



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Administration	Christy Doon - City Administrator	March 4, 2025

AGENDA ITEM

Consent Agenda – Memorandum of Understanding between the City of Salida and Colorado Mountain College Concerning Compensation and Development in the South Ark Neighborhood.

BACKGROUND

The South Ark Neighborhood completed amendments to the Original Development Plan in 2023. During that process, the City met with various stakeholders to determine their needs as well as partnership opportunities. Colorado Mountain College has been working to identify housing options for both students and staff. The South Ark Neighborhood is a prime area for their potential housing expansion.

The City is in a position to deed to CMC approximately 1.5 acres of land to be used for housing for students and staff. CMC is providing much needed funding to be used for site design and construction of Phase 1. The attached MOU outlines the agreement between CMC and the City of Salida.

The CMC Board approved the agreement in concept at an earlier meeting. The technical aspects of the agreement have been finalized and it is ready for final approval.

STAFF RECOMMENDATION

Staff recommends Council approve the MOU.

FISCAL IMPACT

Colorado Mountain College will provide the City \$1,000,000 towards the design and construction of Phase I infrastructure. These payments shall be made in two tranches - \$250,000 on or before July 1, 2025 and \$750,000 on or before July 1, 2026.

MOTION

A City Councilmember should state “I move to combine and approve the items on the Consent Agenda”, followed by a second and a roll call vote.

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made effective the ____ day of _____, 2025, between the CITY OF SALIDA, a Colorado statutory municipal corporation (the “City”), and COLORADO MOUNTAIN COLLEGE, a local college district (“CMC”), (collectively the “Parties”).

RECITALS

WHEREAS, the City and CMC recognize that there is a severe shortage of affordable housing for eligible students enrolled at CMC and eligible employees of CMC; and

WHEREAS, the City and CMC believe that working together along with other community partners and through other available funding sources, that they can collectively create affordable housing for a portion of eligible students enrolled at CMC and eligible employees of CMC; and

WHEREAS, subject to the terms and conditions set forth in this MOU, the City is committed to designing and constructing certain Phase I infrastructure consisting of certain major public utility infrastructure within the South Ark Neighborhood (the “Phase I Utility Infrastructure”) so that CMC can subsequently construct affordable housing for a portion of eligible students enrolled at CMC and eligible employees of CMC within a portion of the South Ark Neighborhood; and

WHEREAS, subject to the terms and conditions set forth in this MOU, CMC is willing to contribute One Million Dollars and 00/100 (\$1,000,000.00) to the City to assist the City in constructing the Phase I Utility Infrastructure; and

WHEREAS, the City and CMC wish to enter into this MOU to memorialize the Parties’ collaborative relationship and understanding with respect to the aforementioned design and construction of the Phase I Utility Infrastructure and the related financial commitment, and to clarify the duties and obligations of each Party both in connection with such design and construction and the related financial commitment, and also with respect to a subsequent land transfer by the City to CMC and CMC’s related construction obligations with respect to such conveyance.

NOW, THEREFORE, the Parties set forth and memorialize their mutual understandings as follows:

1. Purpose and General Description. The purpose of this MOU is to (a) detail the City’s commitment to designing and constructing the Phase I Utility Infrastructure in the South Ark Neighborhood; (b) confirm CMC’s obligation to contribute One Million Dollars and 00/100 (\$1,000,000.00) to the City for purposes of partially subsidizing the City’s design and construction of the Phase I Utility Infrastructure in the South Ark Neighborhood; (c) approve the City’s conveyance of approximately 1.5 acres of land to CMC, as generally depicted on Exhibit A attached hereto (the “Land”), for certain defined construction by CMC within the South Ark

Neighborhood; and (d) describe CMC's construction obligations on the Land conveyed to it by the City.

2. Term. This MOU shall remain in effect from the date first set forth above until it is terminated by mutual written agreement of the Parties or as otherwise set forth herein.

3. Specific Obligations. The Parties have agreed to the following obligations and responsibilities under this MOU:

A. The City shall:

i. Subject to receipt of all necessary funds, design and construct the Phase I Utility Infrastructure in the South Ark Neighborhood, including water and sewer lines, major utilities, and public roads. It is anticipated that the City's design and construction of the Phase I Utility Infrastructure in the South Ark Neighborhood will be complete mid-year 2026; and

ii. Following acceptance of the constructed Phase I Utility Infrastructure in the South Ark Neighborhood and recordation of the associated Plat for such Phase I Utility Infrastructure in the South Ark Neighborhood, which is anticipated to occur on or before December 31, 2026, the City will convey the Land, including access to such utilities at no additional cost to CMC for certain defined construction by CMC within the South Ark Neighborhood as further detailed in Section 3(B)(iii), below. Notwithstanding the foregoing and for the avoidance of doubt, the City and CMC acknowledge and agree that CMC shall be responsible for paying system development fees and/or connection charges that are associated with the utilities.

B. CMC shall:

i. Pay to the City Two Hundred Fifty Thousand Dollars and 00/100 (\$250,000.00) on or before July 1, 2025, as a portion of the funds required for the Phase I Utility Infrastructure design;

ii. Pay to the City Seven Hundred Fifty Thousand Dollars and 00/100 (\$750,000.00) on or before July 1, 2026, as a portion of the funds required for the Phase I Utility Infrastructure construction; subject, however, to the award of the Phase I Utility Infrastructure contract by the City; and

iii. Within ten (10) years following the City's conveyance of the Land to CMC, CMC shall begin construction of affordable housing units designed to maximize the use of the conveyed Land for affordable housing while taking into consideration the college's and community's needs, which shall be for the exclusive use of eligible students enrolled at CMC and eligible employees of CMC and permanently deed restricted as such, together with such other mixed use concepts as may be approved by the City.

iv. CMC shall comply with the provisions of C.R.S. 23-71-122(1)(v) as it may be amended from time to time with respect to consulting with the City prior to development of the Land and construction of affordable housing on the Land in order to ensure that the proposed construction conforms to the adopted plan of the Vandever Ranch Planned Development as set forth in Ordinance 2023-16 insofar as feasible. In the event of any ambiguity or conflict between this MOU and Section 23-71-122(1)(v)(I), C.R.S., which cannot be resolved by reasonable good faith mutual agreement, the statute shall control.

C. If the City does not complete the design and construction of the Phase I Utility Infrastructure in the South Ark Neighborhood as detailed in Section 3(A)(i) above on or before December 31, 2027, then (i) the City shall review funding needs with CMC to identify other options or a revised schedule or (ii) upon and within 90 days of CMC's request, return to CMC any amounts CMC paid to the City under either Section 3(B)(i) or Section 3(B)(ii), above, whereupon this MOU shall be deemed terminated.

D. If CMC does not Initiate the Construction detailed in Section 3(B)(iii) above within ten (10) years following the City's conveyance of the Land to CMC, then CMC shall (i) work with the City to establish a revised timeframe for construction or (ii) sell the Land to the City or another public entity in Chaffee County should the City choose not to purchase the Land. Should Section 3(D)(ii) apply, CMC shall notify the City in writing of its intention to sell the Land for CMC's contribution amount of \$1 million plus inflation. Thereafter, the City shall have a period of ninety (90) days following receipt of such notice from CMC to elect to purchase the Land for CMC's contribution amount of \$1 million plus inflation (the "Right of First Refusal"). In the event the City elects to exercise its Right of First Refusal, the City must do so by notifying CMC of such election within such ninety (90) day period. Inflation shall be determined by the Consumer Price Index for All Urban Consumers (CPI-U), Denver-Aurora-Lakewood area, from the date of the \$1 million CMC contribution to the date of the City's exercise of its Right of First Refusal. Following any such sale of the Land to the City or to any other public entity by CMC this MOU shall be deemed terminated; provided, however, should any public entity purchase the Land it can only develop or use such Land in accordance with applicable law. "Initiate the Construction" means the obtaining of a building permit by CMC for the construction of affordable housing units designed to maximize the conveyed Land while taking into consideration the college's and community's needs together with such other mixed use concepts as may be approved by the City, which residential units will be permanently deed restricted for the exclusive use of eligible students enrolled at CMC and eligible employees of CMC, in a form approved by the City Attorney.

4. Default and Remedies.

A. CMC Default. If the City alleges that CMC is in default under this MOU and CMC does not cure such default within thirty (30) days following written notice

from the City, the City shall be entitled to the following remedies, which shall be cumulative to any other remedies set forth in this MOU: (i) injunctive relief; (ii) specific performance; (iii) withholding action on any pending applications or approval of plans, building permits or certificates of occupancy, to the extent such applications and/or approvals relate to CMC's alleged default; and (iv) any other remedies permitted under the Municipal Code of the City of Salida (the "Code"), or otherwise set forth in this MOU, or available at law or in equity. The City shall extend the cure period if the nature of the default is such that it cannot reasonably be remedied within thirty (30) days, provided CMC commences the corrective action within thirty (30) days and diligently pursues such correction thereafter.

B. City Default. If CMC alleges that the City is in default under this MOU and the City does not cure such default within thirty (30) days following written notice from CMC, CMC shall be entitled to the following remedies which shall be cumulative to any other remedies set forth in this MOU: (i) injunctive relief; (ii) specific performance; and (iii) any other remedies permitted under the Code, or otherwise set forth in this MOU, or available at law or in equity. CMC shall extend the cure period if the nature of the default is such that it cannot reasonably be remedied within thirty (30) days, provided the City commences the corrective action within thirty (30) days and diligently pursues such correction thereafter.

C. Additional Remedies. In addition to any other remedy allowed by law or in equity, in the event of default by CMC with respect to any provision of this MOU, the City may refuse to further process any site development or building permit application for property owned, in whole or in part, by CMC until such time as the default is cured or another mutually agreeable resolution is reached. Except as otherwise expressly provided in this MOU, neither Party shall be entitled to claim or receive any form of damages from the other, whether remedial, compensatory, punitive, or consequential, including economic damages and lost profits.

5. Legal Agreements. Any legal agreements entered into under or pursuant to this MOU must be approved, as to form, by the City Attorney, before execution.

6. Notice. Any notice or communication required or permitted hereunder shall be given in writing and shall be personally delivered, or sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed as follows:

City:
City of Salida
Attn: City Administrator
448 E. First Street, Suite 112
Salida, CO 81201

With a copy to:
Nina P. Williams, Esq.
Wilson Williams Fellman Dittman

CMC:
Colorado Mountain College
Matt Gianneschi
President
802 Grand Avenue
Glenwood Springs, CO 81601

With a copy to:
Lucia Padilla

1314 Main Street, Suite 101
Louisville, CO 80027

General Counsel
802 Grand Avenue
Glenwood Springs, CO 81601

or to such other address or person as either Party shall have previously designated by written notice given to the other Party in the manner hereinabove set forth. Notices given hereunder shall be deemed given, in the case of personal delivery, on the date delivered, and in the case of delivery by certified mail, on the third (3rd) business day after delivery to the United States Postal Service.

7. No Third-Party Beneficiaries. None of the provisions in this MOU shall give or allow any claim, benefit, or right of action by any person or entity other than the Parties.

8. No Personal Liability of Elected Officials and Officers. No individual who is either a director, councilperson, and/or officer of the City or trustee of CMC shall be subject to personal liability to any person or entity in connection with the performance or non-performance of the obligations and responsibilities of the City or CMC hereunder.

9. Recordation. All provisions in this MOU, including the benefits, burdens and covenants, are intended to run with the Land and shall be binding upon and inure to the benefit of the respective successors and permitted assigns of the Parties hereto. The City shall record this MOU in the official records of the County of Chaffee, State of Colorado.

10. Governing Law. This MOU, and the terms, conditions and covenants herein contained, shall be deemed to complement and shall be in addition to the conditions and requirements of the Code and other applicable laws, rules and regulations. This MOU shall be construed pursuant to the laws of the State of Colorado. Jurisdiction and venue for any cause of action arising under this MOU shall be proper and exclusive in the Chaffee County District Court.

11. Governmental Immunity. No term or condition of this MOU shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*

12. Assignment. Neither Party may assign this MOU or any of its rights or obligations hereunder without the prior written consent of the other Party. This MOU shall be binding on and inure to the benefit of the Parties and their respective successors and permitted assigns.

13. Headings. The headings in this MOU are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

14. Severability. If any provision of this MOU is held invalid or unenforceable by a court with competent jurisdiction, the remainder of this MOU or the application of such provision to persons other than those as to who it is held invalid or unenforceable, shall not be affected and each provision of this MOU shall be valid and enforceable to the fullest extent permitted by law.

15. Attorney's Fees. In the event any Party commences an action to enforce its rights hereunder or to enjoin any violation of the terms and provisions of this MOU, the prevailing Party in such action shall be entitled to recover its reasonable attorneys' fees and other costs incurred in such action from the non-prevailing Party.

16. Entire Understanding. This MOU contains the entire understanding of the Parties and supersedes all verbal or prior written agreements, arrangements, and understandings of the Parties relating to the subject matter contained herein. The Parties further intend that this MOU constitutes the complete and exclusive statement of its terms, and that no extrinsic evidence may be introduced to reform this MOU in any judicial proceeding involving this MOU.

17. Modification/Waiver. This MOU may only be modified upon written agreement of the Parties, or their respective successors and permitted assigns. Any Party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this MOU or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that Party's right to assert or rely upon the terms and conditions of this MOU. Any express waiver of a term of this MOU shall not be binding and effective unless made in writing and properly executed by the waiving Party.

18. Appropriations. The Parties understand and acknowledge that the City is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this MOU. It is understood and agreed that this MOU does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this MOU to the contrary, all payment obligations of the City are expressly dependent and conditioned upon the continued availability of funds beyond the term of the City's current fiscal period ending upon the next succeeding December 31. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations and resolutions of the City, and other applicable law. Upon the failure to appropriate such funds, this MOU shall be terminated.

Notwithstanding anything contained in this MOU to the contrary, CMC's obligations under this MOU are expressly subject to an annual appropriation being made by CMC's elected governing board in an amount sufficient to allow CMC to perform its obligations under this MOU. If sufficient funds are not so appropriated this MOU may be terminated by either Party without penalty; provided, however, if this MOU is terminated pursuant to this provision, the Parties rights with respect to the Land if it has been conveyed to CMC shall be governed by Section 3(D)(ii) above, including the City's Right of First Refusal. CMC's obligations under this MOU do not constitute a general obligation indebtedness or multiple year direct or indirect debt or other financial obligation whatsoever within the meaning of the Constitution or laws of the State of Colorado.

19. Warranty of Authority. Each individual executing this MOU on behalf of the City and CMC represents and warrants that he or she is duly authorized to execute and deliver this MOU on behalf of the City or CMC, respectively, and that this MOU is binding upon the City and CMC.

20. Construction. Each Party has participated in the drafting of this MOU, which each Party acknowledges is the result of extensive negotiations between the Parties. Accordingly, the Parties agree that in the event an ambiguity or question of intent or interpretation arises, this MOU shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this MOU.

21. Counterparts. This MOU may be executed in one or more counterparts, each of which shall constitute an original, but all of which, when taken together shall constitute a single MOU.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this MOU to be effective as of the day and year first written above.

CITY OF SALIDA

ATTEST

By: _____
Dan Shore, Mayor

By: _____
Kristi Jefferson, City Clerk

STATE OF COLORADO)
) ss.
COUNTY OF CHAFFEE)

The foregoing instrument was subscribed to before me this _____ day of _____, 2025, by Dan Shore, as the Mayor of the City of Salida, Colorado.

Witness my hand and official seal.

Notary Public

My commission expires: _____

COLORADO MOUNTAIN COLLEGE

By: _____

Print Name: _____

Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF CHAFFEE)

The foregoing instrument was subscribed to before me this _____ day of _____, 2025, by _____ the _____ of _____ Colorado Mountain College.

Witness my hand and official seal.

Notary Public

My commission expires: _____

EXHIBIT A

The Land

See Attached

EXHIBIT A

General Depiction of the South Ark Neighborhood and Potential Improvements

The Land is Outline in Teal Below

