or some new development occurs, the retention period may be modified. This file destruction process is automatic and the City will not receive further notice prior to the destruction of these files. Accordingly, if the City wishes to maintain a record of any matter beyond our retention period, the City should consider maintaining its own files relating to the matters that we are handling.

12. Governing Law. This Agreement shall be construed in accordance with, and governed by the laws of the State of Colorado.


13. Amendment. This Agreement may be amended only by a written instrument signed by both of the parties hereto.

14. Prior Agreements. This Agreement shall supercede all prior agreements between the parties concerning the provision of legal services.


15. Signature. THE LAW FIRM AND THE CITY HAVE READ THIS DOCUMENT, UNDERSTAND IT, AND AGREE TO IT.

EXECUTED on this 12th day of December, 2017, to be effective as of December 12, 2017.


**MURRAY DAHL KUECHENMEISTER & RENAUD LLP**

By:   
Geoffrey Wilson, Special Counsel  
Date: 12/12/17

**CITY OF SALIDA, COLORADO**

By:   
P.T. Wood, Mayor  
Date: 12-12-17

ATTEST:

By:  12/12/2017  
~~By: Betty Schwitzer, City Clerk~~  
Deputy,

## **EXHIBIT A**

### **Schedule of Costs**

1. **Long Distance Telephone Charges:** There is no charge for long distance calls.
2. **Faxes:** There is no charge for faxes received or for faxes sent within the local calling area. For faxes sent outside of the local calling area, the Client is charged for the long distance telephone connection.
3. **Copying and Scanning:** Document scanning and copying charges are \$.10 per page for black and white copies, and \$.50 per page for color copies made within the Firm. Copying, collating, binding, and scanning performed outside the Firm shall be charged at actual cost. The decision to use outside scanning, copying, collating and binding services shall be made on a case-by-case basis as the circumstances require.
4. **Deliveries:** Items delivered by commercial messenger service are billed at the actual rate charged by the service.
5. **Legal Research:** The charge to the Client includes the usage amount billed directly to the Firm from its on-line legal research provider in relation to the Client's case.
6. **Mileage:** Mileage is charged at a rate consistent with the guidelines published by the IRS.
7. **Other Costs:** Other third party costs will be billed to Clients at the same rate the Firm is billed for the third party services.

**MURRAY DAHL KUECHENMEISTER & RENAUD LLP**  
**PRIVACY POLICY NOTICE**

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Attorneys, like other professionals, who advise on certain personal matters, are required by federal law to inform their Clients of their policies regarding privacy of Client information. Attorneys have been and continue to be bound by professional standards of confidentiality that are even more stringent than those required by this privacy policy. Therefore, please understand that your privacy is important to us and we will always protect your right to privacy. Maintaining your trust and confidence is a high priority to this law firm. The purpose of this notice is to comply with the law by explaining our privacy policy with respect to your personal information.

**NONPUBLIC PERSONAL INFORMATION WE COLLECT:**

In the course of providing our Clients with legal services, we collect personal and financial information about our Clients that is not available to the public and which is provided to us by our Clients or obtained by us with their authorization or consent.

**PRIVACY POLICY:**

As a Client of Murray Dahl Kuechenmeister & Renaud LLP, rest assured that all nonpublic personal information that we receive from you is held in confidence, and is not released to people outside the firm, except as agreed to by you, or as is permitted or required by law and applicable ethics rules.

**CONFIDENTIALITY AND SECURITY:**

We retain records relating to professional services that we provide so that we are better able to assist you with your professional needs and, in some cases, to comply with professional guidelines. We restrict access to nonpublic, personal information about you to those people in the firm who need to know that information to provide services to you (and their support personnel). In order to guard your nonpublic personal information, we maintain physical, electronic, and procedural safeguards that comply with our professional standards as well as federal regulations.

Please call the attorney you work with if you have any questions. Your privacy, our professional ethics, and the ability to provide you with quality service are very important to us.



**CITY OF SALIDA, COLORADO  
RESOLUTION RESOLUTION NO. 2016 - 51**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO,  
ADOPTING A SCOPE OF WORK FOR THE CITY ATTORNEY.**

**WHEREAS**, the City of Salida wishes to adopt a Scope of Work to detail the current role, tasks and responsibilities of the City Attorney of Salida; and

**WHEREAS**, the City Council unanimously passed Resolution 2016-27 on March 15, 2016 approving an agreement for professional services with the City Attorney contingent upon the inclusion of a Scope of Work to be added at a later date; and

**WHEREAS**, adoption of the Scope of Work for the City Attorney does not require any changes to the Salida Municipal Code or existing City policy; and

**WHEREAS**, the Scope of Work for the City Attorney can be modified at any time by the City Council of Salida to the extent that doing so is consistent with existing legal parameters or subject to any associated implementation needs.

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

Section 1. The aforementioned Recitals are incorporated herein and adopted as findings and determinations of the City Council.

Section 2. The Salida City Council approves and adopts the Scope of Work for the City Attorney of Salida attached as **Exhibit A**.

RESOLVED, APPROVED and ADOPTED this 17<sup>th</sup> day of May, 2016.

CITY OF SALIDA, COLORADO

By: \_\_\_\_\_

Mayor Jim LiVecchi

[SEAL]  
ATTEST:

\_\_\_\_\_  
City Clerk/Deputy City Clerk

## **I. Adoption**

The City of Salida adopts this Scope of Work for the City Attorney to the extent it is consistent with Colorado law, the Salida Municipal Code and existing City policy and otherwise subject to the implementation of any associated and necessary legal needs identified by the Mayor and the City Council.

## **II. Purpose**

The purpose of this Scope of Work is to detail the role, tasks and responsibilities of the City Attorney of Salida.

The City Attorney provides legal services to the City of Salida on a contract basis, subject to the direction and control of the Mayor and the City Council.

## **III. Scope of Work**

The Scope of Work for the City Attorney of Salida includes the following:

1. When required by the Mayor or the City Council, provide legal and related risk management advice and services to the City Council, elected officials, City Boards/Commissions, the City Administrator, Department Heads and any other officers or employees of the City.
2. When deemed necessary by the Mayor or the City Council, provide a written opinion regarding any legal or related risk management question coming before the City Council, the Mayor or any of the appointed officers of the City.
3. Provide the City Council with an annual update regarding any legislative matters or changes in State law that could reasonably affect the City.
4. When requested by the City Administrator, the Mayor or the City Council, draft, review or present agreements, bonds, contracts, ordinances, resolutions, staff reports and other written instruments pertinent to City functions or that will be considered by City Council or the City Administrator and provide a legal and/or related risk management opinion as to the consequences of such documents.
5. When requested by the Mayor or the City Council, provide interpretation of and/or written and oral legal or related risk management opinions regarding the Salida Municipal Code and/or State statutes.
6. When requested by the City Administrator, the Mayor or the City Council, provide legal and related risk management guidance on personnel matters including employee disciplinary and grievance matters.

7. When requested by the City Administrator, the Mayor or the City Council, coordinate legal and related risk management support needs with the Colorado Intergovernmental Risk Sharing Agency (“CIRSA”).
8. When requested by the City Administrator, the Mayor or the City Council, provide legal and related risk management guidance on liquor and marijuana licensing issues.
9. When requested by the Mayor or the City Council, assist elected officials and City staff in maintaining awareness of legal and related ethical standards.
10. When requested by the Mayor or the City Council, provide training and advice to elected officials and City staff on roles, responsibilities and potential liability.
11. When requested by the Mayor or the City Council, review municipal policies with respect to legal compliance and related risk management considerations.
12. When requested by the City Administrator, the Mayor or the City Council, negotiate, draft, review and present legal agreements and documents relating to development and land use.
13. When requested by the City Administrator, the Mayor or the City Council, draft and interpret land use provisions in the Salida Municipal Code and advise City staff and the City Council concerning related policy, legal, risk management and enforcement considerations.
14. When requested by the City Administrator, the Mayor or the City Council, draft, review and present legal documents relating to acquisitions, easements, variances, annexations, subdivisions, zoning, rights-of-way and other land uses.
15. When requested by the City Administrator, the Mayor or the City Council, draft and review contracts and agreements relating to the purchase, sale, transfer or lease of land or improved property.
16. When requested by City Administrator, the Mayor or the City Council, assist in negotiations related to the purchase, sale, transfer or lease of land or improved property.
17. Approve the form of cost reimbursement agreement for land use and development applications.
18. When requested by the Mayor or the City Council, prepare a tabulation of actual review costs and fees for professional services associated with review of a land use application.
19. Approve the form of security necessary from a land use or development applicant to secure the applicant’s performance and completion of public or other required improvements included in a subdivision improvements agreement or development improvements agreement.
20. When required by the City Administrator, approve the form of security submitted by an applicant to guarantee the installation of any required landscaping as a condition for a development permit.

21. Approve any petition for annexation that differs from the City's standard form petition prior to processing by the City.
22. Approve the form of applications for the designation of a common consumption area within an entertainment district.
23. Approve the form of affidavit associated with any water and/or wastewater tap refund issued for abandonment.
24. When deemed necessary by the City Council or the Mayor, attend meetings of the City Council or other meetings involving the City.
25. When requested by the City Council or the Mayor, make a presentation and/or present information and evidence at any hearing held before the City Council on permit applications for regulated activities that may harm the City's waterworks or pollute the City's water supply.
26. When requested by the City Council or the Mayor, prepare a tabulation of costs and fees associated with time spent for preparation and attendance at special meetings for interested parties.
27. If the Director of Finance and Administrative Services concludes that fraudulent activity has occurred, assist with any related legal decisions or final dispositions.
28. Direct a party reporting fraudulent activity to discuss the case, facts, suspicions or allegations if necessary.
29. Review prior to termination any investigative recommendation to terminate an individual for fraudulent activity.
30. When requested by the City Administrator, the Mayor, the City Council, the City Clerk, or the Deputy City Clerk, provide guidance with respect to whether a document is public or not for open records purposes.
31. When requested by the City Council or the Mayor, represent the City with respect to actual or anticipated suits or proceedings involving the City in any court.
32. When requested by the Mayor or City Council, manage, conduct and/or oversee litigation involving or of interest to the City.
33. When requested by the Mayor or the City Council, commence an action for appropriate legal or equitable relief if any person violates the Municipal Code with respect to permits for regulated activities.
34. When requested by the City Council or the Mayor, institute an appropriate legal action or pursue other legal remedies if any building or structure or land is or is proposed to be erected, constructed, altered, maintained, or used in violation of the Salida Municipal Code.

35. When requested by the Mayor or the City Council in special or complex matters including but not limited to water matters, assist the City in obtaining services of outside counsel as necessary and manage, supervise and coordinate the work of such outside counsel.
36. When requested by the Mayor or the City Council in litigation, special or complex matters, act as liaison to City staff and/or elected officials with respect to such matters.
37. When requested by the City Administrator, deposit disputed property held by the City with the registry of the District Court in an interpleader action when there is more than one claimant in response to a notice of unclaimed property by the City.
38. Act in accordance with the Constitutions and laws of the United States and the State of Colorado.
39. Act in accordance with the Ordinances of the City.
40. Perform any additional duties, legal services or tasks required by the City Council or the Mayor.
41. Perform any other duties prescribed by State law or the Ordinances of the City.
42. Post any bond required by law, ordinance or resolution of the City Council to secure the faithful performance of all City Attorney duties, the proper care of any money or property of the City, and a proper accounting for and delivery of same.
43. Notify the City of any actual conflict between the City Attorney's representation of the City and any other party, or of any actual conflict between the City Attorney's representation of the City and the City Attorney's other business or personal interests.

## **IV. Modifications**

This Scope of Work can be modified at any time by the City Council of Salida to the extent that doing so is consistent with Colorado law, the Salida Municipal Code and existing City policy and otherwise subject to the implementation of any associated and necessary legal needs identified by the Mayor and the City Council.



**REQUEST FOR CITY COUNCIL ACTION**

Meeting Date: May 21, 2019:

<p><b>AGENDA ITEM NO.</b> 7.c.</p>	<p><b>ORIGINATING DEPARTMENT:</b> Community Development</p>	<p><b>PRESENTED BY:</b> Glen Van Nimwegen</p>
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**ITEM:**

Resolution 2019-31 Amending the Conditions of Resolution 2017-33 Regarding the Transfer of Sewer Taps at 7251 County Road 105.

**BACKGROUND:**

On June 6 and July 18, 2017 the City Council discussed a request by Drew Peternell who currently owns two parcels totaling 3.67 acres on CR 105 approximately 1,000 feet east of Oak Street. The site is directly across the street from the Two Rivers development. His property at the time was occupied by a mobile home park on the west parcel (11 spaces), and the east parcel formerly included a mobile home park (17 spaces). The parks received water from a well and were only served by sewer from Salida. Mr. Peternell kept the 17 sewer taps active from the east parcel even after the park was closed.

Mr. Peternell's request in 2017 was to have Council approve the transfer of 15 of the taps to the developers of Two Rivers. He retained two taps with the intent to build two homes on the east parcel. Section 13-2-190 of the Salida Municipal Code forbids transferring sewer taps off-site, unless the transfer is approved by the City Council.



The Peternell's compensation from Two Rivers for the taps was to be their share of a buy-in for a waterline installed by Two Rivers in CR 105 (\$30,130).



**REQUEST FOR CITY COUNCIL ACTION**

Meeting Date: May 21, 2019:

<b>AGENDA ITEM NO.</b> 7.c.	<b>ORIGINATING DEPARTMENT:</b> Community Development	<b>PRESENTED BY:</b> Glen Van Nimwegen
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Because of concerns raised by Council regarding the loss of mobile homes at the Peternell site, a source of affordable housing, two additional conditions were added as proposed by Peternell:

- Two of the taps are to be transferred to the Chaffee Housing Trust (CHT), free of charge, to help defer costs of the Old Stage Rowhouses that are now constructed in Two Rivers. The project includes eight homes that are deed restricted for ownership by households earning 80% or less of the Area Median Income; and
- Any development request for the west 1.44 acres must be for affordable housing for three years, or July 18, 2020.

Since the agreement was adopted, the free taps have been granted to CHT; the mobile home park on the west 1.44 acres has been closed due to water system issues; the city has adopted code requirements requiring affordable housing in new developments; and the Peternell property is under contract for purchase by the future owner to the north. Staff expects to be receiving a major subdivision application for the Treat-Mesch annexation property and the Peternell property.





**REQUEST FOR CITY COUNCIL ACTION**

Meeting Date: May 21, 2019:

<b>AGENDA ITEM NO.</b> 7.c.	<b>ORIGINATING DEPARTMENT:</b> Community Development	<b>PRESENTED BY:</b> Glen Van Nimwegen
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Drew Peternell is now asking to remove the requirement that affordable housing must be built on the 1.44 acres until July 18, 2020.

**STAFF RECOMMENDATION:**

When the agreement was reached, the city did not have a comprehensive requirement to include affordable housing in new development. Now we do. Though the requirement under Resolution 2017-33 states development of the 1.44 acres must be nothing "...*other than affordable housing...*" it also has a time limit that is due to expire in just over a year.

Therefore staff recommends the above requirement be stricken from the agreement, and be replaced with the requirement that subsequent development of the site meet Salida's inclusionary housing ordinance.

**SUGGESTED MOTIONS:**

A Council person should make the motion to "Approve Resolution 2019-31 amending the conditions of Resolution 2017-33 regarding the transfer of sewer taps at 7251 County Road 105."

**Attachments**

Email from Drew Peternell  
Resolution 2019-31  
Resolution 2017-33



**From:** [Drew Peternell](#)  
**To:** [Glen VanNimwegen](#)  
**Cc:** [Carrie Mesch](#)  
**Subject:** 7251 CR 105  
**Date:** Tuesday, May 14, 2019 1:40:18 PM

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Dear Glen,

As you know, I am the owner of the two lots located at 7251 CR 105, and as you recall, in July of 2017, I requested that city council allow me to transfer sewer taps assigned to my properties to the Two Rivers development. The purpose of my request was to allow me to reimburse the Two Rivers developers for my share of the cost of extending a new water main down CR 105, pursuant to a cost reimbursement agreement Two Rivers had made with the city.

At the time that I made my request to city council, one of my lots was vacant, while the other was serving as a ten-unit mobile home park. City council granted my request, but as a condition of approval, council required that I commit to not redevelop the mobile home park lot for purposes excluding affordable housing for a period of three years. I was happy to make that commitment because, at the time, my intention was to continue the mobile home operation for the next several years.

There have been two significant changes in circumstances since July of 2017. First, by the fall of 2017, it became clear that the private water system servicing the mobile homes was failing, a fact that was unbeknownst to me when I purchased the property in early 2017. The costs of repairs were beginning to exceed the income from rent from my tenants. Therefore, in 2018, I was forced to discontinue the mobile home park operation.

Second, in 2018, city council adopted an affordable housing ordinance that requires the provision of affordable housing on developments within the city, including development on my properties. The ordinance is, in effect, redundant of the agreement I made with the city in July of 2017. I am now under contract to sell my properties to a party that intends to redevelop them, and the new redevelopment will be required to comply with the affordable housing ordinance.

For these reasons, I would like to request that city council remove the affordable housing restriction on my lot embodied in the July 2017 agreement I made with the city.

Please let me know if you have questions regarding this request.

Sincerely,

Drew Peternell

**CITY OF SALIDA, COLORADO  
RESOLUTION NO. 31  
(Series 2019)**

**A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF SALIDA, COLORADO  
AMENDING THE CONDITIONS FOR THE TRANSFER OF SEWER TAPS AT 7251  
COUNTY ROAD 105 AS DESCRIBED IN RESOLUTION 2017-33**

**WHEREAS**, Section 13-2-190 of the Salida Municipal Code states water and sewer taps are for the property to be served and are not transferrable except upon approval of the City Council; and

**WHEREAS**, Resolution 2017-33 was approved by City Council on July 18, 2017 and allowed the property owners of 1.44 acres at 7251 CR 105 (“Property”), Jamie and Andrew Peternell (“Owners”), to transfer 15-3/4 inch sewer taps to Two Rivers LLC in exchange for a waterline reimbursement due Two Rivers LLC, and other considerations; and

**WHEREAS**, City Council agreed to a condition offered by the Peternell’s to not approve any application for development of the property, whether by them or their assigns, unless it is for “...affordable housing for a period of three years unless the company pays to the city the full price of the facilities...”; and

**WHEREAS**, all other considerations of the transfer have been met including providing two of the sewer taps to the Chaffee Housing Trust at no cost to support the construction of eight affordable housing units on Lot 1 of the Two Rivers development; and

**WHEREAS**, on October 2, 2018 the City Council adopted Ordinance 2018-14 amending Chapter 16 of the Salida Municipal Code by adding new Article XIII. Inclusionary Housing which requires new major and minor subdivisions to include affordable housing; and

**WHEREAS**, the Owners wish to amend the terms of the agreement to delete the three year affordability requirement of Exhibit A of Resolution 2017-33, which is due to expire on July 18, 2020, with the acknowledgement that the development of the property must conform to the terms of the inclusionary housing requirements of the SMC; and

**WHEREAS**, the City has no objection to this amendment, as the amendment continues to meet the objective of the City Council that new development account for the needs of workforce housing for families earning 80% or less of the Area Median Income in Chaffee County as defined by Article XIII of Chapter 16 of the SMC.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council for the City of Salida that:

Paragraph 1.C of Resolution 2017-33 is hereby amended as follows:

C. ~~All representations made regarding affordable housing in the May 19, 2017 letter to~~

~~the Salida City Council, and referenced as Exhibit A in this resolution.~~  
DEVELOPMENT OF THE PROPERTY SHALL BE IN ACCORDANCE WITH  
CHAPTER 16, ARTICLE XIII. INCLUSIONARY HOUSING OF THE SMC.

All other requirements of the agreement shall remain unchanged.

**RESOLVED, APPROVED AND ADOPTED on this 21st day of May, 2019.**

CITY OF SALIDA, COLORADO

\_\_\_\_\_  
Mayor P.T. Wood

(SEAL)

ATTEST:

\_\_\_\_\_  
City Clerk/Deputy City Clerk

**CITY OF SALIDA, COLORADO**  
**RESOLUTION NO. 33**  
**Series of 2017**

**A RESOLUTION PROVIDING FOR THE TRANSFER OF SEWER TAPS AT 7251 COUNTY ROAD 105.**

**WHEREAS**, On July 11, 2017 the Salida City Council received correspondence from Mr. Drew Peternell requesting a transfer of sewer taps to Two Rivers, LLC (Exhibit A); and

**WHEREAS**, in Exhibit A Mr. Peternell has offered support of this request; and

**WHEREAS**, the Salida City Council believes such a transaction is beneficial to the City; and

**WHEREAS**, the Salida City Council believes such a transaction would be of benefit to promoting affordable housing within the City; and

**WHEREAS**, the Salida City Council has the authority to approve such a transfer under SMC Sec. 13-2-190.

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

1. That the City Council approve Jamie Victoria and Andrew Peternell to transfer 15 ¾ inch residential sewer taps to Two Rivers LLC under the following conditions:
  - A. Following the transfer, Two Rivers, LLC would assign two sewer taps to the Chaffee County Housing Trust's affordable housing project in the Two Rivers development at no cost. The remaining taps would be assigned to other lots within the development.
  - B. The County Road 105 water line extension agreement between Two Rivers, LLC and the City would indicate that the reimbursement obligation for the two properties at 7251 County Road 105, Chaffee County parcel numbers 38070400053 and 38070400030, owned by Jamie and Andrew Peternell and Big Springs Properties, LLC, respectively, has been satisfied as a result of the sewer tap transfer.
  - C. All representations made regarding affordable housing in the May 19, 2017 letter to the Salida City Council, and referenced as Exhibit A in this resolution.
  - D. All other representations made in the July 11, 2017 letter to the Salida City Council, and referenced as Exhibit B in this resolution, be hereby incorporated into this agreement and binding on Jamie Victoria and Andrew Peternell, Big Springs Properties, LLC and Two Rivers, LLC.
2. That the City Council direct the City Administrator to consummate this transaction in a timely manner.

**RESOLVED, APPROVED AND ADOPTED** this 18th day of July, 2017.



CITY OF SALIDA, COLORADO

By: James L. Wechi  
Mayor

[SEAL]  
ATTEST:

Betty Schwitger  
City Clerk

**Drew Peternell**

401 East Third Street, Salida, Colorado 81201 • (303) 204-3057 • andrewpeternell@hotmail.com

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May 19, 2017

City Council, City of Salida  
448 East First Street  
Salida, Colorado 81201

Dear Council Members,

On February 3, 2017, my wife and I and a limited liability company of which I am the managing member acquired two adjacent parcels of property in the City of Salida. Though the two parcels are distinct and separate lots, they currently share a single address, 7251 County Road 105. My wife and I acquired the eastern of the two lots, which is assigned Chaffee County parcel number 38070400053. The company, named Big Springs Properties, LLC, acquired the western of the two lots, which is assigned Chaffee County parcel number 38070400030.

At one time, both parcels were used as a trailer park. Today, the eastern lot is vacant, aside from a shed, while the western lot remains an active trailer park, with spaces for 11 trailers. My wife and I plan to build one or two single-family homes on the eastern lot. Big Springs Properties, LLC plans to continue to operate the trailer park on the western lot for the indefinite future.

The properties are connected to the city's sewer system, and there are 28 city sewer taps allocated to them. The city invoices for the sewer taps on three separate accounts (account numbers 99-000008423-00; 99-000008424-00; and 99-000008599-00). Currently, the company is using the equivalent of eight sewer taps for the ten existing trailers on the western property.

Neither property is connected to city water. Instead, Big Springs Properties, LLC provides domestic water to the trailer park by a spring water right the company acquired with the land. Prior to home construction on the eastern lot, we would like to discontinue use of the spring on the western lot and to connect both properties to city water.

The purpose of this letter is to request city council's approval to exchange sewer taps for water taps. Specifically, I proposed to relinquish 15 of the 28 sewer taps to the city, maintaining 11 taps for the western lot and two taps for eastern lot. In exchange, I would request that Big Springs Properties, LLC be assigned a 2-inch commercial water tap and meter for the western lot and that my wife and I receive two ¾-inch residential water taps and meters for the eastern lot.

At the current fee of \$5206 each, the 15 sewer taps I propose to relinquish have a value of \$78,090. The current fees for a 2-inch commercial water tap and meter are \$52,472 and \$1928, respectively, and the current fees for a ¾-inch residential water tap and meter are \$8512 and \$352, respectively. Therefore, the total value of the facilities I am requesting is \$72,128.

In support of this request, I would point out the following:

- There is precedent for this type of exchange. In a situation analogous to ours, in October of last year, city council approved unanimously a request from the developers of the 505 Illinois project to exchange 1-inch water and sewer taps for  $\frac{3}{4}$ -inch taps. The developers were given a credit for the difference in cost of the 1-inch and  $\frac{3}{4}$ -inch taps, which they exchanged for other water and sewer taps that better suited their project.
- Monthly fees have been paid to the city to maintain our sewer taps, even during a period of time when they were not in use. For many years, the properties have required no more than eight sewer taps. Yet, my predecessor-owners and I have paid monthly fees to the city to maintain all 28 taps, at a current rate of nearly \$600 per month.
- Even without the expense of city water taps, our cost for delivering water to the properties is substantial. The Two Rivers development, which sits immediately across the road from our properties, has installed a water main down County Road 105. Under a utility extension agreement with the city, the Two Rivers development would recover a share of the cost of the water main from neighboring properties. The current draft of the agreement allocates 23% of the \$131,000 pipeline to my properties. The total cost to us would be approximately \$30,000.
- Big Springs Properties, LLC is providing affordable housing and intends to continue to do so. To secure this commitment, the company is willing to enter into an agreement with the city, binding on itself and any successor-owner of the property, under which the city would refuse to approve any application for development on the western lot other than affordable housing for a period of three years unless the company pays to the city the full price of the facilities we are requesting today.

I am aware that the city has not yet accepted the new County Road 105 water line as an official city water main and that my request to access water from this source would be conditioned on such final acceptance.

Thank you, council members, for considering this request. I look forward to the opportunity present the request and to answer your questions at your earliest convenience.

Sincerely,



Drew Peternell

**Drew Peternell**

401 East Third Street, Salida, Colorado 81201 • (303) 204-3057 • andrewpeternell@hotmail.com

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July 11, 2017

City Council, City of Salida  
448 East First Street  
Salida, Colorado 81201

Re: Sewer Transfer, County Road 105

Dear Council Members,

As you will recall, on June 6, 2017 I presented you with a request to exchange sewer taps for water taps for properties that my wife and I and my company own on County Road 105. City council decided at that time to table the matter to a later date to allow for additional research on the request.

Since June, I have had several discussions with city administrator Guy Patterson and other city staff. While Mr. Patterson did not support my initial request, I have reformulated the proposal in a way that, in my understanding, Mr. Patterson views more favorably. The new proposal involves transfer of sewer taps from my properties to the Two Rivers development pursuant to section 13-2-190 of the city code.

**Background**

On February 3, 2017, my wife and I and a limited liability company of which I am the managing member acquired two adjacent parcels of property in the City of Salida. Though the two parcels are distinct and separate lots, they currently share a single address, 7251 County Road 105. My wife and I acquired the eastern of the two lots, which is assigned Chaffee County parcel number 38070400053. The company, named Big Springs Properties, LLC, acquired the western of the two lots, which is assigned Chaffee County parcel number 38070400030.

At one time, both parcels were used as a mobile home park. Today, the eastern lot is vacant, aside from a shed, while the western lot remains an active mobile home park, with spaces for 11 mobile homes. My wife and I plan to build one or two single-family homes on the eastern lot. Big Springs Properties, LLC would like to continue to operate the mobile home park on the western lot for the indefinite future.

The properties are connected to the city's sewer system, and there are 28 city sewer taps allocated to them. The city invoices for the sewer taps on three separate accounts (account numbers 99-000008423-00; 99-000008424-00; and 99-000008599-00). Currently, the company is using the equivalent of eight sewer taps for the ten existing mobile homes on the western property.



Neither property is connected to city water. Instead, Big Springs Properties, LLC provides domestic water to the mobile home park by a spring water right the company acquired with the land. Prior to home construction on the eastern lot, we would like to discontinue use of the spring on the western lot and to connect both properties to city water.

The Two Rivers development, which sits immediately across the road from our properties, has installed a water main down County Road 105. Under a utility extension agreement with the city, Two Rivers, LLC would recover a share of the cost of the water main from neighboring properties; prior to accessing water from the new water main, my wife and I and Big Springs Properties, LLC would be required to make a payment to Two Rivers, LLC. The current draft of the agreement allocates 23% of the \$131,000 pipeline to my properties. The total cost to us would be approximately \$30,000.

### **Proposal**

The purpose of this letter is to request city council's approval to transfer 15 ¾-inch residential sewer taps from my properties to the Two Rivers project. Section 13-2-190 of the city code authorizes such a transfer. The code reads, "Taps are appurtenant to the property served and are non-transferable *except upon approval by City Council.*" (emphasis added).

The request to transfer taps from our properties to the Two Rivers development would be conditioned on the following two factors:

1. Following the transfer, Two Rivers, LLC would assign two sewer taps to the Chaffee Housing Trust's affordable housing project in the Two Rivers development at no cost. The remaining taps would be assigned to other lots within the development.
2. The County Road 105 water line extension agreement between Two Rivers, LLC and the city would indicate that the reimbursement obligation for my properties has been satisfied as a result of the sewer tap transfer.

Two Rivers, LLC is amenable to this arrangement and joins me in making this request.

### **Justification**

In support of this request, I would point out the following:

- Section 13-2-190 of the city code unambiguously allows for transfers of taps from one property to another. The request does not require city council to stretch the bounds of its authority in any way.
- We are not proposing that the city give something away. The prior owners of my properties purchased the sewer taps from the city, and the prior owners and I have paid substantial fees to the city over the years (currently amounting to nearly \$600 per month) to maintain the taps, even during a period of time when they were not in use.

- The transfer benefits affordable housing. The Chaffee Housing Trust needs two ¾-inch sewer taps for its Two Rivers affordable housing project, and it would get them at no cost under our proposal. The transfer results in a subsidy for affordable housing in the amount of \$10,412. This would be a long-term, deed-restricted affordable housing project.
- The transfer also facilitates my provision of affordable housing on our western lot, at least for the foreseeable future. Though this property would not be deed-restricted, without the transfer I might be required to eliminate 11 units of affordable housing in the immediate future. With the transfer, we intend to continue to provide affordable housing on the western lot.
- Given that city council has limited control over the utility enterprise fund, it has limited opportunity to use utility pricing to advance affordable housing. The proposed transfer represents a unique opportunity for city council to participate in the provision of affordable housing in Salida.
- The transfer advances much-needed development in the southeastern corner of the city.

Thank you, council members, for considering this request. I look forward to the opportunity present the request and to answer your questions at your July 18 meeting.

Sincerely,



Drew Peternell

cc: Tom Pokorny, Managing Member, Two Rivers, LLC

## REVOCABLE LICENSE AGREEMENT

**THIS REVOCABLE LICENSE AGREEMENT** (hereinafter “Agreement”) is made and entered into this 21<sup>st</sup> day of May 2019, by and between the City of Salida, Colorado, Colorado a municipal corporation (hereinafter “City”) and PowderMonarch LLC (“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 Tenderfoot Mountain, also known as “S” mountain, located within the City of Salida; and

**WHEREAS**, Licensee is a local business and community partner, serving the city’s residents, neighbors and customers through its operations at Monarch Mountain and other related activities; and

**WHEREAS**, Monarch Mountain is celebrating eighty years in the community; and

**WHEREAS**, the City and Licensee are working together to celebrate this anniversary throughout the year and in various ways throughout the City, including the installation and showcase of lights designed in the shape of the Monarch Mountain butterfly logo on the face of Tenderfoot Mountain in the City (the “Licensed Premises”), to be visible from the downtown business district; and

**WHEREAS**, Licensee desires to obtain a revocable and non-exclusive license from the City to use and occupy a portion of the Mountain solely to facilitate and maintain its desired use of the Licensed Premises in installing and showcasing the lights designed in the shape of the Monarch Mountain butterfly logo;

**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 ten dollars (\$10) 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 the face of Tenderfoot Mountain visible to the downtown business district, where lights designed in the shape of the Monarch Mountain butterfly logo will be installed and maintained, as more particularly shown in Exhibit A, attached hereto and incorporated herein by reference.

2. Term. The term of the license shall be for one (1) year 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 installing, maintaining and occupying the butterfly logo lights for the eightieth anniversary of Monarch Mountain. 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 constructing, installing, operating, maintaining and displaying the lights designed in the shape of the Monarch Mountain butterfly logo 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 additional 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 display and maintain the Monarch Mountain butterfly logo lights.
- (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 lights.
- (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 officer's 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	PowderMonarch LLC
Attn: City Administrator	#1 Powder Place
448 E 1 <sup>st</sup> Street	Salida, CO 81201
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.





List of Exhibits:

Exhibit A: Description and Depiction of Licensed Premises



## MAY 2019 STAFF REPORTS

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### **Fire Department –**

- Salida Fire Department teamed up with Red Cross to install smoke detectors for community members who have trouble affording them.
  - We are currently conducting our annual fire hose testing.
  - Inspector Rohrich has been tagging along with the State inspector who is performing final inspections at the HRRMC addition. She is gaining valuable on-the-job knowledge.
  - Inspector Rohrich, with the help of the Salida Police Department code enforcement was able to successfully get two of the hotels in Salida into compliance with the Fire Code.
  - Staff have been training on the river for the upcoming runoff. Several of the staff will attend a Swiftwater Rescue Technician course in the coming weeks to re-certify.
  - The 1911 Kissel was taken to the Salida Museum for their open house. People really enjoyed viewing the truck and hearing the presentation.
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### **Aquatic Center –**

- The Aquatic Center just completed their annual spring shut-down during which they: deep-cleaned the pools, locker rooms, decks and soaking pool; repaired walls, showers and tiles; and repaired a broken hot water supply line.
  - Works progresses on outdoor soaking pools project.
  - Received new fitness equipment (SUP boards and hydro bikes) and will be holding a training next month.
  - Completed Longfellow swim lessons – we had eight to ten water safety instructors teaching kids from kindergarten through fourth grades.
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### **Community Development –**

- Glen attended the Pikes Peak Preservation forum in Colorado Springs with two HPC members: Karen Lintott and Warren Tomkiewicz. Staff also attended two webinars regarding inclusionary housing and public/private sports complexes.
- After wrapping up the workshop portion of Future 50, Community Builders is working on an implementation plan. After staff has reviewed it, we will schedule a formal hearing with the Planning Commission and City Council.
- We are getting a fair amount of inquiries from consultants regarding the Downtown Parking RFP.

- Held a Historic Preservation meeting on May 1<sup>st</sup> to discuss the additions to the Shriner Building at G Street and Sackett. The Commission also reviewed and recommended approval of the draft ordinance to change their duties back to decision-making authority. This ordinance will go before the Planning Commission this month and to Council in June.
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## **Public Works –**

### Administration:

- Attended CDOT TPR meeting in Alamosa with the City Administrator. Briefed on CDOT planning cycle and other items.
- Assisted Community Development department with review of development plans.
- Contract document/management for 2019 Street Project, Asphalt Maintenance.
- Coordinated and completed EV car charging stations. Set-up online portal for reporting and finalized grant paperwork with State.
- Finalized caboose HSA grant reporting with SHF.
- Assisted with event coordination.
- Multi-use facility inspections and meetings.
- Bidding assistance for street sweeper.

### Streets:

- Completed installation of four additional speed radar signs.
- Storm inlet improvements.
- Completed signage and other improvements for EV car charging stations.
- Asphalt patching at utility cuts and pot holes.

### Water/Wastewater:

- Ongoing assistance on wastewater collection Master Plan; currently developing peaking factors and area loadings.
- Routine work at facilities, including several meter replacements.
- Sewer line maintenance.
- Repair water leaks.

### Parks/Facilities:

- Prepped parks for summer: aerate, fertilize, prepped sprinklers and adjusted as needed.
  - Repaired fencing, public restrooms, downtown tree well cleaning, ball field maintenance.
  - Porta-potty screening fence artwork installed at Riverside Park.
  - Attended Rec Advisory board meetings including briefing on SMT future trail plans.
  - Assisted with fiber installation at pool.
  - Assisted with introduction of new facilities manager at the Touber building.
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## **Deputy City Clerk –**

- The City Administrator and Deputy City Clerk attended a meeting in Poncha Springs with the other municipalities of Chaffee County to discuss short-term rentals and what has and has not worked.
- The Clerk's office is receiving on average two inquires per week about short-term rentals.
- Both the City Clerk and Deputy City Clerk attended an elections class in Englewood in advance of this year's election.

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**Police Department –**

- We just finished rewriting, updating and adding some policies to our 608-page policy manual.
- We have begun to working on our accreditation renewal and hope to have the majority of it done by the end of the month.
- Last week we had been advertising for a Code Enforcement position; the ad has been pulled as Debbie Bardol has agreed to stay with the Police Department as the Code Enforcement Officer.
- The two officers in “field training” are doing well. They should be released from training and patrolling by themselves near the end of the month.
- Now that the weather has warmed, we have been trying to utilize bike patrol several times a week. We have been getting a very positive response from the community.
- We had 392 calls for service in the month of April; this is almost identical to April of 2018.