

CITY OF SALIDA, COLORADO
RESOLUTION NO. 41
(Series of 2022)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, APPROVING AN ANNEXATION AGREEMENT WITH CHRISTOPHER AND ALEXANDRIA NEWMAN FOR THE ANNEXATION OF CERTAIN REAL PROPERTY INTO THE CITY.

WHEREAS, Christopher and Alexandria Liv Ponder Newman are the “Owners” of certain real property located at 7680 C.R. 140, in unincorporated Chaffee County, Colorado (the “Property”); and

WHEREAS, the Property is eligible for annexation under C.R.S. § 31-12-104, and the Owners desire to annex the Property into the City of Salida (the “City”); and

WHEREAS, the Owners desire that the City provide municipal services at the Property on the same terms and conditions as those services are provided throughout the rest of the City; and

WHEREAS, the City and the Owners desire to enter into an Annexation Agreement, attached as Exhibit A and incorporated herein by this reference, pursuant to C.R.S. §31-12-101 *et seq.* to set forth the terms and conditions of the Property’s annexation into the City.

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

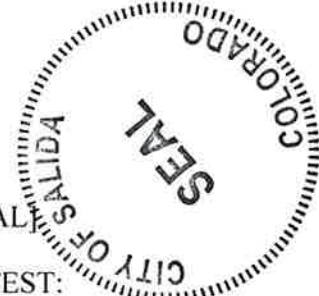
1. Incorporation of Recitals. The City incorporates the foregoing recitals as findings and determinations by the City Council.
2. Enactment. The City Council finds it is in the best interests of the City, approves the attached Annexation Agreement, and authorizes the Mayor to sign it.

RESOLVED, APPROVED AND ADOPTED this 6th day of September, 2022.

CITY OF SALIDA, COLORADO



Justin Critelli, Mayor Pro Tem

[SEAL]  ATTEST:



Erin Kelley
City Clerk/Deputy City Clerk

NEWMAN ANNEXATION
AGREEMENT

THIS ANNEXATION AGREEMENT ("Agreement") is made and entered into this ^{6th} day of ~~August~~ ^{September}, 2022, by and between the CITY OF SALIDA, COLORADO, a Colorado statutory city ("City"), and Christopher and Alexandria Liv Ponder Newman, each a "Party" and together the "Parties."

Section 1 - Recitals

- 1.1 The Annexor is the fee title owner of 100% of certain lands known as the "Newman Annexation" and more particularly described on attached **Exhibit A**, which is incorporated herein by this reference (the "Property").
- 1.2 The Property is contiguous to the current municipal boundaries of the City and contains 1 acre, in unincorporated Chaffee County, Colorado.
- 1.3 The Annexor desires to have the Property annexed to the City, and the City desires to annex the Property on the terms and conditions set forth herein.
- 1.4 Under Colorado law, the City may not annex the Property without the consent of the Annexor.
- 1.5 On May 31, 2022, the Annexor filed with the City Clerk a petition for annexation of the Property ("Annexation Petition").
- 1.6 The City has determined that the Annexation Petition complies with the Colorado Municipal Annexation Act of 1965, as amended, Colorado Revised Statutes sections 31-12-101 through -123 (the "Annexation Act"), and Article IX of the City's Land Use and Development Code.
- 1.7 The City has accepted the Annexation Petition, has given all notices and conducted all hearings required by the Annexation Act, has determined that the Property is eligible for annexation to the City, and has made all necessary findings in support of the annexation of the Property.
- 1.8 On July 25, 2022, the Salida Planning Commission held a public hearing and reviewed the annexation map and all required supportive information and has submitted a written recommendation to the City Council to approve the proposed annexation.
- 1.9 On September 6, 2022 the City Council adopted Ordinance No. 2022-15 annexing the Property to the City; and Ordinance No. 2022-16, zoning the Property as High Density Residential (R-3).

- 1.10 The City and the Annexor desire to enter into this Agreement to set forth their agreements concerning the terms and conditions of the annexation of the Property to the City and the zoning and development of the Property.
- 1.11 The City and the Annexor acknowledge that the terms and conditions hereinafter set forth are reasonable; within the authority of each to perform; necessary to protect, promote, and enhance the health, safety, and general welfare of the residents and property owners of the City; and mutually advantageous.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Annexor agree as follows:

Section 2 – Definitions

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

- 2.1 “Agreement” means this Annexation Agreement. The Recitals in Section 1 above are fully incorporated into this Agreement and made a part hereof by this reference.
- 2.2 “Annexation Act” means sections 31-12-101 through -123, Colorado Revised Statutes.
- 2.3 “Annexation Petition” means the Petition for Annexation of the Property filed of record with the City Clerk on May 31, 2022.
- 2.4 “Annexor” means Christopher and Alexandria Newman, and any and all successor(s), assigns and agent(s) and subsequent owners of the Property.
- 2.5 “City” means the City of Salida, a Colorado statutory City.
- 2.6 “City Code” means the City of Salida Municipal Code (SMC).
- 2.7 “City Council” means the City Council of the City of Salida, Colorado.
- 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 Annexor.
- 2.9 “Final Annexation Approval” means that all of the following have occurred:
 - 2.9.1 City Council has adopted a resolution approving the execution of this agreement;
 - 2.9.2 The effective date of Ordinance No. 2022-15, annexing the Property to the City, has occurred; and
 - 2.9.3 The effective date of Ordinance No. 2022-16, zoning the Property as High Density

Residential (R-3) has occurred.

- 2.10 “Property” means the land that is described as the Newman Annexation in the Annexation Petition and that is legally described in attached **Exhibit A**.
- 2.11 “Reimbursable Costs and Fees” means all fees and costs incurred by the City in connection with the City’s processing and review of the proposed annexation, including without limitation processing and review of the Annexation Petition, zoning applications, and development proposals; and the City’s drafting, review, and execution of this Agreement.

Section 3 – Purpose of Agreement and Binding Effect

- 3.1 The purpose of this Agreement is to establish a contractual relationship between the City and the Annexor with respect to the annexation of the Property, and to establish the terms and conditions upon which the Property will be annexed, zoned, and developed. The terms, conditions, and obligations described herein, including without limitation restrictions upon the zoning and development of the Property, are contractual obligations of the Parties, and the Parties waive any objection to the enforcement of the terms of this Agreement as contractual obligations.
- 3.2 This Agreement benefits and is binding upon the City, the Annexor, and the Annexor’s successor(s), assign(s) and subsequent owner(s). Unless otherwise specified herein, the Annexor’s obligations under this Agreement constitute a covenant running with the Property. As described in Section 9.13 below, the Annexor shall record this Agreement with the Clerk and Recorder of Chaffee County, Colorado.

Section 4 – Annexation of Property

- 4.1 The Annexor agrees to the Annexation of the Property, and the City agrees that it will annex the Property, only in accordance with the terms and conditions of this Agreement.

Section 5 – Terms and Conditions for Annexation of Property

- 5.1 All terms and conditions imposed by this Agreement are in addition to and not in place of any and all requirements of the City Code, the Annexation Act, and all other applicable laws and regulations.
- 5.2 Annexation of the Property to the City will not be effective until both of the following conditions have been met:
 - 5.2.1 The Annexor and the City have mutually executed and delivered this Agreement; and
 - 5.2.2 Final Annexation Approval has occurred.

5.3 Zoning of Property.

5.3.1 On July 25, 2022, the Salida Planning Commission recommended zoning the Property as High Density Residential (R-3).

5.3.2 At its September 6, 2022 meeting, the City Council approved Ordinance 2022-16 zoning the Property as High Density Residential (R-3).

5.3.3 Nothing in this Agreement limits, restricts, or abrogates in any way, and this Agreement is not to be construed to limit, restrict, or abrogate in any way, the power or authority of the City to rezone the Property or any portion thereof at any time after annexation, either on the City's own motion or in response to a zoning petition.

5.4 Development of Property.

5.4.1 The existing single family residence was built in 1971 and the accessory dwelling unit was built in 1997.

5.4.2 New residential dwelling units constructed on the Property shall meet the inclusionary housing requirements of Article XIII of Chapter 16 of the Salida Municipal Code. The applicant volunteers to either provide the required Inclusionary Housing or pay an in-lieu fee at the rate in effect at the time of building permit application of any new residential dwelling units within the Newman Annexation and on the Property.

5.4.3 Annexor agrees that any new residential dwelling units constructed on the Property shall meet the requirements of Land Use Code Sec. 16-6-140, Fair Contributions to Public School Sites, at the time of building permit submittal.

5.4.4 Annexor agrees that for any new residential dwelling units constructed on the property a fee in lieu of open space shall be provided, in an amount then in effect, at the time of issuance of a building permit for new residential units constructed.

5.5 Utilities and Municipal Services. The City shall provide the Property the usual and customary municipal services provided by the City within its municipal limits generally, in accordance with the City Code and City policies. Limitations upon the availability of City utility service may exist from time to time. The Property is and will remain subject to all policies, ordinances, rules, regulations, platting restrictions, and permitting procedures currently in effect or enacted in the future to allocate or regulate the use of the City's utility resources generally throughout the City.

5.5.1 Water and Wastewater Service. The City shall provide water and wastewater treatment services to the Property upon the same basis as such services are provided to other properties within the City, subject to the rules and regulations given in Section 13 of the City Code, as it exists now and as it may be amended. The property

owners have paid the wastewater system development fees and are in the process of connecting to the City's wastewater system. They have requested to be allowed to connect to the City's municipal water system and pay the system development fees of \$12,269 over a period of five (5) years.

The City Council, acting by and through the City of Salida Water and Sewer Enterprise, agrees to allow Christopher and Alexandria Newman to pay System Development Fees for connection to the municipal water for the existing single-family residence and detached accessory dwelling unit (ADU) due now (\$14,979.00) over a five (5) year term with payments due monthly. Interest will be calculated at 3% per annum, see amortization schedule (Exhibit B to the Annexation Agreement). Payments of \$269.15 are due on the 1st day of every month beginning October 1, 2022 and ending October 1, 2027. No penalty will be assessed for an early payment of the remaining balance of system development fees. If the system development fees are increased during the repayment period, the owners will be assessed the increased amount.

In accordance to Chapter 13, Article III of the Salida Municipal Code, (13-3-100) the City may certify delinquent charges, assessments or interest to the Chaffee County Treasurer for collection in the event the owner fails to make the monthly payments.

After the property is connected to the City's municipal water the owner may continue to use the existing well on the property for irrigation only if owner's well permit allows for such use.

- 5.5.2 Fire Protection Services. The City shall provide fire protection services to the Property upon the same basis as such services are provided to other properties within the City.
- 5.5.3 Police Services. The City shall provide police services to the Property upon the same basis as such services are provided to other property within the City.
- 5.5.4 Electric, Natural Gas, Telephone, Cable TV, and Other Utility Services. The City does not provide electric, natural gas, telephone, or cable TV facilities or services. Such services are available within the City from private entities. The extension of such services to the Property is not the obligation or responsibility of the City.
- 5.5.5 Streets and Roads. Within its municipal boundaries, the City shall maintain any duly dedicated and accepted public streets and roads that serve the Property, both on- and off-site, upon the same basis as such services are provided to other properties within the City.

5.6 Fees. The Annexor shall pay to the City the fees described below at the time set forth below:

- 5.6.1 Annexor's Reimbursement of Processing Fees. The Annexor shall reimburse the

City for all fees and actual costs incurred by the City in connection with the City's processing and review of the proposed annexation, including without limitation processing and review of the Annexation Petition, zoning applications, and development proposals, and the City's drafting, review, and execution of this Agreement ("Reimbursable Costs and Fees"). The Reimbursable Costs and Fees include but are not limited to the City's costs incurred for engineering, surveying, and legal services, including the services of outside City consultants and/or counsel; recording fees; printing and publication costs; and any and all other reasonable costs incurred by the City. Interest will be imposed at rate of 1.5% per month on all balances not paid to the City within thirty (30) days of the effective date of the City's invoicing of the Annexor for the Reimbursable Costs and Fees, with that effective date determined in accordance with Section 9.8 below. In addition to any and all remedies available to the City and in the event the City is forced to pursue collection of any amounts due and unpaid under this provision or under this Agreement, the City shall be entitled to collect attorney's fees and costs incurred in said collection efforts in addition to the amount due and unpaid.

- 5.6.2 Payment of Currently Existing Fees as a Condition of Annexation. The Annexor shall pay to the City any fees required to be paid under this Agreement or the currently existing City Code, regardless of whether the relevant provisions of the City Code are later amended, repealed, or declared to be invalid. Payment of such fees pursuant to this Agreement is agreed to by and between the Parties as a condition of the annexation, and as a pre-condition to any development review. The Annexor further agrees not to contest any ordinance imposing such fees as they pertain to the Property.

Section 6 – Zoning

- 6.1 The Annexor requests and consents to High Density Residential District (R-3). Upon Final Annexation Approval, the Property will be subject to and must adhere to all applicable zoning regulations of the City, as those regulations may be amended. The Annexor shall cease and desist from any non-conforming uses on the Property within one (1) year from the date of Final Annexation Approval. In that one (1) year period, there must be no expansion of any non-conforming use.

Section 7 – Breach by Annexor and City's Remedies

- 7.1 In the event of a breach of any of the terms and conditions of this Agreement by the Annexor, the City may take any action necessary or appropriate to enforce its rights, including without limitation any or all of the following:
- 7.1.1 The refusal to issue any building permit or Certificate of Occupancy to the Annexor; provided, however, that this remedy will be unavailable to the City until after the affidavit described in Section 7.1.2 below has been recorded; and provided further that this remedy will not be available against a bona fide third party.

7.1.2 The recording with the Chaffee County Clerk and Recorder of a first affidavit approved in writing by the City Attorney and signed by the City Administrator or the City Administrator's designee, declaring that the terms and conditions of this Agreement have been breached by the Annexor. At the next regularly scheduled City Council meeting following recording of such first affidavit, the City Council shall either approve the filing of said first affidavit or direct the City Administrator to file a second affidavit declaring that the default has been cured and nullifying the first affidavit. Upon the recording of a first affidavit, no parcels or portions thereof on the Property may be sold until the default has been cured. An affidavit signed by the City Administrator or the City Administrator's designee and approved by the City Council declaring that the default has been cured will remove this restriction and be sufficient evidence when recorded that the default has been cured.

7.1.3 The refusal to allow further development review for the Property.

7.1.4 Any other remedy available in equity or at law.

7.2 Unless immediate action is necessary to protect the health, safety, or welfare of the City's residents, the City shall give the Annexor ten (10) days' written notice of the City's intent to take any action under this Section 7, during which 10-day period the Annexor may cure the breach described in said notice and prevent further remedial action by the City. In the event the breach is not cured within the 10-day period, the City will consider whether the Annexor has undertaken reasonable steps to timely complete the cure if additional time is required.

7.3 The District Court of the County of Chaffee, State of Colorado, will have exclusive jurisdiction to resolve any dispute over this Agreement.

7.4 Any waiver by the City of one or more terms of this Agreement will not constitute, and is not to be construed as constituting, a waiver of other terms. A waiver of any provision of this Agreement in any one instance will constitute, and is not to be construed as constituting, a waiver of such provision in other instances.

Section 8 – Indemnification and Release

8.1 Release of Liability. The Annexor 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 Annexor 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, which representation or undertaking subsequently is held unlawful by a court of competent jurisdiction. Accordingly, the Annexor 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.

8.2 Indemnification.

8.2.1 The Annexor shall release the City, and the City's officers, agents, employees, and their designees, from and against any and all claims, damages, losses, and expenses, including but not limited to attorneys' fees and costs, arising from or in connection with the following: (a) the City's approval of the proposed annexation, (b) the City's approval of the proposed zoning, (c) any approval given during development review of the Property; (d) except to the extent of any actual negligence on the part of the City, and the City's officers, agents, employees, and their designees, any road or sidewalk enlargement, extension, realignment, improvement, or maintenance, or approval thereof; or (e) any other item contained in this Agreement.

8.2.2 Nothing in this Agreement obligates or compels the City to proceed with any action or referendum position, other than as the City Council, in its sole discretion, directs.

Section 9 – General Provisions

9.1 Waiver of Defects. In executing this Agreement, the Annexor 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 Annexor as set forth herein. The Annexor further waives all objections it may have to the procedure, substance, and form of the ordinances or resolutions adopting this Agreement.

9.2 Final Agreement. This Agreement supersedes and controls all prior written and oral agreements and representations of the Parties with respect to the subject matter hereof, and is the total integrated agreement between the Parties.

9.3 Modifications. This Agreement may be modified only by a subsequent written agreement executed by both Parties.

9.4 Voluntary Agreement. The Annexor agrees to comply with all of the terms and conditions of this Annexation Agreement on a voluntary and contractual basis, as a condition of annexation of the Property to the City.

9.5 Election. The Annexor represents and submits that to the extent an election would be required by the Annexation Act to approve the annexation or impose terms and conditions upon the Property to be annexed, the Annexor owns one hundred percent (100%) of the Property to be annexed, and would vote to approve the annexation and all terms and conditions as set forth herein. Thus, any election necessarily would result in a majority of the electors' approval to the annexation and the terms and conditions.

9.6 Annexor's Representations. All representations of the Annexor, either oral or as set forth in the Annexation Petition and zoning application, and all documents previously or subsequently submitted with reference thereto, are to be considered incorporated into this Annexation Agreement as if set forth in full herein.

9.7 Survival. The City's and the Annexor's representations, covenants, warranties, and obligations set forth herein, except as they may be fully performed before or on the Effective Date, will survive the Effective Date and are enforceable at law or in equity.

9.8 Notice. All notices required under this Agreement must be in writing and must be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the Parties as set forth below. All notices so given will be considered effective immediately upon hand-delivery, and seventy-two (72) hours after deposit in the United States Mail with the proper address as set forth below. Either Party by notice so given may change the address to which future notices are to be sent.

Notice to the City: City of Salida
Attn: City Administrator and City Attorney
448 East First Street, Suite 112
Salida, CO 81201

Notice to the Annexor's: Christopher Paul and Alexandria Liv Ponder Newman
7680 County Road 140
Salida, CO 81201

9.9 Terms and Conditions as Consideration for Annexation. The Annexor acknowledges that the City's decision to annex the Property is at the City's sole discretion. In consideration for the City's agreement to annex, the Annexor agrees to be bound by all of the terms and conditions of such annexation contained herein, and further acknowledges that such terms and conditions are requisite to the City's decision to annex the Property. The Annexor further agrees and acknowledges that its decision to proceed with annexation is a voluntary act of the Annexor, and that the Annexor has the sole and absolute discretion to withdraw its petition for annexation in lieu of such voluntary act.

9.10 Applicable Laws, Ordinances, and Regulations. The Annexor understands and agrees that the Property, upon annexation, and all subsequent development of the Property, will be subject to and bound by the applicable provisions of laws, ordinances, resolutions, regulations, and policies of the City or the State as they exist at the time of annexation and as they may from time to time be amended or adopted. Nothing in this Agreement constitutes or is to be construed as constituting a repeal of existing ordinances or regulations, or as a waiver or abnegation of the City's legislative, governmental, or police powers to protect the health, safety, and general welfare of the City and its inhabitants.

9.11 Termination. In the event that the annexation of the Property is for any reason not completed, this Agreement will terminate and become null and void and of no force and effect. In such an event, the Annexor shall pay all Reimbursable Costs and Expenses incurred by the City to the time of termination. Otherwise, unless and until the Property is disconnected from the City in accordance with Colorado law, including without limitation sections 31-12-601 through -605, the term of this Agreement is perpetual.

9.12 Severability. The terms of this Agreement are severable. If a court of competent jurisdiction finds any provision hereof to be invalid or unenforceable, the remaining terms and conditions of the Agreement will remain in full force and effect.

9.13 Recording. The Annexor shall record this Agreement with the Clerk and Recorder of Chaffee County, Colorado.

9.14 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, the Annexor, and the Annexor's successor(s).

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

CITY OF SALIDA, COLORADO

By


Justin Critelli, Mayor Pro Tem

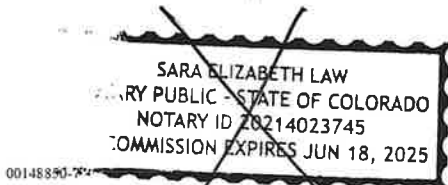




City Clerk/Deputy City Clerk

STATE OF COLORADO)
)
ss.
COUNTY OF CHAFFEE)


Acknowledged, subscribed, and sworn to before me this 6th day of September 2022
by Justin Critelli, 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: June 18, 2025




Notary Public

By


Christopher Paul Newman


Alexandria Liv Ponder Newman

STATE OF COLORADO)
)
) SS.
COUNTY OF Chaffee)

Acknowledged, subscribed, and sworn to before me this 14th day of September 2022
by Christopher Paul Newman and Alexandria Liv Ponder Newman as owners of 7680 County Road
140, Salida, CO 81201.

WITNESS my hand and official seal.
My Commission expires: April 15, 2025.

**KRISTI A. JEFFERSON
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20094011745
MY COMMISSION EXPIRES APRIL 15, 2025**


Notary Public

EXHIBIT A

A tract of land located in the Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 6, Township 49 North, Range 9 East of the New Mexico Principal Meridian, Chaffee County, Colorado, described as follows:

Beginning at a point on the south boundary of County Road No. 140 from whence the north quarter corner of said Section 6 bears North $87^{\circ}19'$ East 1008.0 feet (said quarter corner is located 14.82 feet due south of a brass capped witness corner), also from said beginning point the northwest corner of the Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of said Section 6 bears North $79^{\circ}23'14''$ West 319.37 feet;

Thence proceeding around the tract herein described South $88^{\circ}55'09''$ East along the south boundary of said County Road 140 a distance of 242.0 feet;

Thence leaving said south roadway boundary South $01^{\circ}04'51''$ West 180.0 feet;

Thence North $88^{\circ}55'09''$ West 242.0 feet;

Thence North $01^{\circ}04'51''$ East 180.0 feet to the point of beginning.

Directions are based on solar observation.

Also known by the following address:

7680 County Road 140, Salida, CO 81201

And assessor's schedule or parcel number: 380706200002