



## CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Planning	Kristi Jefferson - Senior Planner	February 7, 2023

### **ITEM**

Approval to reduce Performance Guarantee amount for the Salida RV Resort.

### **BACKGROUND**

On September 21, 2020 City Council approved Resolution 2020-28 for the Development Agreement for the Salida RV Resort. Paragraph 5.6 requires a financial guarantee for the public improvements that are required for the project in an amount of \$598,784.00, which includes the total estimated cost of completing the Required Improvements in the amount of \$479,027.00 plus 25% ( $479,027.00 * 25\% = \$119,756.75$ ).

Paragraph 5.6.4 of the agreement states that "Upon the Director of Public Work's inspection and written approval of all Required Improvements in accordance with paragraph 5.10, City Council shall authorize a release of the Performance Guarantee in the amount of 90% of the total estimated cost of all required improvements."

Attached is a memo from Public Works Director David Lady stating work has been completed consistent with the plans and costs provided by the developer, G2M, LLC. Staff estimates the partial release will be \$538,905.60 ( $\$598,784 * 90\% = \$538,905.60$ ) leaving a remainder of \$59,878.40 for the remaining warranty period.

### **FISCAL NOTE**

There are no budget implications with the approval.

### **STAFF RECOMMENDATION**

Staff has identified that the request meets the requirements set forth in the Development Improvement Agreement and recommends Council reduce the Performance Guarantee amount for the Salida RV Resort Project from \$598,784.00 to \$59,878.40.

### **SUGGESTED MOTION**

A Council person should make a motion to "combine and approve the items on the consent agenda".

Followed by a second and then a vote.



June 27, 2022

RE: Salida RV Park, Salida, Colorado  
Letter of Substantial Completion for Public Improvements

To: Brian Morrison, G2M, LLC

This letter provides notice to the developer that the public improvements for Salida RV Park are deemed substantially complete. The improvements consisted of public roadway improvements to CR102, water main, and sanitary sewer main construction as identified in the Subdivision Improvement Agreement, dated August 20, 2019. Work has been inspected and approved. The 1-year warranty period for the public improvements associated with the project will initiate on June 27, 2022. Substantial Completion and related easement for the public river trail shall be reviewed and approved at a later date.

Thanks,

A handwritten signature in dark ink, reading 'David Lady' in a cursive script.

David Lady, P.E.  
Director of Public Works  
City of Salida

cc: Bill Almquist  
Director of Community Development





## IRREVOCABLE LETTER OF CREDIT

**Borrower:** G2M, LLC  
1901 Jackson St  
Golden, CO 80401

**Lender:** GREAT WESTERN BANK  
Denver Commercial Banking  
3650 E. 1st Ave  
Denver, CO 80206

**Beneficiary:** The City of Salida, City Administrator and City Authority  
448 E First Street, Ste 112  
Salida, CO 81201

**NO.: 979**

**EXPIRATION DATE.** This letter of credit shall expire upon the close of business on 01-15-2022 and all drafts and accompanying statements or documents must be presented to Lender on or before that time (the "Expiration Date").

**AMOUNT OF CREDIT.** Lender hereby establishes at the request and for the account of Borrower, an Irrevocable Letter of Credit in favor of Beneficiary for a sum of Five Hundred Ninety-eight Thousand Seven Hundred Eighty-four & 00/100 Dollars (\$598,784.00) (the "Letter of Credit"). These funds shall be made available to Beneficiary upon Lender's receipt from Beneficiary of sight drafts drawn on Lender at Lender's address indicated above (or other such address that Lender may provide Beneficiary in writing) during regular business hours and accompanied by the signed written statements or documents indicated below.

**WARNING TO BENEFICIARY: PLEASE EXAMINE THIS LETTER OF CREDIT AT ONCE. IF YOU FEEL UNABLE TO MEET ANY OF ITS REQUIREMENTS, EITHER SINGLY OR TOGETHER, YOU SHOULD CONTACT BORROWER IMMEDIATELY TO SEE IF THE LETTER OF CREDIT CAN BE AMENDED. OTHERWISE, YOU WILL RISK LOSING PAYMENT UNDER THIS LETTER OF CREDIT FOR FAILURE TO COMPLY STRICTLY WITH ITS TERMS AS WRITTEN.**

**DRAFT TERMS AND CONDITIONS.** Lender shall honor drafts submitted by Beneficiary under the following terms and conditions:

Upon Lender's honor of such drafts, Lender shall be fully discharged of Lender's obligations under this Letter of Credit and shall not be obligated to make any further payments under this Letter of Credit once the full amount of credit available under this Letter of Credit has been drawn.

Beneficiary shall have no recourse against Lender for any amount paid under this Letter of Credit once Lender has honored any draft or other document which complies strictly with this Letter of Credit, and which on its face appears otherwise in order but which is signed, issued, or presented by a party or under the name of a party purporting to act for Beneficiary, purporting to claim through Beneficiary, or posing as Beneficiary without Beneficiary's authorization. By paying an amount demanded in accordance with this Letter of Credit, Lender makes no representation as to the correctness of the amount demanded and Lender shall not be liable to Beneficiary, or any other person, for any amount paid or disbursed for any reason whatsoever, including, without limitation, any nonapplication or misapplication by Beneficiary of the proceeds of such payment. By presenting upon Lender or a confirming bank, Beneficiary certifies that Beneficiary has not and will not present upon the other, unless and until Beneficiary meets with dishonor. Beneficiary promises to return to Lender any funds received by Beneficiary in excess of the Letter of Credit's maximum drawing amount.

**USE RESTRICTIONS.** All drafts must be marked "DRAWN UNDER GREAT WESTERN BANK IRREVOCABLE LETTER OF CREDIT NO. 979 DATED 01-15-2021," and the amount of each draft shall be marked on the draft. Only Beneficiary or Beneficiary's transferee may complete a draft and accompanying statements or documents required by this Letter of Credit and make a draw under this Letter of Credit. This original Letter of Credit must accompany any draft drawn hereunder.

Partial draws are permitted under this Letter of Credit. Lender's honor of a partial draw shall correspondingly reduce the amount of credit available under this Letter of Credit. Following a partial draw, Lender shall return this original Letter of Credit to Beneficiary with the partial draw noted hereon; in the alternative, and in its sole discretion, Lender may issue a substitute Letter of Credit to Beneficiary in the amount shown above, less any partial draw(s).

**PERMITTED TRANSFEREES.** This Letter of Credit may be transferred by Beneficiary upon prior written notice to Lender of the transfer. The transferee shall be deemed the new Beneficiary of this Letter of Credit and the documents of the transferee, including drafts required under this Letter of Credit, will be processed by Lender (or any intermediary) without the original Beneficiary's intervention and without any further obligation of Lender to the original Beneficiary.

**TRANSFEREES REQUIRED DOCUMENTS.** When the presenter is a permitted transferee under the "Permitted Transferees" paragraph above (the "Permitted Transferee"), the documents required for a draw shall include all documents required elsewhere in this Letter of Credit, except that such documents may be in the name of and executed by either the original Beneficiary or the presenter permitted by the "Permitted Transferees" paragraph above.

**COMPLIANCE BURDEN.** Lender is not responsible for any impossibility or other difficulty in achieving strict compliance with the requirements of this Letter of Credit precisely as written. Beneficiary understands and acknowledges: (i) that unless and until the present wording of this Letter of Credit is amended with Lender's prior written consent, the burden of complying strictly with such wording remains solely upon Beneficiary, and (ii) that Lender is relying upon the lack of such amendment as constituting Beneficiary's initial and continued approval of such wording.

**NON-SEVERABILITY.** If any aspect of this Letter of Credit is ever declared unenforceable for any reason by any court or governmental body having jurisdiction, Lender's entire engagement under this Letter of Credit shall be deemed null and void ab initio, and both Lender and Beneficiary shall be restored to the position each would have occupied with all rights available as though this Letter of Credit had never occurred. This non-severability provision shall override all other provisions in this Letter of Credit, no matter where such provision appears within this Letter of Credit.

**GOVERNING LAW.** This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Colorado without regard to its conflicts of law provisions, and except to the extent such laws are inconsistent with the 2007 Revision of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce, ICC Publication No. 600. This Agreement has been accepted by Lender in the State of Colorado.

**EXPIRATION.** Lender hereby agrees with Beneficiary that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to Lender on or before the Expiration Date unless otherwise provided for above.

**IRREVOCABLE LETTER OF CREDIT  
(Continued)**

Page 2

Dated: January 14, 2021

LENDER:

GREAT WESTERN BANK

By:   
Cari Clayton, Business Banker IV

**ENDORSEMENT OF DRAFTS DRAWN:**

Date	Negotiated By	Amount In Words	Amount In Figures
------	---------------	--------------------	----------------------



**CITY OF SALIDA, COLORADO  
RESOLUTION NO. 28  
(Series 2020)**

**A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF SALIDA, COLORADO  
APPROVING THE DEVELOPMENT AGREEMENT FOR THE SALIDA RV RESORT.**

**WHEREAS**, the property owners, G2M LLC ("Developer") are owners of 19.1 acres ("Property") which was annexed by the City of Salida subject to the Angler's Ridge Annexation Agreement, which was amended by the City Council on March 5, 2019 and is recorded at Reception No. 453086 at the Chaffee County Recorder's Office; and

**WHEREAS**, the property was zoned R-4, Manufactured Housing Residential by Ordinance No. 2019-04 approved by Council on February 19, 2019; and

**WHEREAS**, on February 24, 2020 the Planning Commission approved the Salida RV Resort limited impact review for the property; and

**WHEREAS**, pursuant to Sections 16-2-60 of the Land Use Code, and according to the provisions of the First Amended Angler's Ridge Annexation Agreement, the City and the Developer wish to enter into this Agreement to set forth their understanding concerning the terms and conditions for the construction of the public improvements; cost sharing in accordance with the development plan and annexation agreement and the provision for affordable leases for Chaffee County workforce for the Property ("Agreement"); and

**WHEREAS**, staff shall be permitted to correct immaterial errors, typos and inconsistencies in the Agreement as approved by the Mayor.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council for the City of Salida that:

The Salida RV Resort Development Agreement is hereby approved.

**RESOLVED, APPROVED AND ADOPTED on this 15th day of September, 2020.**

(SEAL)

ATTEST:

  
Evin Kelley  
City Clerk/Deputy City Clerk

CITY OF SALIDA, COLORADO

  
\_\_\_\_\_  
Mayor PT Wood

**DEVELOPMENT AGREEMENT**  
**(Salida RV Resort)**

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this 15th day of September, 2020, by and between the CITY OF SALIDA, COLORADO, a Colorado statutory city ("City"), and G2M, LLC, a limited liability corporation ("Developer") (each a "Party" and together the "Parties").

**Section 1 - Recitals**

- 1.1 The Developer contends that it is the fee title owner of certain lands known as the Salida RV Resort (the "Project") and more particularly described on attached **Exhibit A**, which is incorporated herein by this reference (the "Property"). The Property is located within the boundaries of the City.
- 1.2 The Developer received Manufactured Housing Residential (R-4) zoning on the 19.1 acre site on February 19, 2019 when the City Council adopted Ordinance 2019-04 on second reading.
- 1.3 The City Council approved the First Amended Angler's Ridge Annexation Agreement on March 5, 2019 by Resolution 2019-11; and it is recorded at Reception No. 453086 of the Chaffee County Recorder's Office. The agreement references the change in land use for the site from the 200 unit tiny home development to the proposed RV park; described how the site is to be served by Salida sewer and water utilities; amended the requirements for affordable housing; defined the role of the Chaffee County Housing Office to ensure compliance with the affordable housing requirements and removed restrictions on short term rentals. Requirements that remain from the original agreement includes the construction of D&RG Drive; provision of open space and river access and the collection of city sales taxes.
- 1.4 On February 24, 2020 the Salida Planning Commission approved the limited impact review of the Salida RV Resort development plan, subject to conditions.
- 1.5 The City wishes to advance development within municipal boundaries in accordance with the City of Salida Comprehensive Plan.
- 1.6 Pursuant to Section 16-2-60 of the Land Use Code, the City and the Developer wish to enter into this Agreement to set forth their understanding concerning requirements of the Project including fees; provision of affordable housing and off-site public improvements to be constructed and installed on the Property in association with the Developer's activities under any building permit issued under the Permit Application, if approved ("Building Permit").

- 1.7 The City has determined that this Agreement is consistent with the City of Salida 2013 Comprehensive Plan and all applicable City Ordinances and regulations.
- 1.8 The City and the Developer acknowledge that the terms and conditions hereinafter set forth are reasonable, within the authority of each to perform, and consistent with the City of Salida Comprehensive Plan.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the City and the Developer agree as follows:

## **Section 2 – Definitions**

As used in this Agreement, the following terms have the following meanings:

- 2.1 “Agreement” means this Development Agreement. The Recitals in Section 1 above are fully incorporated into this Agreement and made a part hereof by this reference.
- 2.2 “Affordable Housing” means units that are deed restricted to be rented or sold to households earning 80% or less of the Area Median Income for Chaffee County as more particularly defined herein.
- 2.3 “Building Permit” means any building permit issued under the Permit Application, if approved.
- 2.4 “City” means the City of Salida, a Colorado statutory City.
- 2.5 “City Administrator” means the City Administrator of the City of Salida, and the City Administrator’s designee.
- 2.6 “City Code” means the City of Salida Municipal Code.
- 2.7 “City Council” means the City Council of the City of Salida, Colorado.
- 2.8 “Dark Sky-Compliant” means lighting in compliance with Section 16-8-100 of the Land Use Code and intended to protect the night sky from nuisance glare and stray light from poorly aimed, poorly placed, poorly maintained, or poorly shielded light sources.
- 2.9 “Developer” means G2M, LLC, and its successor(s)-in-interest with respect to the Property.
- 2.10 “Easement Lands” means all real property to be dedicated to the City hereunder in the form of easements.
- 2.11 “Effective Date” means the date on which City Council adopted a resolution approving the execution of this Agreement. On the Effective Date, this Agreement will become binding upon and enforceable by the City and the Developer.

- 2.12 “Force Majeure” means acts of God, fire, abnormal weather, explosion, riot, war, labor disputes, terrorism, or any other cause beyond the applicable Party’s reasonable control. A lack of money or inability to obtain financing does not constitute Force Majeure.
- 2.13 “Land Use Code” means the City’s Land Use and Development Code, Title 16 of the City Code.
- 2.14 “Native Vegetation” means “native plant” as defined in the Colorado Noxious Weed Act, C.R.S. § 35-5.5-103(15).
- 2.15 “Noxious Weed” takes the meaning given to that term in the Colorado Noxious Weed Act, C.R.S. § 35-5.5-103(16).
- 2.16 “Other Required Improvements Warranty Period” means a period of two years from the date that the Director of Public Works, in accordance with the terms and conditions of paragraph 5.9 below, approves the Required Improvements that are not Public Improvements, and certifies their compliance with approved specifications.
- 2.17 “Performance Guarantee” means cash, a letter of credit, a cash bond, a performance bond, or other security acceptable to the City Attorney to secure the Developer’s construction and installation of the Required Improvements, in an amount equal to 125% of the estimated cost of said Required Improvements.
- 2.18 “Permit Application” means the Developer’s full and complete application for a building permit for a RV park consisting of up to 158 spaces to be constructed on the Property.
- 2.19 “Property” means the land that is known as the “Salida RV Resort” and described in attached **Exhibit A**.
- 2.20 “Public Improvements” means Required Improvements constructed and installed by the Developer and dedicated to the City in accordance with this Agreement, including without limitation water mains, water service lines, water laterals, fire hydrants, and other water distribution facilities; irrigation lines and facilities; wastewater collection mains, lines, laterals, and related improvements; drainage facilities in public rights-of-way; handicap ramp improvements; and required curbs, sidewalks, and street improvements. The Required Improvements that are also Public Improvements are identified on attached **Exhibit B**.
- 2.21 “Public Improvements Warranty Period” means a period of one year from the date that the Director of Public Works, in accordance with the terms and conditions of paragraph 5.9 below, approves the Public Improvements and certifies their compliance with approved specifications.
- 2.22 “Reimbursable Costs and Fees” means all fees and costs incurred by the City in connection



with the City's processing and review of the Permit Application and the Building Permit; and the City's drafting, review, and execution of this Agreement.

- 2.23 **"Required Improvements"** means the public and other improvements that the Developer is required to make to the Property in association with the Developer's activities under the Permit Application and the Building Permit, including without limitation improvements for roads, parking lots or structures, signage, landscaping, drainage improvements, sidewalks, and utilities.

Any term that is defined in the Land Use Code or the City Code but not defined in this Agreement takes the meaning given to that term in the Land Use Code or the City Code.

### **Section 3 – Purpose of Agreement and Binding Effect**

- 3.1 **Salida RV Resort.** The Salida RV Resort is a project consisting of parking spaces for Recreational Vehicles to be used on a temporary basis in conformance with specific requirements stated in the First Amended Angler's Ridge Annexation Agreement, Chapter 16 of the Salida Municipal Code and Planning Commission's approval of the development plan.
- 3.2 **Contractual Relationship.** There are two purposes of this Agreement. First, the purpose of this Agreement is to establish a contractual relationship between the City and the Developer with respect to the improvements the Developer is required to make to the Property in association with the Developer's activities under the Permit Application and the Building Permit, and to establish terms and conditions for such improvements. The other purpose of this Agreement is to stipulate how the requirements of the First Amended Angler's Ridge Annexation Agreement regarding affordability will be implemented. The terms, conditions, and obligations described herein are contractual obligations of the Parties, and the Developer waives any objection to the enforcement of the terms of this Agreement as contractual obligations.
- 3.3 **Binding Agreement.** This Agreement benefits and is binding upon the City, the Developer, and the Developer's successor(s). The Developer's obligations under this Agreement constitute a covenant running with the Property.

### **Section 4 – Construction under Permit Application and Building Permit**

- 4.1 The Developer agrees that it will undertake construction under the Permit Application, if approved, and the Building Permit, if issued, only in accordance with the terms and conditions of this Agreement and all requirements of the City Code as it may be amended, including without limitation the Land Use Code, and all other applicable laws and regulations, including all City Ordinances and regulations, all State statutes and regulations, and all Federal laws and regulations.

## **Section 5 – Terms and Conditions for Construction**

- 5.1 **Other Applicable Laws and Regulations.** All terms and conditions imposed by this Agreement are in addition to and not in place of any and all requirements of the City Code as it may be amended, including without limitation the Land Use Code, and all other applicable laws and regulations, including all City Ordinances and regulations, all State statutes and regulations, and all Federal laws and regulations.
- 5.2 **Submittals to and Approvals by City Administrator.** Unless this Agreement specifically provides to the contrary, all submittals to the City in connection with this Agreement must be made to the City Administrator. In addition, unless this Agreement specifically provides to the contrary, the City Administrator and/or City Council must provide all approvals required of the City in connection with this Agreement.
- 5.3 **Required Improvements.** Attached **Exhibit B**, which is incorporated herein by this reference, provides a detailed list of the Required Improvements for which the Developer is responsible, along with the reasonably estimated costs of those Required Improvements, including both labor and materials. The Required Improvements must be designed, built, and installed in conformity with the City's Standard Specifications for Construction, as those Standard Specifications may be amended, and must be designed and approved by a registered professional engineer retained by the Developer. Before the Developer's commencement of construction or installation of the Required Improvements, the Director of Public Works must review and approve the drawings and plans for such improvements. In addition to warranting the Required Improvements as described in paragraph 5.7 below, the Developer shall perform routine maintenance on the Public Improvements for the duration of the Public Improvements Warranty Period and on the other Required Improvements for the duration of the Other Required Improvements Warranty Period.
- 5.4 **General Construction Standards.** The Developer shall ensure that all construction is performed in a workmanlike manner in accordance with this Agreement and with the City's rules, regulations, requirements, criteria, and standards governing such construction, as they may be amended.
- 5.5 **Specific Requirements for Construction within Waste Water Treatment Plant (WWTP).** In addition to the general construction standards described above in paragraph 5.4, construction of private and public utilities within the WWTP shall be in accordance with the additional requirements stated herein.
- 5.5.1 Developer shall contribute one hundred thousand dollars (\$100,000) towards the City's construction of additional concrete drying beds for bio-solids at the north end of the site, at the discretion and as directed by the Public Works Director. Payment shall be made within 30 days of the date of this agreement and prior to executing the Construction Agreement and issuing the Notice of Award to the contractor. The new beds must be complete and ready for use prior to beginning construction of the private and public utilities within the WWTP.

- 5.5.2 Developer shall install two – three inch low pressure sewer lines: one dedicated to the Salida RV Resort and the second to be owned by the City for any future connections at the City’s discretion.
  - 5.5.3 Construction of the private sewer lines and public water line (Required Improvements) shall be in accordance with the Construction Schedule for within the WWTP as shown in **Exhibit C**.
  - 5.5.4 Developer shall prepare an easement for recordation to allow required maintenance and repair of the Salida RV Resort private sewer line subject to notice and access to be granted by the City.
  - 5.5.5 Developer shall erect temporary fencing as needed along west end of the WWTP to ensure plant remains secure while utility work is underway. The final perimeter security fence shall be located on the property line, and shall be installed with the same materials and specifications as the existing fencing.
  - 5.5.6 All spoils from utility line construction shall be removed from the WWTP immediately upon excavation. Developer shall remove and replace asphalt driveway, or 2-inch mill and overlay, if any wear or damage is present due to construction activities.
  - 5.5.7 Developer shall repair any other damage that may occur due to construction activities.
- 5.6 Performance Guarantee. Before commencement of construction under the Permit Application, if approved, and the Building Permit, if issued, the Developer shall furnish the City with an effective Performance Guarantee in the amount of 125% of the total estimated cost of the Required Improvements, as shown on **Exhibit B**. The total estimated cost of the Required Improvements, including both labor and materials, is \$479,027 therefore, the Performance Guarantee must be in an amount equal to \$598,784.
- 5.6.1 The Performance Guarantee must provide for payment to the City upon demand, based upon the City’s written certified statement that the Developer has failed to construct, install, maintain, or repair, as required by this Agreement, any of the Required Improvements.
  - 5.6.2 The Developer shall extend or replace the Performance Guarantee at least thirty days prior to its expiration. In the event that the Performance Guarantee expires, or the entity issuing the Performance Guarantee becomes non-qualifying, or the City reasonably determines that the cost of the Required Improvements is greater than the amount of the Performance Guarantee, then the City shall give written notice to the Developer of the deficiency, and within thirty days of receipt of such notice, the Developer shall provide the City an increased or substituted

Performance Guarantee that meets the requirements of this paragraph 5.6 and the Land Use Code.

- 5.6.3 Upon completion of portions of the Required Improvements ("Completed Improvements"), the Developer may apply to the City for a release of part of the Performance Guarantee. Any such application must include submittal of as-built drawings and a detailed cost breakdown of the Completed Improvements. Upon the Director of Public Work's inspection and written approval of the Completed Improvements in accordance with paragraph 5.10 below, the City Council may authorize a release of the Performance Guarantee in the amount of 75% of the documented cost of the Completed Improvements.
- 5.6.4 Upon the Director of Public Work's inspection and written approval of all Required Improvements in accordance with paragraph 5.10 below, the City Council shall authorize a release of the Performance Guarantee in the amount of 90% of the total estimated cost of all Required Improvements, as shown on **Exhibit B**.
- 5.6.5 Upon the expiration of both the Public Improvements Warranty Period and the Other Required Improvements Warranty Period described in paragraph 5.8 below, the Developer's correction of all defects discovered during such periods, and the City's final acceptance of the Public Improvements in accordance with paragraph 5.10 below, the City Council shall authorize a full release of the Performance Guarantee.
- 5.6.6 Failure to provide or maintain the Performance Guarantee in compliance with this paragraph 5.6 will constitute an event of default by the Developer under this Agreement. Such default will be subject to the remedies, terms, and conditions listed in Section 8 below.
- 5.7 Conveyance of Public Improvements. Within twenty-eight days of the City's final acceptance of the Public Improvements in accordance with paragraph 5.11 below, the Developer shall, at no cost to the City, do the following:
  - 5.7.1 Execute and deliver to the City a good and sufficient bill of sale describing all of the Public Improvements constructed, connected, and installed by the Developer pursuant to this Agreement, together with all personal property relating to the Public Improvements ("Bill of Sale"). In the Bill of Sale, the Developer shall warrant the conveyance of the Public Improvements as free from any claim, demand, security interest, lien, or encumbrance whatsoever. Acceptance of the Bill of Sale must be authorized by City Council.
  - 5.7.2 Execute and deliver to the City a good and sufficient General Warranty Deed conveying to the City, free and clear of liens and encumbrances, all easements necessary for the operation and maintenance of the Public Improvements to the extent the Public Improvements are not constructed within dedicated easements or rights-of-way.

- 5.7.3 Deliver to the City all engineering designs, current surveys, current field surveys, and as-built drawings and operation manuals for the Public Improvements and for all improvements made for utilities, or make reasonable provision for the same to be delivered to the City. The legal description of all utility service lines must be prepared by a registered land surveyor at the Developer's sole expense.
- 5.8 Warranty. The Developer shall warrant the Public Improvements for one year from the date that the Director of Public Works, in accordance with paragraph 5.10 below, approves the Public Improvements and certifies their compliance with approved specifications ("Public Improvements Warranty Period"). The Developer shall warrant all other Required Improvements for a period of two years from the date that the Director of Public Works, in accordance with paragraph 5.9 below, approves the other Required Improvements and certifies their compliance with approved specifications ("Other Required Improvements Warranty Period"). In the event of any defect in workmanship or quality during the Public Improvements Warranty Period or the Other Required Improvements Warranty Period, the Developer shall correct the defect in workmanship or material. In the event that any corrective work is performed by the Developer during either Warranty Period, the warranty on said corrected work will be extended for one year from the date on which it is completed. Should the Developer default in its obligation to correct any defect in workmanship or material during either the Public Improvements Warranty Period or the Other Required Improvements Warranty Period, the City will be entitled to draw on the Performance Guarantee and/or to pursue any other remedy described in Section 8 below.
- 5.9 Observation of Construction and Inspection of Required Improvements. The City may observe all construction on the Property, and may inspect and test each component of the Required Improvements. The Developer shall reimburse the City for all costs associated with the City's observation of construction on the Property and inspection of the Required Improvements, and the City shall not give its written approval of the Required Improvements, as described in paragraph 5.10 below, until such costs have been reimbursed. Such observation and inspection may occur at any point before, during, or upon completion of construction.
- 5.10 Director of Public Work's Written Approval of Required Improvements. At the Developer's request, the Director of Public Works shall inspect the Required Improvements to ascertain whether they have been completed in conformity with the approved plans and specifications. The Director of Public Works shall confirm in writing the date(s) on which (i) individual Required Improvements have been completed in conformity with the approved plans and specifications, and (ii) all Public Improvements have been completed in conformity with the approved plans and specifications. The Developer shall make all corrections necessary to bring the Required Improvements into conformity with the approved plans and specifications.



- 5.11 Final Acceptance of Public Improvements. Upon expiration of the Public Improvements Warranty Period, and provided that any breaches of warranty have been cured and any defects in workmanship and/or materials have been corrected, the City shall issue its final written acceptance of the Public Improvements. Thereafter, the City shall maintain such Public Improvements.
- 5.12 Inspection Distinguished from Approval. Inspection, acquiescence, and/or verbal approval by any City official of construction on the Property, at any particular time, will not constitute the City's approval of the Required Improvements as required hereunder. Such written approval will be given by the City only in accordance with paragraph 5.10 above.
- 5.13 Revegetation. Any area disturbed by construction must be promptly revegetated with Native Vegetation following completion of such work unless a building permit application has been requested for such area. In addition, the Developer shall control all Noxious Weeds within such area to the reasonable satisfaction of the City.
- 5.14 Local Utilities. In addition to the Required Improvements, the Developer shall install service lines for both on-site and off-site local utilities necessary to serve the Property, including without limitation service lines for telephone, electricity, natural gas, cable television, and street lights. The Developer shall install such service lines underground to the maximum extent feasible. If such lines are placed in a street or alley, they must be in place prior to surfacing.
- 5.15 Public Use Dedication. Consistent with paragraph 2.c of the First Amended Angler's Ridge Annexation Agreement, Developer shall construct an eight to ten foot wide trail along the frontage of the Arkansas River as described in the Agreement and provide a 25 foot wide public trail easement to be reviewed, approved and recorded by the City prior to completion of the Required Improvements.
- 5.16 Landscape Improvements. As shown on **Exhibit B**, certain of the Required Improvements are landscape improvements. The Developer shall construct all landscape improvements in accordance with the requirements of Section 16-8-90 of the Land Use Code.
- 5.17 Drainage Improvements. As shown on **Exhibit B**, certain of the Required Improvements are drainage improvements.
- 5.17.1 In accordance with Section 16-8-60 of the Land Use Code, the Developer shall retain a registered professional engineer to prepare a drainage study of the Property and to design a drainage system according to generally accepted storm drainage practices. The drainage plan must conform to the City's flood control regulations, as given in Article XI of the Land Use Code, and must be reviewed and approved in writing by the Director of Public Works before commencement of construction activities, including over-lot grading.

- 5.17.2 All site drainage, including drainage from roof drains, must be properly detained and diverted to the drainage system approved in the drainage plan before any certificate of occupancy will be issued for the Property.
- 5.17.3 All drainage improvements within public rights-of-way will be dedicated to the City as Public Improvements. All drainage improvements on private property will be maintained by the Developer, subject to easements to allow the City access in the event that the Developer fails to adequately maintain the drainage facilities.
- 5.18 Slope Stabilization. Any slope stabilization work must be performed in strict compliance with applicable law, including City Ordinances and regulations, State statutes and regulations, and Federal law and regulations. The City will determine on a case-by-case basis whether additional requirements apply to slope stabilization work.
- 5.19 Blasting and Excavation. Any removal of rock or other materials from the Property by blasting, excavation, or other means must be performed in strict compliance with applicable law, including City Ordinances and regulations, State statutes and regulations, and Federal law and regulations. The City will determine on a case-by-case basis whether additional requirements apply to blasting and excavation work.
- 5.20 Trash, Debris, and Erosion. During construction, the Developer shall take all necessary steps to control trash, debris, and erosion (whether from wind or water) on the Property. The Developer also shall take all necessary steps to prevent the transfer of mud or debris from construction sites on the Property onto public rights-of-way. If the City reasonably determines and gives the Developer written notice that such trash, debris, or erosion causes or is likely to cause damage or injury, or creates a nuisance, the Developer shall correct any actual or potential damage or injury and/or abate such nuisance within five working days of receiving such written notice. Pursuant to Section 7-1-60 of the City Code, where, in the opinion of the City Administrator or Chief of Police, a nuisance constitutes an immediate and serious danger to the public health, safety, or welfare, or in the case of any nuisance in or upon any street or other public way or public ground in the City, the City has authority to summarily abate the nuisance without notice of any kind.
- 5.21 Compliance with Environmental Laws. During construction, the Developer shall comply with all Federal and State environmental protection and anti-pollution laws, rules, regulations, orders, or requirements, including solid waste requirements; and shall comply with all requirements pertaining to the disposal or existence of any hazardous substances, pollutants, or contaminants as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and regulations promulgated thereunder.
- 5.22 Fees. The Developer shall pay to the City the fees described below at the time set forth below:

5.22.1 Developer's Reimbursement of Processing Fees. The Developer shall reimburse the City for all fees and actual costs incurred by the City in connection with the City's processing and review of the Permit Application and the Building Permit; and the City's drafting, review, and execution of this Agreement ("Reimbursable Costs and Fees"). The Reimbursable Costs and Fees include but are not limited to the City's costs incurred for engineering, surveying, and legal services, including the services of outside City consultants and/or counsel; recording fees; printing and publication costs; and any and all other reasonable costs incurred by the City.

5.22.1.1 Reimbursable Costs and Fees attributable to work completed by City staff, not including the City Attorney, will be determined based on the fee schedule attached to the City's then-effective Open Records Policy. The fee schedule attached to the Open Records Policy in effect as of the date of this Agreement is attached as **Exhibit C**.

5.22.1.2 Reimbursable Costs and Fees attributable to work completed by the City Attorney or by the City's outside consultants and/or counsel will be equal to the actual costs and fees billed to and paid by the City for that work.

5.22.1.3 Interest will be imposed at rate of 1.5% per month on all balances not paid to the City within 30 days of the effective date of the City's invoicing of the Developer for the Reimbursable Costs and Fees, with that effective date determined in accordance with the notice provisions of paragraph 10.6 below. In addition to any and all remedies available to the City and in the event the City is forced to pursue collection of any amounts due and unpaid under this provision or under this Agreement, the City shall be entitled to collect attorney's fees and costs incurred in said collection efforts in addition to the amount due and unpaid.

5.22.2 Payment of Currently Existing Fees. The Developer shall pay to the City any fees required to be paid under this Agreement or the currently existing City Code, regardless of whether the relevant provisions of the City Code are later amended, repealed, or declared to be invalid. Payment of such fees pursuant to this Agreement is agreed to by and between the Parties as a term and condition of the City's issuance of the Building Permit, if the Permit Application is approved. The Developer further agrees not to contest any Ordinance imposing such fees as they pertain to the Property.

5.23 Lighting. All lighting on the Property must be Dark-Sky Compliant and must conform to Section 16-8-100 of the Land Use Code and all other applicable City Ordinances in effect at the time of permitting.

5.24 Signage. All signage on the Property must conform to Article X of the Land Use Code and all other applicable City Ordinances in effect at the time of permitting.

## **Section 6 – Construction Schedule**

- 6.1 **Construction Schedule.** Attached **Exhibit D**, which is incorporated herein by this reference, provides the schedule according to which construction will occur, including construction and installation of all Required Improvements (“**Construction Schedule**”).
- 6.2 **Construction Phases.** Each phase of construction must be planned so that the Developer’s failure to proceed to a subsequent stage will not have an adverse impact on the construction or on the City.
- 6.3 **Site Restoration.** If the Developer fails to commence or complete construction in accordance with the Construction Schedule, the Developer nonetheless shall complete all site restoration work necessary to protect the health, safety, and welfare of the City’s residents and the aesthetic integrity of the Property (“**Site Restoration Improvements**”). Site Restoration Improvements will include, at minimum, all excavation reclamation, slope stabilization, and landscaping improvements identified as Required Improvements on **Exhibit B**.
- 6.4 **Force Majeure.** If the Developer fails to commence or complete construction in accordance with the Construction Schedule due to Force Majeure, the City shall extend the time for completion by a reasonable period. In such an event, the City and the Developer shall amend the Construction Schedule in writing to memorialize such extension(s).

## **Section 7 – Cost Recovery for Water Main Extension and Private Sewer**

- 7.1 Pursuant to City Code Sections 13-2-160, the Developer shall be entitled to recover costs associated with construction of a portion of the Water Facilities, the extension of the water main necessary to extend City water service to the Property. The recovery costs associated with this Agreement will be determined by the following formula:

Reimbursement Cost =  $(C/P/2)F$ , where

C = total cost of water main extension with hydrants (\$186,270);

P = linear feet of pipe extended (2,196); and

F = linear feet of adjacent lot frontage (1,685 feet).

The total cost of the water main extension therefore will be divided by the total length of the pipe to determine a cost per linear foot. One half of this linear foot cost will be assigned to those properties on each side of the pipe extension in direct proportion to the amount of lot frontage these properties share with the extension.

Per the attached **Exhibit E**, the reimbursement costs will be allocated to any lot or parcel adjacent to the water main extension, presently Chaffee County Assessor Parcels 380709400062 (682 feet) and 380709100063 (1,003 feet) that taps into this extension.

- 7.2 If the City allows a private entity to connect to the second, private low pressure waste water line located within the WWTP as described in paragraph 5.5.2, pursuant to City Code Section 13-2-160, the Developer shall be entitled to recover costs for installing said improvement. The recovery cost for this improvement shall be 50% of the Sewer Construction costs identified in **Exhibit B**, or \$26,400.
- 7.3 The Developer has provided the City with supporting documentation (**Exhibit B**) to set a dollar amount per measurable unit to be charged subsequent owners for their proportionate share of the facilities. The recovery charge is subject to approval by the City and will be determined by the formulas given above.
- 7.4 The City shall provide written notice to the Developer of any application submitted to the City for connection to the Water or Private Sewer Facilities, which applications will trigger recovery from a current or subsequent owner of property benefitted by said Water or Private Sewer Facilities. The City will require recovery in the form of a lump sum payment, or, at the City's discretion, a system development fee surcharge from the current or subsequent owner of property benefitted by the Water or Private Sewer Facilities as a condition of any future water service connection to said Water Facilities.
- 7.5 Recovery from current or subsequent owners of property benefitted by the Water Facilities will be limited to those properties that receive approval from the City for any application to connect to the Water or Wastewater Facilities within ten years of the date of this Agreement.
- 7.6 Nothing in this Agreement is to be construed as a commitment of financial liability to the Developer or of the City's required collection or payment of the amount claimed for recovery through participation of a subsequent owner; the City is merely agreeing to facilitate an acceptable approach for subsequent owners' participation in public improvement costs.

### **Section 8 – Default by Developer and City's Remedies**

- 8.1 **City's Remedies on Developer's Default.** In the event of the Developer's default with respect to any term or condition of this Agreement, the City may take any action necessary or appropriate to enforce its rights, including without limitation any or all of the following:
- 8.1.1 The refusal to issue any further building permits or a certificate of occupancy to the Developer.
- 8.1.2 The revocation of any building permit previously issued and under which construction directly related to such building permit has not commenced; provided, however, that this remedy will not apply to a third party.
- 8.1.3 Suspension of all further activities, approvals, and permitting related to the Permit Application and the Building Permit.



8.1.4 A demand that the Performance Guarantee be paid or honored.

8.1.5 Any other remedy available in equity or at law.

- 8.2 Notice of Default. Pursuant to Section 16-2-60(o) of the Land Use Code, before taking remedial action hereunder, the City shall give written notice to the Developer of the nature of the default and an opportunity to be heard before the City Council concerning such default. If the default has not been cured within thirty days of receipt of the notice or the date of any hearing before the City Council, whichever is later, the City will consider whether the Developer has undertaken reasonable steps to timely complete the cure if additional time is required.
- 8.3 Immediate Damages on Developer's Default. The Developer recognizes that the City may suffer immediate damages from a default. In the event of such immediate damages resulting from the Developer's default with respect to any term or condition of this Agreement, the City may seek an injunction to enforce its rights hereunder.
- 8.4 Jurisdiction and Venue. The District Court of the County of Chaffee, State of Colorado, will have exclusive jurisdiction to resolve any dispute over this Agreement.
- 8.5 Waiver. Any waiver by the City of one or more terms of this Agreement will not constitute, and is not to be construed as constituting, a waiver of other terms. A waiver of any provision of this Agreement in any one instance will constitute, and is not to be construed as constituting, a waiver of such provision in other instances.
- 8.6 Cumulative Remedies. Each remedy provided for in this Agreement is cumulative and is in addition to every other remedy provided for in this Agreement or otherwise existing at law or in equity.

## **Section 9 – Affordable Rates and Lease Options for Work Force**

- 9.1 First Amended Angler's Ridge Annexation Agreement. Paragraphs 5.n. and s. of said agreement recognizes that permanent housing is not a part of the proposed RV park development, however it can play a role in providing affordable housing for the work force. Therefore the Developer agrees to provide 12.5% of the spaces, currently 20 spaces, at affordable prices for residents of Chaffee County and those employed in Chaffee County and provide various lease terms and housing options. This shall be accomplished by:
- 9.1.1 Chaffee County Office of Housing (CCOH), or a housing authority serving Chaffee County, will define the prices for monthly rent for the affordable spaces and update yearly. The formula for setting the "affordable price" rent for these spaces shall be the current rent amount for a studio apartment for a household earning 80% of the Area Median Income (AMI), multiplied by the percentage of the cost of a new home that is devoted to the cost of land. These variables are defined below:

- 9.1.1.1 The maximum rental cost of a studio for a household earning 80% AMI will be defined by the Colorado Housing Finance Administration yearly (currently \$1,000 per month).
- 9.1.1.2 The percentage of the cost of the construction of a housing unit in Salida that is due to the Finished Lot Price (currently 33.8%) as defined by the 2016 Chaffee County Housing Needs Assessment and Strategy and any future adopted revisions to said study.
- 9.1.2 CCOH or a housing authority serving Chaffee County will verify the eligibility of tenants of spaces at the affordable price as meeting the criteria of having been employed in Chaffee County for at least four years and retired or unable to work; or currently employed in Chaffee County.
- 9.1.3 The Developer agrees to provide biannual reports to CCOH or a housing authority serving Chaffee County demonstrating compliance with the affordability requirements defined above.
- 9.1.4 CCOH or a housing authority serving Chaffee County will provide annual reports to the City Council by the end of the first quarter of each calendar year on the current affordable price and aggregated statistical information regarding residency, general employment and household income of the renters of the reduced price spaces.
- 9.1.5 The Developer agrees to: provide leases with three to 12 month terms; offer for sale park model homes that are designed for all year use, with skirting and freeze proof utilities; and offer various housing options including RV trailers, motor homes, park models and tiny homes on wheels.
- 9.1.6 Shared community expenses will be calculated annually, based on the prior year's actual costs for the total project, divided by the total number of lots. The first year will be based on actual expenses monthly and divided by the total number of approved lots for the community.
- 9.2 Planning Commission Approval of Development Plan. As part of the Planning Commission's approval on February 24, 2020 of the Salida RV Resort Development Plan, the following condition was added regarding the timing of the affordable spaces.
  - 9.2.1 If the construction of RV spaces are phased, Developer shall ensure that at least 12.5% of the available spaces will be affordable as defined herein.

## **Section 10 – Indemnification and Release**

- 10.1 Release of Liability. The Developer acknowledges that the City cannot be legally bound by the representations of any of its officers or agents or their designees except in

accordance with the City Code, City Ordinances, and the laws of the State of Colorado. The Developer further acknowledges that it acts at its own risk with respect to relying or acting upon any representation or undertaking by the City or its officers or agents or their designees. Accordingly, the Developer expressly waives and releases any current or future claims related to or arising from any such representation or undertaking by the City or its officers or agents or their designees.

## 10.2 Indemnification.

10.2.1 The Developer shall indemnify and hold harmless the City, and the City's officers, agents, employees, and their designees, from and against any and all claims, damages, losses, and expenses, including but not limited to attorneys' fees and costs, arising from or in connection with the following: (a) the City's issuance of the Building Permit if the Permit Application is approved; (b) acts or omissions by the Developer, its officers, employees, agents, consultants, contractors, or subcontractors in connection with the Permit Application, if it is approved, and the Building Permit, if it is issued; (c) the City's required disposal of hazardous substances, pollutants, or contaminants; required cleanup necessitated by leaking underground storage tanks, excavation, and/or backfill of hazardous substances, pollutants, or contaminants; or environmental cleanup responsibilities of any nature whatsoever on, of, or related to the Easement Lands; provided that such disposal or cleanup obligations do not arise from any hazardous substance, pollutant, or contaminant generated or deposited by the City upon the Easement Lands; or (d) any other item contained in this Agreement.

10.2.2 The Developer shall reimburse the City for all fees, expenses, and costs, including attorneys' fees and costs, incurred in any action brought against the City as a result of the City's issuance of the Building Permit if the Permit Application is approved; and shall reimburse the City for all fees, expenses, and costs, including attorneys' fees and costs, associated with any referendum election, review of petition for referendum, protest, or any other proceedings to challenge the City's issuance of the Building Permit if the Permit Application is approved. Nothing in this Agreement obligates or compels the City to proceed with any action or referendum position.

10.2.2.1 Fees, expenses, and costs attributable to work completed by City staff, not including the City Attorney, will be determined based on the fee schedule attached to the City's then-effective Open Records Policy. The fee schedule attached to the Open Records Policy in effect as of the date of this Agreement is attached as **Exhibit C**.

10.2.2.2 Fees, expenses, and costs attributable to work completed by the City Attorney or by the City's outside consultants and/or counsel will be equal to the actual costs and fees billed to and paid by the City for that work.

## **Section 11 – Representations and Warranties**

- 11.1 **Developer's Representations and Warranties.** The Developer hereby represents and warrants to the City that the following are true and correct as of the date of the Developer's execution of this Agreement and will be true and correct as of the Effective Date:
- 11.1.1 **Authority.** This Agreement has been duly authorized and executed by the Developer as a legal, valid, and binding obligation of the Developer, and is enforceable as to the Developer in accordance with its terms.
- 11.1.2 **Authorized signatory.** The person executing this Agreement on behalf of the Developer is duly authorized and empowered to execute and deliver this Agreement on behalf of the Developer.
- 11.1.3 **No litigation or adverse condition.** To the best of the Developer's knowledge, there is no pending or threatened litigation, administrative proceeding, or other claim pending or threatened against the Developer that, if decided or determined adversely, would have a material adverse effect on the ability of the Developer to meet its obligations under this Agreement; nor is there any fact or condition of the Property known to the Developer that may have a material adverse effect on the Developer's ability to complete construction on the Property as contemplated under the Permit Application.
- 11.1.4 **Compliance with environmental laws and regulations.** To the best of the Developer's knowledge, all Easement Lands to be dedicated to the City hereunder are in compliance with all Federal and State environmental protection and anti-pollution laws, rules, regulations, orders, or requirements, including solid waste requirements; and all such dedicated property is in compliance with all requirements pertaining to the disposal or existence of any hazardous substances, pollutants, or contaminants as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and regulations promulgated thereunder.
- 11.1.5 **No conflict.** Neither the execution of this Agreement nor the consummation of the transaction contemplated by this Agreement will constitute a breach under any contract, agreement, or obligation to which the Developer is a party or by which the Developer is bound or affected.
- 11.2 **City's Representations and Warranties.** The City hereby represents and warrants to the Developer that the following are true and correct as of the date of the City's execution of this Agreement and will be true and correct as of the Effective Date:
- 11.2.1 **Authority.** Upon execution, this Agreement will have been duly authorized by City Council as a legal, valid, and binding obligation of the City, and is enforceable as to the City in accordance with its terms.

- 11.2.2 Authorized signatory. The person executing this Agreement on behalf of the City is duly authorized and empowered to execute this Agreement on behalf of the City.
- 11.2.3 No adverse condition. To the best of the City's knowledge, there is no fact or condition of the Property known to the City that may have a material adverse effect on the Developer's ability to complete construction on the Property as contemplated under the Permit Application.
- 11.2.4 No conflict. Neither the execution of this Agreement nor the consummation of the transaction contemplated by this Agreement will constitute a breach under any contract, agreement, or obligation to which the City is a party or by which the City is bound or affected.

### **Section 12– General Provisions**

- 12.1 Waiver of Defects. In executing this Agreement, the Developer waives all objections it may have to any defects in the form or execution of this Agreement concerning the power of the City to impose conditions on the Developer as set forth herein. The Developer further waives all objections it may have to the procedure, substance, and form of the resolution of City Council adopting this Agreement.
- 12.2 Final Agreement. This Agreement supersedes and controls all prior written and oral agreements and representations of the Parties with respect to a Development Improvements Agreement associated with the Permit Application and the Building Permit, and is the total integrated agreement between the Parties with respect to that subject.
- 12.3 Modifications. This Agreement may be modified only by a subsequent written agreement executed by both Parties.
- 12.4 Voluntary Agreement. The Developer agrees to comply with all of the terms and conditions of this Agreement on a voluntary and contractual basis.
- 12.5 Survival. The City's and the Developer's representations, covenants, warranties, and obligations set forth herein, except as they may be fully performed before or on the Effective Date, will survive the Effective Date and are enforceable at law or in equity.
- 12.6 Notice. All notices required under this Agreement must be in writing and must be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the Parties as set forth below. All notices so given will be considered effective immediately upon hand-delivery, and seventy-two hours after deposit in the United States Mail with the proper address as set forth below. Either Party by notice so given may change the address to which future notices are to be sent.



Notice to the City: City of Salida  
Attn: City Administrator and City Attorney  
448 East First Street, Suite 112  
Salida, CO 81201

Notice to the Developer: G2M, LLC  
Attn: Brian Morrison, Partner  
1901 Jackson Street  
Golden, CO 80401

- 12.7 Severability. The terms of this Agreement are severable. If a court of competent jurisdiction finds any provision hereof to be invalid or unenforceable, the remaining terms and conditions of the Agreement will remain in full force and effect.
- 12.8 Recording. The City shall record this Agreement with the Clerk and Recorder of Chaffee County, Colorado, at the Developer's expense
- 12.9 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, confers or is intended to confer any rights or remedies whatsoever upon any person or entity other than the City, the Developer, and the Developer's successor(s).
- 12.10 No Waiver of Immunity. Nothing in this Agreement, express or implied, waives or is intended to waive the City's immunity under Colorado State law, including without limitation the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 through -120.
- 12.11 Joint Drafting. The Parties acknowledge that this Agreement represents the negotiated terms, conditions, and covenants of the Parties, and that the Party responsible for drafting any such term, condition, or covenant is not to be prejudiced by any presumption, canon of construction, implication, or rule requiring construction or interpretation against the Party drafting the same.
- 12.12 Subject to Annual Appropriation. Any financial obligation of the City arising under this Agreement and payable after the current fiscal year is contingent upon funds for that purpose being annually appropriated, budgeted, and otherwise made available by the City Council in its discretion.
- 12.13 Exhibits. All schedules, exhibits, and addenda attached to this Agreement and referred to herein are to be deemed to be incorporated into this Agreement and made a part hereof for all purposes.
- 12.14 Counterparts. This Agreement may be executed in multiple counterparts, all of which taken together constitute one and the same document.

WHEREFORE, the parties hereto have executed duplicate originals of this Agreement on the day and year first written above.



CITY OF SALIDA, COLORADO

By

[Signature]  
Mayor P.T. Wood

ATTEST:

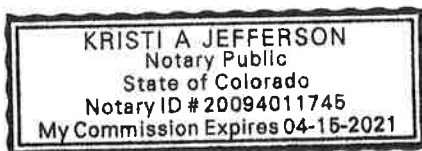
[Signature]  
City Clerk/Deputy City Clerk

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF CHAFFEE     )

Acknowledged, subscribed, and sworn to before me this 21<sup>st</sup> day of September 2020  
by P.T. Wood, as Mayor, and by Erin Kelley,  
as Clerk, on behalf of the City of Salida, Colorado.

WITNESS my hand and official seal.

My Commission expires: April 15, 2021.



[Signature]  
Notary Public

DEVELOPER:

By

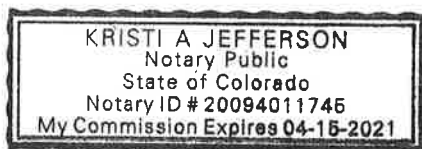
[Signature]  
Brian Morrison, Partner  
G2M, LLC

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF CHAFFEE     )

Acknowledged, subscribed, and sworn to before me this 16<sup>th</sup> day of September 2020 by  
Brian Morrison.

WITNESS my hand and official seal.

My Commission expires: 04/15/2021.



[Signature]  
Notary Public