



CITY COUNCIL ACTION FORM

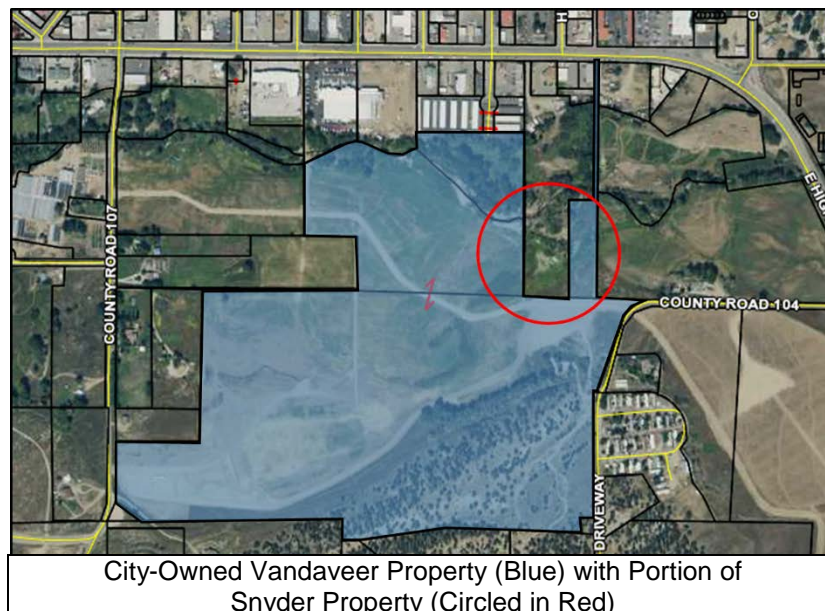
DEPARTMENT	PRESENTED BY	DATE
Planning	Bill Almquist - Community Development Director	December 21, 2021

ITEM

Ordinance 2021-19: An Ordinance of the City Council of the City of Salida, Colorado, Approving the Transfer and Conveyance of Real Property from the City of Salida, Approving the Transfer and Conveyance of Real Property to the City of Salida, and Authorizing the Execution of Certain Agreements for Said Conveyances (Second Reading and Public Hearing)

BACKGROUND

The City of Salida is the owner of roughly 97.5 contiguous acres within the Vandaveer Planned Development area, just south of the South Arkansas River, between CR 107 to the west and CR 104 to the east. This property has long been eyed for a variety of uses, including but not necessarily limited to: residential housing (inc. affordable housing), natural open space areas, and active recreation spaces. Staff recognizes that there is an opportunity to enhance the potential developability and connectivity of the northeastern portion of the site via a land swap with one of the neighboring properties to the north (owned by Jodie and Barry Snyder, and zoned RMU). The Snyder property extends from Highway 50 in the north across the South Arkansas River and is located in between City-owned parcels, close to a likely entrance area for future development of the City property (see area circled in map below). Staff identified the southern tip of the Snyder property as an area that could be used for a variety of purposes down the road, potentially including access and parking for a trail along the southern edge of the South Ark River.

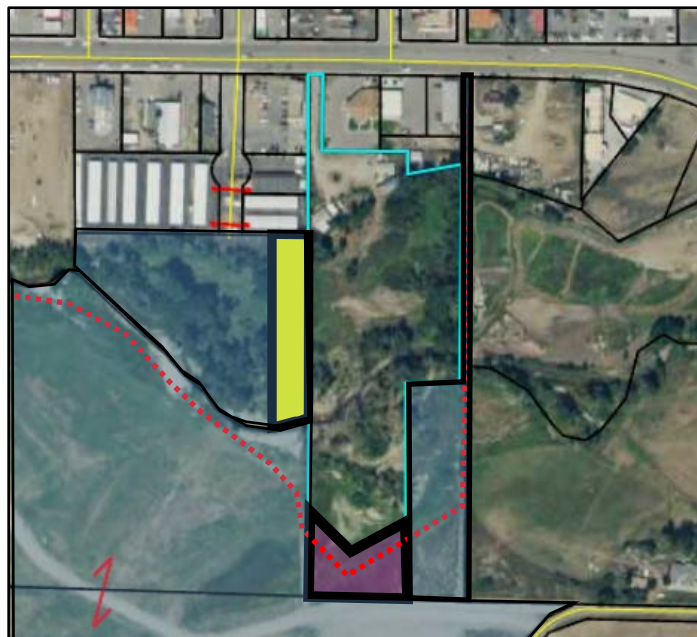




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In late 2020, staff approached the Snyders to discuss the possibility of exchanging an approximately .9-acre portion of their property for an equally-sized slice of City-owned land immediately to their west, on the north bank of the South Arkansas River. The City-owned piece is 76-feet wide and is largely inaccessible from the rest of the City property due to the location of the river and its wetland characteristics. Following additional discussions and site visits, it was determined that there was mutual interest in such an exchange. The Snyders intend to restore the riparian area of their property along the river's edge to a more natural and ecologically healthy state, and the .9 acres to their west would be a beneficial addition to that project. Meanwhile, the .9 acres at the southern tip of the Snyder property is currently inaccessible to them except through City property. The Snyder property affords primarily dry and developable land that is already contiguous with City property and could be used to the community's benefit.



Approximation of .9 Acre Parcels Proposed to be Exchanged

The Snyder's Annexation Agreement (Ordinance 2017-11) required that a public access easement be dedicated along their property, somewhere south of the river, to allow for the future extension of a trail in that vicinity. The Snyders would like, as part of such a transfer, that this requirement be removed via an amendment to the Annexation Agreement. Staff notes that, with the proposed exchange, the trail could be built in a location that would be much easier to construct and maintain



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than any of the very wet areas on the remainder of the Snyders' property south of the river (which includes a seasonal pond). The trail would also be more accessible to the rest of the Vandaveer development with the newly proposed alignment. Staff supports such an amendment and believes the location of the trail onto City property would have numerous benefits, including enjoyment of the seasonal pond.

The Snyders have agreed to a no-development clause (other than ecological restoration work) for the parcel they would be acquiring, and the City would agree as part of the transfer to build and/or relocate a fence along the new boundary line south of the river. Transfer of properties would be conditioned upon such agreements and would be brought forth to Council for approval prior to any actual quit claims of deeds. A boundary line adjustment will also be conducted administratively following the recordation of such agreements.

FISCAL NOTE

No significant impacts. City is assuming all survey, title work, and recording expenses (anticipated at less than \$5,000).

STAFF RECOMMENDATION

Staff recommends approval of Ordinance 2021-19 on second reading.

SUGGESTED MOTION

"I move to approve Ordinance 2021-19 on second reading."

ATTACHMENTS

Ordinance 2021-19

Site Plan

Site Photos

2017 Snyder Annexation Agreement

CITY OF SALIDA, COLORADO
ORDINANCE NO. 19
(Series of 2021)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, APPROVING THE TRANSFER AND CONVEYANCE OF REAL PROPERTY FROM THE CITY OF SALIDA, APPROVING THE TRANSFER AND CONVEYANCE OF REAL PROPERTY TO THE CITY OF SALIDA, AND AUTHORIZING THE EXECUTION OF CERTAIN AGREEMENTS FOR SAID CONVEYANCES

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

WHEREAS, pursuant to Colorado Revised Statutes § 31-15-713, the City, acting by and through its City Council (“Council”), possesses the authority to sell and dispose of real estate owned by the City by ordinance, where the real property was not used or held for park purposes or any governmental purpose; and

WHEREAS, the City owns approximately .90 acres of certain real property (the “City Property”), more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference; and

WHEREAS, Snyder Revocable Trust (represented by Barry and Jodie Snyder) owns approximately .90 acres of certain real property (the “Snyder Property”), more particularly described in **Exhibit B**, attached hereto and incorporated herein by this reference; and

WHEREAS, the City has determined that it would further the goals and objectives of the City, its residents, customers and taxpayers to take ownership of the Snyder Property in exchange for the City Property in order to facilitate potential future trail connections and certain development within the City-owned portion of the Vandaveer Planned Development; and

WHEREAS, in furtherance of these goals, the City and the Snyders are also entering into agreements to restrict development on the City Property in perpetuity, to provide boundary fencing, and to remove the requirement of a trail easement across the remainder of the Snyder Property; and

WHEREAS, the City Council finds and determines that the City Property has not been a public park, and is not, or has not been, used or held for any governmental purpose; and

WHEREAS, the City Council therefore desires to approve the transfer and conveyance of the City Property conditioned upon execution of certain agreements related to the restriction of development of the City Property; and

WHEREAS, the City Council likewise authorizes the acceptance of the Snyder Property in exchange for the conveyance of the City Property and authorizes the execution of all necessary documents associated with the exchange, transfer and conveyance of the Properties.

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

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

Section 2. Conveyance of Real Property. Pursuant to Colorado Revised Statutes §31-15-713, the City Council hereby approves the conveyance and transfer of the real property described on **Exhibit A**, from the City to the Snyder Revocable Trust, and authorizes and directs the Mayor to execute a quit claim deed and such other instruments as necessary to effect such conveyance, in forms approved by the City Attorney.

Section 3. Acceptance of Real Property. The City Council hereby authorizes the City's acceptance of the real property described on **Exhibit B**, in exchange for the conveyance of the real property described on **Exhibit A**, and authorizes the Mayor to execute any instruments as necessary to effect such conveyance, in form(s) approved by the City Attorney.

Section 4. Additional Agreements Approved. In connection with the transfer and conveyance of the City Property approved by Section 2 above, the City Council hereby authorizes and directs the Mayor to execute additional agreements which prohibit development on the real property described on **Exhibit A**, outside of natural or ecological restoration purposes; which establish requirements for the construction of a new boundary fence; and which remove the requirement of a trail easement across the remainder of the Snyder Property, and any associated documents, in form(s) approved by the City Attorney.

Section 5. Conditions of Approval of Conveyance of Property. The transfer and conveyance of the City Property and execution of documents approved by Section 2 above is expressly contingent upon the satisfaction of the following condition precedent: the execution of agreements referenced and approved by Section 4, and any associated documents, in form(s) approved by the City Attorney.

Section 6. Severability. 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 December 7, 2021 ADOPTED and ORDERED PUBLISHED IN FULL in a newspaper of general circulation by the City Council on this ____ day of _____, 2021 and set for second reading and public hearing on the 21st day of December, 2021.

INTRODUCED ON SECOND READING FINALLY ADOPTED and ORDERED PUBLISHED IN FULL BY TITLE ONLY by the City Council on this 21st day of December, 2021.

City of Salida

Mayor Dan Shore

ATTEST:

City Clerk/Deputy City Clerk

EXHIBIT A

Legal description of the "City Property" being conveyed from the City
to the Snyder Revocable Trust

ALL THAT PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 49 NORTH, RANGE 9 EAST OF THE NEW MEXICO PRINCIPAL MERIDIAN, IN THE CITY OF SALIDA, CHAFFEE COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT NO. 13, RIVER BEND ADDITION TO THE CITY OF SALIDA, ACCORDING TO THE REPLAT FILED AT RECEPTION NO. 267623 IN THE OFFICE OF THE CHAFFEE COUNTY CLERK & RECORDER, FROM WHENCE THE SOUTHEAST CORNER OF SAID SECTION 5, MARKED BY A B.L.M. BRASS CAP, BEARS SOUTH 24°03'20" EAST, A DISTANCE OF 989.94 FEET;

THENCE SOUTH 00°11'23" WEST ALONG THE EAST LINE OF SAID LOT NO.13, A DISTANCE OF 508.75 FEET TO THE CENTER OF THE SOUTH ARKANSAS RIVER;

THENCE WESTERLY ALONG SAID CENTERLINE, A DISTANCE OF 79 FEET, MORE OR LESS;

THENCE NORTH 00°11'23" EAST, A DISTANCE OF 510.52 FEET TO THE NORTH BOUNDARY OF SAID LOT NO. 13;

THENCE SOUTH 88°56'30" EAST, A DISTANCE OF 76.21 FEET TO THE POINT OF BEGINNING;

CONTAINING 0.90 ACRES, MORE OR LESS.

EXHIBIT B

Legal description of the "Snyder Property" being conveyed from the Snyder Revocable Trust
to the City

ALL THAT PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 49 NORTH, RANGE 9 EAST OF THE NEW MEXICO PRINCIPAL MERIDIAN, IN THE CITY OF SALIDA, CHAFFEE COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF SAID SECTION 5, MARKED BY A #5 REBAR, FROM WHENCE THE SOUTHEAST CORNER OF SAID SECTION 5, MARKED BY A B.L.M. BRASS CAP, BEARS SOUTH 89°03'23" EAST, A DISTANCE OF 406.55 FEET;

THENCE NORTH 00°11'23" EAST, A DISTANCE OF 244.27 FEET;

THENCE SOUTH 38°49'33" EAST, A DISTANCE OF 184.20 FEET;

THENCE NORTH 63°34'25" EAST, A DISTANCE OF 155.66 FEET;

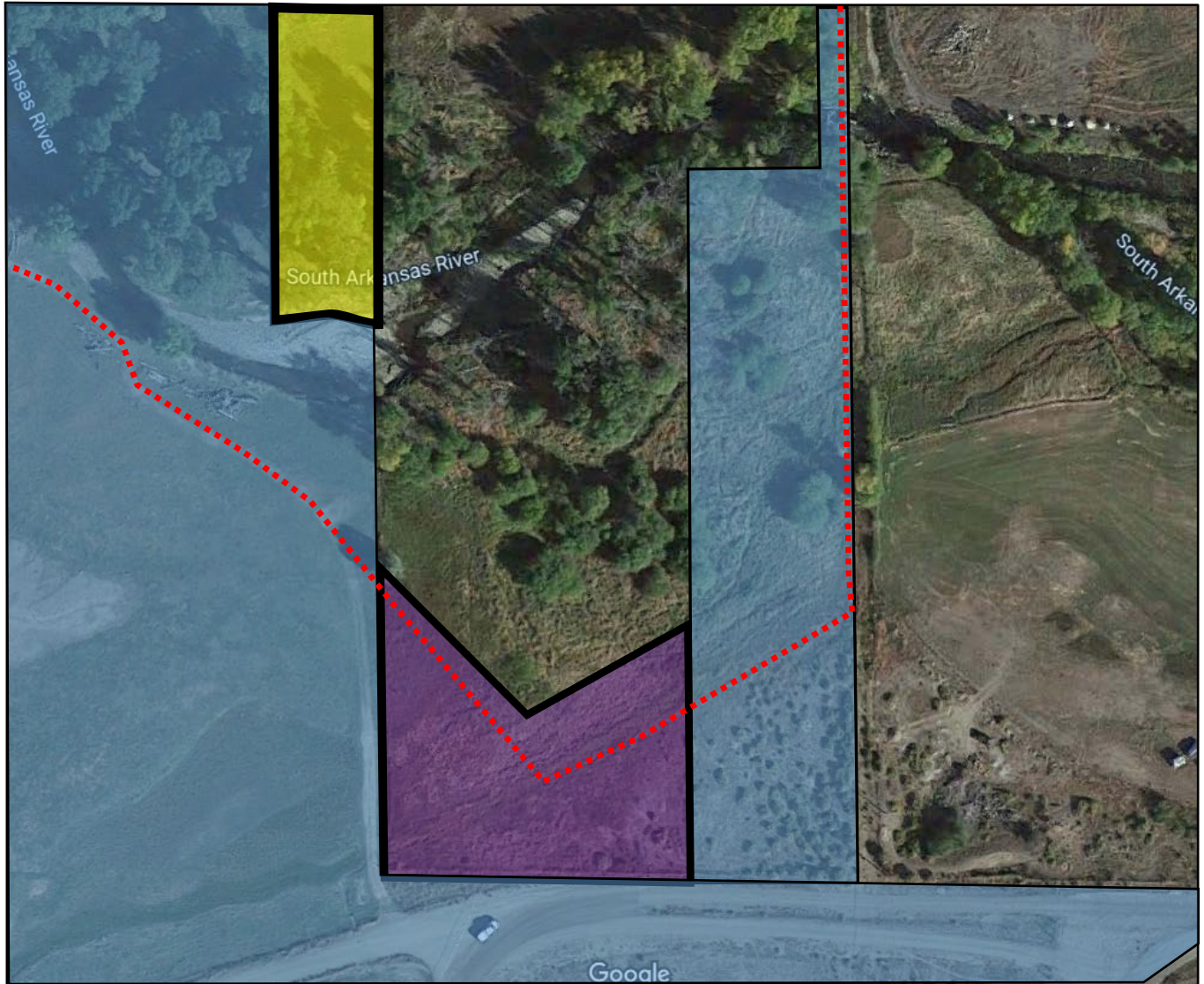
THENCE SOUTH 00°08'43" WEST, A DISTANCE OF 174.24 FEET TO SAID SOUTH LINE OF SECTION 5;

THENCE NORTH 89°03'23" WEST ALONG SAID SOUTH LINE, A DISTANCE OF 255.28 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.90 ACRES, MORE OR LESS.



Site Photos:



Purple = Snyder Property.

Yellow = Portion of City Property.

Blue = Other City Vandaveer Property.

Red = Proposed Future Trail Alignment Connecting to Hwy 50 and Existing Foot Bridge.



Purple = Portion of Snyder Property proposed to be acquired by City.
Blue = Adjacent Existing City Vandaveer Property.
View looking NW



Portion of Snyder Property proposed to be acquired by City, inside fence line on left.
Adjacent Existing City Vandaveer Property on right and in background.
View looking south



Portion of City Property proposed to be transferred to Snyders. Numerous cottonwood trees and seasonal wetlands below.
View looking southwest

**SNYDER ANNEXATION AGREEMENT
(1139 and 1141 EAST HIGHWAY 50)**

THIS ANNEXATION AGREEMENT (the "Agreement") is made and entered into this 2nd day of May, 2017, by and between the CITY OF SALIDA, COLORADO, a Colorado statutory city ("City"), and JODIE A. SNYDER AND BARRY L. SNYDER (together, "Annexor") (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 "Snyder 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 approximately 8.14 acres, more or less, 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 January 3, 2011, the City and the Annexor entered into a Pre-Annexation Agreement.
- 1.6 On January 14, 2017, the Annexor filed with the City Clerk a petition for annexation of the Property ("Annexation Petition").
- 1.7 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.
- 1.8 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.
- 1.9 On May 2, 2017, City Council adopted Ordinance No. 2017-10, annexing the Property to the City, and Ordinance No. 2017-12, zoning the Property as Residential Mixed Use (RMU) Zone District with inclusion of a portion of the Property in the Highway 50 Corridor Overlay. That portion of the Property included in the Highway 50 Corridor Overlay ("Highway 50 Corridor Overlay Portion") is the driveway and adjacent parkway that fronts Highway 50 and provides access to the remaining portions of the parcel detached from Highway 50.

- 1.10 The City wishes to control its growth in a planned and orderly fashion, maintaining and improving its quality of life and its ability to provide and enhance environmental amenities, services, and local opportunity for its citizens.
- 1.11 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 of the Property.
- 1.12 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 January 14, 2017.
- 2.4 “Annexor” means Jodie A. Snyder and Barry L. Snyder, and their successor(s) and agent(s).
- 2.5 “City” means the City of Salida, a Colorado statutory City.
- 2.6 “City Code” means the City of Salida Municipal Code.
- 2.7 “City Council” means the City Council of the City of Salida, Colorado.
- 2.8 “Dark sky-compliant” means lighting in compliance with Section 16-8-100 of the City Code and intended to reduce the unnecessary use of artificial light at night.
- 2.9 “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.
- 2.10 “Final Annexation Approval” means that all of the following have occurred:

- 2.10.1 City Council has adopted a resolution approving the execution of this agreement;
- 2.10.2 The effective date of Ordinance No.2017-10, annexing the Property to the City, has occurred; and
- 2.10.3 The effective date of Ordinance No. 2017-12, zoning the Property as RMU Zone District with inclusion of a portion of the Property in the Highway 50 Corridor Overlay, has occurred.
- 2.11 “Property” means the land that is described as the Snyder Annexation in the Annexation Petition and that is legally described in attached Exhibit A.
- 2.12 “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 and zoning applications; 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 Annexor waives 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). 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 March 27, 2017, the Salida Planning Commission recommended zoning of the Property as RMU Zone District with a portion of the Property in the Highway 50 Corridor Overlay.

5.3.2 The parties agree and acknowledge that Owner does not currently have a development proposal for the Property. Because the Planning Commission did not review a development or subdivision proposal for the Property in conjunction with its review of the Annexation, any development or subdivision proposal for the Property, including within the RMU Zone District, must be reviewed and approved by the City before commencement of any development or subdivision.

5.3.2 At its May 2, 2017, 2017 meeting, the City Council approved zoning of the Property as RMU Zone District with a portion of the Property in the Highway 50 Corridor Overlay.

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 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.

5.4.1 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. Water and wastewater treatment service are available on a "first come, first served" basis, and the availability of such services is determined at the time

application therefor is made. The City's obligation to provide water and wastewater treatment service to the Property is contingent upon the City's certification that all water and wastewater facilities and all water- and wastewater-related improvements on the Property conform to approved plans and specifications and all applicable City standards for those facilities and improvements. Connection to the City's treated water and wastewater treatment facilities will be at the then-prevailing fees and rates for such connection and service. The City reserves the right to refuse to provide wastewater treatment service for any effluent that includes prohibited wastes as described in Section 13-2-120 of the City Code, or that is beyond the City's capability of treating in either quantity or quality.

- 5.4.2 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.
- 5.4.3 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.
- 5.4.4 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.
- 5.4.5 Streets and Roads.
 - 5.4.5.1 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.
 - 5.4.5.2 In accordance with the Section 16-5-60 of the City Code and the specifications described therein for streetscape and lighting within the Highway 50 Corridor Overlay, the Annexor shall install landscaping, sidewalks, pedestrian lighting, and stamped concrete parkways along the entire length of the Highway 50 Corridor Overlay Portion of the Property. The Annexor shall complete such improvements before proposing any development plan for the Property.
 - 5.4.5.3 In the event that subdivision is proposed for the Property in the future, the Annexor shall submit plans and specifications for access improvements with the development application and Subdivision Plat for review and approval by the City. Such improvements must be referenced in and secured by a subdivision improvements agreement for the Property.

- 5.4.5.4 Annexor additionally shall comply with any and all Colorado Department of Transportation (“CDOT”) access requirements. Annexor acknowledges that CDOT may require the consolidation of access points to the Property in the event that the Property is redeveloped or subdivided in the future.
- 5.4.6 Use of Existing Well. The parties agree that upon annexation and connection to City water, Annexor shall be entitled to the continued use of existing well on the Property for all outside irrigation and other customary non-domestic uses allowed under the existing well permit as set forth in Section 13-3-100 of the Municipal Code.
- 5.5 Fees. The Annexor shall pay to the City the fees described below at the time set forth below:
- 5.5.1 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.
- 5.5.2 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.
- 5.6 Dedications and Easements. At no cost to the City, the Annexor shall dedicate or convey to the City all rights-of-way, easements, and public land reasonably required by the City. The City may require dedication of rights-of-way, easements, or public land at any time construction thereof or thereon is deemed necessary in the public interest, even if the Property is not being platted or developed at the time the City deems dedication of the

rights-of-way, easements, or public land necessary.

- 5.6.1 The Annexor shall dedicate public access and an easement for a ten-foot wide public pedestrian/bicycle trail located south of the south bank of the South Arkansas River, along with sufficient width on each side of the trail to allow for maintenance, including without limitation equipment access (“Trail Easement”).

The final alignment of the Trail Easement will not be determined until a plan is adopted for overall alignment of the trail to the east and west of the Property. The City shall use its best efforts to negotiate with the Annexor to determine a Trail Easement alignment and design agreeable to the Annexor considering the impact on the Annexor’s use of the Property. The final alignment of the Trail Easement must minimize impacts to the riparian zone and avoid impacts to high-quality wetlands and mature trees. The Annexor is prohibited from constructing improvements on or within the Trail Easement. Costs incurred by the City in finalizing the Trail Easement location and construction, including any necessary agency approvals and studies, will be borne by the City and do not constitute Reimbursable Costs and Fees hereunder. Specifically, the City will pay for floodplain, wetland, and/or threatened and endangered species studies pertaining to the Trail Easement, as required by applicable federal law and regulations. Further, the City will pay for mitigation (e.g., wetland mitigation) for the Trail Easement as required by applicable federal law or regulations. The Trail Easement will be granted pursuant to the Recreational Use Act of Article 41 of Title 33, C.R.S. In consideration of the Annexor's dedication of the Trail Easement, the Annexor shall, as applicable, receive the corresponding credit for open space dedication as set forth in Chapter 16 of the City Code based upon the dedication requirement applied to the acreage of the Trail Easement.

- 5.6.2 The Annexor shall dedicate public utility easements for all City water and sewer mains constructed and installed on the Property.

- 5.6.3 The Annexor shall dedicate public utility easements for all interior streets.

- 5.7 All lighting on the Property must be “dark sky”-compliant.

- 5.8 In meeting its obligations with respect to public improvements under this Section 5 and under the City Code, the Annexor shall deliver to the City a reasonable performance guarantee in the form of cash, a letter of credit, a cash bond, a performance bond, or another security instrument acceptable to and approved in writing by the City Attorney.

- 5.9 Drainage. Prior to any future development of the Property, the Annexor shall obtain the City’s approval of a master drainage plan that complies with all applicable laws, regulations, and ordinances. The Annexor’s activities, operations, and development on the Property must comply with the master drainage plan and with all applicable laws, ordinances, and regulations pertaining to drainage.

- 5.10 Conveyance and Acceptance Requirements. Conveyance and acceptance requirements and reimbursement opportunities for all public improvements installed by Annexor in connection with the development or use of the Property are as described in the City Code.
- 5.11 **Affordable Housing.** Any construction of new residential dwelling units on the Snyder Annexation Property, shall be done in compliance with the affordable housing regulations in place at the time of development.

Section 6 – Zoning

- 6.1 The Annexor requests and consents to zoning of RMU Zone District with a portion of the Property in the Highway 50 Corridor Overlay. 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.

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 A demand that any performance guarantee given for completion of any public improvement be paid or honored.
- 7.1.4 The refusal to allow further development review for the Property.

7.1.5 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 indemnify and hold harmless 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 The Annexor shall reimburse the City for all fees, expenses, and costs, including attorneys' fees and costs, incurred in any action brought against the City as a result of the City's approval of the proposed annexation and proposed zoning; and

shall reimburse the City for all fees, expenses, and costs, including attorneys' fees and costs, associated with any referendum election, review of petition for referendum, protest, or any other proceedings to challenge the City's approval of the proposed annexation or zoning. 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
 Salida, CO 81201

Notice to the Annexor: Mr. Barry L. Snyder
 Ms. Jodie A. Snyder
 232 Helena Circle
 Littleton, CO 80124

- 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. Subject to the terms and conditions of Section 6.1 above, 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

James Livacchi Mayor

ATTEST:

[Signature]
City Clerk/Deputy City Clerk

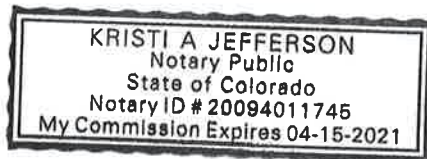


STATE OF COLORADO)
)
 s
 s.
COUNTY OF Chaffee)

Acknowledged, subscribed, and sworn to before me this 20th day of July 2017
by James Livacchi, as Mayor, and by Christina Samora, as Deputy Clerk,
on behalf of the City of Salida, Colorado.

WITNESS my hand and official seal.

My Commission expires: April 15, 2021.



Kristi A. Jefferson
Notary Public

ANNEXOR:

Jodie A. Snyder
Jodie A. Snyder

Barry L. Snyder
Barry L. Snyder

STATE OF COLORADO)
) ss.

COUNTY OF Arapahoe

Acknowledged, subscribed, and sworn to before me this 11th day of July 2017
by Jodie A. Snyder and Barry L. Snyder.

WITNESS my hand and official seal. My Commission expires: 06-29-2019.

Sarah Sue Andersen
Notary Public

**SARAH SUE ANDERSEN
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20154025531
MY COMMISSION EXPIRES 06/29/2019**

EXHIBIT A

The subject property is legally described as:

A tract of land located within the Southeast Quarter of the Southeast (SE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 5, Township 49 North, Range 9 East of the New Mexico Principal Meridian, Chaffee County, Colorado described as follows,

Beginning at the northwest corner (marked by a 5/8 inch rebar with an aluminum cap stamped '6758') of that parcel of land described in Deed of Record filed under Reception No 281105 of the Chaffee County Records, from whence a brass capped concrete right-of-way maker for Station 2292+50 of U.S. Highway 50 bears South 89°21'00" East 131.8 feet, thence proceeding around the tract herein described South 00°06'00" East 190.87 feet to the southwest corner of the above described parcel;

thence South 89°21'00" East 212.51 feet to a corner of a parcel of land described in deed of record and filed under Reception No. 278468 of the Chaffee County Records;

thence South 00°13'30" East 55.88 feet to another corner of the above described parcel;

thence North 80°08'48" East 140.27 feet to the southeast corner of the above said parcel;

thence South 00°10'28" East parallel with the East line of said Section 5 for a distance of 498.09 feet;

thence South 89°49'32" West at right angle to the above said section line 134.86 feet;

thence South 00°07'52" East 577.50 feet to an existing on inch diameter cedar post (said corner post is located North 88°54'50" West 151.28 feet from the southeast corner of the said Section 5- a government brass capped pipe monument);

thence North 89°28'34" West along a fence line 251.87 feet to the railroad tie fence corner post;

thence North 00°49'43" West 327.08 feet along a fence to a fence angle point;

thence North 00°06'00" West along a fence line, also being the Easterly boundary of River Bend Addition to the City of Salida (Plat filed on 16 September 1975, under Reception No. 165926- Chaffee County Records) for a distance of 847.20 feet to the northeast corner of said River Bend Addition to the City of Salida;

thence South 69°21' East along the southerly right-of-way boundary of U.S. Highway No. 50 a distance of 38.00 feet to the point of beginning.