

RESOLUTION NO. 2010-02-01

AUTHORIZING THE MAYOR TO EXECUTE THE ANNEXATION AND DEVELOPMENT AGREEMENT FOR THE SALUD ANNEXATION

WHEREAS, Plan De Salud Del Valle, Inc. d/b/a Salud Family Health Centers, holds in fee simple the certain real property located in Morgan County, Colorado, more accurately described in Exhibit "A" of the **Annexation and Development Agreement for the Salud Annexation**; and,

WHEREAS, Salud Family Health Centers has filed a **Petition for Annexation** to annex the property into the City of Fort Morgan; and,

WHEREAS, the City has found that the petition is substantially compliance with the laws of the State of Colorado and has found that the property is eligible for annexation into the City; and,

WHEREAS, the Parties have set forth the terms of their agreement in the **Annexation and Development Agreement for the Salud Annexation** (a copy of which is attached hereto and incorporated herein by this reference).

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORT MORGAN, COLORADO:

SECTION 1: The City Council hereby authorizes the Mayor to execute the **Annexation and Development Agreement for the Salud Annexation**.

INTRODUCED, PASSED, APPROVED AND ADOPTED this 2nd day of February 2010, the vote upon roll call being as follows:

Ayes: Mayor McAlister; Councilmembers Bryan, Deal, Forstedt, Nation, Powers and Shaver.

Nays: None.

Absent /Abstain:

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

[SEAL]

BY: *Samuel L. McElis*
Mayor

ATTEST:

Andrea Strand
Andrea Strand, City Clerk

STATE OF COLORADO)
COUNTY OF MORGAN) ss.
CITY OF FORT MORGAN)

CERTIFICATE

I, Andrea Strand, City Clerk of the City of Fort Morgan, Colorado, do hereby certify that the above and foregoing **Resolution** is a true, perfect and complete copy of the **Resolution** adopted by the City Council and is identical to the original thereof appearing in the official records of the City of Fort Morgan, Colorado, and that the same has not been, since its adoption, in any respect, rescinded or amended.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the City of Fort Morgan this 9th day of February, 2010.

Andrea Strand
Andrea Strand, City Clerk

**ANNEXATION AND DEVELOPMENT AGREEMENT
FOR THE SALUD ANNEXATION**

THIS ANNEXATION AND DEVELOPMENT AGREEMENT FOR THE SALUD ANNEXATION ("Agreement") is made and entered into this 2nd day of ~~January~~^{February}, 2010, by and between PLAN DE SALUD DEL VALLE, INC. d/b/a Salud Family Health Centers, a Colorado nonprofit corporation, hereinafter referred to as ("Owner"); and the CITY OF FORT MORGAN, COLORADO, a Colorado municipal corporation ("City"). The City and the Owner shall hereinafter be referred to collectively as "the Parties."

WITNESSETH:

WHEREAS, Owner holds in fee simple certain real property located in Morgan County, Colorado, legally described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, the Owner has petitioned the City that the Property be annexed into the City for varied density commercial uses ("Project"); and

WHEREAS, the City has found that the Owner's annexation petition is substantially compliant with laws of the State of Colorado and has found the Property eligible for annexation; and,

WHEREAS, the Property is located near jurisdictional limits of the City and the City desires for the Property to be annexed into the City; and

WHEREAS, the Parties therefore desire to set forth in this Agreement the terms and conditions related to the City Council's annexation of the Property.

NOW, THEREFORE, in consideration of the promises and covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which the parties hereto acknowledge the parties agree as follows:

1. **Effective Date and Term.** This Agreement shall become effective as of the date that this Agreement has been signed by the Parties. If on or before May 1, 2010, the Property has not been annexed and zoned by the City Council in accordance with the terms of this Agreement and in accordance with the terms of any future annexation agreement negotiated by the Parties, this Agreement shall thereupon terminate and will be null and void and the Parties shall be released from all further obligations under this Agreement, provided however, that the City Manager shall have the authority with the written consent of Owner to extend the term of this Agreement for a period of up to six (6) additional months (i.e. to November 1, 2010).

2. **Terms and Conditions of Annexation.** The Parties agree that the annexation of the Property shall be made in general accord with the following terms and conditions:

(a) *Zoning.* It is the intention and desire of the Parties that immediately after the Property is annexed by the City it shall be zoned B-1 (Business District). The intent of the zoning is to provide the authorized uses for the Project as a health care facility or clinic, professional and general offices and such other uses now or hereafter allowed under Zone B-1. It is also the intention and desire of the Parties that the concept plan substantially in the form of the Salud Business Park Site Plan Review, dated September 11, 2009 (Job No. 09-100.350) (the "Concept Plan") shall be considered by the Planning Commission through its site plan review authority, and as fully set forth by the Zoning and Land Use Code, as amended. Upon approval by the Planning Commission, the Concept Plan shall serve as the site specific development plan for the Property. The zoning of the Property shall be agreed upon contemporaneously with this Annexation Agreement. Any future material modification of the Concept Plan must be approved by the applicable approval process. Collectively, the approval of the zoning application and the Concept Plan are referred to herein as the "Zoning Approvals."

(b) *Timing of Development.* In recognition of the size of the Property, the time required to complete development, the need for development to proceed in phases the possible impact of economic conditions and economic cycles and varying market conditions during the course of development, the Owner in its sole discretion shall have the right to develop the Property in such order, at such rate and at such time as the market dictates within the structure of this Agreement.

(c) *Site Plan Review/Development Review Process.* The City's current Zoning and Land Use Code and Subdivision Regulations shall be incorporated herein by reference. The Owner shall have the right to rely on these documents as it moves forward with the development of the property.

(d) *Required Dedications/Improvements/Fees.* The Parties hereby agree that certain improvements shall be made to the Property in association with the annexation and development of the Property. Generally, the Owner shall be responsible for all costs and fees associated with the development of the Property including reasonable fees for services provided by the City and its Utility Enterprises. Specifically, the Owner shall be responsible for any financing cost and the cost to construct the following improvements in addition to the general requirements.

(i) Roads/Utilities.

(A) Owner shall provide for a maximum of two full ingress and egress access points to Lot 2 as depicted on the Concept Plan.

(B) If Lot 3 is to be developed prior to construction of Linda Street, Owner may be allowed one point of ingress and egress onto E. Railroad Avenue; provided, that the location of such access point shall be determined through the site plan review process. If, however, Linda Street is constructed prior to the development of Lot 3, then the City may consider the location of ingress and egress for Lot 3 onto Linda Street. Ingress and Egress points on Lot 3 shall be subject to traffic counts taken before its development to ensure that access meets the safety and traffic needs of the area. Owner may be allowed one point of ingress and egress for Lot 1 onto E. Railroad Avenue; provided, that the location of such access point shall be determined through the site plan review process. The City will also consider one additional access point for Lot 1 to Sherman Street at such time. Ingress and Egress points on Lot 1 shall be subject to traffic counts taken before its development to ensure that access meets the safety and traffic needs of the area. Owner shall dedicate a portion of the Property to be used for the 60' Linda Street ROW to be located along the east side of Lot 3 and west side of Outlot A as set forth on the Concept Plan. The ROW shall extend between the north and south boundary of the Property beginning at E. Railroad Avenue as shown on the Concept Plan. Owner shall be responsible for a payment equal to its proportionate share of costs related to the construction of this street. The proportionate share shall be based on the number of lineal feet of such road that is adjacent to Lot 3 as shown on the Concept Plan.

(C) Owner shall dedicate a 10' (ten foot) Sanitary Sewer easement adjacent to the north edge of the City's ROW for E. Railroad Avenue. The primary purpose of this easement is for the construction of a sanitary sewer system to be maintained by the City after acceptance by the City Engineer.

(D) Owner shall construct the sidewalk improvements required under this Agreement in material compliance with ADA requirements along E. Railroad Avenue and the future Linda Street ROW adjacent to Lot 3 for pedestrian access to the development. The sidewalks for each Lot will be completed as the development and building of the improvements on each particular Lot progresses such that Owner (or the current owner of a Lot) will not be required to construct the sidewalks along a Lot until after the improvements on such Lot have been started. The City may withhold a certificate of occupancy for the improvements on a Lot until the sidewalk along such Lot parallel to Railroad Avenue is completed. Under no circumstances shall the Owner fail to construct a sidewalk along East Railroad Avenue adjacent to Lot 2 after development on Lot 2 is completed.

(E) Owner shall construct a sanitary sewer main pipe line from the City's existing main pipe line to the west Lot 3 property line to service the Lots proposed in the Concept Plan. The size of the pipe shall be sufficient to serve the proposed development on the Property as reasonably determined by the City Engineer. Should the City determine in its discretion to install a larger pipe for future service needs of the City, to properties not included in this annexation, the City may, at its cost, pay or reimburse Owner (to the extent previously paid by Owner) for the difference in cost of materials between the size required for the Property and size it requests be constructed. Any such payment shall be made promptly upon completion of the work

(F) Subject to the City's requirements and at its sole expense Owner shall have the right to locate and install electric, gas, and water and appurtenances within the public right of ways adjacent to the Property and the City shall cooperate with Owner in connection with coordinating Owner's installation of such electric, gas and water improvements.

(ii) Parks/Open Space.

(A) The Parties agree that the City does hereby agree to waive the fee in lieu of park development.

(iii) Storm Drainage/Filling of Property.

(A) Owner shall establish and dedicate the land currently identified as Outlot A in the Concept Plan, for storm water discharge and a retention pond in a capacity adequate to properly drain the Property as reasonably approved by the City Engineer. Owner shall be responsible for construction and maintenance of the retention pond except that it may contract with the City to take over maintenance in a separate agreement that will be provided by the City upon approval of the Concept Plan.

(B) Owner shall construct all storm water conveyance facilities necessary to properly convey storm runoff from all portions of the Property to Outlot A. The City shall not be responsible for the construction of the storm water conveyance facilities which are designed and constructed for this purpose. The City shall only maintain the storm water drainage system to the extent that it accepts ownership of the line at the point it reaches the west Linda Street ROW line to the Retention Pond located in Outlot A.

(iv) Building Permit Fee.

(A) Owner shall pay all applicable building permit fees associated with any construction that is completed on the Property.

(v) Water and Wastewater System Development Fee and Water Rights Fee.

(A) Owner acknowledges the uniqueness of the City's water system and the regulations related to providing potable water to the City users. Owner shall purchase and transfer to the City all additional water rights in the form of Colorado Big Thompson ("C-BT") shares needed to meet any water usage that exceeds the allotment of water related to any tap purchased by the Owner for development on the Property. Such transfer shall be done no later than ninety (90) days after the building permit is issued by the City. Alternatively, Owner may also pay the City market value and a five percent (5%) administrative cost and the City will procure the C-BT units on behalf of the Owner.

(B) Owner shall pay all costs associated with the exclusion of the Property from the Morgan County Quality Water District ("Quality") of \$100.00 per acre as required under the 2001 intergovernmental agreement between the City and Quality prior to the second reading and approval of the annexation ordinance.

(C) Owner shall execute a JOINT STIPULATION FOR AN ORDER FOR EXCLUSION OF TERRITORY FROM THE DISTRICT to be filed under Civil Action NO. 13,282, Morgan County District Court. Execution of this stipulation shall be done prior to the second reading and approval of the annexation ordinance.

(e) Financial Information.

(i) The Parties recognize, given the size of the Property, that coordinated development of the Property will require the installation of major infrastructure improvements, many of which may be required to be installed in the early phases of development. The Parties agree that Owner shall be responsible for all financing of public improvements required under this Agreement.

(f) Vested Property Rights.

(i) This Annexation Agreement, the Zoning Approvals, and the matters identified in this Paragraph 2 (Terms and Conditions of Annexation), upon approval by the City, shall constitute site-specific development plans and shall be vested for a period of three (3) years after the date of this Annexation

Agreement all in accordance with Art. II of the *Zoning and Land Use Code*. The Parties acknowledge that the vested property rights contemplated herein are not intended to apply to any matters other than as specifically identified in this paragraph, nor to the City's building and fire codes or other similar technical codes, such as the technical standards for street design contained in the City's Engineering requirements.

3. **Municipal Services.** The City agrees to make available to the Property all of the usual municipal services provided by the City in accordance with the ordinances and policies of the City. The services provided by the City include, but are not limited to, police protection, water and waste water services, natural gas and electricity.

4. **City Council Approval.** Notwithstanding any of the provisions of this Agreement, nothing herein shall be construed to require the City Council to approve the proposed annexation or zoning of the Property, to approve this Annexation Agreement or the Concept Plan, or in any way obligate the City Council to grant such approvals. The Owner further acknowledges and agrees that the annexation and zoning of the Property, as proposed in this Agreement, are subject to the legislative discretion of the City Council and that no assurances of annexation or zoning or any other assurances have been made or relied upon by the Owner. The effective date of the annexation of the Property shall be not less than ten (10) days after second reading approval of the ordinance annexing the Property. If the City shall not adopt an ordinance concurrently with the City's approval of the annexation contemplated hereby, allocating to the Property a zoning designation of B-1, then Owner shall have the right to petition the City for immediate disconnection of the Property from the City and, upon proper filing of such petition, the City shall promptly take all steps necessary to accomplish such disconnection of the entire Property from the City. The City acknowledges that the granting of such zoning by the City is a material consideration for the Owner's agreement to annex the Property to the City.

5. **Reimbursements.** To the extent Owner is required to relocate fiber optic and electric lines to construct the storm water and/or sanitary sewer lines across "Linda Street" for the benefit accruing to other parties including the City, said improvements may be eligible for reimbursement. City agrees to use its best efforts to maximize the opportunity for, and amounts of, reimbursement payable to Owner. The City agrees to coordinate the execution and delivery of necessary reimbursement agreements among the City and the Owner.

6. **General Provisions.** City shall:

(a) cause its staff to approve or disapprove written submittals of Owner of any plans, specifications, drawings, details or other pertinent data required in connection with any water line, sanitary sewer line, storm drainage or other utility serving the Property or any improvements within any dedicated right-of-way on the Property. Any disapproval shall set forth the items disapproved together with the reasons for such disapproval;

(b) use its best efforts in securing, at Owner's expense, construction and maintenance agreements from governmental or private entities in order to allow Owner to fulfill its obligations under this Agreement and to proceed with development of the Property;

(c) cooperate with Owner with any filing, applications or other administrative procedures with governmental entities other than the City which is necessary to allow Owner to fulfill its obligations under this Agreement and to develop the Property;

(d) provide police, natural gas, electrical and other municipal services to the Property to the same extent as those services are provided by City throughout the balance of the City, pursuant to the City's uniform applied policies and ordinances; and

(e) not unreasonably withhold its consent or approval when any consent or approval is required.

7. **Severability.** The Parties agree that if any part, term, portion, section or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law or regulation, the validity of the remaining parts, terms, portions, sections or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term, portion, section or provision held to be invalid.

8. **Rules of Construction.** This Agreement shall be construed according to its fair meaning and as if prepared by all of the Parties and shall be deemed to be and contain the entire understanding and agreement between the Parties. There shall be deemed to be no other terms, conditions, promises, understandings, statements or representations, expressed or implied, concerning this Agreement unless set forth in writing and signed by all of the Parties.

9. **Future Cooperation.** The Parties agree that they will cooperate with one another in accomplishing the terms, conditions, and provisions of this Agreement and will execute such additional documents as are reasonably necessary to effectuate the same.

10. **Notices.** All notices under this Agreement shall be in writing and shall be hand delivered, sent by facsimile transmission, or sent by certified mail, return receipt requested, postage pre-paid to the addresses of the Parties hereinafter set forth. All notice by hand-delivery shall be effective upon receipt. All facsimile transmissions shall be effective upon transmission received, provided a hard copy is mailed by first class mail on the same date. All notices by mail shall be considered effective seventy-two (72) hours after deposit in the United States mail with the proper address as set forth below. Any party, by notice so given, may change the address to which future notice shall be sent.

Notice to City:

Pat Merrill, City Manager

City of Fort Morgan
P. O. Box 100
Fort Morgan, CO 80701
Fax No. 970-542-3968

With copy to:

Jeffrey A. Wells, City Attorney
P.O. Box 100
Fort Morgan, CO 80701
Fax No. (970) 542-6315

Notice to Owner:

Salud Family Health Centers
203 South Rollie Avenue
Fort Lupton, CO 80621
Attn: John Santistevan
Facsimile: (303) 892-1511
Telephone: (303) 892-6401
E-mail: jsantistevan@saludclinic.org

With copy to:

Mary Lou Raders, Esq.
Kutak Rock LLP
1801 California Street, Suite 3100
Denver, CO 80202
Facsimile: (303) 292-7799
Telephone: (303) 297-2400
E-mail: lou.raders@kutakrock.com

11. **No Third-Party Beneficiaries.** This Agreement is made solely for the benefit of the Parties hereto and is not intended to nor shall be deemed to confer rights on any other person or entity not named as one of the Parties to this Agreement.

12. **Governing Law and Venue.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Colorado. In addition, the Parties hereto recognize that there are legal constraints imposed upon the City by the constitutions, statutes and rules and regulations of the State of Colorado and of the United States and imposed upon the City by its Home Rule Charter and Municipal Code, and that, subject to such constraints, the Parties intend to carry out the terms and conditions of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, in no event shall any of the Parties exercise any power or take any action that would be prohibited by applicable law. Whenever possible, each provision of this Agreement shall be interpreted in such manner so as to be effective and valid under applicable law. Should any of the Parties institute legal suit or action for enforcement of any obligation contained herein, it is agreed that venue of such suit or action shall be proper and exclusive in the District Court of Morgan County, Colorado.

13. **Binding Effect.** This Agreement shall constitute an offer by the Owner, which may be withdrawn at any time prior to acceptance by the City. If not accepted and signed by the City on or before March 1, 2010, this offer shall be deemed withdrawn and shall be null and void and of no further force or effect. Upon execution of this Agreement by all Parties, this Agreement shall be binding upon and inure to the benefit of the Parties and of their respective personal representatives, successors, heirs, trustees and assigns, and shall constitute covenants and equitable servitudes running with the Property. Upon full execution and approval of the Annexation of the Property to the City, this Agreement shall be recorded at the Owner's expense with the Clerk and Recorder of Morgan County, Colorado.

14. **Headings.** The headings of this Agreement are for convenience of reference only and shall not be considered in construing or interpreting any section of this Agreement.

15. **Time of the Essence.** Time is of the essence of each and every term, covenant, condition and provision of this Agreement.

16. **Applicability of other City Requirements, Rates, Fees and Charges.** The Parties agree that, except as otherwise provided in this Agreement, all other applicable Municipal Code, Policy and LUC provisions, regulations, standards, rates, fees and charges shall apply to any future development of the Property.

17. **Assignment.** This Agreement shall not be assigned by any of the Parties hereto without the prior written consent of all of the other Parties, except that the Owner may assign this Agreement to an entity who will be the developer of the Property and, in such event, written notice of such assignment shall promptly be given to the City. It is anticipated that the Parties to the Annexation Agreement will be the City and the developer of the Property, with other Owner of the Property, if any, consenting to the annexation and zoning of the Property, but with limited rights and obligations under the Annexation Agreement.

18. **Waiver.** The parties agree that waiver by any means of any part of the requirements contained herein does not constitute a waiver of the entire agreement.

EXHIBIT A

Legal Description of Salud Business Park

FINAL PLAT OF THE SALUD BUSINESS PARK, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A PARCEL OF LAND AS SHOWN ON SUBDIVISION EXEMPTION PLAT RECORDED MAY 12, 2009 AT RECEPTION NO. 1601461 IN THE RECORDS OF MORGAN COUNTY, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 3 NORTH, RANGE 57 WEST OF THE 6TH P.M., MORGAN COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 5: THENCE ALONG THE NORTH LINE OF THE SOUTH HALF OF SECTION 5, N88°50'03"E A DISTANCE OF 30.00 FEET TO A POINT OF INTERSECTION WITH THE EXTENDED EASTERLY R.O.W. LINE OF SHERMAN STREET AS ESTABLISHED BY LOCAL MONUMENTATION RECOVERED IN THE AREA; THENCE S01°04'30"E, ALONG SAID EASTERLY R.O.W. LINE, A DISTANCE OF 1648.98 FEET TO THE POINT OF BEGINNING; THENCE N88°50'03"E, ALONG THE SOUTHERLY LINE OF SHERMAN PARK SCHOOL AND THE SUBDIVISION EXEMPTION PLAT RECORDED AT RECEPTION NO. 764293, A DISTANCE OF 1065.00 FEET; THENCE N85°30'05"E, A DISTANCE OF 414.02 FEET, THENCE S01°04'30"E, ALONG THE WESTERLY LINE OF SUBDIVISION EXEMPTION PLAT RECORDED AT RECEPTION NO. 783669, A DISTANCE OF 300.00 FEET; THENCE S85°55'30"W, ALONG THE NORTHERLY R.O.W. LINE OF EAST RAILROAD AVENUE, A DISTANCE OF 666.19 FEET; THENCE S88°55'30"W, ALONG THE NORTHERLY R.O.W. LINE OF EAST RAILROAD AVENUE, A DISTANCE OF 813.00 FEET; THENCE N01°04'30"W, ALONG THE EASTERLY R.O.W. LINE OF SHERMAN STREET, A DISTANCE OF 308.46 FEET TO THE POINT OF BEGINNING.