



**REQUEST FOR CITY COUNCIL ACTION**

Meeting Date: April 20, 2021

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

Resolution No. 2021-11 – A Resolution of the City Council of the City of Salida, Colorado, Approving an Annexation Agreement with Tory and Clee Upchurch for the Annexation of Certain Real Property into the City.

**BACKGROUND:**



The applicant made an application to annex the 5.32 acre property located between County Roads 140 and 141 (in addition to a portion of County Road 140 stretching from the existing City limits at the eastern terminus of County Road 141 approximately 1,274 feet to the western terminus of County Road 141, totaling approximately 2.58 acres), more particularly described in Exhibit A of the annexation agreement.

The request was heard by the Planning Commission on March 22, 2021 and the Commission recommended the site be annexed with conditions noted in the annexation memo. Council held the public hearing on the annexation on April 20, 2021.



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**Proposed Annexation Agreement:** Staff believes we have an agreement on the following stipulations on the annexation. Staff's recommended conditions for the annexation agreement (based upon the conditions for the Annexation Ordinance and which have been substantially incorporated into the agreement) are as follows:

1. No vehicle access to/from CR 141 shall be allowed in any future development on the site without either the approval of Chaffee County, or annexation of relevant portions of CR 141 into the City of Salida through the applicable City review and approval process.
2. No units within any future development on the site (including accessory dwelling units) shall have frontage on CR 141 without either the approval of Chaffee County, or annexation of relevant portions of CR 141 into the City of Salida through the applicable City review and approval process.
3. Pedestrian access between CR 140 and the northern portion of CR 141 shall be provided in any future development on the site. Details of improvements to such access will be determined via a subdivision improvement agreement or development agreement.
4. Future development shall include a public street and utilities stubbed to the south property line in alignment with Shepherd Road, before development occurs.
5. Any future development shall meet the City's fire turnaround and/or street connectivity requirements for rights-of-way.
6. The applicant shall, at time of development, improve the annexed portion of CR 140 fronting the site, pursuant to City Code and all City Design Standards (including curb, gutter, sidewalk, street trees and parking on the north side); provide a crosswalk across CR 140 to the shared path on the south side in a location approved by staff; and provide a minimum 2-inch overlay over both drive lanes of CR 140 from the existing City limits to the west intersection with CR 141, or reconstruct road if needed for grade, at the direction of the Public Works Director.
7. Residential development of the site shall meet the inclusionary housing requirements of Article XIII of Chapter 16 of the Salida Municipal Code, as negotiated between parties and approved by Council, as specified in the Annexation Agreement.
8. In-lieu open space fees (currently \$3,000 per unit) shall be provided at the time of issuance of a building permit.



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9. Provision of school impact fees in an amount then in effect (currently \$444.66 per unit) at the time of issuance of a building permit.
10. The “area of overlap” on the annexation plat shall be resolved prior to obtaining any building permits, and the owner/applicant shall provide proof to the City of filing the necessary paperwork and beginning the necessary process to resolve same prior to recordation of the annexation agreement and plat.
11. The City will agree to permit one short-term rental license within the development at the Property. (The development will still be subject to the one-license-per-block face maximum; however, the total number of block faces will be determined by the eventual subdivision design.)
12. Provided that water mains within the development will be looped, will front each parcel, and will extend to the west end of the property along CR 140, as required by City Code and City of Salida Design Standards, future subdivision and development of the Property shall not require the applicant to provide water and sewer main extensions within either CR 141 nor CR 140, other than as needed to serve future development of the Property. However, significant changes to the subdivision design may require re-evaluation of this determination, which shall be approved at the Public Works Director’s sole discretion.
13. Roads shall be designed in accordance with the City Design Standards, including, but not limited to, applicable requirements related to sidewalk construction and of right-of-way dedication, unless otherwise permitted by the Public Works Director. It is noted that a 40 ft ROW on the west end of such a subdivision, in addition to other access requirements, would be sufficient and a sidewalk would only be required on the east side of said ROW. A 20 ft dedication of ROW will be required of the adjacent property to the west at time of annexation for that parcel.
14. Any lots created on property immediately adjacent CR 141 shall be developed for detached single-family dwellings, shall have a minimum lot size of 7,500SF, and have no less than 50 feet of rear lot line frontage onto CR 141. If accessory dwelling units (“ADUs”) are developed on lots immediately adjacent to CR 141, said ADUs shall be subject to the same frontage restrictions of the primary dwellings.
15. Preference will be given to current Chaffee County residents or workforce for a minimum of 6 non-inclusionary housing units within any future development on the site, to the extent



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permitted by law. Such marketing and vetting shall be the Applicant's responsibility, with guidance provided by City staff and the Chaffee Housing Authority.

16. Up to 3 lots at or around the northwest corner may have less than the required minimum lot frontage facing onto the proposed internal street, but no such frontage shall be less than 20 feet, and proposed development upon said lots shall follow the applicable approval processes set forth in the City Code.
17. Applicant shall be required to have a Traffic Impact Analysis conducted, and shall be responsible for any and all street and road improvements deemed necessary by said Traffic Impact Analysis

**STAFF RECOMMENDATION:**

Staff recommends approval of the proposed annexation agreement.

**SUGGESTED MOTION:**

A council person should make the motion to "approve Resolution 2021-11 approving the agreement for the Upchurch Annexation."

**Attachments:**

- Resolution 2021-11
- Upchurch Annexation Agreement

**CITY OF SALIDA, COLORADO**  
**RESOLUTION NO. 11**  
**(Series of 2021)**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, APPROVING AN ANNEXATION AGREEMENT WITH TORY AND CLEE UPCHURCH FOR THE ANNEXATION OF CERTAIN REAL PROPERTY INTO THE CITY.**

WHEREAS, Tory and Clee Upchurch are the “Owners” of certain real property located between County Roads 140 and 141, Salida, in unincorporated Chaffee County, Colorado (the “Property”); and

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

WHEREAS, the Owner desires 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 Owner 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, and hereby approves and adopts the Annexation Agreement attached hereto as “Exhibit A,” and incorporated herein, and authorizes the Mayor to sign said Annexation Agreement.

RESOLVED, APPROVED AND ADOPTED this 20<sup>th</sup> day of April, 2021.

CITY OF SALIDA, COLORADO

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

[SEAL]

ATTEST:

\_\_\_\_\_  
City Clerk

**Exhibit A**  
**Annexation Agreement**

UPCHURCH ANNEXATION  
AGREEMENT

THIS ANNEXATION AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between the CITY OF SALIDA, COLORADO, a Colorado statutory city (“City”), and Tory and Clee Upchurch (“Annexor”), City and Annexor each a “Party,” and together referred to as the “Parties.”

**Section 1 - Recitals**

- 1.1 This agreement relates to certain lands known as the “Upchurch Annexation,” and more particularly described on attached **Exhibit A**, which is incorporated herein by this reference (the “Property”). The Annexor is 100% fee title owner of this area, exclusive of the public streets and alleys.
- 1.2 The Property is contiguous to the current municipal boundaries of the City and contains approximately 5.32 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 December 14, 2020, 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 Chapter 16, Article IX of the City of Salida Municipal 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 March 22, 2021, 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 April 20, 2021, the City Council adopted Ordinance No. 2021-05 annexing the Property to the City.
- 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 December 14, 2020.
- 2.4 “Annexor” means Tory and Clee Upchurch, and the successor(s), assigns 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 (SMC).
- 2.7 “City Council” means the City Council of the City of Salida, Colorado.
- 2.8 “CR” means County Road.
- 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. 2021-05, annexing the Property to the City, has occurred; and
- 2.10.3 The effective date of Ordinance No. 2021-06, zoning the Property has occurred.
- 2.11 “Property” means the land that is described as the Upchurch Annexation in the Annexation



Petition and that is legally described in attached **Exhibit A**, exclusive of any existing public streets and alleys.

- 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, 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). 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 At its April 20, 2021 meeting, the City Council approved zoning the Property as Medium Density Residential (R-2).
- 5.3.2 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 Future Subdivision and Development of Property.

- 5.4.1 The Annexor's intent is to develop the property into approximately twenty-four (24) lots, some of which may be subsequently subdivided into additional lots and developed in accordance with the R-2 zoning standards pursuant to other limitations/conditions listed below. The Annexor has indicated a desire to build approximately forty-three (43) units including a variety of single-family, duplexes, triplexes, and multi-family units which will generally increase the density of the site as it goes from the north and west to the south and east. The Annexor will be required to go through the relevant land use review process in order to receive approvals for such a proposed development. This Agreement must be amended and approved by City Council if the Annexor proposes to develop the property at a significantly higher density and impact than described herein.
- 5.4.2 Annexor agrees that any lots created on property immediately adjacent to CR 141 shall be developed with detached single-family primary dwellings, shall have a minimum lot size of 7,500 square feet ("SF"), and shall have no less than 50 feet of rear lot line frontage onto CR 141. If accessory dwelling units ("ADUs") are developed on lots immediately adjacent to CR 141, said ADUs shall be subject to the same frontage restrictions of the primary dwellings.
- 5.4.3 Up to three (3) lots at or around the northwest corner may have less than the required minimum lot frontage facing onto the proposed internal street, but such frontage shall be no less than 20 feet, and proposed development upon said lots shall follow the applicable approval processes set forth in the City Code.
- 5.4.4 Annexor agrees that no vehicle access to or from CR 141 shall be allowed in any future development on the Property without either the approval of Chaffee County, or annexation of relevant portions of CR 141 into the City of Salida through the applicable City review and approval process.
- 5.4.5 Annexor agrees that no primary or accessory dwelling units within any future development on the Property shall have frontage on CR 141 without either the approval of Chaffee County, or annexation of relevant portions of CR 141 into the City of Salida through the applicable City review and approval process.
- 5.4.6 Annexor agrees to provide pedestrian access between CR 140 and the northern stretch of CR 141 within any future development on the Property. Annexor shall

enter into a subdivision improvement agreement or development agreement, which shall determine the details of the improvements to such access.

- 5.4.7 A cash in-lieu fee for Parks, Trails and Open Space shall be required at the time of issuance of a building permit for each unit within the development on the Property, pursuant to the requirements of the City Code.
- 5.4.8 Annexor agrees to give a preference to current Chaffee County residents or workforce for a minimum of six (6) non-inclusionary housing units within any future development on the Property, to the extent permitted by law. Such marketing and vetting shall be the Annexor's responsibility, with guidance provided by City staff and the Chaffee Housing Authority.
- 5.4.9 Annexor agrees that a Traffic Impact Analysis, prepared by a qualified expert, which shall include projections of traffic volumes to be generated by the development and traffic flow patterns, to determine the impacts of the proposed development on surrounding streets and to evaluate the need for future road improvements, is and shall be required before any development on the Property. Annexor further agrees and acknowledges, that Annexor shall be responsible for any and all street and road improvements deemed necessary by said Traffic Impact Analysis, as provided for in Section 5.6.6.5 of this Agreement.
- 5.4.10 Annexor shall enter into either a subdivision improvement agreement, or development agreement, that includes guarantees for the construction of the public street improvements described in paragraphs 5.8.1 and 5.8.2; and the extension of public water and sewer mains described in paragraphs 5.8.1 and 5.9; and guarantees the construction of which per paragraph 5.10, prior to recordation of the subdivision or development.
- 5.4.11 Annexor shall resolve the "area of overlap" and/or property ownership discrepancy on the southern portion of the property, as shown on the draft annexation plat, prior to obtaining any building permits on the Property, and Annexor shall provide proof to City Community Development Staff of filing the necessary paperwork and proof of beginning the necessary process to resolve same prior to recordation of this Annexation Agreement and the Annexation Plat.

5.5 Inclusionary Housing. The Annexor volunteers and agrees to meet the inclusionary housing requirements of Article XIII of Chapter 16 of the City Code, pursuant to the following conditions:

5.5.1 The inclusionary housing requirement shall be met through the construction of actual physical housing units, and the fee-in-lieu per unit referenced in Chapter 16, Article XIII of the City Code shall only be permitted to satisfy such requirements for any partial unit remaining beyond the 12.5% requirement. The first of such built inclusionary housing units shall receive certificate of occupancy (“CO”) prior to the eighth (8<sup>th</sup>) unit on the Property receiving CO or, if provided via multi-family housing, the first of such required inclusionary housing units shall receive CO prior to the twelfth (12<sup>th</sup>) unit on the Property receiving CO, and the last of such required units shall receive CO prior to the 24<sup>th</sup> unit on the Property receiving CO. The number of units required to be physically built will be specified within the subdivision improvement agreement or development agreement, based upon the 12.5% City Code requirement.

5.5.2 For any affordable inclusionary housing unit(s) required to be built within the development on the Property, the Annexor shall be required to deposit the applicable Inclusionary Housing fee-in-lieu for each required unit at the time of issuance of a building permit. Once the required affordable unit(s) has received certificate of occupancy, such fees-in-lieu deposit shall be returned to the Annexor.

5.6 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.

5.6.1 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 therefore 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. Additionally, the following provision shall apply:

5.6.1.1 Provided that water mains within the development will be looped, will

front each parcel, and will extend to the west end of the property along CR 140, as required by City Code and City of Salida Design Standards and anticipated by the Annexor's conceptual design, future subdivision and development of the Property shall not require the Annexor to provide water and sewer main extensions within either CR 141 nor CR 140, other than as needed to serve future development of the Property. However, significant changes to the development design may require re-evaluation of this determination which shall be approved at the Public Works Director's sole discretion.

- 5.6.2 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.
- 5.6.4 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.
- 5.6.5 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.
- 5.6.6 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, and provided that the following provisions shall also apply, as set forth below:
  - 5.6.6.1 The Annexor shall, at time of development of the Property, improve the annexed portion of CR 140 fronting the Property site, pursuant to City Code and all City Design Standards, including and relating, but not limited to, curb, gutter, sidewalk, street trees and parking on the north side; provide a crosswalk across CR 140 to the shared path on the south side in a location approved by City staff; and provide a minimum 2-inch overlay over both drive lanes of CR 140 along the frontage of the annexed property and extended to the west intersection with CR 141, or reconstruct said road if it is for grade, at the direction of the Public Works Director.
  - 5.6.6.2 Annexor agrees that any future development or subdivision on the Property shall include the requirement that a public street and applicable utilities be stubbed to the south property line in alignment with Shepherd Road, before development occurs.

- 5.6.6.3 Roads shall be designed in accordance with the City Design Standards, including, but not limited to, applicable requirements related to sidewalk construction and of right-of-way dedication, unless otherwise permitted by the Public Works Director. It is noted that a 40 ft ROW on the west end of such a subdivision, in addition to other access requirements, would be sufficient and a sidewalk would only be required on the east side of said ROW. A 20 ft dedication of ROW will be required of the adjacent property to the west at time of annexation for that parcel.
- 5.6.6.4 Any future development on the Property shall meet the City's fire turnaround and street connectivity requirements for roads, streets and rights-of-way.
- 5.6.6.5 Annexor shall also be responsible for any and all additional street and road improvements deemed necessary by the Traffic Impact Analysis required in Section 5.4.9 of this Agreement.

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

5.7.1 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").

5.7.1.1 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 9.7 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.

5.7.1.2 The City shall provide Annexor, at a minimum quarterly initiating from the Effective Date, with itemized billing for all Reimbursable Costs and Fees incurred by the City in relation to the project, pursuant to the terms of the "City of Salida Special Fee and Cost Reimbursement Agreement," executed by both the City and Annexor upon the of submission of Annexor's Annexation Petition.

- 5.7.2 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, provided City Staff make themselves available for any inquiries or questions, should Annexor ask questions regarding same.
- 5.7.3 Open Space Fee. Annexor agrees to a payment in lieu of Parks, Trails and Open Space, at the time of a building permit for each lot within the subdivision and or development on the Property, as required by the City Code.
- 5.7.4 Fair Contributions for Public School Sites. Per Section 16-6-140(c)(1) Annexor agrees to a payment in lieu of public school site dedication or conveyance in the amount then in effect, currently \$444.66 per residential dwelling unit, at the time of issuance of a building permit.
- 5.8 Dedications, Easements and Road Improvements. 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, as set forth below, and within this Agreement. 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, and reasonably related to the development of the Property, provided such dedications are required in this Agreement or a subsequent subdivision agreement or development agreement.
- 5.8.1 Annexor shall dedicate public utility easements for all City water and sewer mains constructed and installed on the Property.
- 5.8.2 Additionally, Annexor shall construct any and all right-of-way, sidewalk and other improvements as required by the City Design Standards and City Code.
- 5.9 Water and Sewer Mains. The Annexor shall extend sewer and water mains within the Property as approved by the City Public Works Director, or his/her designee.
- 5.10 Subdivision/Development Agreement and Performance Guarantee. Annexor shall enter into a subdivision agreement or a development agreement that includes the requirement that 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 to secure the performance of such public and other required improvements, in an amount equal to one hundred twenty-five (125%) of the estimated cost of said improvements.

- 5.11 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.
- 5.12 Short-Term Rental License. City agrees to permit one short-term rental ("STR") license within the development at the Property, in a location to be determined by the Annexor. Such license shall not be counted towards, or subject to, the City's overall cap on STRs in residential areas but shall count towards the one license per block face maximum. Such license shall not be transferred or transferable.

### **Section 6 – Zoning**

- 6.1 The Annexor requests and consents to Medium Density Residential District (R-2). 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 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 thirty (30) days' written notice of the City's intent to take any action under this Section 7, during which 30-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 30-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, unless such representations are specifically approved in writing by the City Administrator's office or the City Council. 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.
- 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 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 written representations of the Annexor, 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: Tory and Clee Upchurch  
2112 Ann Arbor Avenue  
Austin, TX 78704

- 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, if Annexor terminates this Agreement or causes this Agreement to be terminated. Otherwise, unless and until the Property is disconnected from the City in accordance with Colorado law, including without limitation Colorado Revised Statutes sections 31-12-601 through 31-12-605, 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 \_\_\_\_\_ Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

STATE OF COLORADO    )  
                                  ) ss.  
COUNTY OF                )

Acknowledged, subscribed, and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 2021 by \_\_\_\_\_, as Mayor, and by \_\_\_\_\_, as Clerk, on behalf of the City of Salida, Colorado.

WITNESS my hand and official seal.  
My Commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

ANNEXORS  
TORY AND CLEE UPCHURCH

By \_\_\_\_\_  
Tory Upchurch

By \_\_\_\_\_  
Clee Upchurch

STATE OF COLORADO    )  
                                  ) ss.  
COUNTY OF                )

Acknowledged, subscribed, and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 2021 by  
Tory Upchurch, as Annexor of the Property.

WITNESS my hand and official seal.  
My Commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

STATE OF COLORADO    )  
                                  ) ss.  
COUNTY OF                )

Acknowledged, subscribed, and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 2021 by  
Clee Upchurch, as Annexor of the Property..

WITNESS my hand and official seal.  
My Commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

## **EXHIBIT A - THE "PROPERTY"**

ALL THAT TRACT OF LAND LOCATED IN THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 31, TOWNSHIP 50 NORTH, RANGE 9 EAST OF THE NEW MEXICO PRINCIPAL MERIDIAN, CHAFFEE COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBES AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF DUPLEX 4-A, BOUNDARY LINE ADJUSTMENT AND REPLAT OF COCHETOPA ESTATES, AS RECORDED AT RECEPTION NO. 309631 IN THE OFFICE OF THE CHAFFEE COUNTY CLERK & RECORDER, MARKED BY A 1 1/2" ALUMINUM CAP STAMPED LS 16117, FROM WHENCE A 2 1/2" ALUMINUM CAP STAMPED "RM", LS 16117 BEARS SOUTH 86°38'21" WEST, A DISTANCE OF 13.80 FEET;

THENCE SOUTH 01°25'11" WEST, A DISTANCE OF 82.16 FEET TO THE NORTHERLY RIGHT-OF-WAY OF CHAFFEE COUNTY ROAD NO. 140;

THENCE NORTH 88°35'30" WEST ALONG SAID CHAFFEE COUNTY ROAD NO. 140, A DISTANCE OF 777.08 FEET;

THENCE CONTINUING ALONG SAID NORTHERLY BOUNDARY OF CHAFFEE COUNTY ROAD NO. 140 NORTH 88°34'33" WEST, A DISTANCE OF 497.11 FEET;

THENCE NORTH 00°58'40" EAST, A DISTANCE OF 80.87 FEET TO THE SOUTHWEST CORNER OF THE PROPERTY DESCRIBED IN BOOK 379 AT PAGE 269 IN THE OFFICE OF THE CHAFFEE COUNTY CLERK & RECORDER AND THE NORTHERLY RIGHT-OF-WAY OF SAID CHAFFEE COUNTY ROAD NO. 140, MARKED BY A 1" ALUMINUM CAP STAMPED LS 1776;

THENCE SOUTH 88°38'54" EAST ALONG SAID NORTHERLY RIGHT-OF-WAY OF CHAFFEE COUNTY ROAD NO. 140, A DISTANCE OF 185.05 FEET TO THE SOUTHEAST CORNER OF SAID PROPERTY DESCRIBED IN BOOK 379 AT PAGE 269;

THENCE NORTH 00°52'55" EAST, A DISTANCE OF 220.83 FEET TO THE NORTHEAST CORNER OF SAID PROPERTY DESCRIBED IN BOOK 379 AT PAGE 269;

THENCE NORTH 88°32'00" WEST, A DISTANCE OF 184.68 FEET TO THE NORTHWEST CORNER OF SAID PROPERTY DESCRIBED IN BOOK 379 AT PAGE 269 AND ON THE EASTERN RIGHT-OF-WAY OF CHAFFEE COUNTY ROAD NO. 141;

THENCE NORTH 00°58'40" EAST ALONG SAID EASTERN RIGHT-OF-WAY OF CHAFFEE COUNTY ROAD NO. 141, A DISTANCE OF 124.84 FEET TO THE SOUTHERLY RIGHT-OF-WAY OF SAID CHAFFEE COUNTY ROAD NO. 141;

THENCE SOUTH 88°31'21" EAST ALONG SAID SOUTHERLY RIGHT-OF-WAY OF SAID CHAFFEE COUNTY ROAD NO. 141, A DISTANCE OF 801.81 FEET TO THE NORTHWEST CORNER OF LOT 1, 141 ANNEX MINOR SUBDIVISION AS RECORDED AT RECEPTION NO. 447958 IN THE OFFICE OF THE CHAFFEE COUNTY CLERK & RECORDER;

THENCE SOUTH 01°29'04" WEST, A DISTANCE OF 333.01 FEET TO THE SOUTHWEST CORNER OF THE PROPERTY DESCRIBED AT RECEPTION NO. 279296 IN THE OFFICE OF THE CHAFFEE COUNTY CLERK & RECORDER AND A POINT ON SAID

NORTHERLY RIGHT-OF-WAY OF CHAFFEE COUNTY ROAD NO. 140; THENCE SOUTH  $88^{\circ}30'29''$  EAST ALONG SAID NORTHERLY RIGHT-OF-WAY OF CHAFFEE COUNTY ROAD NO. 140, A DISTANCE OF 416.06 FEET, TO THE SOUTHEAST CORNER OF THE PROPERTY DESCRIBED AT RECEPTION NO. 389150 IN THE OFFICE OF THE CHAFFEE COUNTY CLERK & RECORDER;  
 THENCE SOUTH  $78^{\circ}51'30''$  EAST, A DISTANCE OF 60.86 TO THE POINT OF BEGINNING.  
 CONTAINING 7.90 ACRES, MORE OR LESS

