



REQUEST FOR CITY COUNCIL ACTION

Meeting Date: September 7, 2021

AGENDA ITEM NO. Consent Agenda	ORIGINATING DEPARTMENT: Administration	PRESENTED BY: Drew Nelson
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ITEM:

Conditional License Agreement – Salida Public Schools – Cross-Country Race at Vandaveer Ranch

BACKGROUND:

Historically, the Salida School District has held a cross-country race on the Vandaveer Ranch property in the fall. In order to hold the race on the property, the City and School District must enter into a Conditional License Agreement to allow the race to occur and to secure insurance to protect the City of Salida from any claims that may arise from the use of the property. A copy of the certificate of liability insurance is accompanied with a copy of the Conditional License Agreement.

FISCAL NOTE:

None

STAFF RECOMMENDATION:

Staff recommends approval of the Conditional License Agreement, to be signed by the Mayor, to allow the Salida Public School District R-32J to hold a cross country race on the Vandaveer Ranch property on October 2, 2021.

SUGGESTED MOTIONS:

A City Councilperson should make a motion to combine and approve the items on the consent agenda, followed by a second and a voice vote.

REVOCABLE LICENSE AGREEMENT

THIS REVOCABLE LICENSE AGREEMENT (hereinafter “Agreement”) is made and entered into this 7th day of September, 2021, by and between the City of Salida, Colorado, Colorado a municipal corporation (hereinafter “City”) and Salida School District R-32J (“Licensee”), together referred to herein as “Parties;

WITNESSETH:

WHEREAS, the City holds in the public trust all streets, rights-of-ways, parks, public lands and open space which it owns and which is dedicated to the public use, including Vandaveer Ranch, located within the City of Salida; and

WHEREAS, Licensee is the local school district; and

WHEREAS, the City has recently acquired Parcels B, C, E, F2 and F3 (encompassing approximately 95 acres) of the former Vandaveer Ranch (the “Licensed Premises”), of which the Licensee has leased from prior owners in the past; and

WHEREAS, Licensee desires to obtain a revocable and non-exclusive license from the City to use and occupy a portion of the Vandaveer Ranch property, shown in Exhibit A, solely to provide a cross-country running race on October 2, 2021; and

WHEREAS, the City is willing to grant Licensee a revocable license for such limited purpose upon the Licensed Property, upon the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the payment to the City by the Licensee of ten dollars (\$10) and other good and valuable consideration, the delivery and receipt and acceptance of which are hereby acknowledged and confessed, the City and Licensee agree as follows:

1. Licensed Premises. The City hereby grants to Licensee a revocable and non-exclusive license to occupy, use, and maintain, subject to all of the terms and conditions of this Agreement, the following described Licensed Premises: that portion of Vandaveer Ranch encompassing 95 acres, referred to as Parcels B, C, E, F2 and F3, as more particularly shown in Exhibit A, attached hereto and incorporated herein by reference.

2. Term. The term of the license shall be starting from the date of approval of this Agreement until November 1, 2021. The agreement will not be renewed and is only for the limited purposes of the cross-country race. The Licensee agrees to pay for any cost to install, maintain and use the Licensed Premises, in consideration for its use of the Premises. Either party may terminate this Agreement upon thirty (30) days written notice with or without cause. Notwithstanding the foregoing, the City may revoke the License at any time without notice should Licensee violate or breach any terms or conditions of this Agreement.

3. Purpose and Conduct of Use. The Premises may be occupied and used by Licensee during the term of this Agreement for the sole purpose of the cross-country race at the Licensed

Premises. Except as specifically allowed by this Agreement, Licensee shall not place, build, expand, or add any other structures, improvements, or items on the Licensed Premises. In its use and occupancy of the Premises, Licensee shall strictly comply with the following standards and requirements:

- (a) The City shall be able to access the Licensed Premises at any time the City deems necessary or desirable.
- (b) No additional structures, improvements or items shall be installed on the Premises other than what is necessary to hold the race within the Premises.
- (c) Licensee shall not place or permit any hazardous materials in or about the Premises.
- (d) Licensee shall at its sole expense promptly remove from the Premises and any adjacent areas all debris and trash generated by its operation and maintenance of the Premises.
- (e) Licensee shall be responsible for maintaining the Premises in the manner and state in which Licensee found the Premises, and for returning the Premises to the manner and state in which it found the Premises at the effective date of this Agreement.
- (f) Licensee agrees to maintain all improvements upon the Premises in good repair and safe condition. All repairs shall be made at Licensee's sole expense, and the City shall have no monetary obligation whatsoever to maintain the Premises, all which shall be maintained solely at Licensee's expense. Licensee shall maintain the Premises reasonably free from unsightly debris or accumulations of trash or other items in compliance with the standards set by the City ordinances.
- (g) Upon termination of this License for any reason, Licensee shall remove any and all improvements made to the Premises at Licensee's sole expense.
- (h) Licensee's use of the Premises shall always and continuously be in compliance with all applicable federal, state and local rules and regulations, including but not limited to those contained in the Municipal Code of the City of Salida.

4. General Use and Care of Premises. Licensee agrees to take such actions as are necessary to maintain the improvements and Premises in good and safe condition at all times. Licensee further agrees to comply at all times with the ordinances, resolutions, rules, and regulations of the City in Licensee's use and occupancy of the Premises.

5. No Estate in Premises. Licensee agrees that it does not have or claim, and shall not at any time in the future have or claim, any ownership interest or estate in the Premises, or any other interest in real property included in the Premises, by virtue of this Agreement or by virtue of Licensee's occupancy or use of the Premises

6. Compliance. If Licensee fails to comply with its obligations under this Agreement, the City may at its sole option terminate this Agreement as provided herein or take such measures as it determines necessary to bring the Premises into compliance with the terms hereof, and the cost of any such measures shall be paid by Licensee.

7. Acknowledgment of General Condition. Licensee acknowledges that its use and occupancy hereunder is of the Premises in its present, as-is condition with all faults, whether patent or latent, and without warranties or covenants, express or implied. Licensee acknowledges the

City shall have no obligation to repair, replace, or improve any portion of the Premises in order to make such Premises suitable for Licensee's intended uses.

8. Acknowledgment and Acceptance of Specific Matters. Licensee specifically acknowledges that the Premises may not currently meet standards under federal, state or local law for Licensee's intended use, including but not limited to accessibility standards under the Americans with Disabilities Act and Uniform Building Code and adopted and in force in the City of Salida. Compliance with such standards, if required for Licensee's use, shall be at the sole cost and expense of Licensee. If Licensee determines that compliance with such standards for Licensee's use is not feasible or economical, then Licensee may terminate this Agreement and the parties shall be released from any further obligations hereunder.

9. Taxes. The Premises are presently exempt from any real property taxation. In the event the County Assessor determines that the Premises is subject to the lien of general property taxes due to Licensee's use or occupancy, Licensee shall be responsible for the payment of taxes.

10. Liens. Licensee shall be solely responsible for and shall promptly pay for all services, labor or materials furnished to the Premises at the instance of Licensee. The City may at Licensee's expense discharge any liens or claims arising from the same.

11. Licensee and City's Property. The City shall have no responsibility, liability, or obligation with respect to the safety or security of any personal property of Licensee placed or located on, at, or in the Premises, it being acknowledged and understood by Licensee that the safety and security of any such property is the sole responsibility and risk of Licensee.

12. Right of Entry. Notwithstanding any other provisions of this Agreement to the contrary, the City shall at all times have the right to enter the Premises to inspect, improve, maintain, alter or utilize the Premises in any manner authorized to the City. If such entry requires disturbance of any items placed upon the Premises under this Agreement, the City shall not be required to repair or replace any such disturbance. In the exercise of its rights pursuant to this Agreement, Licensee shall avoid any damage or interference with any City installations, structures, utilities, or improvements on, under, or adjacent to the Premises.

13. Indemnity and Release. Licensee shall be solely responsible for any damages suffered by the City or others as a result of Licensee's use and occupancy of the Premises. Licensee agrees to indemnify and hold harmless the City, its elected and appointed officers, agents, employees and insurers harmless from and against all liability, claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of, resulting from, or in any way connected with (a) Licensee's use and occupancy of the Premises; (b) the conduct of Licensee's operations or activities on the Premises; (c) any liens or other claims made, asserted or recorded against the Premises as a result of Licensee's use or occupancy thereof; and (d) the rights and obligations of Licensee under this Agreement. Licensee hereby further expressly releases and discharges the City, its elected and appointed officers, agents, employees, and insurers, from any and all liabilities for any loss, injury, death, or damages or any person or property that may be sustained by reason of the use or occupancy of the Premises under this Agreement, excepting only those arising solely from willful and wanton conduct of the City's officers or employees.

14. Insurance. Licensee shall at its expense obtain, carry, and maintain at all times, and shall require each contractor or subcontractor of Licensee performing work on the Premises to

obtain, carry, and maintain, a policy of comprehensive general liability insurance insuring the City and Licensee against any liability arising out of or in connection with Licensee's use, occupancy or maintenance of the Premises or the condition thereof. The City, its elected and appointed officers, agents and employees shall be named as additional insureds on such policies. The policies required above shall be primary insurance, and any insurance carried by the City shall be excess and not contributory insurance. Such policies shall contain a severability of interests provision. Licensee shall be solely responsible for any deductible losses under each of the policies required above. A certificate of insurance shall be completed by Licensee's insurance agent(s) as evidence that a policy or policies providing the coverages, conditions, and minimum limits required herein are in full force and effect, and shall be subject to review and approval by the City prior to commencement of Licensee's occupancy of the Premises, or whenever City requests such evidence. As between the parties hereto, the limits of such insurance shall not limit the liability of Licensee. No required coverage shall be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to the City. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto. Failure on the part of Licensee to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach hereof upon which the City may immediately terminate this Agreement.

15. No Waiver of Immunity or Impairment of Other Obligations. The City is relying on and does not waive or intend to waive by any provision of this Agreement the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. §24-10-101 *et seq.*, as from time to time amended, or otherwise available to the City, and its officers and employees.

16. Restoration of Premises. At the termination of this Agreement by lapse of time or otherwise, Licensee shall deliver up the Premises in as good a condition as when Licensee took possession, excepting only ordinary wear and tear. At the time of such termination, Licensee at its sole expense shall remove from the Premises all improvements and other items placed on the Premises. If any such improvements or items are not removed at the termination of this Agreement, the City may remove them at Licensee's sole expense, and Licensee shall reimburse the City for all costs incurred, including but not limited to staff time and administrative overhead, within 15 days of receipt of a City invoice for same.

17. Notices. Any notices or communication required or permitted hereunder shall be given in writing and shall be personally delivered, or sent by facsimile transmission or by United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

City:

City of Salida
Attn: City Administrator
448 E 1st Street
Salida, CO 81201

LICENSEE:

Salida School District R-32J
Attn: Athletics Director
349 E. 9th Street
Salida, CO 81201

or to such other address or the attention of such other person(s) as hereafter designated in writing by the parties. Notices given in the manner described above shall be effective, respectively, upon personal delivery, upon facsimile receipt, or upon mailing.

18. Existing Rights. Licensee understands that the license granted hereunder is granted subject to prior franchise agreements and subject to all easements and other interests of record applicable to the Premises. Licensee shall be solely responsible for coordinating its activities hereunder with the holders of such franchise agreements or of such easements or other interests of record, and for obtaining any required permission for such activities from such holders if required by the terms of such franchises or easements or other interests.

19. No Waiver. Waiver by the City of any breach of any term of this Agreement shall not be deemed a waiver of any subsequent breach of the same or any other term or provision thereof.

20. Agreement Personal. This Agreement is personal to the parties hereto. Licensee shall not transfer or assign any rights hereunder without the prior written approval of the City, which approval shall be at the City's sole option and discretion.

21. Entire Agreement; Authority. This Agreement is the entire agreement between the City and Licensee and may be amended only by written instrument subsequently executed by the City and Licensee. The undersigned signatory of Licensee represents that he or she has been duly authorized to execute this Agreement on behalf of Licensee and has full power and authority to bind Licensee to the terms and conditions hereof.

22. Survival. All of the terms and conditions of this Agreement concerning release, indemnification, termination, remedies and enforcement shall survive termination of this Agreement.

23. No Third Party Beneficiaries. The Parties expressly agree that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties. The Parties expressly intend that any person other than the Parties who receives services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date first above written.

CITY OF SALIDA, COLORADO

By:

P.T. Wood, Mayor

ATTEST:

City Clerk/Deputy City Clerk

LICENSEE

By: Salida School District R-32J

STATE OF COLORADO)
) ss.
COUNTY OF _____)

Acknowledged, subscribed and sworn to before me this ____ day of _____, 2021, by _____.

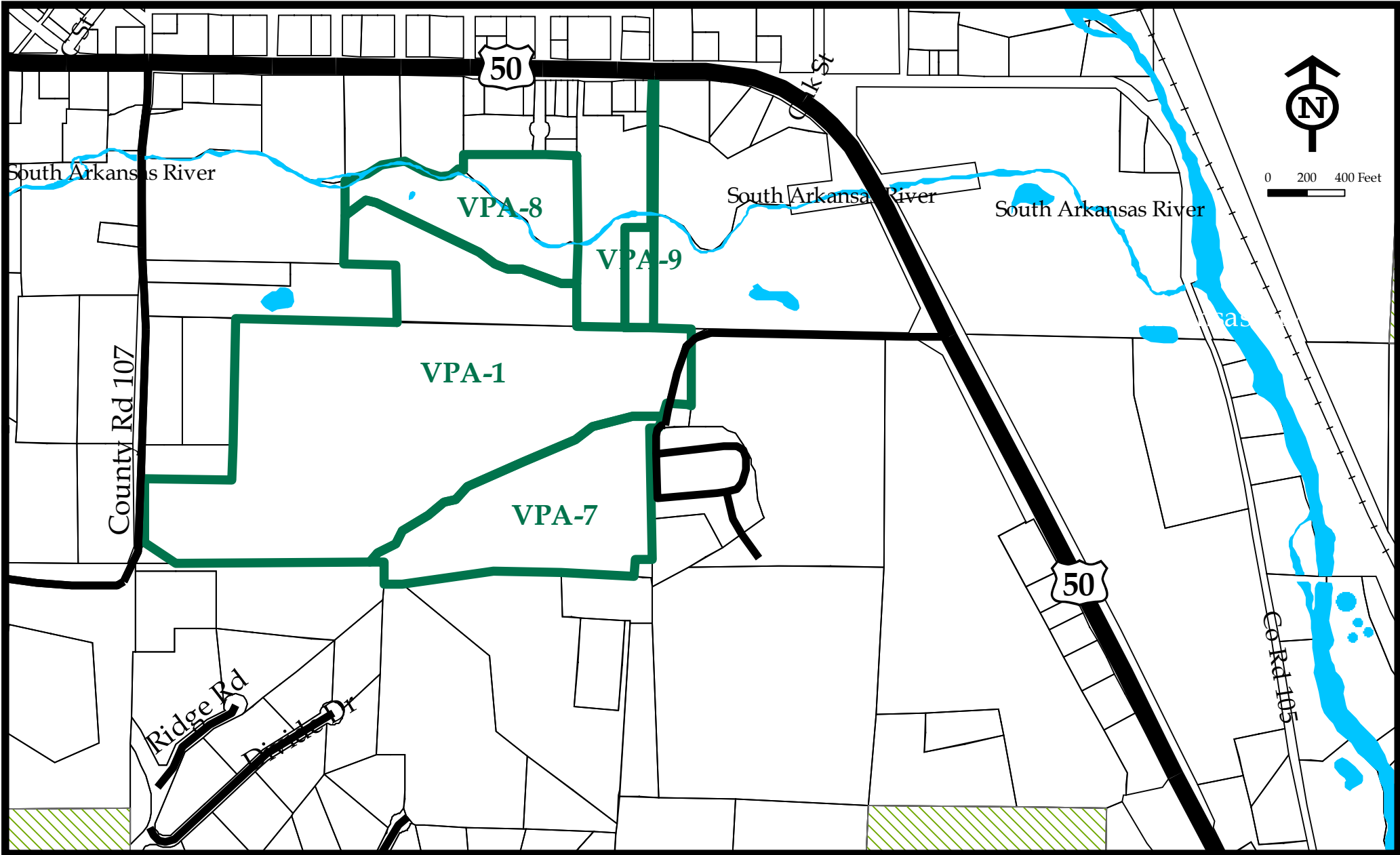
WITNESS my hand and official seal.

My Commission expires: _____.

Notary Public (SEAL)


List of Exhibits:

Exhibit A: Description and Depiction of Licensed Premises



Vandaveer Ranch Planned Development District
 2011 Amendment to the Overall Development Plan
 City of Salida, Colorado

Exhibit A
Vandaveer Ranch Lease Area

 Lease Areas