

**CITY OF SALIDA, COLORADO
RESOLUTION NO. 21
(Series 2020)**

**A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF SALIDA, COLORADO
APPROVING THE WATER AND SEWER MAIN EXTENSION REIMBURSEMENT
AGREEMENT FOR THE 141 ANNEX MINOR SUBDIVISION.**

WHEREAS, the property owners, Bradley J and Sandra L Love (“Developer”) are the Developer of certain lands known as the “141 Annex Minor Subdivision” consisting of 1.2 acres and three lots recorded at Reception No. 447958 at the Chaffee County Recorder’s Office; and

WHEREAS, the property is within un-incorporated Chaffee County and the subdivision was approved by the Board of County Commissioners on November 13, 2018; and

WHEREAS, on December 4, 2018 the City Council entered into a pre-annexation agreement between the City and Developer allowing extension of and connection to City municipal water and sewer services for the subdivision subject to the construction of the required public improvements per City standards; all system development fees per current amounts; meet affordable housing requirements; and agree to annex when the Property is eligible for annexation. The Pre-Annexation Agreement for 7551 County Road 141 is recorded at Reception No. 447915 of the Chaffee County Recorder’s Office; and

WHEREAS, the Developer has constructed the public improvements in accordance with City standards and guaranteed by Chaffee County agreements; and

WHEREAS, pursuant to Sections 13-2-160 and 13-2-170 of the Salida Municipal Code, the Developer shall be entitled to recover pro-rata costs associated with construction of a portion of the Water and Sewer Facilities, which included the extension of the water and sewer mains necessary to extend City services to the Property, from adjacent land owners when they connect to the lines; and

WHEREAS, staff shall be permitted to correct immaterial errors, typos and inconsistencies in the Agreement as approved by the Mayor.

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

The Water and Sewer Main Extension Reimbursement Agreement for 141 Annex Minor Subdivision is hereby approved.

RESOLVED, APPROVED AND ADOPTED on this 2nd day of June, 2020.

CITY OF SALIDA, COLORADO



A handwritten signature in blue ink, appearing to read "PT Wood", written over a horizontal line.

Mayor PT Wood

(SEAL)

ATTEST:

A handwritten signature in black ink, appearing to read "Erin Kelley", written over a horizontal line.
City Clerk/Deputy City Clerk

WATER AND SEWER MAIN EXTENSION REIMBURSEMENT AGREEMENT
141 Annex Minor Subdivision

THIS WATER AND SEWER MAIN EXTENSION REIMBURSEMENT AGREEMENT (the "Agreement") is made and entered into this 2nd day of June, 2020, by and between the CITY OF SALIDA, COLORADO, a Colorado statutory city ("City"), and Bradley J. and Sandra L. Love ("Developer") (each a "Party" and together the "Parties").

Section 1 - Recitals

- 1.1 The Developer represents that they are the developer of certain lands known as the "141 Annex Minor Subdivision" consisting of 1.2 acres and three lots recorded at Reception No. 447958 at the Chaffee County Recorder's Office, which is incorporated herein by this reference (the "Property") and shown in **Exhibit A** attached hereto. The Developer is fee title owner of Lot 1 of the above subdivision. The Property is located outside of the municipal boundaries of the City in unincorporated Chaffee County.
- 1.2 On November 13, 2018 the Chaffee County Board of Commissioners approved the 141 Annex Minor Subdivision subject to connecting to water and sewer utilities from the City.
- 1.3 On December 4, 2018 the City Council entered into a pre-annexation agreement between the Parties allowing extension of and connection to City municipal water and sewer services for the subdivision subject to the construction of the required public improvements per City standards; all system development fees per current amounts; meet affordable housing requirements; and the Parties agree to annex when the Property is eligible for annexation. The Pre-Annexation Agreement for 7551 County Road 141 is recorded at Reception No. 447915 of the Chaffee County Recorder's Office.
- 1.4 On December 21, 2018 the Developer entered into the Subdivision Improvements and Maintenance Agreement and Covenant with Chaffee County which guarantees construction of the public improvements, inspection and maintenance and warranty of the improvements. The above agreement is recorded at Reception No. 447956 of the Chaffee County Recorder's Office.
- 1.5 Pursuant to City Code Sections 13-2-160 and 13-2-170, the Developer shall be entitled to recover costs associated with construction of a portion of the Water and Sewer Facilities, which included the extension of the water and sewer mains necessary to extend City services to the Property.
- 1.6 The City and the Developer wish to enter into this Agreement to set forth their understanding concerning the terms and conditions for recovery of costs for extending the water and sewer mains in County Road 141.
- 1.7 The City and the Developer acknowledge that the terms and conditions hereinafter set forth are reasonable, within the authority of each to perform, and consistent with the City of Salida Comprehensive Plan.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the City and the Developer agree as follows:

Section 2 – Definitions

As used in this Agreement, the following terms have the following meanings:

- 2.1 “Agreement” means this Water and Sewer Main Extension Reimbursement Agreement. The Recitals in Section 1 above are fully incorporated into this Agreement and made a part hereof by this reference.
- 2.2 “City” means the City of Salida, a Colorado statutory City.
- 2.3 “City Administrator” means the City Administrator of the City of Salida, and the City Administrator’s designee.
- 2.4 “City Code” means the City of Salida Municipal Code.
- 2.5 “City Council” means the City Council of the City of Salida, Colorado.
- 2.6 “Developer” means Bradley J. and Sandra L. Love and their successor(s).
- 2.7 “Development” means all work on the Property required to transform the Property into the 141 Annex Minor Subdivision as approved by Chaffee County in accordance with the Pre-Annexation Agreement with the City by means of Resolution 2018-52. The term “Development” includes, without limitation, the demolition of existing structures; grading; construction of new structures; and construction of improvements, including without limitation streets, signage, landscaping, drainage improvements, sidewalks, utilities, and other improvements. When the context so dictates, the verb “Develop” may be used in place of the noun “Development.”
- 2.8 “Effective Date” means the date on which City Council adopted a resolution approving the execution of this Agreement. On the Effective Date, this Agreement will become binding upon and enforceable by the City and the Developer.
- 2.9 “Force Majeure” means acts of God, fire, abnormal weather, explosion, riot, war, labor disputes, terrorism, or any other cause beyond the applicable Party’s reasonable control. A lack of money or inability to obtain financing does not constitute Force Majeure.
- 2.10 “Land Use Code” means the City’s Land Use and Development Code, Title 16 of the City Code.
- 2.11 “Property” means the land that is known as the 141 Annex Minor Subdivision as recorded at Reception No. 447958 of the Chaffee County Recorder’s Office.

- 2.12 “Public Improvements” means Required Improvements constructed and installed by the Developer and dedicated to the City in accordance with this Agreement, limited to water mains, water service lines, water laterals, fire hydrants, and other water distribution facilities; wastewater collection mains, lines, laterals, and related improvements. The Required Improvements that are also Public Improvements are identified on attached **Exhibit B**.
- 2.13 “Reimbursable Costs and Fees” means all fees and costs incurred by the City in connection with the City’s drafting, review, and execution of this Agreement.
- 2.14 “Subdivision Plat” means 141 Annex Minor Subdivision of the Property approved by Chaffee County and recorded at Reception No. 447958.
- 2.15 “Wastewater Facilities” means the wastewater main, service lines and all other appurtenances and necessary components of the wastewater distribution system to be constructed by the Developer to extend City sewer service to the Property.
- 2.16 “Water Facilities” means the water main, service line, and all other appurtenances and necessary components of the water distribution system to be constructed by the Developer to extend City water service to the Property.

Any term that is defined in the Land Use Code or the City Code but not defined in this Agreement takes the meaning given to that term in the Land Use Code or the City Code.

Section 3 – Purpose of Agreement and Binding Effect

- 3.1 Contractual Relationship. The purpose of this Agreement is to establish a contractual relationship between the City and the Developer with respect to the Required Improvements for the Property, and Reimbursements. The terms, conditions, and obligations described herein are contractual obligations of the Parties, and the Developer waives any objection to the enforcement of the terms of this Agreement as contractual obligations.
- 3.2 Binding Agreement. This Agreement benefits and is binding upon the City, the Developer, and the Developer’s successor(s). The Developer’s obligations under this Agreement constitute a covenant running with the Property.
- 3.3. Reservation. To the extent that the City becomes aware of new information about the Property, and notwithstanding anything to the contrary herein, the City reserves the right to require new terms, conditions, or obligations with respect to the Required Improvements for the Property.

Section 4 – Cost Recovery for Water and Sewer Main Extension

- 4.1 Pursuant to City Code Sections 13-2-160, the Developer shall be entitled to recover costs associated with construction of a portion of the Water Facilities, the extension of the water main necessary to extend City water service to the Property. The recovery costs associated with this Agreement will be determined by the following formula:

Reimbursement Cost = $(C/2)F$, where

C = total cost of water main extension with hydrants (\$49,738); and

F = linear feet of adjacent lot frontage (417 feet).

The total cost of the water main extension therefore will be divided by the total length of the pipe to determine at cost per linear foot. One half of this linear foot cost will be assigned to those properties on each side of the pipe extension in direct proportion to the amount of lot frontage these properties share with the extension.

The reimbursement costs will be allocated to any lot or parcel adjacent to the water main extension that taps into this extension (**Exhibit C**).

- 4.2 Pursuant to City Code Sections 13-2-160, the Developer shall be entitled to recover costs associated with construction of a portion of the Wastewater Facilities, the extension of the wastewater main necessary to extend wastewater service to the Property. The recovery costs associated with this Agreement will be determined by the following formula:

Reimbursement Cost = $(C/2)F$, where

C = total cost of sanitary sewer main extension with manholes (\$47,096); and

F = linear feet of adjacent lot frontage (417 feet).

The total cost of the wastewater main extension therefore will be divided by the total length of the pipe to determine at cost per linear foot. One half of this linear foot cost will be assigned to those properties on each side of the pipe extension in direct proportion to the amount of lot frontage these properties share with the extension.

The reimbursement costs will be allocated to any lot or parcel adjacent to the sanitary sewer main extension that taps into this extension (**Exhibit C**).

- 4.3 The Developer has provided the City with supporting documentation (**Exhibits B and C**) to set a dollar amount per measurable unit to be charged subsequent owners for their proportionate share of the facilities. The recovery charge is subject to approval by the City and will be determined by the formulas given above.
- 4.4 The City shall provide written notice to the Developer of any application submitted to the City for connection to the Water or Wastewater Facilities, which applications will trigger recovery from a current or subsequent owner of property benefitted by said Water or

Wastewater Facilities. The City will require recovery in the form of a system development fee surcharge from the current or subsequent owner of property benefitted by the Water or Wastewater Facilities as a condition of any future water service connection to said Water Facilities.

- 4.5 Recovery from current or subsequent owners of property benefitted by the Water and Wastewater Facilities will be limited to those properties that receive approval from the City for any application to connect to the Water or Wastewater Facilities within ten years of the date of this Agreement.
- 4.6 Nothing in this Agreement is to be construed as a commitment of financial liability to the Developer or of the City's required collection or payment of the amount claimed for recovery through participation of a subsequent owner; the City is merely agreeing to facilitate an acceptable approach for subsequent owners' participation in public improvement costs.

Section 5 – Indemnification and Release

- 5.1 **Release of Liability.** The Developer acknowledges that the City cannot be legally bound by the representations of any of its officers or agents or their designees except in accordance with the City Code, City Ordinances, and the laws of the State of Colorado. The Developer further acknowledges that it acts at its own risk with respect to relying or acting upon any representation or undertaking by the City or its officers or agents or their designees. Accordingly, the Developer expressly waives and releases any current or future claims related to or arising from any such representation or undertaking by the City or its officers or agents or their designees.
- 5.2 **Indemnification.**
 - 5.2.1 Fees, expenses, and costs attributable to work completed by City staff, not including the City Attorney, will be determined based on the fee schedule attached to the City's then-effective Open Records Policy. The fee schedule attached to the Open Records Policy in effect as of the date of this Agreement is attached as **Exhibit D**.
 - 5.2.2 Fees, expenses, and costs attributable to work completed by the City Attorney or by the City's outside consultants and/or counsel will be equal to the actual costs and fees billed to and paid by the City for that work.

Section 6 – Representations and Warranties

- 6.1 **Developer's Representations and Warranties.** The Developer represents and warrants to the City that the following are true and correct as of the date of the Developer's execution of this Agreement and will be true and correct as of the Effective Date:
 - 6.1.1 **Authority.** This Agreement has been duly authorized and executed by the Developer as a legal, valid, and binding obligation of the Developer, and is

enforceable as to the Developer in accordance with its terms.

- 6.1.2 Authorized signatory. The person executing this Agreement on behalf of the Developer is duly authorized and empowered to execute and deliver this Agreement on behalf of the Developer.
- 6.1.3 No litigation or adverse condition. To the best of the Developer's knowledge, there is no pending or threatened litigation, administrative proceeding, or other claim pending or threatened against the Developer that, if decided or determined adversely, would have a material adverse effect on the ability of the Developer to meet its obligations under this Agreement; nor is there any fact or condition of the Property known to the Developer that may have a material adverse effect on the Developer's ability to Develop the Property as proposed in the Subdivision Plat.
- 6.1.4 No conflict. Neither the execution of this Agreement nor the consummation of the transaction contemplated by this Agreement will constitute a breach under any contract, agreement, or obligation to which the Developer is a party or by which the Developer is bound or affected.
- 6.2 City's Representations and Warranties. The City hereby represents and warrants to the Developer that the following are true and correct as of the date of the City's execution of this Agreement and will be true and correct as of the Effective Date:
 - 6.2.1 Authority. Upon execution, this Agreement will have been duly authorized by City Council as a legal, valid, and binding obligation of the City, and is enforceable as to the City in accordance with its terms.
 - 6.2.2 Authorized signatory. The person executing this Agreement on behalf of the City is duly authorized and empowered to execute this Agreement on behalf of the City.
 - 6.2.3 No adverse condition. To the best of the City's knowledge, there is no fact or condition of the Property known to the City that may have a material adverse effect on the Developer's ability to develop the Property as proposed in the Subdivision Plat.
 - 6.2.4 No conflict. Neither the execution of this Agreement nor the consummation of the transaction contemplated by this Agreement will constitute a breach under any contract, agreement, or obligation to which the City is a party or by which the City is bound or affected.

Section 7– General Provisions

- 7.1 Waiver of Defects. In executing this Agreement, the Developer waives all objections it may have to any defects in the form or execution of this Agreement concerning the power of the City to impose conditions on the Developer as set forth herein. The Developer further waives all objections it may have to the procedure, substance, and form of the

amended form of this Agreement evidencing which terms have been severed and which terms remain in full force and effect.

- 7.9 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, confers or is intended to confer any rights or remedies whatsoever upon any person or entity other than the City or the Developer.
- 7.10 No Waiver of Immunity. Nothing in this Agreement, express or implied, waives or is intended to waive the City's immunity under Colorado State law, including without limitation the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 through -120.
- 7.11 Joint Drafting. The Parties acknowledge that this Agreement represents the negotiated terms, conditions, and covenants of the Parties, and that the Party responsible for drafting any such term, condition, or covenant is not to be prejudiced by any presumption, canon of construction, implication, or rule requiring construction or interpretation against the Party drafting the same.
- 7.12 Subject to Annual Appropriation. Any financial obligation of the City arising under this Agreement and payable after the current fiscal year is contingent upon funds for that purpose being annually appropriated, budgeted, and otherwise made available by the City Council in its discretion. Nothing herein creates a multi-year fiscal obligation on behalf of the City.
- 7.13 Exhibits. All schedules, exhibits, and addenda attached to this Agreement and referred to herein are to be deemed to be incorporated into this Agreement and made a part hereof for all purposes.
- 7.14 Counterparts. This Agreement may be executed in multiple counterparts, all of which taken together constitute one and the same document.

WHEREFORE, the parties hereto have executed duplicate originals of this Agreement on the day and year first written above.

Remainder of this page intentionally left blank. Signature pages follow.



CITY OF SALIDA, COLORADO

By:

P.T. Wood
Mayor PT Wood

ATTEST:

Erin Kelley
City Clerk/Deputy City Clerk

STATE OF COLORADO)
)ss
COUNTY OF CHAFFEE)

Acknowledged, subscribed, and sworn to before me this 3 day of June 2020
by P.T. Wood, as Mayor, and by Erin Kelley,
as Clerk, on behalf of the City of Salida, Colorado.

WITNESS my hand and official seal.
My Commission expires: 8-8-2023

KATHERINE SMITH
NOTARY PUBLIC - STATE OF COLORADO
Notary ID #20194030210
My Commission Expires 8/8/2023

Katherine Smith
Notary Public