



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 Chaffee County 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. During meetings held with Chaffee County, the two governmental entities determined that the South Ark Neighborhood could be a location in which Chaffee County could fulfill its Proposition 123 commitment to provide additional affordable housing in the County.

With the creation of up to 400 new housing units, the road infrastructure, currently maintained by the County will be impacted. The City is proposing to take over responsibility for the necessary structural or geometric improvements to CR 104 and 107 which may be required by CDOT. The County 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 Board of County Commissioners is discussing the MOU at their March 5th work session and will vote on the agreement at their March 5th regular meeting.

STAFF RECOMMENDATION

Staff recommends Council approve the MOU and allow City and County staff to address any technical items that may arise after the BOCC meeting, which could constitute a change in the attached MOU.

FISCAL IMPACT

Chaffee County will provide the City \$1,000,000 towards the design and construction of Phase I infrastructure. At this time, 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 the COUNTY OF CHAFFEE, COLORADO (the “County”) (collectively the “Parties”).

RECITALS

WHEREAS, the City and County recognize that there is a severe shortage of affordable workforce housing for residents of the City and County; and

WHEREAS, the City is fostering the creation of a new affordable housing development south of US Highway 50 between County Roads 104 and 107, designated as the South Ark Neighborhood; and

WHEREAS, the City and County believe that working together along with other community partners and through other available funding sources, that they can collectively create or have created additional affordable workforce housing for a portion of the residents of the City and County; and

WHEREAS, subject to the terms and conditions set forth in this MOU, the City is committed to designing and constructing certain public utility infrastructure within the South Ark Neighborhood (the “Phase I Utility Infrastructure”) so that additional affordable workforce housing for a portion of the residents of the City and County can be constructed within the South Ark Neighborhood; and

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

WHEREAS, the City and County 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 certain subsequent road maintenance and the annexation of certain land by the City upon the occurrence of certain events.

NOW, THEREFORE, the Parties incorporate the above Recitals into this MOU and 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 the County’s agreement 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) detail certain City road maintenance obligations upon the occurrence of certain events; and (d) detail certain City annexation obligations upon the occurrence of certain events. The South Ark Neighborhood is generally described and depicted in Exhibit A to this MOU.

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. The City shall be responsible for necessary structural or geometric improvements to County Road 104 or 107 which may be required by the Colorado Department of Transportation (CDOT) for the development of the South Ark Neighborhood, including but not limited to widening, auxiliary/turn lanes, right of way acquisition, drainage, and intersection improvements at US Highway 50. 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;

ii. Once one hundred (100) residential units receive certificates of occupancy within the South Ark Neighborhood, the City will undertake certain road maintenance obligations for the portion of County Road 107 between US Highway 50 and County Road 108, as well as the portion of County Road 104 between US Highway 50 and the east entrance to the South Ark Neighborhood. The City's road maintenance obligations for the portions of the aforementioned roads shall be limited to snow plowing, asphalt resurfacing, striping, repairing potholes, and shouldering, each to be completed by the City in the City's commercially reasonable discretion;

iii. Upon the earlier of (a) two hundred (200) deed restricted residential units, in a form approved by the City Attorney, receiving certificates of occupancy within the South Ark Neighborhood, or (b) more than half of the individually constituted real property parcels with frontage along County Road 107 between US Highway 50 and County Road 108 having been annexed into the City as determined by the City, and then subject to the then constituted City Council's approval, the City will annex the portion of County Road 107 between US Highway 50 and County Road 108;

iv. Upon the earlier of (a) two hundred (200) deed restricted residential units, in a form approved by the City Attorney, receiving certificates of occupancy within the South Ark Neighborhood, (b) the adjacent real property north of County

Road 104 (currently owned by James and Diane Treat; Parcel Number 380704300035) being annexed into the City, or (c) the adjacent real property south of County Road 104 (currently owned by Bearcreek Partnership LLC; Parcel Number 380709200041) having received a certificate of occupancy for its first building thereon, and then subject to the then constituted City Council's approval, the City will proceed with annexing the portion of County Road 104 between US Highway 50 and the eastern entrance to the South Ark Neighborhood; and

v. The City shall enter into an infrastructure cost reimbursement agreement with the County in accordance with the Code for a proportionate share of the related public water and sewer utilities infrastructure installation costs when future off-site developments tie into the mains.

B. The County 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; and

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.

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 the County to identify other options or a revised schedule or (ii) upon the County's request, return to the County any amounts the County paid to the City under either Section 3(B)(i) or Section 3(B)(ii), above, whereupon this MOU shall be deemed terminated.

4. Default and Remedies.

A. County Default. If the County fails to meet its obligations under the terms of this MOU, the City shall provide written notice of such default. If the default is not remedied within thirty days from the date of written notice, 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; and (iii) 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 the County commences the corrective action within thirty (30) days and diligently pursues such correction thereafter.

B. City Default. If the City fails to meet its obligations under the terms of this MOU, the County shall provide written notice of such default. If the default is not remedied within thirty days from the date of written notice, the County 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 Codes, or otherwise set forth in this MOU, or available at law or in equity. The County 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. Limitation on Damages. Except as 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 and County 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

County:

Chaffee County, Colorado
Attn: County Administrator
PO Box 699
Salida, CO 81201

With a copy to:

Nina P. Williams, Esq.
Wilson Williams Fellman Dittman
1314 Main Street, Suite 101
Louisville, CO 80027

With a copy to:

County Attorney
PO Box 699,
Salida, CO 81201

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 County 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 County hereunder.

9. 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.

10. 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.*

11. Assignment. The County may not assign this MOU or any of its rights or obligations hereunder without the prior written consent of the City. This MOU shall be binding on and inure to the benefit of the Parties and their respective successors and permitted assigns.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. Appropriations. The Parties understand and acknowledge that both the City and County are 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 or County are expressly dependent and conditioned upon the continued availability of funds beyond the term of the City’s and/or County’s current fiscal period ending upon the next succeeding December 31. Financial obligations of the City and/or County 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 County, respectively, and other applicable law. Upon the failure to appropriate such funds, this MOU shall be terminated.

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

19. 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.

20. 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: _____

COUNTY OF CHAFFEE, COLORADO

ATTEST

By: _____
Chairman, Board of Commissioners

By: _____
Clerk/Deputy Clerk

STATE OF COLORADO)
) ss.
COUNTY OF CHAFFEE)

The foregoing instrument was subscribed to before me this _____ day of _____, 2025, by P.T. Wood the Chairman of the Chaffee County Board of Commissioners, County of Chaffee, Colorado.

Witness my hand and official seal.

Notary Public

My commission expires: _____

EXHIBIT A

The South Ark Neighborhood

See Attached

EXHIBIT A

General Depiction of the South Ark Neighborhood and Potential Improvements

