

A SPECIAL
CITY COUNCIL
MEETING WILL BE
HELD ON

Thursday May 23, 2024
@ 6:00 P.M.

CITY OF LAMAR, COLORADO

-AGENDA-

SPECIAL MEETING OF CITY COUNCIL

Thursday, May 23, 2024 – 6:00 p.m.

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JOE GONZALES	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SHALAH MATA	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
GERRY JENKINS	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
KIRK CRESPIN	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
DAVID ZAVALA	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
MANUEL TAMEZ	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
BRENT BATES	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
ROB EVANS	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
KRISTIN SCHWARTZ	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
LANCE CLARK	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---

GENERAL BUSINESS

- I. Invocation –
- II. Pledge of Allegiance
- III. Call to Order
- IV. Roll Call
- V. Review Agenda

GENERAL BUSINESS

- Item 1 – City/Rhodes Agreement on Main Café/Warehouse Properties

- Item 2 – Chief of Police Recommendation

- Item 3 – Miscellaneous

NEXT CITY COUNCIL MEETING – Monday, June 10, 2024 @ 7:00 P.M Individuals with disabilities needing auxiliary aid(s) may request assistance by contacting Stephanie Strube at City of Lamar, 102 E Parmenter, Lamar CO 81052, or by phone (719) 336-4376. We would appreciate 48 hours advance notice of the event so arrangements can be made to locate the requested auxiliary aid(s).

LAMAR CITY COUNCIL
AGENDA ITEM COMMENTARY

ITEM TITLE: City/Rhodes Agreement on Main Café/Warehouse Properties
INITIATOR: Anne-Marie Crampton CITY ADMINISTRATOR'S REVIEW: _____
ACTION PROPOSED: Approve agreement and authorize the Mayor to sign
STAFF INFORMATION SOURCE: Anne-Marie Crampton

BACKGROUND: The City purchased the Main Café property at 114 S. Main Street in March 2020. The property shares a common stairway and hallway with 112 S. Main Street's second floor. Former City Administrator Steve Kil and former Community Development Director Morgan Alba negotiated with Haley May Rhodes & Ash Rhodes for the donation of the upstairs of 112 S. Main, so the upstairs of 112 and 114 S. Main could be developed together as four apartments. In consideration of the donation, the City verbally agreed to demolish one or both of the warehouses located in the parking lot directly to the west of the buildings, now known as 111A and 111B W. Beech. 111A can be saved if it receives a new roof in the near future.

The City must complete an MOU with the Rhodes to confirm their intention to donate the upstairs of 112 S. Main to the City as part of its application for the CDPHE 1306 Cleanup Grant to remediate the asbestos spill and complete abatement. Once the City receives a verbal award it will complete the transfer of the property. Anne-Marie and Stephen DiNardo, an Ayres Associates subconsultant, drafted an MOU. Lance Clark redrafted it as an agreement. Mr. & Mrs. Rhodes have confirmed their intention to sign it.

RECOMMENDATION: Approve agreement and authorize the Mayor to sign it.

AGREEMENT BETWEEN CITY OF LAMAR AND RHODES

This Agreement dated and effective this ___ day of ___, 2024, is made and between the **City of Lamar (the "City")** located at 102 E Parmenter St, Lamar, CO 81052, and **Haley May and Ashlynn Rhodes**, (hereinafter collectively referred to as the "**Rhodes**") private property owner, located at 110 S Main, Lamar, CO 81052, collectively referred to as the "Parties".

RECITALS

WHEREAS, the City is the legal owner of the building located at 114 South Main Street, Lamar, CO 81052 (hereinafter referred to as the "Main Café"); and

WHEREAS, the City and RHODES are the joint legal owner of the entryway, staircase, and common hallway located between the buildings of 112 South Main Street and 114 South Main Street; and

WHEREAS, Haley May Rhodes is the legal owner of the buildings located at 108, 110, and 112 South Main Street, Lamar, CO 81052 (the 110 and 112 South Main Street hereinafter referred to as "Home & Season") and the legal owner of the Warehouse buildings located at 111A (the "North Warehouse") and 111B (the "South Warehouse") West Beech Street, Lamar, CO 81052; and

WHEREAS, the Parties hereby enter into this Agreement to summarize their mutual agreements relating to the proposed improvements of the Main Café, the 2nd floor of the Home & Season, and the North and South Warehouse properties, (hereinafter referred to as the "Property or Project"). This Agreement reflects the Parties' negotiations, commitments, obligations and responsibilities; and

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises set forth herein, the parties hereto agree to the following:

1. **OBJECTIVES OF PROJECT.** The Parties agree that the Project consists of the following objectives and obligation on each Party:

- a. Parties acknowledge that the progress on the Main Café project is dependent on the City's receipt of additional funds to complete the project. The City is applying for a CDPHE 1306 Brownfield Cleanup Grant to assist in the funding of the environmental abatement/remediation of the Main Café, including the second floor of the Main Café and the second-floor property located at 112 South Main Street. Further acknowledge that the City will apply for a second CDPHE 1306 grant for assistance in mitigating the South Warehouse in a future round. Further acknowledge that the City desires to draw funds from City of Lamar Capital Improvement Fund to transfer ownership of the 2nd floor of the 112 South Main Street property from the RHODES to the City and fund the demolition of the South Warehouse.
- b. The City desires to renovate the Main Café and the second (2nd) floor of the 110 and 112 South Main Street property to promote revitalization in the downtown area. The

renovation's scope includes but is not limited to environmental remediation, surgical demolition, interior demolition, interior/exterior construction, and historic preservation. The Parties acknowledge that the revitalization project will require grants being provided to the City. Within sixty (60) days of the City receiving a verbal notification of a CDPHE 1306 grant award to the City, the RHODES agree donate their interest in the second floor of the 112 South Main Street property and their interest in the entryway, staircase, and common hallway between the properties of 112 and 114 South Main Street, by Special Warranty Deed to the City, a copy of the draft deed is attached hereto as Exhibit A. In consideration of the donation, the City will provide a tax contribution letter using an appropriate valuation.

- c. The RHODES and the City desire to create public parking as an amenity to the renovations on the Rhodes property where the South Warehouse is located.
- d. The RHODES desire the South Warehouse (111B) to be demolished as it has been deemed structurally unsound. The City desires to work with the RHODES to demolish the South Warehouse at the City's expense with the assistance of grants being awarded. The Parties acknowledge that the abatement and demolition project will require grants being provided to the City, however, the Parties acknowledge that this project will occur at a later time after or during the revitalization of the main café and second floor of 112 South Main Street property. Nevertheless, the RHODES agree to donate their interest in the South Warehouse by Special Warranty Deed to the City within sixty (60) days of either the City receiving notice of award for an additional grant for asbestos mitigation or at the election of the RHODES at an earlier time, a copy of the draft deed is attached hereto as Exhibit B.
- e. The Parties agree that the North Warehouse (111A) has been deemed structurally sound but needing a new roof, as such the North Warehouse will not be demolished. The RHODES agree that they will complete roof repairs by December 31st, 2024, unless extended upon agreement of the Parties. The RHODES will apply and complete an application for Lamar Redevelopment Authority funding assistance for the new roof. The City, through the URA board, agrees to provide financial or in-kind assistance of fifty percent (50%) of the cost to repair the North Warehouse roof in consideration of the projects expressed herein and properties that are being donated to the City. The RHODES agree to comply with all terms, conditions, and obligations of the Urban Renewal Agreement.
- f. The Parties acknowledge that the City desires to surgically cut and demolish the non-historical section of the Main Café to create a patio space behind the building.

2. **AGREEMENTS.** In consideration of the mutual covenants and promises of the Parties contained herein, and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as set forth in this Agreement:

- a. In consideration of this Agreement, the City shall:
 - i. Have discretion to apply and use any and all appropriate grants or fundings sources available, in addition to funding available through the Capital Improvement Fund,

for the development costs associated with the demolition of the South Warehouse, including but not limited to architectural drawings, environmental surveys, structural reports, zoning adjustments, environmental abatement, and demolition.

- ii. Have discretion to apply and use any and all appropriate grants or funding sources available, in addition to funding available through the Capital Improvement Fund, for the development costs associated with the 2nd floor of the 112 and 114 South Main Street properties, including but not limited to architectural drawings, environmental surveys, structural reports, zoning adjustments, environmental abatement, demolition, and new construction.
- iii. Have discretion to make necessary steps for and cover costs associated with the successful transfer of ownership of the 2nd floor of the Rhodes 112 South Main Street and the South Warehouse property to the City.
- iv. In consideration for the RHODES donation of the South Warehouse property and the second floor of the 112 South Main Street property and joint interest in the entryway, staircase, and common hallway, the City, through the URA, shall provide financial assistance of fifty percent (50%) of the cost to repair the North Warehouse roof. The RHODES will apply and complete an application to the Lamar Redevelopment Authority grant for the North Warehouse roof repair and complete the repairs by December 31, 2024, unless extended upon agreement of the Parties. The City recognizes that typical URA awards are up to 20% of the project cost with a maximum dollar amount of \$20,000; however, the City agrees to provide financial assistance of fifty percent (50%) of the cost to repair the North Warehouse roof in consideration of the properties that are being donated to the City.
- v. The City shall grant to the RHODES a First Right of Refusal on the 2nd floor of the 112 South Main Street property upon the donation Special Warranty Deed by the RHODES to the City, as stated more fully herein:
 - A. If City intends to sell and has received an offer or counter offer for the 2nd Floor of the 112 South Main Street property, City shall first send a written notice to the RHODES that shall contain the offer or counter offer received by the City. City shall provide a copy of the offer to purchase or acquire, or any executed purchase agreement, to RHODES which copy shall include, at a minimum, the purchase or acquisition price and proposed closing date. Within twenty (20) days of receipt of such notice and copy of the offer, RHODES shall provide written notice to City of RHODES' election to purchase the 2nd Floor of the 112 South Main Street property at the same price, provided, the closing date shall be no sooner than sixty (60) days after RHODES' purchase election notice. In such event, City agrees to sell the said property to RHODES subject to RHODES' payment of the purchase price and compliance with a purchase and sale agreement to be negotiated in good faith between City and RHODES. If RHODES provide written notice that it does not elect to exercise its right of first refusal, or if RHODES does not provide notice of its election within the twenty (20) day

period, RHODES shall be deemed to have waived such right of first refusal and such right shall lapse and be forfeited and shall have no further force or effect, which shall allow the City to thereafter be free and clear to sell said property to a third party.

b. Therefore, in consideration of this Agreement, the Rhodes shall.

i. In consideration for the City's demolition of the South Warehouse property and URA assistance on North Warehouse roof, within sixty (60) days of the City receiving notice of being awarded the grant to proceed with this project, the RHODES shall donate and transfer to the City by Special Warranty Deed their ownership of the 2nd floor of the 112 South Main Street Property and their interest in the entryway, staircase, and common hallway as well as its contents.

ii. In consideration for the City's demolition of the South Warehouse property and assistance on North Warehouse roof, within sixty (60) days of either the City receiving notice of award for an additional grant to proceed with this project or at the election of the RHODES at an earlier time, the RHODES shall donate and transfer to the City by Special Warranty Deed their interest of the South Warehouse and its contents.

iii. Deliver Special Warranty Deeds to the City, as provided for herein, with all property being transferred being free and clear of all encumbrances.

iv. Work in good faith with the City regarding all property transfer, demolition and improvements, including but not limited to communication, development and the City's or City's agents, representatives, assigns, engineers, developers, and contractors' access to the RHODES property.

v. If the City is approved for a Brownfield Grant, within one hundred and twenty (120) days of such approval, RHODES shall apply and complete an application to the URA for assistance with the repair the roof on the North Warehouse building and complete the repairs by December 31, 2024, unless extended upon agreement of the Parties. The RHODES agree to comply with all terms, conditions, and obligations of the Urban Renewal Agreement.

c. The Parties agree that the agreements outlined in this Agreement regarding property transfer, environmental abatement, and demolition are contingent upon the City successfully obtaining funds from the CDHPE 1306 Brownfield Clean Grant and the City of Lamar Capital Fund contribution. Further, acknowledge and agree that the process to acquire grants may take significant time to be approved.

3. **INDEMNIFICATION.** To the fullest extent permitted by law, the RHODES shall defend, indemnify, assume any and all responsibility for and hold harmless the City, their commissioners, officers, employees, agents, representatives, contractors, assigns, affiliates, partners, and invitees ("City Representative") against any and all liabilities, suits, judgments, settlements, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, for

attorney fees and costs which may be imposed upon or incurred by or asserted against the City by reason of or resulting from but not limited to any one or more of the following occurring during or after the projects contemplated herein this Agreement: (i) any accident, injury (including death) or damage, on or about the premises or any part thereof the projects , (ii) any accident, injury (including death) or damage to any person or property occurring in, on or about the projects as a result of the act or neglect of any City Representative, or (iii) any act or failure to act on the part of any City Representative while in, on or about the projects during the performance of this Agreement.

4. **REMEDIES.** If any Party defaults hereunder, any non-defaulting Party may seek enforcement of the Agreement by any available remedy at law or in equity; provided, however, damages payable by the City shall be limited to those amounts that would have been payable under this Agreement. In no event shall the City be liable for special, consequential, or punitive damages. In addition, any non-defaulting Party may recover its reasonable costs and attorney fees.

5. **NOTICES.** Unless otherwise notified in writing by any Party, all notices required or permitted by this Agreement shall be in writing and shall be sufficiently given if delivered in person, by prepaid overnight express mail or express courier to any Party or by certified mail, with postage prepaid, return receipt requested and addressed:

In the case of the City:

Community Development Director
Attention: Anne-Marie Crampton
102 East Parmenter Street
Lamar, Colorado 81052

In the case of Rhodes:

Haley May Rhodes and Ashlynn Rhodes
110 S Main
Lamar, Colorado 81052

6. **ENTIRE AGREEMENT; AUTHORITY NOT A PARTNER.** The respective obligations of the Parties to this Agreement constitute the only obligations of the Parties under this Agreement. Notwithstanding any language in this Agreement or any other agreement, representation or warranty to the contrary, the City shall not be deemed to be a partner or joint venture of the RHODES and the City shall not be responsible for any debt or liability of the RHODES.

7. **ASSIGNMENT.** This Agreement or any rights or interest in this Agreement may not be assigned or transferred by either Party without the prior written approval of the other Party.

8. **BINDING EFFECT.** The Agreement shall be binding upon and inure to the benefit of the Parties, their personal representatives, successors and assigns, but nothing herein shall permit the assignment or transfer of this Agreement without the prior written consent of the other Party.

9. **JURISDICTION AND VENUE.** In the event of litigation hereunder, the Prowers County District Court sitting without a jury shall have exclusive jurisdiction and venue of the case.

10. **AMENDMENTS.** This Agreement is the entire Agreement of the Parties as to the subject matter herein and supersedes and replaces all prior agreements with respect to the subject matter herein and may be amended only in writing fully subscribed by the Parties.

11. **AUTHORITY.** The persons executing this Agreement on behalf of Parties represent and warrant that each is fully authorized to bind such Party to all of the terms and conditions of this Agreement.

12. **GOVERNING LAW.** This Agreement shall be construed and interpreted under the laws of Colorado.

13. **NO THIRD-PARTY BENEFICIARIES.** The City shall not be obligated or liable under the terms of this Agreement to any person or entity not a party hereto.

14. **CONSTRUCTION OF AGREEMENT.** This Agreement has been arrived at by negotiation and shall not be construed against either party to it or against the party who prepared the last draft.

15. **SUFFICIENT TIME TO REVIEW.** The RHODES acknowledge and agree that they have had sufficient time to review this agreement and consult with anyone they choose regarding whether or not to enter into this Agreement.

16. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which will be deemed an original and constitute the same instrument.

17. **NO WAIVER OF IMMUNITY.** No term or condition of the Agreement 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.

18. **APPROPRIATION.** Any monetary obligation of the City of Lamar, Colorado is subject to appropriation as provided by law. The Parties understand and acknowledge that the Agency 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 Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the Agency are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the Agency's current fiscal period ending on December 31 of the current year and December 31 of each year thereafter. Financial obligations of the Agency 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 of Lamar, and other applicable law. Upon the failure to appropriate such funds, this Agreement shall be terminated.

IN WITNESS WHEREOF, this Agreement is executed by the City and RHODES as of this ____
Day of May, 2024.

RHODES:

City:

By: Hayley May Rhodes/Owner

By: Kirk Crespín/Mayor

Attest:

By: Ashlynn Rhodes/Owner

By: Linda Williams/City Clerk

EXHIBIT A
(Draft Second Floor of 112 S Main)
SPECIAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, THAT **HALEY MAY** of 39818 County Road 7 LAMAR CO 81052, hereinafter called and referred to as "Grantor", and **CITY OF LAMAR, COLORADO**, a Home Rule Municipal Charter, whose address is 102 E Parmenter St. Lamar, CO 81052, hereinafter called and referred to as "Grantee".

WITNESSETH, that said Grantor, for and in consideration of the sum of Ten and No/100 Dollars, to the said Grantor in hand paid by the said Grantee, the receipt whereof is hereby confessed and acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm unto the said Grantee, its heirs and assigns forever, all the following described lot or parcel of land, situate, lying in the County of Prowers and State of Colorado, to wit:

Also known as: 112 South Main Street (2nd floor) Lamar, CO 81052

TOGETHER with all and singular the appurtenances and privileges thereto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever of the Grantor, either in law or equity, to the only proper use, behoof and benefit of the said Grantee, its successors, assigns, personal representatives and heirs forever. TO HAVE AND TO HOLD the said premises above bargained and described, with the appurtenances, unto the said Grantee, their heirs and assigns forever.

With all appurtenances and warrants the title to the same, subject to any and all mineral reservations of record, taxes assessed for the year 2023 and subsequent years, easements or rights-of-way for roads, pipeline, telephone and electric lines and other utilities and to the burdens of special districts and similar restrictions.

Signed and delivered this ____ day of _____, 2024.
Grantor:

HALEY MAY

STATE OF COLORADO)
) ss.
COUNTY OF PROWERS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by Haley May, Grantor.

Witness my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT B
(Draft South Warehouse)
SPECIAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, THAT **HALEY MAY** of 39818 County Road 7 LAMAR CO 81052, hereinafter called and referred to as "Grantor", and **CITY OF LAMAR, COLORADO**, a Home Rule Municipal Charter, whose address is 102 E Parmenter St. Lamar, CO 81052, hereinafter called and referred to as "Grantee".

WITNESSETH, that said Grantor, for and in consideration of the sum of Ten and No/100 Dollars, to the said Grantor in hand paid by the said Grantee, the receipt whereof is hereby confessed and acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm unto the said Grantee, its heirs and assigns forever, all the following described lot or parcel of land, situate, lying in the County of Prowers and State of Colorado, to wit:

Also known as: 111B West Beech Street, Lamar, CO 81052

TOGETHER with all and singular the appurtenances and privileges thereto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever of the Grantor, either in law or equity, to the only proper use, behoof and benefit of the said Grantee, its successors, assigns, personal representatives and heirs forever. TO HAVE AND TO HOLD the said premises above bargained and described, with the appurtenances, unto the said Grantee, their heirs and assigns forever.

With all appurtenances and warrants the title to the same, subject to any and all mineral reservations of record, taxes assessed for the year 2023 and subsequent years, easements or rights-of-way for roads, pipeline, telephone and electric lines and other utilities and to the burdens of special districts and similar restrictions.

Signed and delivered this _____ day of _____, 2024.
Grantor:

HALEY MAY

STATE OF COLORADO)
) ss.
COUNTY OF PROWERS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by Haley May, Grantor.

Witness my hand and official seal.

My commission expires: _____

Notary Public

Agenda Item No. 2

Council Date: 05/23/2024

LAMAR CITY COUNCIL
AGENDA ITEM COMMENTARY

ITEM TITLE: Chief of Police Recommendation

INITIATOR: Rob Evans, City Administrator CITY ADMINISTRATOR'S REVIEW: _____

ACTION PROPOSED: Approve Recommendation

STAFF INFORMATION SOURCE: Rob Evans, City Administrator

BACKGROUND: Under Lamar's Ordinances, City Council appoints the Chief of Police upon the recommendation of the City Administrator.

This recommendation is the result of a national search which was conducted by KRW Associates. The City hosted four candidates last Thursday and Friday for a tour of the community, a public reception and an interview process.

RECOMMENDATION: Approve the recommendation of the new Chief of Police.