

**CITY OF SALIDA, COLORADO
RESOLUTION NO. 2016 - 97**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO,
DIVESTING THE MUNICIPALITY FROM THE SALIDA NATURAL RESOURCES
CENTER DEVELOPMENT CORPORATION:**

WHEREAS, the Office of the State Auditor (“OSA”) notified the City on July 19, 2016 that based on the OSA’s review of the City’s 2014 audited financial statements and further investigation, the OSA had determined that the City should report the SNRCDC as a component unit on future financial statements; and

WHEREAS, the City reported the SNRCDC as a blended component unit on the City’s certified Financial Statements for the 2015 fiscal year; and

WHEREAS, on October 18, 2016, the City Council via SNRCDC Financing Resolution 2016-81 “concluded that the existing SNRCDC financing form and mechanism does not comply with the TABOR debt limitation provisions in the Colorado Constitution that are applicable to the City and/or is inconsistent with the TABOR debt limitation provisions in the Colorado Constitution that are applicable to the City;” and

WHEREAS, on October 18, 2016, the City Council via SNRCDC Financing Resolution 2016-81 also “concluded that the existing SNRCDC financing form and mechanism presents the potential for unacceptable municipal exposure and/or other risks;” and

WHEREAS, on October 18, 2016, the City Council via SNRCDC Financing Resolution 2016-81 directed the City Attorney to “present the City’s good-faith compliance plan with respect to the SNRCDC’s existing financing to the SNRCDC and the State for implementation purposes on or before October 31, 2016;” and

WHEREAS, the City Attorney presented the City’s SNRCDC Compliance Plan to the State and the SNRCDC for implementation purposes on October 28, 2016; and

WHEREAS, on November 29, 2016, the City Council via SNRCDC Compliance Plan Resolution 2016-88 approved the City’s Final SNRCDC Compliance Plan; and

WHEREAS, the City Attorney presented the adopted Resolution 2016-88 and Final SNRCDC Compliance Plan to the State and the SNRCDC for implementation purposes on November 30, 2016 and requested confirmation that the SNRCDC would implement the adopted Final SNRCDC Compliance Plan pursuant to Resolution 2016-81 and 2016-88; and

WHEREAS, the current Board of Directors of the SNRCDC is unwilling to abide by Resolutions 2016-81 or 2016-88 or implement the Final SNRCDC Compliance Plan; and

WHEREAS, the original SNRCDC Bylaws provided in Section 3.2 that “[a]ny Director may be removed at any time by the Salida City Council;” and

WHEREAS, the SNRCDC Bylaws were amended in 2013 to strengthen City control over the SNRCDC Board and now provide in Section 3.2 that “[a]ny Director may be removed at any time by the Salida City Council with or without cause;” and

WHEREAS, the SNRCDC nevertheless sued the City in Chaffee County District Court on December 6, 2016 and obtained a Temporary Restraining Order precluding the City from removing the current Board of Directors (the “SNRCDC Litigation”); and

WHEREAS, the SNRCDC has set a hearing in the SNRCDC Litigation on December 20, 2016 to request a preliminary injunction precluding the City from removing the current Board of Directors; and

WHEREAS, the SNRCDC repeatedly has taken the position that it is an independent non-profit corporation; and

WHEREAS, the SNRCDC prepared a W-9 on or about August 29, 2013 identifying itself as an “S Corporation” to the lender; and

WHEREAS, the City is not a member, manager, shareholder or partner in the SNRCDC; and

WHEREAS, no City employees or elected officials currently serve as Officers or Directors of the SNRCDC; and

WHEREAS, the SNRCDC’s counsel took the position on May 26, 2016 that the SNRCDC and the City have different “legal interests;” and

WHEREAS, the SNRCDC’s President took the position on September 21, 2016 that “[i]t is the goal of this board to do whatever is best for the citizens who we believe are the true owners of the property;” and

WHEREAS, the SNRCDC’s President took the position on October 10, 2016 that “[a]s the NRCDC Board, we have a responsibility to do all we can to protect the asset for the citizens;” and

WHEREAS, the SNRCDC’s President took the position on October 11, 2016 that the “true owners” of the SNRCDC assets are “the citizens of Salida;” and

WHEREAS, the SNRCDC’s Treasurer took the position on October 11, 2016 that the SNRCDC is an “Enterprise” even though the City and the State do not recognize the SNRCDC as an “Enterprise” for financial reporting purposes or otherwise;

WHEREAS, the SNRCDC’s President took the position on October 24, 2016 that the City is “a third party outside our organization;” and

WHEREAS, on October 25, 2016, the SNRCDC's President took the position that the SNRCDC "is an independent corporation of the State of Colorado" with the right to control its own financial decisions and expenditures outside and irrespective of the City's annual budgeting process; and

WHEREAS, the SNRCDC's President took the position on November 13, 2016 that the SNRCDC would "determine a course of action that is best for the NRCDC, the Vandaveer property, and the citizens of Salida;" and

WHEREAS, the SNRCDC's Treasurer again took the position on November 22, 2016 that the SNRCDC is an "Enterprise" even though the City and the State do not recognize the SNRCDC as an "Enterprise" for financial reporting purposes or otherwise; and

WHEREAS, the SNRCDC's Treasurer took the position on November 22, 2016 that the positions of the Mayor or the majority of the City Council "are irrelevant;"

WHEREAS, the Mayor and City Council received a letter from hundreds of citizens asking the City to "respect the sovereignty of [the] NRCDC board;" and

WHEREAS, the SNRCDC's Articles of Incorporation provide that "[n]otwithstanding anything contained herein, the Corporation shall be an independent entity and not an agent of the City of Salida (except as may be expressly agreed to by the City of Salida in writing) and the Corporation shall have no authority to obligate or otherwise bind the City of Salida;" and

WHEREAS, the City has concluded that it is untenable and unacceptable from the City's perspective for the SNRCDC's Officers and Directors to claim fiduciary duties to parties other than the SNRCDC and the City while the SNRCDC is a blended component unit of or otherwise affiliated with the City; and

WHEREAS, the City has concluded that it is untenable and unacceptable from the City's perspective for the SNRCDC to interpret the interests of the citizens of Salida independently of the City's interests while the SNRCDC is a blended component unit of or otherwise affiliated with the City; and

WHEREAS, the City has concluded that it is untenable and unacceptable from the City's perspective for the SNRCDC to assert and pursue interests that otherwise diverge from the City's interests while the SNRCDC is a blended component unit of or otherwise affiliated with the City; and

WHEREAS, the City has concluded that it is untenable and unacceptable from the City's perspective for the SNRCDC to act in contravention of the City's direction while the SNRCDC is a blended component unit of or otherwise affiliated with the City; and

WHEREAS, the City has concluded that it is untenable and unacceptable from the City's perspective for the SNRCDC to refuse to implement the City's adopted Resolutions while the SNRCDC is a blended component unit of or otherwise affiliated with the City; and

WHEREAS, the City has concluded that it is untenable and unacceptable from the City's perspective for the City to be precluded from removing Directors from the SNRCDC Board pursuant to the SNRCDC's Bylaws while the SNRCDC is a blended component unit of or otherwise affiliated with the City; and

WHEREAS, the City has concluded that it is untenable and unacceptable from the City's perspective for the City or the SNRCDC to expend funds on the SNRCDC Litigation while the SNRCDC is a blended component unit of or otherwise affiliated with the City; and

WHEREAS, the City has concluded that it is untenable and unacceptable from the City's perspective for the SNRCDC to receive subsidies from or share services with the City if the SNRCDC is an independent private corporation; and

WHEREAS, the City has concluded that it is untenable and unacceptable and that it no longer desires to provide financial and property management services to the SNRCDC if the SNRCDC is an independent private corporation; and

WHEREAS, the City is unwilling to be responsible for or affiliated with the SNRCDC or responsible for or affiliated with any acts or omissions of the SNRCDC Board of Directors without adequate control over the SNRCDC's Board of Directors or if the SNRCDC is an independent private corporation; and

WHEREAS, the City is unwilling take responsibility for the SNRCDC as a blended component unit of the City for financial or tax reporting purposes without adequate control over the SNRCDC's Board and operations and/or if the SNRCDC is an independent private corporation; and

WHEREAS, the City is unwilling take responsibility for the SNRCDC as a blended component unit of the City for legal compliance purposes without adequate control over the SNRCDC's Board and operations and/or if the SNRCDC is an independent private corporation; and

WHEREAS, the City has determined that the SNRCDC's interpretation of its authority, duties and obligations and the SNRCDC Litigation has led to the potential for unworkable conflicts between the City and the SNRCDC; and

WHEREAS, the City has concluded that the best way to accomplish the City's goals of eliminating differing interests and conflicts between the SNRCDC and the City and to resolve the SNRCDC Litigation is to divest the City from any actual or effective control over the SNRCDC and to divest the City from the SNRCDC as a blended component unit or other affiliate of the City.

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

Section 1. The aforementioned Recitals, and the Recitals and Sections in Resolutions 2016-81 and 2016-88, are incorporated herein and adopted as findings and determinations of the City and the City Council.

Section 2. The City and the City Council hereby demand and acquiesce to the SNRCDC's alteration, amendment and repeal of any City prior consent or approval amendment rights currently outlined in the Tenth section of the SNRCDC's Articles of Incorporation, and otherwise disclaim and divest the City of any further City prior consent or approval amendment rights currently outlined in the Tenth section of the SNRCDC's Articles of Incorporation.

Section 3. The City and the City Council hereby demand and acquiesce to the SNRCDC's alteration, amendment and repeal of any City approval or removal rights with respect to the SNRCDC's Board of Directors currently outlined in Article III, Section 3.2 of the SNRCDC's Bylaws as amended, and otherwise disclaim and divest the City of any further City approval or removal rights with respect to the SNRCDC's Board of Directors currently outlined in Article III, Section 3.2 of the SNRCDC's Bylaws as amended.

Section 4. The City and the City Council hereby disclaim and divest the City of any further actual or effective City control of the SNRCDC entity effective immediately.

Section 5. The City and the City Council hereby disclaim and divest the City of any other affiliation with the SNRCDC for contracting, financial reporting, tax reporting or legal compliance purposes, including but not limited to any characterization of the SNRCDC as a blended or other component unit or enterprise of the City effective immediately.

Section 6. The City and the City Council hereby terminate the Maintenance Agreement between the City and the SNRCDC effective as of February 1, 2017.

Section 7. The City and the City Council hereby terminate the Development Agreement as amended between the City and the SNRCDC effective immediately. The City and the SNRCDC no longer agree on a proper Project scope given Resolutions 2016-81, 2016-88 and the SNRCDC Litigation. The City does not otherwise release or waive any City rights pursuant to the Development Agreement, including but not limited to any indemnity rights pursuant to the Development Agreement or rights reserved by the City in Ordinance 2011-14.

Section 8. The City and the City Council hereby direct the Deputy City Clerk to remove consideration of Resolutions 2016-93 and 2016-94 from the City Council Agenda for the City Council Meeting on December 20, 2016 or otherwise.

Section 9. The City and the City Council hereby direct the City Attorney to provide a copy of this Resolution to the State and Chaffee County District Court for reporting purposes.

Section 10. No Officer or other elected official of the City shall serve as an Officer or Board Director of the SNRCDC.

The Salida City Council approves the terms of this Resolution and authorizes the Mayor to execute Resolution No. 2016 - 97 on behalf of the City.

RESOLVED, APPROVED and ADOPTED this 19th day of December, 2016.



[SEAL]
ATTEST:

CITY OF SALIDA, COLORADO

By: *Jim LiVecchi*
Mayor, Jim LiVecchi

Betty Schwidger
City Clerk/Deputy City Clerk