



# CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Community Development	Carolyn Poissant - Senior Planner	August 20, 2024

## AGENDA ITEM

Ordinance 2024-15: Second Reading and Public Hearing on the proposed Suesse Annexation for a 5.71-acre property plus a portion of Confluence Road right-of-way (approximately 5.86 acres total).

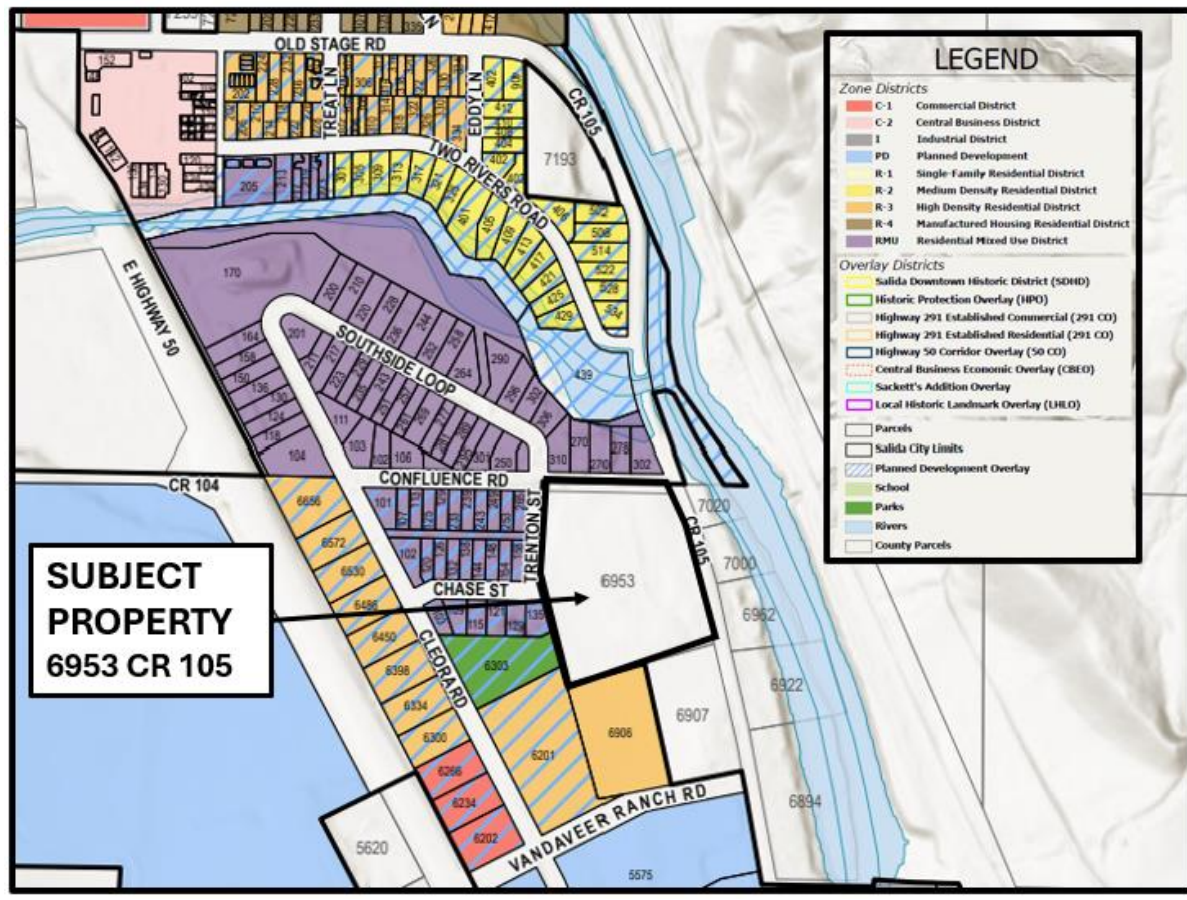
## BACKGROUND

On May 22, 2024, Ned Suesse submitted a complete application to annex the 5.71-acre property located at 6953 County Road 105 plus a 0.27-acre a portion of Confluence Road right-of-way.



**Vicinity Map**

**Surrounding Land Use and Zoning:** The site is currently zoned RES (Residential Zone District) in Chaffee County. Properties to the east remain in Chaffee County and are zoned RES. Properties to the north and west are within city limits and include the Confluent Subdivision Planned Development Overlay, comprised of a residential mixed-use development (RMU); a 1.24-acre park dedication (P); and Salida Ridge (Low Income Housing Tax Credit) Apartments (R-3). The approved Bike Baker (Flour Mill) annexation and Magpie Apartments zoned R-3 High Density Residential are on the southern boundary.



## **PROCESS:**

An application for annexation is a multi-step process. When annexing a property, the city must follow state statutes for contiguity and procedural requirements. The steps and standards include:

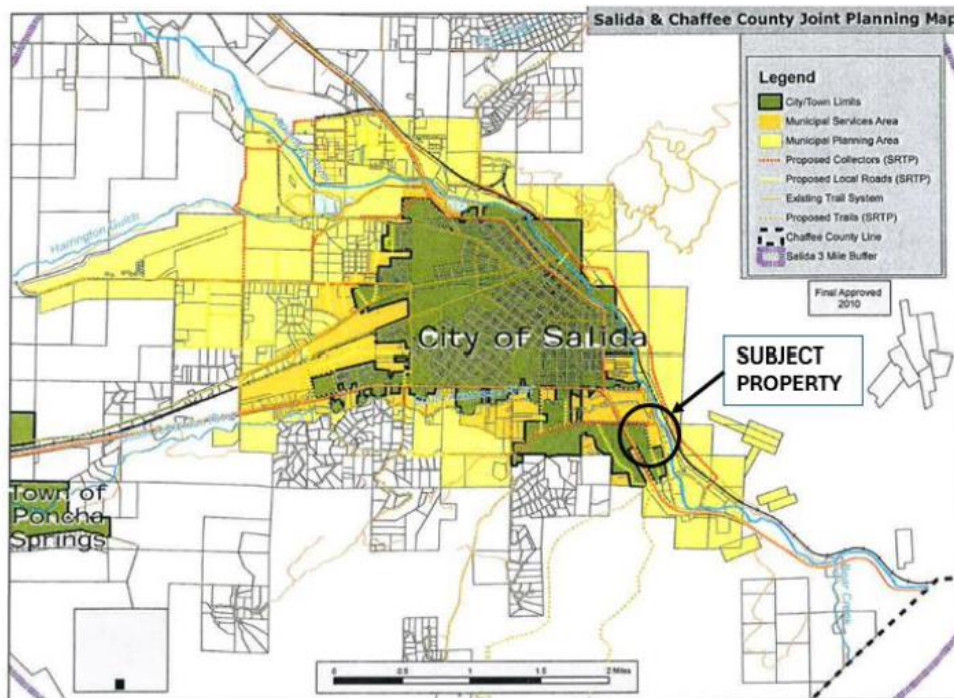
- A minimum of 1/6<sup>th</sup> (16.67%) of the perimeter of the proposed annexation must be contiguous with the City of Salida city limits.
- Staff reviews the petition for compliance with city and state statutes.
- City Council adopts a resolution stating the petition is valid and sets a public hearing date that is no less than 30 days and no greater than 60 days from the resolution date.
  - On July 2, 2024 City Council adopted Resolution 2024-40 finding the Annexation petition in compliance with city and state statutes and set the public hearing date for August 20, 2024.
- The City Council public hearing is advertised in the newspaper for four consecutive weeks.
  - Notice of such hearing was published on July 12, 2024, July 19, 2024, July 26, 2024, and August 2, 2024 in *The Mountain Mail* newspaper.

- Planning Commission holds a public hearing to review the annexation and recommend the zoning designation of the property.
  - A public hearing was held July 9, 2024.
- Planning Commission holds a public hearing to review the annexation and recommend the zoning designation of the property.
- City Council holds a public hearing on the annexation petition.
- City Council reviews and acts on an annexation agreement.
- City Council holds a public hearing to review and act on the proposed zoning.

### **FINDINGS OF FACT:**

As explained above, the annexation shall be considered by the Commission as a required step prior to the zoning of the property. The following findings of facts are required for annexation:

1. The proposed annexation meets the required 1/6<sup>th</sup> contiguity with the municipal boundary of the City of Salida as shown on the annexation plat. This is a series annexation, with annexation plat A-1 preceding annexation plat A-2. As such, contiguity requirements are satisfied for both properties (C.R.S. 31-12-104).
2. All applicable owners of the property are party to the annexation.
3. The property to be annexed is within the Municipal Services Area (MSA) or expansion area of the City of Salida, as defined in the City's Comprehensive Plan and its intergovernmental agreement (IGA) with Chaffee County approved in 2010. According to the IGA, the MSA "encompasses properties which are eligible for annexation and extension of municipal utilities and infrastructure, within the parameters set forth in the Salida Municipal Code and Salida Comprehensive Plan, which may be amended from time to time."



**Salida and Chaffee County Joint Planning Map**

4. The annexation of the property is consistent with the vision and goals set forth in the Comprehensive Land Use Plan, specifically, to promote new development projects that contain a variety of housing, including affordable units. In addition, the proposal will provide for a logical extension of the City boundary to support the demand for residentially zoned land, which will provide for a variety of housing opportunities.
5. The property may be efficiently served by City fire and police departments.
6. The property is a natural extension of the City's municipal boundary and meets the legal requirements for annexation.

The timeline for the requests related to the annexation is as follows:

Proposed Action	Planning Commission Recommendation	City Council First Reading	City Council Final Action
Findings of Fact Resolution 2024-53			8/20/2024
Annexation Ordinance 2024-15	7/9/2024	8/6/2024	8/20/2024
Annexation Agreement Resolution 2024-			
Zoning Ordinance 2024-16	7/9/2024	8/6/2024	8/20/2024

**Annexation Agreement:** The petitioner has not agreed to the terms of a draft annexation agreement, as such, the recommended annexation motion and ordinance contain the conditions recommended by Planning Commission and the City Attorney.

#### **RESPONSE FROM REFERRAL DEPARTMENTS AND AGENCIES:**

- Salida Fire Department: No concerns.
- Salida Police Department: No issues
- Salida Parks and Recreation Department: Future discussions regarding an open space dedication will be needed to determine how best to compliment park resources in the area.
- Public Works Department and City Engineering Consultants: No comment.
- Salida Finance Department: The property at 6953 County Road 105 is a sewer only account. By annexing into the city, should the existing well fail, connection to city water and payment of fees in effect at that time would be required.
- Salida School District: We have no issue with this annexation. When development fees are applicable, we will take fees in lieu of land.
- Xcel Energy: No major concerns. Response letter attached.
- ATMOS Energy: No comment.
- Visionary Broadband: No response.
- Chaffee County Planning Department: The appropriate road annexations should be completed.
- Chaffee County Building Department: No concerns at this time.

## **PLANNING COMMISSION RECOMMENDATION**

A public hearing with the Planning Commission was held July 9, 2024, and the Commission recommended Council approve the proposed Suesse Annexation with conditions included in the list below.

## **STAFF RECOMMENDATION**

Staff recommends approval of the proposed annexation subject to the following conditions, which are included in Ordinance 2024-15 (attached):

1. All proposed development shall meet the requirements of the Municipal Code.
2. The annexation is subject to the following conditions of approval:
  - a. Upon any future development of the Property, all applicable cost recovery agreements and payment terms and conditions shall be satisfied and payable in full.
  - b. Use of the existing well is permitted until failure, after which time the owner shall connect to City water and pay all applicable system development and other fees associated with the provision of City water due at the time of such connection pursuant to the City's applicable ordinances and Schedule of Fees;
  - c. Existing agricultural uses are permitted to continue, and existing associated structures may remain on the Property in their current form, until such time that an agriculture use zone is established in the Municipal Code, after which any expansion of such agricultural use shall require the Property to be appropriately rezoned;
  - d. The applicant and/or future owners of the Property will be responsible for future intersections and / or common road improvements in proportion to the Property development's impact and pursuant to its required contributions as stated within City regulations, standards, and ordinances;
  - e. There will be no minimum density requirements applied to the area illustrated in **Exhibit C** attached hereto for as long as the historic structures contained in such area remain in existence in their current form, size, shape, location and footprint;
  - f. Appropriate right-of-way dedications and improvements for all roads abutting the Property shall be completed in compliance with City standards prior to issuance of a Certificate of Occupancy for any new residential units constructed on the Property or any applicable development of the Property;
  - g. In compliance with the Two Rivers Southside Subdivision and Confluent Park Subdivision improvement agreements, the following amounts shall be paid by the Annexor or Owner upon connection of the Property to City water, in addition to any other standard fees associated with connection to City water required at the time of such connection:
    - 1) Confluent Street water/sewer main reimbursable in the amount of \$31,419.18 as per **Exhibit D** attached hereto;

- 2) Pressure Reducing Valve Reimbursement for Southeast Planning Area as calculated by the square footage of all proposed residential units, consistent with the calculations and / or proportions indicated as per **Exhibit E** attached hereto; and
- h. Dedication of required additional right-of-way and completion of right-of-way improvements on the east side of Trenton Street shall be completed pursuant to the Letter of Agreement attached hereto as **Exhibit F**.
- i. Upon any development at the Property, Annexor or Owner shall pay, at the time of issuance of a building permit, all applicable fees and fees-in-lieu in the amounts set forth pursuant to the Salida Municipal Code, or as hereafter amended.

### **MOTION**

A City Councilmember should state, "I move to \_\_\_\_\_ Ordinance 2024-15 approving the annexation of a 5.71-acre parcel and a 0.27-acre portion of Confluence Road right-of-way for total of 5.86-acres, known as the Suesse Annexation."

Attachments: Ordinance 2024-15  
Suesse Annexation petition and Annexation plats  
Minutes of July 9, 2024 Planning Commission meeting

**CITY OF SALIDA, COLORADO  
ORDINANCE NO. 15  
SERIES OF 2024**

**AN ORDINANCE OF THE CITY OF SALIDA, COLORADO ANNEXING TO THE CITY OF SALIDA A CERTAIN TRACT OF LAND IN UNINCORPORATED CHAFFEE COUNTY KNOWN AS THE SUESSE ANNEXATION**

**WHEREAS**, on May 22, 2024, Ned Suesse filed a General Development Application (the "Petition") to commence proceedings to annex to the City of Salida (the "City") a certain unincorporated tract of land comprised of a 5.71-acre parcel located at 6953 County Road 105 and a 0.27-acre portion of Confluence Road right-of-way in the County of Chaffee, State of Colorado (the "Property"), and being more particularly described on **Exhibit A**, attached hereto and incorporated herein by reference; and

WHEREAS, a Pre-Annexation Agreement (**Exhibit B** attached hereto), recorded onto the Property with the Chaffee County Clerk and Recorder on March 24, 2016 with Reception No. 425861 and constituting a covenant which runs with said real Property, required the annexation to occur once contiguity had been achieved, along with requiring right-of-way and open space dedications; and

**WHEREAS**, pursuant to C.R.S. §31-12-108, the City Council by Resolution No. 40, Series of 2024 specified that the City Council would hold a hearing on the proposed annexation at its regular meeting on August 20, 2024 commencing at the hour of 6 p.m. in the City Council Chambers, 448 East First Street, Salida, Colorado; and

**WHEREAS**, pursuant to C.R.S. §31-12-108 to -110, the City Council on August 20, 2024 held a duly-noticed public hearing to consider the proposed annexation; and

**WHEREAS**, notice of such hearing was published on July 12, 2024, July 19, 2024, July 26, 2024, and August 2, 2024 in *The Mountain Mail* newspaper; and

**WHEREAS**, C.R.S. §31-12-105(1)(e) provides that prior to the completion of any annexation within a three-mile area, the municipality shall have in place a plan for that area, which generally describes the proposed location, character, and extent of streets, subways, bridges, waterways, waterfronts, parkways, playgrounds, squares, parks, aviation fields, other public ways, grounds, open spaces, public utilities and terminals for water, light, sanitation, transportation and power to be provided by the municipality and the proposed land uses for the area; and

**WHEREAS**, the City hereby sets forth its Findings of Fact, Determinations, and Conclusions with regard to annexation to the City of the Suesse Annexation; and

**WHEREAS**, the City currently has in place a Comprehensive Plan and other long-range planning documents which constitute the City's annexation plan.

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

1. The City incorporates the foregoing recitals as findings and determinations by the City Council.
2. The City hereby approves the annexation of the Property described on Exhibit A, attached hereto with the following conditions of approval, and such real Property is hereby annexed to and made a part of the City of Salida.
  1. All proposed development shall meet the requirements of the Municipal Code.
  2. The annexation is subject to the following conditions of approval:
    - a. Upon any future development of the Property, all applicable cost recovery agreements and payment terms and conditions shall be satisfied and payable in full.
    - b. Use of the existing well is permitted until failure, after which time the owner shall connect to City water and pay all applicable system development and other fees associated with the provision of City water due at the time of such connection pursuant to the City's applicable ordinances and Schedule of Fees;
    - c. Existing agricultural uses are permitted to continue, and existing associated structures may remain on the Property in their current form, until such time that an agriculture use zone is established in the Municipal Code, after which any expansion of such agricultural use shall require the Property to be appropriately rezoned;
    - d. The applicant and/or future owners of the Property will be responsible for future intersections and / or common road improvements in proportion to the Property development's impact and pursuant to its required contributions as stated within City regulations, standards and ordinances;
    - e. There will be no minimum density requirements applied to the area illustrated in **Exhibit C** attached hereto for as long as the historic structures contained in such area remain in existence in their current form, size, shape, location and footprint;
    - f. Appropriate right-of-way dedications and improvements for all roads abutting the Property shall be completed in compliance with City standards prior to issuance of a Certificate of Occupancy for any new residential units constructed on the Property or any applicable development of the Property;
    - g. In compliance with the Two Rivers Southside Subdivision and Confluent Park Subdivision improvement agreements, the following amounts shall

be paid by the Annexor or Owner upon connection of the Property to City water, in addition to any other standard fees associated with connection to City water required at the time of such connection:

- 1) Confluent Street water/sewer main reimbursable in the amount of \$31,419.18 as per **Exhibit D** attached hereto;
  - 2) Pressure Reducing Valve Reimbursement for Southeast Planning Area as calculated by the square footage of all proposed residential units, consistent with the calculations and / or proportions indicated as per **Exhibit E** attached hereto; and
- h. Dedication of required additional right-of-way and completion of right-of-way improvements on the east side of Trenton Street shall be completed pursuant to the Letter of Agreement attached hereto as **Exhibit F**.
  - i. Upon any development at the Property, Annexor or Owner shall pay, at the time of issuance of a building permit, all applicable fees and fees-in-lieu in the amounts set forth pursuant to the Salida Municipal Code, or as hereafter amended.
3. Within ten (10) days after final publication of this Ordinance, the City Clerk of the City of Salida, Colorado, on behalf of the City shall:
- A. File one (1) copy of the Annexation Plat and the original of this Annexation Ordinance in the office of the City Clerk of the City of Salida, Colorado;
  - B. File for recording three (3) certified copies of this Annexation Ordinance and three (3) copies of the Annexation Plat, containing a legal description of the annexation parcel, with the County Clerk and Recorder of Chaffee County, Colorado, with directions to the Chaffee County Clerk and Recorder to file one certified copy of this Annexation Ordinance and one copy of the Annexation Map with the Division of Local Government of the Department of Local Affairs of the State of Colorado and one certified copy of this Annexation Ordinance and one copy of the Annexation Map with the Colorado Department of Revenue; and
  - C. File one certified copy of this Annexation Ordinance and one copy of the Annexation Map in the office of the County Assessor of Chaffee County, Colorado.

**INTRODUCED ON FIRST READING**, on the 6<sup>th</sup> day of August, 2024, ADOPTED and ORDERED PUBLISHED IN FULL in a newspaper of general circulation in the City of Salida by the City Council on the 9<sup>th</sup> day of August, 2024, and set for second reading and public hearing on the 20<sup>th</sup> day of August, 2024.

INTRODUCED ON SECOND READING, FINALLY ADOPTED and ORDERED PUBLISHED IN FULL WITH REVISIONS, by the City Council on the 20<sup>th</sup> day of August, 2024.

CITY OF SALIDA, COLORADO

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Dan Shore, Mayor

[SEAL]

ATTEST:

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City Clerk/Deputy Clerk

PUBLISHED IN FULL in the Mountain Mail after First Reading on the 9th day of August, 2024, and IN FULL WITH REVISIONS, after final adoption on the 23<sup>rd</sup> day of August, 2024.

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City Clerk/Deputy City Clerk

## EXHIBIT A

ALL THAT TRACT OF LAND LOCATED WITHIN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER AND THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 49 NORTH, RANGE 9 EAST OF THE NEW MEXICO PRINCIPAL MERIDAN, ALSO BEING LOT 1-R "CONFLUENCE ROAD SUBDIVISION EXEMPTION FOR PUBLIC BENEFIT," CHAFFEE COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE WITNESS CORNER TO THE NORTH QUARTER CORNER OF SAID SECTION 9, BEING MARKED BY A 3 1/4" B.L.M. BRASS CAP, FROM WHENCE THE TRUE NORTH QUARTER CORNER OF SAID SECTION 9 BEARS SOUTH 88 DEG 48'25" EAST, A DISTANCE OF 74.51 FEET; THENCE SOUTH 88 DEG 48'25" EAST ALONG THE NORTH LINE OF SAID SECTION 9, A DISTANCE OF 380.68 FEET TO THE WEST RIGHT-OF-WAY OF CHAFFEE COUNTY ROAD 105;

THENCE SOUTH 25 DEG 25'46" EAST, A DISTANCE OF 16.62 FEET TO A POINT OF CURVATURE;

THENCE SOUTHERLY A DISTANCE OF 16.89 FEET ALONG THE ARC OF A CURVE DEFLECTING TO THE RIGHT, HAVING A RADIUS OF 820.00 FEET, A DELTA ANGLE OF 1 DEG 10'48", A CHORD LENGTH OF 16.89 FEET AND A CHORD BEARING OF SOUTH 25 DEG 05'57" EAST;

THENCE CONTINUING SOUTHERLY ALONG SAID ARC A DISTANCE OF 152.25 FEET DEFLECTING TO THE RIGHT, HAVING A RADIUS OF 820.00 FEET, A DELTA ANGLE OF 10 DEG 38'18", A CHORD LENGTH OF 152.03 FEET, AND A CHORD BEARING OF SOUTH 19 DEG 11'24" EAST TO A POINT OF TANGENCY;

THENCE SOUTH 13 DEG 53'16" EAST, A DISTANCE OF 268.86 FEET;

THENCE SOUTH 12 DEG 48'58" EAST A DISTANCE OF 60.18 FEET, THIS AND THE PRECEDING 4 COURSES ARE ALONG SAID WEST RIGHT-OF-WAY OF CHAFFEE COUNTY ROAD 105;

THENCE SOUTH 73 DEG 55'54" WEST A DISTANCE OF 466.73 FEET;

THENCE NORTH 15 DEG 21'10" WEST A DISTANCE OF 343.21 FEET;

THENCE NORTH 03 DEG 10'18" EAST A DISTANCE OF 300.18 FEET TO THE POINT OF BEGINNING.

CONTAINING 5.98 ACRES MORE OR LESS.

BY: LANDMARK SURVEYING & MAPPING JULY 26, 2024

*SUESSE ANNEXATION  
TO THE CITY OF SALIDA*

A PORTION OF CONFLUENCE ROAD AND LOT 1-R  
CONFLUENCE ROAD SUBDIVISION EXEMPTION  
FOR PUBLIC BENEFIT  
CHAFFEE COUNTY, COLORADO



## EXHIBIT B

### PRE-ANNEXATION AGREEMENT

**Lot 1,  
Located within Tract 1 of the Vandaveer Subdivision Exemption Plat.  
Also known as 6953 County Road 105**

THIS AGREEMENT is made and entered into this 24<sup>th</sup> day of March, 2016, by and between the CITY OF SALIDA, COLORADO, a municipal corporation (hereinafter "City"), and TRIPLE T RANCH, LLC as the owner of the real property described hereafter (hereinafter "Owner");

#### WITNESSETH:

WHEREAS, Owner is the owner of certain real property located in unincorporated Chaffee County, which property is more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, the Property is currently not eligible for annexation and lies within the City of Salida Municipal Services Area; and

WHEREAS, Owner desires to obtain the municipal services hereinafter described from the City at such time, and the City is capable of providing such service; and

WHEREAS, the parties desire to enter into this Agreement pursuant to C.R.S. §31-12-121 to set forth the terms and conditions of the extension of services and annexation of the Property by the City.

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

1. Service to be Provided. The City agrees to provide Owner with municipal sewer service to the Property for residential uses at in-City rates. In the event City water service becomes available adjacent to the Property, Owner agrees to connect to City water at the then applicable in-City rates.

2. Costs. The City will provide said service subject to the rules, regulations, charges, fees, and ordinances of the City of Salida as are now in effect, or as they may hereafter be amended. All costs of extending service to the Property shall be borne by the Owner including, but not limited to, main and service line extensions. At or prior to the first delivery of municipal service pursuant to this Agreement, the Owner agrees to pay all system improvement fees at the then applicable in-City rate as provided in the Salida Municipal Code.

3. No Precedential Value. Nothing herein shall obligate the City to extend additional service to the Owner or to the Property, other than that service described in Paragraph 1, above. There shall be no expansion of such service without the express written consent of the City. The Owner and its agents, employees, and tenants shall be bound by all of the ordinances of the City of

Salida insofar as they may pertain to the conditions of pre-annexation herein described.

4. Annexation. To the maximum extent permitted by law, the parties agree that this Agreement, pursuant to C.R.S. §31-12-121, constitutes an enforceable obligation upon the Owner, its successors, and assigns to file a petition for annexation prior to or contemporaneous with any change in use of the Property to the extent permitted by law. The Owner further agrees that at such time as the Property is eligible for annexation, Owner shall within sixty (60) days of becoming eligible for annexation file a petition for annexation of the Property.

5. New Development. Owner agrees that during the term of this Agreement all new development or construction on the Property shall be in accordance with the requirements of the Salida Municipal Code.

6. Existing Uses. The Property is currently zoned residential and the Owner intends to continue to use it for that purpose.

7. Payment of Impact Fees. Owner agrees to pay at the time of annexation all applicable fees for the Property in the amounts set forth pursuant to the Salida Municipal Code, or as hereafter amended, and any other fees prescribed by Resolution or Ordinance as may apply to annexations.

8. Termination Upon Annexation. This Agreement shall terminate automatically on the effective date of the annexation to the City of the Property; provided, however, that nothing in this paragraph shall limit any other rights of termination provided in this Agreement.

9. Failure or Refusal to Annex. In the event the Owner fails to annex their Property to the City as required by this Agreement, the City may, at its sole option and without otherwise limiting its legal rights, bring an action at law or equity, including an action for specific performance, to enforce the terms of this Agreement or treat this Agreement as a petition for annexation and annex the Property without consent after thirty (30) days' written notice to Owner. The rights and remedies under this paragraph shall be cumulative. To the extent permitted by law, the Owner hereby appoints the City Clerk as their attorney-in-fact to execute and deliver all documents necessary to annex Owner's Property to the City, should the Owner fail or refuse to annex as required under this Agreement. If the City proceeds to annex the Owner's Property as permitted under this paragraph, it may advance all fees and costs related to the annexation, and shall be entitled to recover the same as a personal obligation of the Owner. Such fees and costs shall also constitute a lien against the Owner's Property, which may be foreclosed as provided by law.

10. Lien Rights. The City shall be entitled to prepare and record a lien against the Owner's Property for the amount of any costs, fees, and other expenses which it has advanced or which the Owner is required to be pay pursuant to this Agreement and/or the Salida Municipal Code.

11. Miscellaneous. The parties agree time is of the essence in the implementation of this Agreement. All of the terms and conditions of this Agreement shall bind the heirs,

\*425861\*

425861 3/24/2016 11:48 AM AGR Lori A Mitchell  
3 of 4 RS25 DS0 NS0 SS1 MS0 ES0 Chaffee County Clerk

successors, assigns, or personal representatives of the parties hereto. This Agreement constitutes a covenant which runs with the real Property. This Agreement sets forth the entire understanding between the parties, and any previous agreements, promises, or understandings have been included in this Agreement.

12. Recording; Fees. The City shall record this Agreement upon execution. The Owner shall simultaneously with the execution of this Agreement tender to the City the actual amount of recording fees (Checks shall be payable to the Chaffee County Clerk and Recorder).

WITNESS WHEREOF, the parties have executed this Agreement on the day and year first written above.

CITY OF SALIDA, COLORADO

By James L. LiVecchi  
Mayor

ATTEST:

[Signature]  
City Clerk/Deputy City Clerk



OWNER:

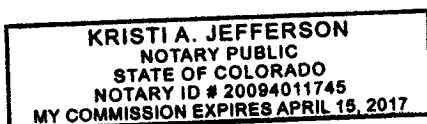
[Signature]  
TRIPLE T RANCH, LLC  
By: DEBORAH A. YORK  
Title: SOLE MEMBER

STATE OF Colorado )  
COUNTY OF Chaffee ) ss.

Acknowledged, subscribed, and sworn to before me this 18<sup>th</sup> day of March, 2016, by Deborah A. York, \_\_\_\_\_ of Triple T Ranch, LLC.

WITNESS my hand and official seal.

My Commission expires: April 15, 2017



Kristi A. Jefferson  
Notary Public

**\*425861\***

425861 3/24/2016 11:48 AM AGR Lori A Mitchell  
4 of 4 R\$25 D\$0 N\$0 S\$1 M\$0 E\$0 Chaffee County Clerk

**EXHIBIT A**

**Legal Description:**

LOT 1, LOCATED WITHIN TRACT 1 OF THE VANDAVEER SUBDIVISION EXEMPTION PLAT BEING WITHIN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER AND THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 49 NORTH, RANGE 9 EAST OF THE NEW MEXICO PRINCIPAL MERIDIAN, CHAFFEE COUNTY, COLORADO, BEING MORE OR LESS 5.97 ACRES.

**Also known as:**

6953 County Road 105  
Salida, CO 81201

**Parcel No.** 380709100070

County of Chaffee  
State of Colorado

## EXHIBIT C

Area occupied by historic structures  
not subject to future minimum density requirements



**EXHIBIT D**

**SUBDIVISION IMPROVEMENT;  
CONFLUENCE ROAD WATER AND SEWER MAIN EXTENSION; AND  
INCLUSIONARY HOUSING AGREEMENT  
Two Rivers Southside Subdivision**

THIS SUBDIVISION IMPROVEMENT; CONFLUENCE ROAD WATER AND SEWER MAIN REIMBURSEMENT; AND INCLUSIONARY HOUSING AGREEMENT (the "Agreement") is made and entered into this 5<sup>th</sup> day of May, 2020, by and between the CITY OF SALIDA, COLORADO, a Colorado statutory city ("City"), and Southside, LLC ("Developer") (each a "Party" and together the "Parties").

**Section 1 - Recitals**

- 1.1 The Developer represents that it is the fee title owner of certain lands known as the "Two Rivers Southside Subdivision" consisting of 18.6 acres and more particularly described as Lot 5, Little River Properties LLC Subdivision as recorded at Reception No. 431288 at the Chaffee County Recorder's Office, which is incorporated herein by this reference (the "Property"). The Property is located within the boundaries of the City.
- 1.2 On October 18, 2016 the City Council entered into an annexation agreement with the Parties prescribing the required public improvements for the property; allowing cost sharing agreements; and requiring eight (8) affordable dwelling units in the first phase of the Two Rivers Subdivision and 12 % of the lots in future phases to be affordable as recorded at Reception No. 431286 of the Chaffee County Recorder's Office.
- 1.3 On December 18, 2018 the City Council approved the Two Rivers Southside major subdivision consisting of the Property described herein by adoption of Resolution 2018-55; a condition of the approval requires entering into a subdivision improvement agreement pursuant to Section 16-2-60 of the Salida Municipal Code and further defines how the affordable housing requirements of the annexation agreement will be met for this phase.
- 1.4 Pursuant to the above Resolution and City Code Sections 13-2-160 and 13-2-170, the Developer shall be entitled to recover costs associated with construction of a portion of the Water and Sewer Facilities, the extension of the water and sewer mains necessary to extend City services to the Property.
- 1.5 Pursuant to Section 16-13-20 (g) of the Land Use Code residential developments must enter into an inclusionary housing development agreement with the City Council. Such agreements may be part of a subdivision improvement agreement. The agreement shall address the total number of units; the number of affordable units provided; standards for parking, density and other development standards for projects meeting the requirements; design standards for the affordable units and any restrictive covenants necessary to carry out the purposes of the inclusionary housing requirements.

- 1.6 The City wishes to advance development within municipal boundaries in accordance with the City of Salida 2013 Comprehensive Plan adopted April 16, 2013, as it may be amended.
- 1.7 Pursuant to Section 16-2-60; 13-2-160 and 170; and 16-13-20 of the Land Use Code, 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 subdivision public improvements and other improvements; recovery of costs for extending the Confluence Road water and sewer mains and for meeting the inclusionary housing requirements for the Two Rivers Southside major subdivision.
- 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 Subdivision Improvement; Confluence Road Water and Sewer Main Extension; and Inclusionary Housing Agreement. The Recitals in Section 1 above are fully incorporated into this Agreement and made a part hereof by this reference.
- 2.2 “City” means the City of Salida, a Colorado statutory City.
- 2.3 “City Administrator” means the City Administrator of the City of Salida, and the City Administrator’s designee.
- 2.4 “City Code” means the City of Salida Municipal Code.
- 2.5 “City Council” means the City Council of the City of Salida, Colorado.
- 2.6 “Dedicated Lands” means those lands the Developer will convey to the City for public use.
- 2.7 “Developer” means Southside LLC and its successor(s).
- 2.8 “Development” means all work on the Property required to transform the Property into the Two Rivers Southside major subdivision approved by the City by means of Resolution 2018-55. The term “Development” includes, without limitation, the demolition of existing structures; grading; construction of new structures; and construction of improvements, including without limitation streets, signage, landscaping, drainage improvements, sidewalks, utilities, and other improvements. When the context so dictates, the verb “Develop” may be used in place of the noun “Development.”

- 2.9 **“Drainage Plan”** means the drainage system designed for the subdivision in accordance with Section 16-8-60 of the Land Use Code.
- 2.10 **“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.
- 2.11 **“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.
- 2.12 **“Land Use Code”** means the City’s Land Use and Development Code, Title 16 of the City Code.
- 2.13 **“Native Vegetation”** means “native plant” as defined in the Colorado Noxious Weed Act, C.R.S. § 35-5.5-103(15).
- 2.14 **“Noxious Weed”** takes the meaning given to that term in the Colorado Noxious Weed Act, C.R.S. § 35-5.5-103(16).
- 2.15 **“Other Required Improvements Warranty Period”** means a period of two years from the date that the City Engineer or the City Engineer’s designee, in accordance with the terms and conditions of paragraph 5.10 below, approves the Required Improvements that are not Public Improvements, and certifies their compliance with approved specifications.
- 2.16 **“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 completing said Required Improvements.
- 2.17 **“Property”** means the land that is known as the Two Rivers Southside major subdivision and described as Lot 5 of the Little River Properties, LLC Subdivision as recorded at Reception No. 431288 of the Chaffee County Recorder’s Office.
- 2.18 **“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 A**.
- 2.19 **“Public Improvements Warranty Period”** means a period of one year from the date that the City Engineer or the City Engineer’s designee, in accordance with the terms and conditions

of paragraph 5.10 below, approves the Public Improvements and certifies their compliance with approved specifications.

- 2.20 “Reimbursable Costs and Fees” means all fees and costs incurred by the City in connection with the City’s processing and review of the proposed Development Plan and the Subdivision Plats; and the City’s drafting, review, and execution of this Agreement as described in **Exhibit B**.
- 2.21 “Required Improvements” means the public and other improvements that the Developer is required to make to the Property as part of the annexation and subdivision approvals and pursuant to this Agreement, including without limitation improvements for streets, landscaping, parks, trails, drainage improvements, sidewalks, and utilities.
- 2.22 “Subdivision Plat” means Two Rivers Southside major subdivision of the Property approved by Resolution No. 2018-55.
- 2.23 “Water Facilities” means the water main, service line, and all other appurtenances and necessary components of the water distribution system to be constructed by the Developer to extend City water service to the Property.

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 Contractual Relationship. The purpose of this Agreement is to establish a contractual relationship between the City and the Developer with respect to the Required Improvements for the Property and the provision of inclusionary housing. 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.
- 3.2 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.
- 3.3. Reservation. To the extent that the City becomes aware of new information about the Property, and notwithstanding anything to the contrary herein, the City reserves the right to require new terms, conditions, or obligations with respect to the Required Improvements for the Property.

### **Section 4 – Development of Property**

- 4.1 The City agrees to the Development of the Property, and the Developer agrees that it will Develop the Property, only in accordance with the terms and conditions of this Agreement

and all requirements of the City Code; the Little River Properties, LLC Annexation Agreement; Resolution No. 2018-55 and all other applicable laws and regulations, including without limitation all City Ordinances and regulations, all State statutes and regulations, and all Federal laws and regulations.

- 4.2 The approval of the major subdivision by the City Council on December 18, 2018 constitutes approval of the site specific development plan and establishment of vested property rights for the project per Section 16-2-20 of the Code. An established vested property right precludes any zoning or land use action by the City or pursuant to an initiated measure which would alter, impair, prevent, diminish, impose a moratorium on development, or otherwise delay the development or use of the property as set forth in the approved site specific development plan.

**Section 5 – Terms and Conditions for Development of Property**

- 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; the Little River Properties LLC Annexation Agreement; Resolution No. 2018-55 and all other applicable laws and regulations, including without limitation all City Ordinances and regulations, all State statutes and regulations, and all Federal laws and regulations.
- 5.2 Term of Vested Property Rights. Pursuant to Section 16-2-20(f)(2) of the Code the city is authorized to extend the term for vested property rights beyond three (3) years from the date of approval of the site specific development plan if warranted for reasons such as the size and phasing of the development. The term of the vested property rights for the Two Rivers Southside Subdivision shall be three (3) years from the approval of this agreement.
- 5.3 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.
- 5.4 Required Improvements. Attached **Exhibit A**, 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 to complete construction and installation of those Required Improvements, including both labor and materials. The Required Improvements must be designed, built, and installed in conformity with the City's Public Works Manual and the City's Standard Specifications for Construction ("Standard Specifications"), 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 City Engineer or the City Engineer's designee must review and approve the drawings and plans for such improvements, which drawings and plans must be stamped by the engineer retained by the Developer. In addition to warranting the Required Improvements as described in paragraph 5.10 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.

- 5.5 Construction Standards. The Developer shall ensure that all construction is performed in accordance with this Agreement and with the City's rules, regulations, requirements, and criteria, and with industry standards governing such construction.
- 5.6 Observation of Development and Inspection of Required Improvements. The City may observe all Development on the Property, and may inspect and test each component of the Required Improvements. Consistent with Section 16-2-20(r) of the Land Use Code, the Developer shall reimburse the City for all costs associated with the City's observation of Development 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 5.7 below, until such costs have been reimbursed. Such observation and inspection may occur at any point before, during, or upon completion of construction.
- 5.7 City Engineer's Written Approval of Required Improvements. At the Developer's request, the City Engineer or the City Engineer's designee shall inspect the Required Improvements to ascertain whether they have been completed in conformity with the approved plans and specifications. The City Engineer or the City Engineer's designee 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.
- 5.8 Performance Guarantee. Before commencement of any further construction on the Required Improvements, the Developer shall furnish the City with an effective Performance Guarantee in the amount of 125% of the total estimated cost of completing the Required Improvements, as shown on **Exhibit A**. The total estimated cost of completing the Required Improvements, including both labor and materials, is \$2,396,888; therefore, the Performance Guarantee must be in an amount equal to \$2,996,110.
- 5.8.1 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.
- 5.8.2 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 completing 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 5.8 and the Land Use Code.

- 5.8.3 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 City Engineer's inspection and written approval of the Completed Improvements in accordance with paragraph 5.6 above, and upon approval of the City Council, the City may authorize a release of the Performance Guarantee in the amount of 75% of the documented cost of the Completed Improvements.
- 5.8.4 Upon the City Engineer's inspection and written approval of all Required Improvements in accordance with paragraph 5.6 above, 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 A**.
- 5.8.5 Upon the expiration of both the Public Improvements Warranty Period and the Other Required Improvements Warranty Period described in paragraph 5.9 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, City Council shall authorize a full release of the Performance Guarantee.
- 5.8.6 Failure to provide or maintain the Performance Guarantee in compliance with this paragraph 5.8 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, including without limitation the City's suspension of all activities, approvals, and permitting related to the Subdivision Plats.
- 5.9 Conveyance of Public Improvements. Within twenty-eight days of the City's final acceptance of the Public Improvements in accordance with paragraph 5.10 below, the Developer shall, at no cost to the City, do the following:
- 5.9.1 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. Pursuant to Section 16-2-60(j) of the Land Use Code, acceptance of the Bill of Sale must be authorized by City Council.
- 5.9.2 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 as shown on the Two Rivers Southside major subdivision recorded at Reception No. \_\_\_\_\_.

- 5.9.3 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.
- 5.10 Warranty. The Developer shall warrant the Public Improvements for one year from the date that the City Engineer, in accordance with paragraph 5.6 above, 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 City Engineer, in accordance with paragraph 5.6 above, 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.
- 5.11 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 the Development, 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 5.6 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 Landscape Improvements. Other Required Improvements are landscape improvements consisting of right of way and parkway landscaping in accordance with the requirements of the approved landscape improvement plan for the Subdivision and the requirements of Section 16-8-90 of the Land Use Code. The Developer or homeowner's association shall be responsible for the Other Required Improvements Warranty Period.
- 5.16 Drainage Improvements. As shown on **Exhibit A**, certain of the Required Improvements are drainage improvements.
- 5.16.1 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 Plan 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 City Engineer before commencement of Development activities, including overlot grading.
- 5.16.2 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.
- 5.16.3 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.
- 5.17 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.
- 5.18 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.

5.19 Trash, Debris, and Erosion. During Development, 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. When, 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 consistent with Section 7-1-60 of the City Code. Nothing in this paragraph limits or affects the remedies the City may pursue under Section 8 of this Agreement.

5.20 Compliance with Environmental Laws. During Development, the Developer shall comply with all Federal and State environmental protection and anti-pollution laws, rules, regulations, orders, or requirements, including without limitation solid waste requirements and all requirements under the Federal Water Pollution Control Act, as amended ("Clean Water Act"); 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.

5.21 Fees. The Developer shall pay to the City the fees described below at the time set forth below:

5.21.1 Developer's reimbursement of processing fees. Consistent with Sections 16-2-10 and 16-2-60(r) of the Land Use Code, the Developer shall reimburse the City for all fees and costs incurred by the City in connection with the City's processing and review of the proposed Subdivision Plats, including without limitation processing and review of the Zoning and Subdivision Applications and supporting documentation, 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 costs incurred by the City.

5.21.2 Work by City staff other than City Attorney. 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 B**.

- 5.21.3 Work by City Attorney. 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.
- 5.21.4 Amounts due and unpaid. 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 11.6 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 attorneys' fees and costs incurred in said collection efforts in addition to the amount due and unpaid.
- 5.21.5 Currently existing fees. Payment of Currently Existing Fees as a Condition of Development. 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 condition of the Development. The Developer further agrees not to contest any Ordinance imposing such fees as they pertain to the Property.

#### Section 6 – Construction Schedule

- 6.1 Construction Schedule. Attached **Exhibit C**, which is incorporated herein by this reference, provides the schedule according to which construction and installation of the Required Improvements will occur ("Construction Schedule"). If the Developer fails to commence or to complete any phase of construction and installation of the Required Improvements in compliance with the Construction Schedule, the City will take action in accordance with Section 16-2-60(e) of the Land Use Code.
- 6.2 Site Restoration. If the Developer fails to commence or complete construction and installation of the Required Improvements 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 A**.
- 6.3 Force Majeure. If the Developer fails to commence or complete construction and installation of the Required Improvements 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 and Sewer Main Extension**

- 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 (\$92,780);

P = linear feet of pipe extended (1,328 feet); and

F = linear feet of adjacent lot frontage (1,242 feet) (per **Exhibit D**).

The total cost of the water main extension therefore will be divided by the total length of the pipe to determine at 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.

The reimbursement costs will be allocated to any lot or parcel adjacent to the water main extension that taps into this extension (**Exhibit D**).

- 7.2 Pursuant to City Code Sections 13-2-160, the Developer shall be entitled to recover costs associated with construction of a portion of the Wastewater Facilities, the extension of the wastewater main necessary to extend wastewater 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 sanitary sewer main extension with manholes (\$104,304);

P = linear feet of pipe extended (1,203 feet); and

F = linear feet of adjacent lot frontage (1,242 feet) (per **Exhibit D**).

The total cost of the wastewater main extension therefore will be divided by the total length of the pipe to determine at 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.

The reimbursement costs will be allocated to any lot or parcel adjacent to the sanitary sewer main extension that taps into this extension (**Exhibit D**).

- 7.3 Pursuant to City Code Section 13-2-170, the Developer shall be entitled to recover costs associated with the upgrading the size of wastewater lines as a part of the Wastewater Facilities to serve future growth that occurs west of Highway 50. The recovery costs associated with this Agreement will be determined by the following formula:

Reimbursement Cost =  $(CS2-CS1)P = \$20,451$  where

CS1 = cost of 8" sanitary sewer main extension per foot (\$68);  
CS2 = cost of 12" sanitary sewer main extension per foot (\$85); and  
P = linear feet of pipe extended (1,203 feet) (per **Exhibit D**).

The total cost for upgrading the wastewater lines shall be the difference of the costs of installing a 12" or 8" sanitary sewer main multiplied the length of extension. The total Reimbursement Cost shall be due upon connection to the sanitary sewer main to serve properties lying west of Highway 50.

- 7.4 The Developer has provided the City with supporting documentation (**Exhibit D**) 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.
- 7.5 The City shall provide written notice to the Developer of any application submitted to the City for connection to the Water or Wastewater Facilities, which applications will trigger recovery from a current or subsequent owner of property benefitted by said Water or Wastewater Facilities. The City will require recovery in the form of a system development fee surcharge from the current or subsequent owner of property benefitted by the Water or Wastewater Facilities as a condition of any future water service connection to said Water Facilities.
- 7.6 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.
- 7.7 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 – Inclusionary Housing**

- 8.1 Agreement to Provide Affordable Housing Consistent with Article XIII of the Land Use Code within Lots 25 and 44. Developer hereby agrees to deed restrict Lots 25 and 44 for the construction of three (3) dwelling units on each lot which will be affordable to households earning 80% or less of the Area Median Income for Chaffee County as defined by the Colorado Housing and Finance Authority. Development of the affordable housing units shall be according to the additional standards specified below:

- 8.1.1. Issuance of building permits for the construction of the affordable units on Lots 25 and 44 shall begin within five (5) years of the issuance of the first building permit for a principal residence within the subdivision.
  - 8.1.2. The units constructed within Lots 25 and 44 shall be comparable to the market rate housing units in exterior finish and design by meeting the architectural standards for the subdivision and any required architectural design approval required by the subdivision's design guidelines.
  - 8.1.3 Developer agrees to record a deed restriction on Lots 25 and 44 that meets the requirements of Sections 16-13-20(a)(1) and (2) and (c) through (f) which defines income eligibility; permanency of restriction; comparable design of units; and good faith marketing requirements as agreed to by Parties.
- 8.2 Agreement to Provide Affordable Housing Consistent with Article XIII of the Land Use Code within Lot 48. Developer hereby agrees to deed restrict Lot 48 for the construction of 12.5% of the total dwelling units to be constructed on Lot 48, or three (3) dwelling units, whichever is greater, to be affordable to households earning 80% or less of the Area Median Income for Chaffee County as defined by the Colorado Housing and Finance Authority. Development of the affordable housing units shall be according to the additional standards specified below:
- 8.2.1. Construction of the affordable units on Lot 48 shall be at the time of construction of the market rate units.
  - 8.2.2. The affordable units constructed within Lot 48 shall be comparable to the market rate units in exterior finish and design by meeting the architectural standards for the subdivision and any required architectural design approval required by the subdivision's design guidelines.
  - 8.2.3 Developer agrees to record a deed restriction on Lot 48 that meets the requirements of Sections 16-13-20(a)(1) and (2) and (c) through (f) which defines income eligibility; permanency of restriction; comparable design of units; and good faith marketing requirements as agreed to by Parties.
  - 8.2.4 Pursuant to Section 16-13-50 of the Land Use Code, Lot 48 of the Two Rivers Southside subdivision shall be allowed the revised dimensional standards in the RMU district designated by footnotes 6 and 7 of Table 16-F regarding standards for projects meeting the inclusionary housing requirements of Article XIII of Chapter 16 of the Code, attached hereto as **Exhibit E**. The parking requirement for multi-family units constructed within Lot 48 shall be a minimum of one (1) space per unit.

**Section 9 – Default by Developer and City’s Remedies**

- 9.1 **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:
- 9.1.1 The refusal to issue any building permit or certificate of occupancy to the Developer.
- 9.1.2 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.
- 9.1.3 Suspension of all further activities, approvals, and permitting related to the Planned Development and the Subdivision Plats.
- 9.1.4 A demand that the Performance Guarantee be paid or honored.
- 9.1.5 Any other remedy available in equity or at law.
- 9.2 **Notice of Default.** 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. No sooner than thirty days after the Developer’s receipt of the notice or any hearing before City Council, whichever occurs later, the City may take any and all remedial action consistent with this Agreement, the City Code, and the Land Use Code.
- 9.3 **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.
- 9.4 **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.
- 9.5 **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 not constitute, and is not to be construed as constituting, a waiver of such provision in other instances. Nothing herein allows the City to waive any provision of the City Code or Land Use Code.
- 9.6 **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 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 approval of the Planned Development or the Subdivision Plats; (b) acts or omissions by the Developer, its officers, employees, agents, consultants, contractors, or subcontractors in connection with the Planned Development or the Subdivision Plats; (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 Dedicated 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 Dedicated Lands; (d) any remedial action required of the City as a result of the Developer's violation of the Clean Water Act; or (e) 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 approval of the Subdivision Plats; and shall reimburse the City for all fees, expenses, and costs, including attorneys' fees and costs, associated with any proceedings to challenge the City's approval of the Subdivision Plats.

10.2.3 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 B**.

10.2.4 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 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 Develop the Property as contemplated under the Planned Development or proposed in the Subdivision Plats.

11.1.4 **Compliance with environmental laws and regulations.** To the best of the Developer's knowledge, all property to be dedicated to the City hereunder (both in fee simple and in the form of easements) is in compliance with all Federal and State environmental protection and anti-pollution laws, rules, regulations, orders, or requirements, including solid waste requirements and all requirements under the Clean Water Act; 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 Develop the Property as contemplated under the Development Plan or as proposed in the Subdivision Plats.
- 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 Ordinances or resolutions 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 Subdivision Improvement; Confluence Road Water and Sewer Main Extension; and Inclusionary Housing Agreement associated with Development of the Property, and is the total integrated agreement between the Parties with respect to those subjects.
- 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  
Salida, CO 81201

Notice to the Developer: Southside LLC  
Attn: Tom Pokorny, Managing Member  
P.O. Box 745  
Salida, CO 81201

- 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. Should any term of this Agreement be severed in accordance with paragraph 12.7 above, the Parties will cooperate to record an amended form of this Agreement evidencing which terms have been severed and which terms remain in full force and effect.
- 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 or the Developer.
- 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. Nothing herein creates a multi-year fiscal obligation on behalf of the City.
- 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.

**Remainder of this page intentionally left blank. Signature pages follow.**




CITY OF SALIDA, COLORADO

By:

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

ATTEST:

  
\_\_\_\_\_  
City Clerk/Deputy City Clerk


STATE OF COLORADO     )  
  )ss  
COUNTY OF CHAFFEE    )

Acknowledged, subscribed, and sworn to before me this 5<sup>th</sup> day of MAY 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: 8-8-2023.



  
\_\_\_\_\_  
Notary Public

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Lori A Mitchell  
Chaffee County Clerk

SOUTHSIDE LLC

By:

Tom Pokorny  
Tom Pokorny, Managing Member

STATE OF COLORADO )  
 ) ss.  
COUNTY OF CHAFFEE )

Acknowledged, subscribed, and sworn to before me this 21 day of MAY 2020 by  
Thomas CRAIG Pokorny

WITNESS my hand and official seal. My Commission expires: 8-8-2023

Katherine Smith  
Notary Public



\*464843\*

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Lori A Mitchell  
Chaffee County Clerk



Morey Walker & Associates Engineering, Inc.

905 Camino Sierra Vista  
Santa Fe, NM 87505  
505-820-7990 Fax 505-820-3539

**Engineer's Estimate of Probable Costs**

**Project: Two Rivers South Subdivision**

**Date: 3/10/2020**

Item Number	Item Description	Unit	Quantity	Unit Cost	Total Cost
	Mobilization	L.S.	1	\$3,800.00	\$3,800
	Construction Staking	L.S.	1	\$15,000.00	\$15,000
<b>EARTHWORK AND EROSION CONTROL</b>					
	Unclassified Earthwork	L.S.	1	\$100,000.00	\$100,000
	Construction Entrance	C.Y.	75	\$25.00	\$1,875
	Silt Fence	Lin. Ft.	1800	\$4.00	\$7,200
	Straw Wattles	Each	20	\$6.00	\$120
	Earthen Swales	Lin. Ft.	500	\$4.00	\$2,000
	SWPPP	L.S.	1	\$15,000.00	\$15,000
<b>SANITARY SEWER</b>					
	8" Sanitary Sewer Main	Lin. Ft.	1699	\$68.00	\$115,532
	12" Sanitary Sewer Main	Lin. Ft.	842	\$85.00	\$71,570
	4' Sanitary Sewer Manhole	Each	11	\$4,500.00	\$49,500
	4" Sch 40 PVC Service	Each	69	\$1,150.00	\$79,350
	Sewer Cleanout	Each	1	\$1,000.00	\$1,000
	Sewer Main Concrete Encasements	Each	1	\$600.00	\$600
<b>PUBLIC WATER</b>					
	8" PVC Water Main	Lin. Ft.	4279	\$55.00	\$235,345
	Pressure Connection	Ea.	2	\$750.00	\$1,500
	Fire Hydrants with valve	Ea.	5	\$6,580.00	\$32,900
	Double Water Service	Ea.	32	\$2,750.00	\$88,000
	Single Water Service	Ea.	6	\$2,275.00	\$13,650
	Irrigation Tap	Ea.	2	\$2,275.00	\$4,550
<b>GAS, ELECTRIC PHONE AND CABLE</b>					
	Gas line and services	L.S.	1	\$85,000.00	\$85,000
	Electric lines, transformers and services	L.S.	1	\$110,000.00	\$110,000
<b>STREETS AND SIDEWALKS</b>					
	Subgrade and Base for Roads, Alleys and Sidewalks <sup>1</sup>	Sq. Ft.	147015	\$1.50	\$220,523
	Subgrade and Base for Curb and Gutter	Lin. Ft.	4658	\$8.00	\$37,264
	3" PMBP <sup>2</sup>	Sq. Ft.	89830	\$2.40	\$215,592
	Stamped and Colored Concrete Crosswalk	Sq. Ft.	1877	\$13.00	\$24,401
	Concrete Sidewalk	Sq. Ft.	21034	\$6.00	\$126,204
	18" Curb and Gutter	Lin. Ft.	4658	\$25.00	\$116,450
	Concrete Aprons for Driveways	Each	16	\$600.00	\$9,600
	Concrete Aprons for Alley Entrances	Each	4	\$1,600.00	\$6,400
	Concrete Aprons and Pans at Intersections	Sq. Ft.	247	\$8.00	\$1,976
	Type 1 Handicap Ramps	Each	13	\$1,500.00	\$19,500
	Type 2 Handicap Ramps	Each	4	\$3,000.00	\$12,000
	Clean Backfill for Parkways	Sq. Ft.	4658	\$1.00	\$4,658

**EXHIBIT A: Construction Costs**  
page 2 of 2

	Stop signs	Each	3	\$300.00	\$900
	Street Signs	Each	3	\$250.00	\$750
	Street Lights	Each	6	\$12,500.00	\$75,000
<b>STORM SEWER AND PONDING</b>					
	12" ADS Pipe	Lin. Ft.	226	\$60.00	\$13,560
	8" ADS PIPE	Lin. Ft.	202	\$40.00	\$8,080
	Drop Inlet	Each	2	\$3,200.00	\$6,400
	Inline Drain	Each	4	\$1,600.00	\$6,400
	Pond Excavations	C.Y.	16191	\$1.50	\$24,287
	Rip Rap Pond Overflow	C.Y.	20	\$150.00	\$3,000
	Sidewalk Culverts	Each	5	\$2,500.00	\$12,500
<b>LANDSCAPING</b>					
	Street Trees, Plantings and Sprinklers	L.S.	1	\$35,000.00	\$35,000
	Boulder Retaining Walls	Lin. Ft.	385	\$45.00	\$17,325

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Lori A Mitchell  
Chaffee County Clerk

Subtotal	\$2,031,261
Inspection, Testing, Proj. Mgmt. (8%)	\$162,501
10% Contingencies	\$203,126
<b>Total</b>	<b>\$2,396,888</b>



**Open Records Policy – Exhibit B**  
Fee Schedule

Charges must be paid before service is provided.

The City does not allow payment terms on copies or other services in conjunction with open records requests.

The Open Records Act allows \$.25 charge per page when copies are requested and provided, or the actual cost of preparation if the cost is greater. The actual cost may include, but is not limited to, the hourly rate paid to the employee conducting the research, cost of the physical medium of the document (e.g., tape or diskette) and the cost of retrieving the document from off-site storage for inspection.

The first hour of research and retrieval service is free.

Cost per hour for research, retrieval and related services after the first hour:

City Attorney \$30/hr

Assistant City Attorney \$30/hr

Information Services \$30/hr

Department Heads \$30/hr

Supervisor \$30/hr

Non-Supervisory Personnel \$20/hr





















City Mapping \$5/ black & white ink, paper 24" x 36"  
\$10/colored ink, paper 24" x 36"

DVD - \$10

The Department responsible for the record shall provide it to the Clerk so that the Clerk's office may make an appointment with the applicant for inspection within the time frame required.



EXHIBIT C: Construction Schedule

ID		Task Name	Duration	Start	Finish	Predecessors	Resource Names	S
1		Demo, Grub, Clean	14 days	Mon 12/28/20	Thu 1/14/21		Nat Hab	
2		Rough Grade	45 days	Fri 1/15/21	Thu 3/18/21	1		
3		Erosion Control - Silt Fencing	4 days	Fri 3/19/21	Wed 3/24/21	2		
4		Rough Grade-Streets	21 days	Fri 3/19/21	Fri 4/16/21	2	G.T. Structural	
5		Water Main CR105	30 days	Mon 4/19/21	Fri 5/28/21	4	Laura Weilert	
6		Sewer line/manholes	60 days	Mon 5/31/21	Fri 8/20/21	5		
7		Water lines - services	90 days	Mon 8/23/21	Fri 12/24/21	6		
8		Utility Chases	7 days	Mon 12/27/21	Tue 1/4/22	7		
9		Curb & Gutter prep	30 days	Wed 1/5/22	Tue 2/15/22	8		
10		Pour Curb and Gutter	61 days	Wed 2/16/22	Wed 5/11/22	9		
11		Drainage Ponds - Rough-in	7 days	Thu 5/12/22	Fri 5/20/22	10		
12		Excel	28 days	Mon 5/23/22	Wed 6/29/22	11		
13		Atmos	28 days	Thu 6/30/22	Mon 8/8/22	12		
14		Sidewalks-prep and pour	78 days	Thu 5/12/22	Mon 8/29/22	10		
15		Road & Alley - base & compaction	20 days	Mon 12/27/21	Fri 1/21/22	7		
16		Asphalt Roads	14 days	Thu 5/12/22	Tue 5/31/22	10		
17		Crosswalks, ramps and aprons	20 days	Wed 6/1/22	Tue 6/28/22	16		
18		Street Signs	14 days	Tue 8/30/22	Fri 9/16/22	14		
19		Street Lights - Excel	21 days	Tue 8/30/22	Tue 9/27/22	14		
20		Landscaping- trees per code	90 days	Tue 8/30/22	Mon 1/2/23	14		

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Lori A Mitchell  
Chaffee County Clerk

Project: Trial ScheduleTom  
Date: Tue 4/28/20

Task



Project Summary



Split



External Tasks



Progress



External Milestone



Milestone



Deadline



Summary





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Lori A Mitchell  
Chaffee County Clerk

**EXHIBIT D**  
**CONFLUENT STREET WATER/SEWER MAIN COSTS**

DESCRIPTION OF WORK	QUANTITY	UNIT	UNIT COST	TOTAL COST
Furnish and Install 8" C-900 PVC water main w/fittings	1,328.0	lin. ft.	55.00	\$ 73,040.00
Furnish and Install 8" PVC sewer main	1,203.0	lin. ft.	68.00	\$ 81,804.00
Furnish and install fire hydrant	3.0	per hydrant	6580.00	19,740.00
Furnish and Install manhole	5.0	per manhole	4500.00	22,500.00
		SUBTOTAL	SUBTOTAL	\$ 197,084.00
		TAX RATE	TAX RATE	
		SALES TAX	SALES TAX	
		TOTAL	TOTAL	\$ 197,084.00

**CONFLUENT STREET WATER/SEWER MAIN REIMBURSABLE AMOUNTS**

PARCEL #	OWNER	LENGTH OF STREET FRONTAGE	% OF TOTAL FRONTAGE	SHARE OF TOTAL COST
380709100079	Confluent Park Salida, LLC	590'	47.5%	\$93,622.22 /2 = <u>\$46,811.11</u>
380709100078	Confluent Park Salida, LLC	256'	20.6%	\$40,622.78 /2 = <u>\$20311.39</u>
380709100081	Ned Suesse	396'	31.9%	\$62,838.36 /2 = <u>\$31,419.18</u>
<b>Total</b>		<b>1242'</b>	<b>100.0%</b>	<b>\$197,084.00</b>



TABLE 16-F

## Schedule of Dimensional Standards

Dimensional Standard	R-1	R-2	R-3	R-4	RMU	C-1	C-2	I
Min. lot size (sq. ft.)	7,500	5,625	5,625 5,063 <sup>6</sup> 3,750 <sup>7</sup>	4,000 3,600 <sup>6</sup>	5,625 5,063 <sup>6</sup> 3,750 <sup>7</sup>	5,625 5,063 <sup>6</sup> 3,750 <sup>7</sup>	N/A	5,625
Density (Min. lot sq. footage per principal dwelling unit)	3,750	3,125	2,400 2,100 <sup>6</sup>	2,400 2,100 <sup>6</sup>	3,125 2,734 <sup>6</sup>	2,800 2,450 <sup>6</sup>	N/A	2,800
Min lot size (sq. ft.)—attached units	N/A	3,125	2,400 2,160 <sup>6</sup>	2,400 2,160 <sup>6</sup>	3,125 2,812 <sup>6</sup>	2,800 2,520 <sup>6</sup>	N/A	2,800
Min. lot frontage	50'	37'-6"	37'-6" 25' <sup>7</sup>	37'-6" 25' <sup>7</sup>	37'-6" 25' <sup>7</sup>	37'-6" 25' <sup>7</sup>	No Req.	37'-6"
Min. lot frontage—attached units	N/A	20'	15'	15'	20'	20'	N/A	20'

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Lori A Mitchell  
Chaffee County Clerk**TABLE 16-F****Schedule of Dimensional Standards**

Dimensional Standard	R-1	R-2	R-3	R-4	RMU	C-1	C-2	I
Max. lot coverage: structures (additive coverage total for structures and uncovered parking cannot exceed 90% except in C-2)	35%	40%	45% 50% <sup>6</sup>	45% 50% <sup>6</sup>	45% 50% <sup>6</sup>	60% 66% <sup>6</sup>	100% <sup>3</sup>	60%
Max. lot coverage: uncovered parking/access (additive coverage total for structures and uncovered parking cannot exceed 90% except in C-2) <sup>5</sup>	10%	15%	25%	25%	25%	60%	No Req.	30%
Min. landscape area	55%	45%	30%	30%	30%	10%	No Req. <sup>1</sup>	10%
Min. setback from side lot line for a primary bldg.	8'	5'	5'	5'	5'	5'***	No Req.	5'***
Min. setback from side lot line for a detached accessory bldg.	3', 5', or 10' <sup>8</sup>	3', 5', or 10' <sup>8</sup>	3', 5', or 10' <sup>8</sup>	3', 5', or 10' <sup>8</sup>	3', 5', or 10' <sup>8</sup>	3', 5', or 10' <sup>8</sup>	No Req.	3', 5', or 10' <sup>8</sup>

TABLE 16-F

Schedule of Dimensional Standards

Dimensional Standard	R-1	R-2	R-3	R-4	RMU	C-1	C-2	I
Min. setback from rear lot line: principal bldg.	30'	20'	20'	15'	15'	5' <sup>2</sup>	No Req.	5' <sup>2</sup>
Min. setback from rear lot line: accessory bldg.	5'	5'	5'	5'	5'	5'	N/A	5'
Min. setback from front lot line <sup>4</sup>	30'	20'	20'	15'	15'	10'	No Req.	10'
Max. building height for a primary bldg.	35'	35'	35'	35'	35'	35'	35'	35'
Max. building height for a detached accessory bldg.	25'	25'	25'	25'	25'	25'	25'	25'

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Lori A Mitchell  
Chaffee County Clerk

TABLE 16-F

## Schedule of Dimensional Standards

Dimensional Standard	R-1	R-2	R-3	R-4	RMU	C-1	C-2	I
----------------------	-----	-----	-----	-----	-----	-----	-----	---

## Notes:

- 1 If a property does not utilize the zero setback allowance, the minimum landscape area shall be ten (10) percent.
- 2 If the property adjoins a residential zone district, setbacks on the side and rear lot line shall be the same as those in the residential zone.
- 3 Existing structures are not required to meet off-street parking requirements. New structures and additions shall meet off-street parking requirements.
- 4 A covered porch may encroach into the front yard setback by twenty-five (25) percent.
- 5 If a front-loaded garage is set back at least ten (10) feet behind the primary street-facing building façade, the lot coverage between the garage entrance and the primary, street-facing building façade shall not be included in the calculation of lot coverage for uncovered parking/access.
- 6 Standards for inclusionary housing development per Section 16-13-50.
- 7 Fifteen (15) percent of the single-family lots within an inclusionary housing development may be twenty-five (25) feet by one hundred fifty (150) feet.
- 8 See Section 16-4-190(c) for a description of side lot line setbacks for all accessory buildings, including ADUs.

CITY OF SALIDA  
ATTN: KRISTI JEFFERSON  
448 E 1ST STREET STE 112  
Salida, CO 81201

**EXHIBIT E**  
**SUBDIVISION IMPROVEMENT;**  
**SCOTT STREET WATER FACILITIES REIMBURSEMENT;**  
**AND INCLUSIONARY HOUSING AGREEMENT**  
**Confluent Park Subdivision**

THIS SUBDIVISION IMPROVEMENT; SCOTT STREET WATER FACILITIES REIMBURSEMENT; AND INCLUSIONARY HOUSING AGREEMENT (the "Agreement") is made and entered into this 18<sup>th</sup> day of August, 2020, by and between the CITY OF SALIDA, COLORADO, a Colorado statutory city ("City"), and Confluent Park Salida, LLC ("Developer") (each a "Party" and together the "Parties").

**Section 1 - Recitals**

- 1.1 The Developer represents that it is the fee title owner of certain lands known as the "Confluent Park Subdivision" consisting of 16.4 acres and more particularly described as Lots 1-4, Confluent Park Minor Subdivision as recorded at Reception No. 456722 at the Chaffee County Recorder's Office, which is incorporated herein by this reference (the "Property"). The Property is located within the boundaries of the City.
- 1.2 On January 21, 2020 the City Council adopted Ordinance No. 2020-01 amending the Vandaveer Ranch Planned Development and creating the Confluent Park development plan for Parcel VPA-5.
- 1.3 Ordinance No. 2020-01 required certain public improvements be constructed within the project; water system improvements off-site at Scott Street; and affordable housing requirements.
- 1.4 On July 7, 2020 the City Council approved the Confluent Park major subdivision consisting of the Property described herein by adoption of Resolution 2020-24; a condition of the approval requires entering into a subdivision improvement agreement pursuant to Section 16-2-60 of the Salida Municipal Code and further defines how the affordable housing requirements will be met.
- 1.5 On July 14, 2020, after conferring with both the Planning Commission and City Council, the staff approved an insubstantial modification of the Planned Development to allow phasing of certain public improvements pursuant to Section 16-7-150 (c) of the Salida Municipal Code.
- 1.6 Pursuant to City Code Sections 13-2-160 and 13-2-170, the Developer shall be entitled to recover costs associated with construction of a portion of the Water and Sewer Facilities, and the extension of the water and sewer mains necessary to extend City services to the Property.
- 1.7 Pursuant to Section 16-13-20 (g) of the Land Use Code residential developments must enter into an inclusionary housing development agreement with the City Council. Such

agreements may be part of a subdivision improvement agreement. The agreement shall address the total number of units; the number of affordable units provided; standards for parking, density and other development standards for projects meeting the requirements; design standards for the affordable units and any restrictive covenants necessary to carry out the purposes of the inclusionary housing requirements.

- 1.8 The City wishes to advance development within municipal boundaries in accordance with the City of Salida 2013 Comprehensive Plan adopted April 16, 2013, as it may be amended.
- 1.9 Pursuant to Section 16-2-60; 13-2-160 and 170; and 16-13-20 of the Land Use Code, 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 subdivision public improvements and other improvements; recovery of costs for extending a water line within Scott Street and for meeting the inclusionary housing requirements as required by Ordinance 2020-01.
- 1.10 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 Subdivision Improvement; Scott Street Water Facilities Reimbursement; and Inclusionary Housing Agreement for Confluent Park. The Recitals in Section 1 above are fully incorporated into this Agreement and made a part hereof by this reference.
- 2.2 “City” means the City of Salida, a Colorado statutory City.
- 2.3 “City Administrator” means the City Administrator of the City of Salida, and the City Administrator’s designee.
- 2.4 “City Code” means the City of Salida Municipal Code.
- 2.5 “City Council” means the City Council of the City of Salida, Colorado.
- 2.6 “Dedicated Lands” means those lands the Developer will convey to the City for public use.
- 2.7 “Developer” means Confluent Park Salida LLC and its successor(s).
- 2.8 “Development” means all work on the Property required to transform the Property into the

Confluent Park major subdivision approved by the City by means of Resolution 2020-24. The term “Development” includes, without limitation, the demolition of existing structures; grading; construction of new structures; and construction of improvements, including without limitation streets, signage, landscaping, drainage improvements, sidewalks, utilities, and other improvements. When the context so dictates, the verb “Develop” may be used in place of the noun “Development.”

- 2.9 “Drainage Plan” means the drainage system designed for the subdivision in accordance with Section 16-8-60 of the Land Use Code.
- 2.10 “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.
- 2.11 “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.
- 2.12 “Land Use Code” means the City’s Land Use and Development Code, Title 16 of the City Code.
- 2.13 “Native Vegetation” means “native plant” as defined in the Colorado Noxious Weed Act, C.R.S. § 35-5.5-103(15).
- 2.14 “Noxious Weed” takes the meaning given to that term in the Colorado Noxious Weed Act, C.R.S. § 35-5.5-103(16).
- 2.15 “Other Required Improvements Warranty Period” means a period of two years from the date that the City Engineer or the City Engineer’s designee, in accordance with the terms and conditions of paragraph 5.10 below, approves the Required Improvements that are not Public Improvements, and certifies their compliance with approved specifications.
- 2.16 “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 completing said Required Improvements.
- 2.17 “Property” means the land that is known as the Confluent Park major subdivision and described as Lots 1-4 of the Confluent Park Minor Subdivision as recorded at Reception No. 456722 at the Chaffee County Recorder’s Office.
- 2.18 “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 A**.

- 2.19 **“Public Improvements Warranty Period”** means a period of one year from the date that the City Engineer or the City Engineer’s designee, in accordance with the terms and conditions of paragraph 5.10 below, approves the Public Improvements and certifies their compliance with approved specifications.
- 2.20 **“Reimbursable Costs and Fees”** means all fees and costs incurred by the City in connection with the City’s processing and review of the proposed Development Plan and the Subdivision Plats; and the City’s drafting, review, and execution of this Agreement as described in **Exhibit A**.
- 2.21 **“Required Improvements”** means the public and other improvements that the Developer is required to make to the Property as part of the annexation and subdivision approvals and pursuant to this Agreement, including without limitation improvements for streets, landscaping, parks, trails, drainage improvements, sidewalks, and utilities.
- 2.22 **“Subdivision Plat”** means the Confluent Park major subdivision of the Property approved by Resolution No. 2020-24.
- 2.23 **“Water Facilities”** means the water main, service line, and all other appurtenances and necessary components of the water distribution system to be constructed by the Developer to extend City water service to the Property.

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 **Contractual Relationship**. The purpose of this Agreement is to establish a contractual relationship between the City and the Developer with respect to the Required Improvements for the Property and the provision of inclusionary housing. 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.
- 3.2 **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.
- 3.3. **Reservation**. To the extent that the City becomes aware of new information about the Property, and notwithstanding anything to the contrary herein, the City reserves the right

to require new terms, conditions, or obligations with respect to the Required Improvements for the Property.

**Section 4 – Development of Property**

- 4.1 The City agrees to the Development of the Property, and the Developer agrees that it will Develop the Property, only in accordance with the terms and conditions of this Agreement and all requirements of the City Code; the Confluent Park Planned Development Ordinance 2020-01 and major subdivision Resolution No. 2020-24 and all other applicable laws and regulations, including without limitation all City Ordinances and regulations, all State statutes and regulations, and all Federal laws and regulations.
- 4.2 The approval of the major subdivision by the City Council on July 7, 2020 constitutes approval of the site specific development plan and establishment of vested property rights for the project per Section 16-2-20 of the Code. An established vested property right precludes any zoning or land use action by the City or pursuant to an initiated measure which would alter, impair, prevent, diminish, impose a moratorium on development, or otherwise delay the development or use of the property as set forth in the approved site specific development plan.

**Section 5 – Terms and Conditions for Development of Property**

- 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; the Confluent Park Planned Development Ordinance 2020-01; Resolution No. 2020-24 and all other applicable laws and regulations, including without limitation all City Ordinances and regulations, all State statutes and regulations, and all Federal laws and regulations.
- 5.2 Term of Vested Property Rights. Pursuant to Section 16-2-20(f)(2) of the Code the city is authorized to extend the term for vested property rights beyond three (3) years from the date of approval of the site specific development plan if warranted for reasons such as the size and phasing of the development. The term of the vested property rights for the Confluent Park major subdivision shall be three (3) years from the approval of this agreement.
- 5.3 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.
- 5.4 Required Improvements. Attached **Exhibit A**, 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 to complete construction and installation of those Required Improvements, including both labor and materials. The

Required Improvements must be designed, built, and installed in conformity with the City's Public Works Manual and the City's Standard Specifications for Construction ("Standard Specifications"), 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 City Engineer or the City Engineer's designee must review and approve the drawings and plans for such improvements, which drawings and plans must be stamped by the engineer retained by the Developer. In addition to warranting the Required Improvements as described in paragraph 5.10 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.

- 5.5 Construction Standards. The Developer shall ensure that all construction is performed in accordance with this Agreement and with the City's rules, regulations, requirements, and criteria, and with industry standards governing such construction.
- 5.6 Observation of Development and Inspection of Required Improvements. The City may observe all Development on the Property, and may inspect and test each component of the Required Improvements. Consistent with Section 16-2-20(r) of the Land Use Code, the Developer shall reimburse the City for all costs associated with the City's observation of Development 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 5.7 below, until such costs have been reimbursed. Such observation and inspection may occur at any point before, during, or upon completion of construction.
- 5.7 City Engineer's Written Approval of Required Improvements. At the Developer's request, the City Engineer or the City Engineer's designee shall inspect the Required Improvements to ascertain whether they have been completed in conformity with the approved plans and specifications. The City Engineer or the City Engineer's designee 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.
- 5.8 Performance Guarantee. Before commencement of any further construction on the Required Improvements, the Developer shall furnish the City with an effective Performance Guarantee in the amount of 125% of the total estimated cost of completing each phase of the Required Improvements, as shown on **Exhibit A**. The total estimated cost of completing every phase of the Required Improvements, including both labor and materials, is \$1,682,360. Therefore, the Performance Guarantee for Phase 1 must be in an amount equal to \$982,162.50; the Performance Guarantee for Phase 2 must be in an amount equal to \$539,042.50 and the Performance Guarantee for Phase 3 must be in an amount equal to \$581,745.00.

- 5.8.1 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.
- 5.8.2 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 completing 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 5.8 and the Land Use Code.
- 5.8.3 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 City Engineer's inspection and written approval of the Completed Improvements in accordance with paragraph 5.6 above, and upon approval of the City Council, the City may authorize a release of the Performance Guarantee in the amount of 75% of the documented cost of the Completed Improvements.
- 5.8.4 Upon the City Engineer's inspection and written approval of all Required Improvements in each Phase in accordance with paragraph 5.7 above, 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 A**.
- 5.8.5 Upon the expiration of both the Public Improvements Warranty Period and the Other Required Improvements Warranty Period described in paragraph 5.9 below, the Developer's correction of all defects discovered during such periods, and the City's final acceptance of the Public Improvements in that phase in accordance with paragraph 5.10 below, City Council shall authorize a full release of the Performance Guarantee.
- 5.8.6 Failure to provide or maintain the Performance Guarantee in compliance with this paragraph 5.8 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, including without limitation the City's suspension of all activities, approvals, and permitting related to the Subdivision Plats.
- 5.9 Conveyance of Public Improvements. Within twenty-eight days of the City's final acceptance of the Public Improvements in accordance with paragraph 5.10 below, the Developer shall, at no cost to the City, do the following:

- 5.9.1 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. Pursuant to Section 16-2-60(j) of the Land Use Code, acceptance of the Bill of Sale must be authorized by City Council.
- 5.9.2 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 as shown on the Confluent Park major subdivision recorded at Reception No. \_\_\_\_\_.
- 5.9.3 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.
- 5.10 Warranty. The Developer shall warrant the Public Improvements for one year from the date that the City Engineer, in accordance with paragraph 5.7 above, 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 City Engineer, in accordance with paragraph 5.6 above, 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.
- 5.11 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 the Development, 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 5.7 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 Landscape Improvements. Other Required Improvements are landscape improvements consisting of right of way and parkway landscaping in accordance with the requirements of the approved landscape improvement plan for the Subdivision and the requirements of Section 16-8-90 of the Land Use Code. The Developer or homeowner's association shall be responsible for the Other Required Improvements Warranty Period.
- 5.16 Drainage Improvements. As shown on **Exhibit A**, certain of the Required Improvements are drainage improvements.
- 5.16.1 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 Plan 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 City Engineer before commencement of Development activities, including overlot grading.
- 5.16.2 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.
- 5.16.3 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.

- 5.17 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.
- 5.18 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.
- 5.19 Trash, Debris, and Erosion. During Development, 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. When, 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 consistent with Section 7-1-60 of the City Code. Nothing in this paragraph limits or affects the remedies the City may pursue under Section 8 of this Agreement.
- 5.20 Compliance with Environmental Laws. During Development, the Developer shall comply with all Federal and State environmental protection and anti-pollution laws, rules, regulations, orders, or requirements, including without limitation solid waste requirements and all requirements under the Federal Water Pollution Control Act, as amended ("Clean Water Act"); 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.
- 5.21 Fees. The Developer shall pay to the City the fees described below at the time set forth below:
- 5.21.1 Developer's reimbursement of processing fees. Consistent with Sections 16-2-10 and 16-2-60(r) of the Land Use Code, the Developer shall reimburse the City for all fees and costs incurred by the City in connection with the City's processing and review of the proposed Subdivision Plats, including without limitation processing and review of the Zoning and Subdivision Applications and supporting documentation, 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 costs incurred by the City.

- 5.21.2 Work by City staff other than City Attorney. 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 B**.
- 5.21.3 Work by City Attorney. 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.
- 5.21.4 Amounts due and unpaid. 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 11.6 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 attorneys' fees and costs incurred in said collection efforts in addition to the amount due and unpaid.
- 5.21.5 Currently existing fees. Payment of Currently Existing Fees as a Condition of Development. 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 condition of the Development. The Developer further agrees not to contest any Ordinance imposing such fees as they pertain to the Property.

## **Section 6 – Construction Schedule**

- 6.1 Construction Schedule. Attached **Exhibit C**, which is incorporated herein by this reference, provides the schedule according to which construction and installation of the Required Improvements will occur ("Construction Schedule"). If the Developer fails to commence or to complete any phase of construction and installation of the Required Improvements in compliance with the Construction Schedule, the City will take action in accordance with Section 16-2-60(e) of the Land Use Code.
- 6.2 Site Restoration. If the Developer fails to commence or complete construction and installation of the Required Improvements 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 A**.

- 6.3 Force Majeure. If the Developer fails to commence or complete construction and installation of the Required Improvements 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 Facilities**

- 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 (\$62,440);  
P = linear feet of pipe extended (709 feet); and  
F = linear feet of adjacent lot frontage (1,257 feet per **Exhibit D**).

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.

The reimbursement costs will be allocated to any lot or parcel adjacent to the water main extension that taps into this extension (**Exhibit D**).

- 7.2 A part of the Water Facilities to be installed in Scott Street includes a Pressure Reducing Valve (PRV) that serves the subject site and other parcels (“Contributing Properties”) in the vicinity as shown in **Exhibit E**. The Confluent Park minimum share shall be \$67,914.57. To the greatest extent possible, the City will condition future annexations or land use approvals that increase the development levels above the Approved status for contributing properties to require reimbursements in the amounts shown in **Exhibit E** and to be collected as described below.
- 7.3 The City shall provide written notice to the Developer of any application submitted to the City for connection to the Water Facilities, which applications will trigger recovery from a current or subsequent owner of property benefitted by said Water Facilities. The City will require recovery in the form of a system development fee surcharge from the current or subsequent owner of property benefitted by the Water Facilities as a condition of any future water service connection to said Water Facilities.

- 7.4 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.
- 7.5 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 – Inclusionary Housing**

- 8.1 Agreement to Provide Affordable Housing Consistent with Article XIII of the Land Use Code within Confluent Park. Per the conditions of Ordinance 2020-01, Developer hereby agrees to provide affordable housing units within the project and be afforded the revised standards as described below:
- 8.1.1. Lot 1 shall be legally restricted for up to 60 affordable rental apartments for households earning 60% or less of the Area Median Income (AMI) for Chaffee County as defined by the Colorado Housing Finance Authority (CHFA).
- 8.1.2. Upon issuance of a building permit for Lot 1 in conformance with the above requirements, credit for affordable units greater than 37 may be used to meet the affordable housing requirements for residential development within the Angel View Minor Subdivision recorded at Reception No. 428085. If this equals 100% or greater of the required affordable housing for the build-out of Angel View, the project will be afforded additional density only for R-3 as defined by Section 16-13-50. These provisions shall be defined by separate agreement for Angel View project.
- 8.1.3 If residential building permits are issued within Angel View or Confluent Park prior to issuance of building permits within Lot 1, then developer shall submit the inclusionary housing in-lieu fee for said units, to be held in escrow until construction begins on Lot 1.
- 8.1.4 Development Standards shall be as adopted in the Narrative and Planned Development Site Plan for Confluent Park (Exhibit B of Ordinance 2020-01).

### **Section 9 – Default by Developer and City's Remedies**

- 9.1 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:

- 9.1.1 The refusal to issue any building permit or certificate of occupancy to the Developer.
- 9.1.2 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.
- 9.1.3 Suspension of all further activities, approvals, and permitting related to the Planned Development and the Subdivision Plats.
- 9.1.4 A demand that the Performance Guarantee be paid or honored.
- 9.1.5 Any other remedy available in equity or at law.
- 9.2 Notice of Default. 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. No sooner than thirty days after the Developer's receipt of the notice or any hearing before City Council, whichever occurs later, the City may take any and all remedial action consistent with this Agreement, the City Code, and the Land Use Code.
- 9.3 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.
- 9.4 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.
- 9.5 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 not constitute, and is not to be construed as constituting, a waiver of such provision in other instances. Nothing herein allows the City to waive any provision of the City Code or Land Use Code.
- 9.6 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 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 approval of the Planned Development or the Subdivision Plats; (b) acts or omissions by the Developer, its officers, employees, agents, consultants, contractors, or subcontractors in connection with the Planned Development or the Subdivision Plats; (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 Dedicated 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 Dedicated Lands; (d) any remedial action required of the City as a result of the Developer's violation of the Clean Water Act; or (e) 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 approval of the Subdivision Plats; and shall reimburse the City for all fees, expenses, and costs, including attorneys' fees and costs, associated with any proceedings to challenge the City's approval of the Subdivision Plats.

10.2.3 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 B**.

10.2.4 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 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 Develop the Property as contemplated under the Planned Development or proposed in the Subdivision Plats.
- 11.1.4 Compliance with environmental laws and regulations. To the best of the Developer's knowledge, all property to be dedicated to the City hereunder (both in fee simple and in the form of easements) is in compliance with all Federal and State environmental protection and anti-pollution laws, rules, regulations, orders, or requirements, including solid waste requirements and all requirements under the Clean Water Act; 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 Develop the Property as contemplated under the Development Plan or as proposed in the Subdivision Plats.

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 Ordinances or resolutions 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 Subdivision Improvement; Confluence Road Water and Sewer Main Extension; and Inclusionary Housing Agreement associated with Development of the Property, and is the total integrated agreement between the Parties with respect to those subjects.
- 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  
Salida, CO 81201

Notice to the Developer: Confluent Park Salida, LLC  
Attn: Walt Harder, Managing Member  
130 W. 2<sup>nd</sup> Street, Suite 1  
Salida, CO 81201

- 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. Should any term of this Agreement be severed in accordance with paragraph 12.7 above, the Parties will cooperate to record an amended form of this Agreement evidencing which terms have been severed and which terms remain in full force and effect.
- 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 or the Developer.
- 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. Nothing herein creates a multi-year fiscal obligation on behalf of the City.
- 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.

**\*470651\***

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19 of 27 SUAG R\$143.00 D\$0.00

Lori A Mitchell  
Chaffee County Clerk

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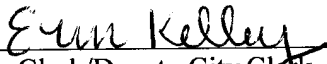
Lori A Mitchell  
Chaffee County Clerk

CITY OF SALIDA, COLORADO

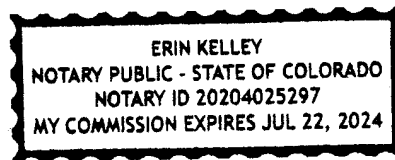
By:

  
Mayor PT Wood

ATTEST:

  
City Clerk/Deputy City Clerk

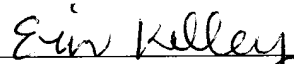
STATE OF COLORADO   )  
  )ss  
COUNTY OF CHAFFEE   )



Acknowledged, subscribed, and sworn to before me this 18<sup>th</sup> day of August 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: July 22, 2024.

  
Notary Public

**\*470651\***

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21 of 27

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Lori A Mitchell  
Chaffee County Clerk

Confluent Park Salida, LLC

By:

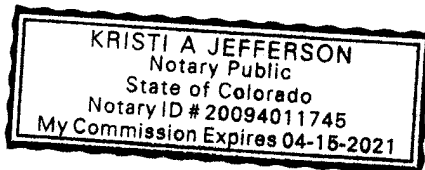
*W. Harder*  
Walt Harder, Managing Member

STATE OF COLORADO    )  
                                  ) ss.  
COUNTY OF CHAFFEE    )

Acknowledged, subscribed, and sworn to before me this 19<sup>th</sup> day of November 2020 by  
Walt Harder

WITNESS my hand and official seal. My Commission expires: April 15, 2021

*Kristi A. Jefferson*  
Notary Public



# EXHIBIT A

\*470651\*

Lori A Mitchell  
Chaffee County Clerk

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Engineer's Opinion of Probable Cost CONFLUENT PARK									
Prepared by: Crabtree Group, Inc. Owner: Confluent Park Salida, LLC									
July 31, 2020									
Item	Phase 1 Qty	Phase 2 Qty	Phase 3 Qty	Unit	Description	Unit Cost	Phase 1 Total Cost	Phase 2 Total Cost	Phase 3 Total Cost
<b>Streets</b>									
21	65	0	0	LF	Sawcut Asphalt To Provide Clean Edge For Paving	\$ 4.00	\$ 260.00	\$ -	\$ -
22	101	0	0	SY	Remove & Dispose of Existing (Sawcut) Asphalt	\$ 4.00	\$ 404.00	\$ -	\$ -
23	1490	1577	1047	LF	Furnish & Install 30" "Catch" Curb & Gutter	\$ 33.00	\$ 49,170.00	\$ 52,041.00	\$ 34,551.00
24	0	0	2	EA	Construct Curb Opening	\$ 300.00	\$ -	\$ -	\$ 600.00
25	64	30	67	LF	Furnish & Install 4" Wide Concrete Ribbon Gutter	\$ 35.00	\$ 2,240.00	\$ 1,050.00	\$ 2,345.00
26	36	0	0	SY	Furnish & Install 6" Thick Patterned Concrete Crosswalk	\$ 125.00	\$ 4,500.00	\$ -	\$ -
27	2649	2519	2472	SY	Furnish & Install 3" Thick AC Paving Over 6" Class 6 Agg Base	\$ 32.00	\$ 84,768.00	\$ 80,608.00	\$ 79,104.00
28	1684	1189	1047	SY	Furnish & Install 4" Thick Concrete Sidewalk Over 4" Class 6 Agg Base	\$ 70.00	\$ 117,880.00	\$ 83,230.00	\$ 73,290.00
29	8	3	2	EA	Furnish & Install Type 1A ADA Curb Ramp	\$ 2,000.00	\$ 16,000.00	\$ 6,000.00	\$ 4,000.00
30	0	2	1	EA	Furnish & Install Type 2 ADA Curb Ramp	\$ 5,000.00	\$ -	\$ 10,000.00	\$ 5,000.00
31	54	161	27	SY	Furnish & Install Type 1 Concrete Driveway	\$ 85.00	\$ 4,590.00	\$ 13,685.00	\$ 2,295.00
32	744	905	748	SY	Furnish & Install 3" Thick Decorative Rock Planter	\$ 7.00	\$ 5,208.00	\$ 6,335.00	\$ 5,236.00
33	1	1	2	EA	Furnish & Install MUTCD R1-1 "Stop" Sign	\$ 500.00	\$ 500.00	\$ 500.00	\$ 1,000.00
34	2	2	1	EA	Furnish & Install Greenshine NSB Series, Single Davit Solar Street Light And Foundation	\$ 7,500.00	\$ 15,000.00	\$ 15,000.00	\$ 7,500.00
35	1	0	0	EA	Furnish & Install 18" Dia. Nyloplast Drain Basin W/Traffic-Rated Curb Inlet Grate	\$ 4,000.00	\$ 4,000.00	\$ -	\$ -
36	30	0	0	LF	Furnish & Install 8" Diameter ADS N-12 HDPE Drain Pipe	\$ 45.00	\$ 1,350.00	\$ -	\$ -
37	64	64	0	SF	Furnish & Install 12" Thick River Rock Energy Dissipater	\$ 15.00	\$ 960.00	\$ 960.00	\$ -
38	0	960	0	SY	Furnish & Install 6" Class 6 Compacted Aggregate Base Alley/Road	\$ 10.00	\$ -	\$ 9,600.00	\$ -
39	2	0	10	SY	Furnish & Install Concrete Spandrel	\$ 120.00	\$ 240.00	\$ -	\$ 1,200.00
					Subtotal		\$ 307,070.00	\$ 279,009.00	\$ 216,121.00
<b>Sewer</b>									
50	1	0	0	EA	Furnish & Install 48" Diameter Manhole in existing 24" trunk main	\$ 6,000.00	\$ 6,000.00	\$ -	\$ -
51	7	1	3	EA	Furnish & Install 48" Diameter Manhole	\$ 4,500.00	\$ 31,500.00	\$ 4,500.00	\$ 13,500.00
52	1416	225	0	LF	Furnish & Install 8" Diameter PVC Sewer Main	\$ 65.00	\$ 92,040.00	\$ 14,625.00	\$ -
53	24	0	817	LF	Furnish & Install 15" Diameter PVC Sewer Main	\$ 85.00	\$ 2,040.00	\$ -	\$ 69,445.00
54	1	15	11	EA	Furnish & Install 4" Diameter PVC Sewer Service At 2%	\$ 1,200.00	\$ 1,200.00	\$ 18,000.00	\$ 13,200.00
55	212	80	59	LF	Furnish & Install 6" Diameter PVC Sewer Service	\$ 50.00	\$ 10,600.00	\$ 4,000.00	\$ 2,950.00
56	20	0	0	LF	Furnish & Install concrete encasement	\$ 40.00	\$ 800.00	\$ -	\$ -
					Subtotal		\$ 144,180.00	\$ 41,125.00	\$ 99,095.00
<b>Water (On Site)</b>									
61	2	0	1	EA	Verify Top Of Pipe Elevation By "Pothole" Method	\$ 500.00	\$ 1,000.00	\$ -	\$ 500.00
62	2	0	1	EA	Connect To Existing Water Main With Appropriate Appurtenances	\$ 2,000.00	\$ 4,000.00	\$ -	\$ 2,000.00
63	2	0	1	EA	Furnish & Install 12" X 8" Tee	\$ 1,200.00	\$ 2,400.00	\$ -	\$ 1,200.00
64	979	765	1333	LF	Furnish & Install 8" Diameter PVC Water Main	\$ 60.00	\$ 58,740.00	\$ 45,900.00	\$ 79,980.00
65	3	4	5	EA	Furnish & Install 8" Gate Valve with box and concrete collar	\$ 1,200.00	\$ 3,600.00	\$ 4,800.00	\$ 6,000.00
66	1	2	4	EA	Furnish & Install 8" X 8" Tee	\$ 1,000.00	\$ 1,000.00	\$ 2,000.00	\$ 4,000.00
67	3	2	2	EA	Furnish & Install 6" Fire Hydrant Assembly	\$ 6,500.00	\$ 19,500.00	\$ 13,000.00	\$ 13,000.00
68	1	2	2	EA	Furnish & Install 8" Plug	\$ 800.00	\$ 800.00	\$ 1,600.00	\$ 1,600.00
69	0	1	3	EA	Furnish & Install 8" X 22.5 Degree Bend	\$ 800.00	\$ -	\$ 800.00	\$ 2,400.00
70	1	6	8	EA	Furnish & Install 3/4" edge lot duplex water service tap assembly	\$ 2,500.00	\$ 2,500.00	\$ 15,000.00	\$ 20,000.00
70A	0	6	0	EA	Furnish & Install 3/4" single water service tap assembly	\$ 1,500.00	\$ -	\$ 9,000.00	\$ -
71	0	3	3	EA	Furnish & Install Duplex Water Service Tap Assembly	\$ 2,500.00	\$ -	\$ 7,500.00	\$ 7,500.00
72	4	1	1	EA	Furnish & Install 4" Water Service Tap Assembly	\$ 3,000.00	\$ 12,000.00	\$ 3,000.00	\$ 3,000.00
73	1	0	0	EA	Furnish & Install 6" Water Service Tap Assembly	\$ 3,500.00	\$ 3,500.00	\$ -	\$ -
					Subtotal		\$ 109,040.00	\$ 102,600.00	\$ 141,180.00
<b>Water (Scott Street, 100% Reimbursable based on property frontage)</b>									
74	2			EA	Verify Top Of Pipe Elevation By "Pothole" Method	\$ 500.00	\$ 1,000.00	\$ -	\$ -
75	2			EA	Connect To Existing Water Main With Appropriate Appurtenances	\$ 1,000.00	\$ 2,000.00	\$ -	\$ -
76	709			LF	Furnish & Install 8" Diameter PVC Water Main	\$ 60.00	\$ 42,540.00	\$ -	\$ -
77	4			EA	Furnish & Install 8" Gate Valve with box and concrete collar	\$ 1,200.00	\$ 4,800.00	\$ -	\$ -
78	4			EA	Furnish & Install 8" X 8" Tee	\$ 1,000.00	\$ 4,000.00	\$ -	\$ -
79	1			EA	Furnish & Install 6" Fire Hydrant Assembly	\$ 6,500.00	\$ 6,500.00	\$ -	\$ -
80	2			EA	Furnish & Install 8" Plug	\$ 800.00	\$ 1,600.00	\$ -	\$ -
81	193			SY	Furnish & Install Asphalt Patch	\$ 50.00	\$ 9,650.00	\$ -	\$ -
82	2			EA	Furnish & Install 8" X 90 Degree Bend	\$ 800.00	\$ 1,600.00	\$ -	\$ -
					Subtotal		\$ 62,440.00	\$ -	\$ -
<b>Pressure Reducing Valve (PRV), cost share with future development on Vandaveer NE of US Hwy 50, land area basis</b>									
83	1			EA	Furnish & Install PRV/Vault Assembly	\$ 150,000.00	\$ 150,000.00	\$ -	\$ -
					Subtotal		\$ 150,000.00	\$ -	\$ -
<b>Miscellaneous</b>									
84				LS	Stormwater BMP installation, maintenance, permitting	\$ 8,000.00	\$ 8,000.00	\$ 5,000.00	\$ 5,000.00
85				LS	Construction Survey	\$ 4,000.00	\$ 4,000.00	\$ 3,000.00	\$ 3,000.00
86				LS	Traffic Control	\$ 1,000.00	\$ 1,000.00	\$ 500.00	\$ 1,000.00
					Subtotal		\$ 13,000.00	\$ 8,500.00	\$ 9,000.00
							Phase 1	Phase 2	Phase 3
Civil Construction Total							\$ 785,730.00	\$ 431,234.00	\$ 465,396.00
Contingency (25%)							\$ 196,432.50	\$ 107,808.50	\$ 116,349.00
Total with Contingency							\$ 982,162.50	\$ 539,042.50	\$ 581,745.00

## Limitations of Liability:

1 The Crabtree Group, Inc. (CGI) is providing this Engineer's Opinion of Probable Cost (EOPC) at the request of the "Client" with the understanding that CGI is not responsible for project, financing or construction costs as related to this EOPC.

2 The unit costs contained in this EOPC are based on recent labor and material costs that may change and vary widely due to economic, site and other conditions.

3 The "Client" should obtain more accurate project costs by project specific bids for all project, financing and construction decisions.

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Lori A Mitchell

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Chaffee County Clerk

## **Open Records Policy – Exhibit B**

### **Fee Schedule**

Charges must be paid before service is provided.

The City does not allow payment terms on copies or other services in conjunction with open records requests.

The Open Records Act allows \$.25 charge per page when copies are requested and provided, or the actual cost of preparation if the cost is greater. The actual cost may include, but is not limited to, the hourly rate paid to the employee conducting the research, cost of the physical medium of the document (e.g., tape or diskette) and the cost of retrieving the document from off-site storage for inspection.

The first hour of research and retrieval service is free.

Cost per hour for research, retrieval and related services after the first hour:

City Attorney \$30/hr

Assistant City Attorney \$30/hr

Information Services \$30/hr

Department Heads \$30/hr

Supervisor \$30/hr

Non-Supervisory Personnel \$20/hr

City Mapping \$5/ black & white ink, paper 24" x 36"  
\$10/colored ink, paper 24" x 36"

DVD - \$10

The Department responsible for the record shall provide it to the Clerk so that the Clerk's office may make an appointment with the applicant for inspection within the time frame required.

# Exhibit C

Confluer

ID	Task Mode	Task Name	Duration	Start	Finish	Predeces	Sep	Oct	Nov
1		<b>Phase 1</b>	<b>154 days</b>	<b>Tue 9/1/20</b>	<b>Fri 4/2/21</b>				
2		Overlot Grading	7 days	Tue 9/1/20	Wed 9/9/20				
3		Sewer Main / Manholes	20 days	Thu 9/10/20	Wed 10/7/20	2			
4		Water Main, PRV, & Scott Street Water Main	30 days	Thu 10/8/20	Wed 11/18/20	3			
5		Sewer Services	20 days	Thu 10/8/20	Wed 11/4/20	3			
6		Water Services	20 days	Thu 11/19/20	Wed 12/16/20	4			
7		Dry Utilities	20 days	Thu 12/17/20	Wed 1/13/21	6			
8		Curb & Sidewalk Prep	20 days	Thu 1/14/21	Wed 2/10/21	7			
9		Place Curb	15 days	Thu 2/11/21	Wed 3/3/21	8			
10		Asphalt Prep	15 days	Thu 3/4/21	Wed 3/24/21	9			
11		Place Sidewalk	10 days	Thu 2/11/21	Wed 2/24/21	8			
12		Parkways	15 days	Thu 2/25/21	Wed 3/17/21	11			
13		Striping & Signs	5 days	Thu 2/25/21	Wed 3/3/21	11			
14		Street Lights	5 days	Thu 3/4/21	Wed 3/10/21	13			
15		Place Asphalt	5 days	Mon 3/29/21	Fri 4/2/21				
16		Punch List	5 days	Thu 3/11/21	Wed 3/17/21	14			
17		Phase 1 Closing	0 days	Fri 4/2/21	Fri 4/2/21	15			
18		<b>Phase 2</b>	<b>77 days</b>	<b>Mon 4/5/21</b>	<b>Tue 7/20/21</b>	<b>17</b>			
19		Sewer Main / Manholes	15 days	Mon 4/5/21	Fri 4/23/21	17			
20		Water Main	15 days	Mon 4/26/21	Fri 5/14/21	19			
21		Sewer Services	10 days	Mon 4/26/21	Fri 5/7/21	19			
22		Water Services	10 days	Mon 5/17/21	Fri 5/28/21	20			
23		Dry Utilities	10 days	Mon 5/31/21	Fri 6/11/21	22			
24		Curb & Sidewalk Prep	10 days	Mon 6/14/21	Fri 6/25/21	23			
25		Place Curb	4 days	Mon 6/28/21	Thu 7/1/21	24			
26		Asphalt Prep	10 days	Fri 7/2/21	Thu 7/15/21	25			
27		Place Asphalt	2 days	Fri 7/16/21	Mon 7/19/21	26			
28		Place Sidewalk	4 days	Mon 6/28/21	Thu 7/1/21	24			
29		Parkways	7 days	Fri 7/2/21	Mon 7/12/21	28			
30		Striping & Signs	3 days	Fri 7/2/21	Tue 7/6/21	28			
31		Street Lights	5 days	Wed 7/7/21	Tue 7/13/21	30			
32		Punch List	5 days	Wed 7/14/21	Tue 7/20/21	31			
33		Phase 2 Closing	0 days	Tue 7/20/21	Tue 7/20/21	32			
34		<b>Phase 3</b>	<b>77 days</b>	<b>Wed 7/21/21</b>	<b>Thu 11/4/21</b>	<b>33</b>			
35		Sewer Main / Manholes	15 days	Wed 7/21/21	Tue 8/10/21	33			
36		Water Main	15 days	Wed 8/11/21	Tue 8/31/21	35			
37		Sewer Services	10 days	Wed 8/11/21	Tue 8/24/21	35			
38		Water Services	10 days	Wed 9/1/21	Tue 9/14/21	36			
39		Dry Utilities	10 days	Wed 9/15/21	Tue 9/28/21	38			
40		Curb & Sidewalk Prep	10 days	Wed 9/29/21	Tue 10/12/21	39			
41		Place Curb	4 days	Wed 10/13/21	Mon 10/18/21	40			
42		Asphalt Prep	10 days	Tue 10/19/21	Mon 11/1/21	41			
43		Place Asphalt	2 days	Tue 11/2/21	Wed 11/3/21	42			
44		Place Sidewalk	4 days	Wed 10/13/21	Mon 10/18/21	40			
45		Parkways	7 days	Tue 10/19/21	Wed 10/27/21	44			
46		Striping & Signs	3 days	Tue 10/19/21	Thu 10/21/21	44			
47		Street Lights	5 days	Fri 10/22/21	Thu 10/28/21	46			
48		Punch List	5 days	Fri 10/29/21	Thu 11/4/21	47			
49		Phase 3 Closing	0 days	Thu 11/4/21	Thu 11/4/21	48			

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Lori A Mitchell  
Chaffee County Clerk

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	Dec	Qtr 1, 2021 Jan	Feb	Mar	Qtr 2, 2021 Apr	May	Jun	Qtr 3, 2021 Jul	Aug	Sep	Qtr 4, 2021 Oct	Nov
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**\*470651\***

470651 5/18/2021 3:20 PM  
25 of 27 SUAG R\$143.00 D\$0.00

Lori A Mitchell  
Chaffee County Clerk

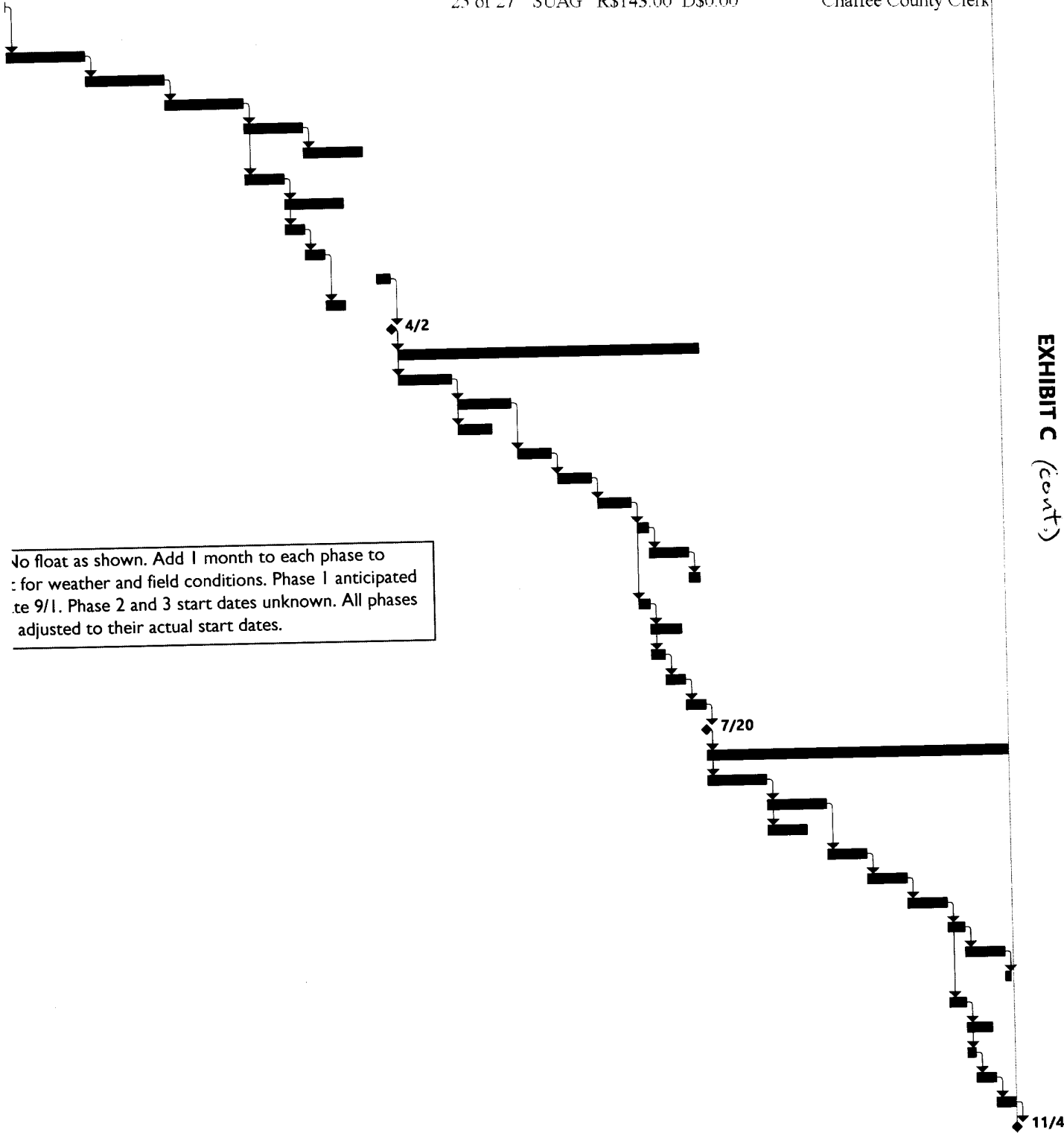


EXHIBIT C (cont.)

No float as shown. Add 1 month to each phase to  
for weather and field conditions. Phase 1 anticipated  
te 9/1. Phase 2 and 3 start dates unknown. All phases  
adjusted to their actual start dates.

Lori A Mitchell  
Chaffee County Clerk

## New 8" Water Main and PRV

# EXHIBIT E

## PRESSURE REDUCING VALVE REIMBURSEMENT FOR SOUTHEAST PLANNING AREA

Parcel	Acres	Approved			Potential			Average Annual Daily Flow					PRV Reimbursement
		SF Units	MF Units	Comm SF	SF Units	MF Units	Comm SF	SF	MF	Comm	Total	%	
Confluent Park	16.3	68	209	125000	68	209	125000	8296.00	19019.00	2638.72	29953.72	45.28%	\$67,914.57
Ned Suesse	5.7				91.2			11126.40			11126.4	16.82%	\$25,227.08
Triple T Ranch	2				32			3904.00			3904	5.90%	\$8,851.61
Vandaveer VPA-4	13.43		125	84462		125	84462		11375.00	1782.97	13157.97	19.89%	\$29,833.29
0014	0.2				1.2			146.40			146.4	0.22%	\$331.94
0036	0.3				1.8			219.60			219.6	0.33%	\$497.90
0037	0.5				3			366.00			366	0.55%	\$829.84
0003	0.8				4.8			585.60			585.6	0.89%	\$1,327.74
0004	1.7				10.2			1244.40			1244.4	1.88%	\$2,821.45
0005	2.95				17.7			2159.40			2159.4	3.26%	\$4,896.04
0006	2	27			27			3294.00			3294	4.98%	\$7,468.54
Total	45.88	68	334	209462	229.9	334	209462	28047.8	30394	4421.69	66157.49	100.00%	\$150,000.00

**\*470651\***

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27 of 27 SUAG R\$143.00 D\$0.00

Lori A Mitchell  
Chaffee County Clerk




## EXHIBIT F

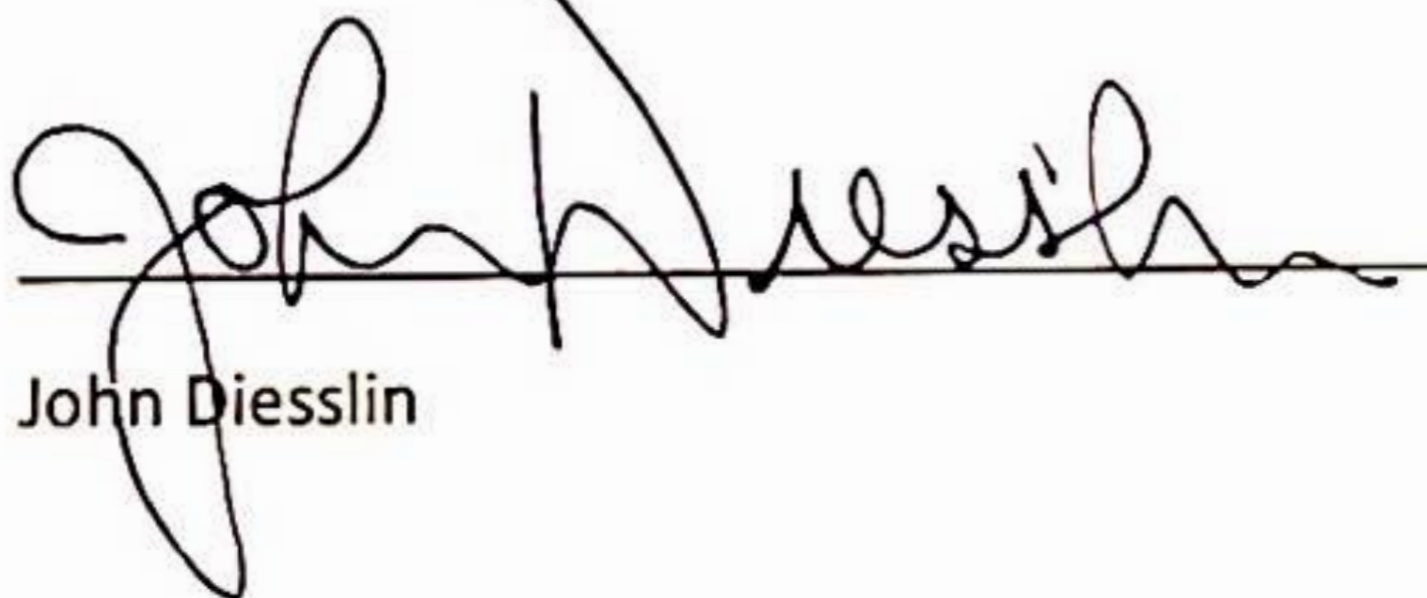
Date: January 16, 2020

Subject: Letter of Agreement Confluent Park and Ned Suesse

The purpose of this letter of agreement between the developer of Confluent Park (parcel no. 3809071000640) and Ned Suesse (parcel no. 380709100070 ) is to define the development interface between the parcels along Trenton Street and the responsibility for infrastructure and surface improvements in Trenton Street.

1. Ned Suesse shall not cost share in any Trenton Street Improvements, including utilities, at this time.
2. The minimum width of the Confluent Park right of way dedication by Confluent Park shall be 42 feet in width at the South end of the street at the intersection of Chase Street to accommodate the future development of the Suesse parcel. The right of way dedication shall widen toward the direction of Confluent Drive.
3. The responsibility of completion of the east side of Trenton Street with curb, gutter, parkway and sidewalk will be the Suesse Parcel at time of the Suesse subdivision development.
4. The responsibility of completion of the west side of Trenton Street with curb, gutter, sidewalk, parkway and paved street lanes shall be Confluent Park at the time of subdivision development.

  
Ned Suesse  
Date 1/17/20

  
John Diesslin  
Date 1/21/2020