

RELEASE AND SETTLEMENT AGREEMENT

READ CAREFULLY BEFORE SIGNING

This Release and Settlement Agreement (hereinafter referred to as the "Release"), is made on the dates indicated below, by and between the Town of Poncha Springs (hereinafter referred to as "Poncha"), Tailwind Group, LLC and Full Views Matter, LLC (hereinafter jointly referred to as the "Developer Plaintiffs") and the City of Salida (hereinafter referred to as "Salida"). Poncha and the Developer Plaintiffs are collectively referred to herein as the "Plaintiffs". The Plaintiffs and Salida are collectively referred to herein as "Parties" or "Party".

WHEREAS, the Parties are desirous of resolving any issues between them related to the allegations which were raised or could have been raised in Civil Action 2023CV30023 filed in Chaffee County District Court (hereinafter referred to as the "Lawsuit"); as well as related to the Transfer, Service and Sewer Line Extension and Connection Agreements referenced in the Lawsuit and Salida's Moratorium (Ordinance No. 9 of Series 2023);

NOW, THEREFORE, for the following described consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties do hereby agree as follows:

1. Tap/System Development Fees for Wastewater and Sewer Services (hereinafter referred to as the "Tap Fees"); Salida agrees to adopt and institute a new System Development or Tap Fee schedule as more fully described below.
 - a. As of the Effective Date of this Release, which is defined in section 7(d) below (hereinafter referred to as the "Effective Date"), and for 5 consecutive years, unless amended as set forth below. Salida's Tap Fees for residential properties located within Poncha shall increase to \$11,600/Equivalent Residential Unit ("ERU").
 - b. Also as of the Effective Date of this Release, Salida's Tap Fees for residential properties located within Salida shall increase to \$6.485/ERU. Thereafter, Salida's Tap Fees for residential properties located within Salida shall increase by at least an additional \$1.279 per year until such Tap Fees are equal to \$11,600/ERU, so that within five (5) years the Tap Fees for properties located within Poncha and Salida will be the same.
 - c. There shall be comparable fee schedule increases to that set forth in the preceding sections (a) and (b) for Tap Fees for commercial properties within Poncha and Salida.
 - d. Salida may impose reduced Tap Fees for multi-family housing and deed restricted affordable housing, so long as any reductions are uniform as to properties located in Poncha and Salida.

- e. Within Sixty Days of the Effective Date of this Release, Salida will adopt an updated fee schedule setting forth the updated Tap Fees.
 - f. Salida may increase Tap Fees, other than as set forth in the preceding sections (a) and (b), so long as such increases are uniform for both Poncha and Salida as to properties of the same type of use (i.e. all non deed restricted residential Tap Fees increased by \$2,000).
 - g. Any Tap Fee increases imposed by Salida other than set forth in the preceding sections (a) and (b) within five (5) years of the Effective Date would need to be for other system improvements not related to the Interceptor¹, except Tap Fees can be increased related to the Interceptor if no reasonable bid from Salida's Request For Proposals ("RFPs") for the expansion construction of the Interceptor comes in for the amount anticipated, which is currently expected to be sixteen million two hundred seventy-eight thousand dollars (\$16,278,000), in which case Salida can institute a Tap Fee increase within five (5) years of the Effective Date, so long as the increase is uniform for both Poncha and Salida as to properties of the same type of use, to assist in funding the Interceptor shortfall.
 - h. After five (5) years from the Effective Date of this Release, Salida may increase Tap Fees as it deems appropriate, so long as any such increases are uniform for both Poncha and Salida as to properties of the same type of use (i.e. all non deed restricted residential Tap Fees increased by the same amount).
2. Amended Service Line Extension and Connection Agreements (hereinafter referred to as "Amended Agreement") Language: Salida agrees to adopt and utilize the revised line extension agreement templates set forth in Exhibit A as described below. Poncha and the Developer Plaintiffs agree that these revised extension agreement templates will apply to future line service agreements and approve of their form and content. Such Amended Agreements, the form of which is attached hereto as Ex. A, will apply and be used as of the Effective Date of this Release for all properties located within Poncha, as well as those properties within Salida and the remaining Municipal Services Area that directly connect to the Interceptor and require sewer connection to it.
- a. Only for five years following the Effective Date, As set forth in Ex. A attached hereto, property owners and/or developers subject to the Amended Agreements must provide proof of funds/ financing for final plat subdivision infrastructure within twelve (12) months of the execution of an Amended Agreement. The only exception to this requirement is that this requirement does not apply to the first 310 units for Tailwinds and Poncha Meadows developed by the Developer Plaintiffs, previously identified as Poncha Meadows Filing No. 2 and Tailwind Village Filing No. 2. The Amended Agreements are revocable by Salida for

¹ The Interceptor refers to the sewer pipe that runs along US Highway 50 from approximately State Highway 291 in Salida to Poncha Springs Lane in Poncha.

any lots who do not satisfy this proof of funds/financing within the required timeframe.

- b. Only for five years following the Effective Date, as also set forth in Ex. A attached hereto, property owners/developers subject to an Amended Agreement must also require their purchasers of an individual lot served by the Interceptor to pay 50% of the required Tap Fees to Salida upon closing on a lot, with the remaining 50% to be paid at time of building permit approval on a lot. Said purchasers' total Tap Fees owed will be determined by the Tap Fees in effect at the time of payment of the initial 50% at closing on the respective lot, so that the lot purchaser will not be required to pay an increase if the Tap Fees are increased between closing and building permit approval. The Developer Plaintiffs agree to be bound to this provision regardless of the language in their Sewer Line Extension and Connection Agreements for the first 310 units of their development.
 - c. Exhibit A attached hereto containing an Amended Agreement will be revised five years after the Effective Date of this Release to remove language related to preceding sections (a) and (b).
 - d. Exhibit A attached hereto containing an Amended Agreement may also be revised per section (3)(c) below.
3. **Amended Agreement Approvals.** Existing customers connected to the Interceptor, along with the first 310 units for Tailwinds and Poncha Meadows comprise 1060 ERU capacity" of connected taps to the Interceptor (hereinafter referred to as the "Baseline"). This Baseline does not include any other not built but approved units.
- a. All Amended Agreements and additional connected taps to the Interceptor above the Baseline will be approved on a first-come, first-serve basis by Salida, except as set forth in section (d) below.
 - b. Salida agrees to allow Amended Agreements until a total of 1375 ERUs of connected capacity of the Interceptor has been reached, which is 315 ERUs of connected capacity above the Baseline (hereinafter referred to as the "Max ERUs").
 - c. Salida, at its sole discretion, may either (1) deny Amended Agreements once the Max ERUs have been reached or (2) continue to allow Amended Agreements provided, however, the Amended Agreement in Ex. A attached hereto shall be amended to contain an advisement that any property's connection to the Interceptor will not occur until the Interceptor's expansion construction has been completed.

- d. Poncha warrants that it is the legal owner of the Poncha Park Development, which is comprised of the Ute Subdivision Final Plat dated July 2019, totaling approximately 30 acres. Poncha agrees to limit those approximately 30 acres to recreational uses and recreational based building development until the Interceptor expansion construction is complete. Salida agrees to provide Poncha with up to 5 ERUs prior to completion of the Interceptor expansion construction being completed for this future recreational development, of which those 5 ERUs count toward the Max ERUs referenced in the preceding section (b).

4. Bonding for Interceptor Expansion Construction.

- a. Salida will start the bonding process to obtain financing for the construction of the expansion of the Interceptor promptly after the Effective Date of this Release and Salida will use commercially reasonable efforts to finalize the bonding process and close on the bonds.
- b. Salida will issue an RFP for the financial/municipal advisor to be used for this bonding process on or before 30 days following the Effective Date of this Release.
- c. Salida will use Kim Crawford from Butler Snow, so long as she is available, and if not, Dalton L. Kelley, or another similarly experienced attorney of Butler Snow, as its bond counsel for this bonding.
- d. Poncha and Salida will evenly split all bonding related fees and costs, which would include but not be limited to: bond counsel fees, bank fees, bank attorney fees, and financial advisor costs. Poncha's contribution towards these fees/costs will be capped at \$40,000. Salida agrees to arrange for invoices from bond counsel, banks, bank counsel and financial advisors who charge any fees/costs for the bonding to be issued jointly by those entities and allocated to Salida and Poncha in equal shares until Poncha's cap is reached. Such invoices will be paid promptly by Poncha and Salida upon each's receipt. The requirement for providing invoices to Poncha will end once Poncha's cap of \$40,000 in payment has been reached. As to all fees and costs in excess of \$80,000 (\$40,000 to be incurred by Salida and \$40,000 to be incurred by Poncha), they may be included in the bonding and paid with bond funding. In no event shall any fees or costs charged by Salida's litigation counsel, its city attorney or city staff be charged to Poncha.

5. Expansion Construction of Interceptor.

- a. Salida agrees at the latest to issue a RFP for construction of the Interceptor associated with its expansion within six (6) months of the bonding set forth in the preceding Section 4 being completed and the financing available.

- b. Salida agrees to include in that RFP a request for the expansion construction of the Interceptor to start within twelve (12) months of a bid being approved.
 - c. Salida will make reasonable efforts to have such construction commence within twelve (12) months after the financing set forth in the preceding section 4 above is complete and to use reasonable efforts to have the construction completed as soon as practicable.
 - d. Salida may in its sole discretion issue this RFP or start construction early.
 - e. Once the expansion construction of the Interceptor is complete, Salida's right to deny Amended Agreement per the preceding section 3(c) will expire.
6. **Amended Intergovernmental Agreement.** Salida and Poncha agree to adoption of the First Amendment to Intergovernmental Agreement for Transfer of Sewer System (also referred to as the "Transfer Agreement") attached hereto as Ex. B. Poncha and Salida both warrant and agree that no one is nor intended to be a third party beneficiary to Ex. B and the Developer Plaintiffs acknowledge that they are not third party beneficiaries to it.
7. **Required Approvals and Process.** The Parties agree that for this Release to be valid and enforceable all of the following must occur and occur in the order set forth below:
- a. First, the Developer Plaintiffs must formally approve and execute this Release and provide the executed copy to Poncha and Salida's attorneys.
 - b. Second, Poncha's Town Board must formally vote on and approve this Release and Ex. B. Poncha must then properly execute this Release and Ex. B to the Release and provide the executed copies to the Developer Plaintiffs and Salida's attorneys.
 - c. Only after the actions set forth in the preceding sections (a) and (b) are completed will Salida's City Council formally vote on this Release and Ex. B to the Release. If the Release and Ex. B to this Release are approved, Salida will execute the Release and Ex. B to it. At that same Council meeting, after any vote approving this Release and Ex. B to the Release, Salida's City Council will vote to repeal the pending Moratorium, Ordinance No. 09 of Series 2023, and execute Amended Agreements as to the Developer Plaintiffs first 310 units. Copies of the executed Release, Ex. B to the Release and the Amended Agreements for the 310 units must be provided to the Plaintiffs' attorneys.
 - d. The Effective Date for this Release, as referred to herein, is the date upon which Salida, as the last reviewing and approving party, provides the executed copy of this Release, Ex. B to this Release and the executed Agreements for the 310 units to the Plaintiffs' attorneys.

8. **Dismissal of Lawsuit.** Within fourteen (14) days of the Effective Date of this Release, the Plaintiffs must dismiss the Lawsuit, with prejudice, all parties to pay their own costs and attorney fees in a form drafted by Plaintiffs' attorneys, but approved prior to filing by Salida's attorney.
9. **Release and Waiver of Claims.**
 - a. Poncha hereby **REMISES, RELEASES AND FOREVER DISCHARGES** Salida and its current and former employees, servants, agents, contractors, current and former elected and appointed officials, assigns, successors, predecessors, attorneys, insurance carriers, and self-insurance pools, including but not limited to the Colorado Intergovernmental Risk Sharing Agency (hereinafter referred to as the "Releasees") from any and all actions, claims, and demands which exist as of the date of this Release and were pled or could have been pled in the Lawsuit; as well as any actions, claims and demands related to the Transfer Agreement, Service Agreement and Sewer Line Extension and Connection Agreements referenced in the Lawsuit and also that related to Salida's Moratorium (Ordinance No. 9 of Series 2023).
 - b. The Developer Plaintiffs and all of their owners, members, shareholders and/or successors hereby **REMISES, RELEASES AND FOREVER DISCHARGES** the Releasees from any and all actions, claims and demands, which exist as of the date of this Release and were pled or could have been pled in the Lawsuit; as well as any actions, claims and demands related to the Transfer Agreement, Service Agreement and Service Line Extension and Connection Agreements referenced in the Lawsuit and also that related to Salida's Moratorium (Ordinance No. 9 of Series 2023).
 - c. Salida has not asserted any claims in the lawsuit against any of the Plaintiffs, but hereby **REMISES, RELEASES AND FOREVER DISCHARGES** any claim for attorney fees and costs associated with the defense of the Lawsuit.
10. **Consideration.** The Parties have Agree that their promises and covenants set forth in Section 1-9 above provide good and sufficient consideration for all aspects of the Settlement Agreement, inclusive of their Release and Waiver of Claims.
11. **Enforcement of this Release.** The Parties agree that each can enforce a breach of this Release through judicial remedies, with the prevailing party to be awarded its reasonable attorneys' fees associated with those judicial remedies.
12. **Warranties of the Parties.** The Parties warrant as follows:
 - a. No promise or agreement not herein expressed has been made to any of the Parties; that in executing this Release the Parties are not relying upon any statement or representation made by any of the other Parties, their employees,

representatives or attorneys concerning any matter or thing, but are relying solely upon their own judgment and knowledge and that of their own attorneys; that the above mentioned consideration is received in full settlement and satisfaction of all the aforesaid released claims and demands, whatsoever, whether said claims and demands be in tort, contract, by statute or otherwise; that this Release was arrived at in good faith, at arms length and after negotiation; that the above mentioned consideration is received by each of the Parties in full settlement and satisfaction of any claims which any of the Parties may have for attorney's fees or costs; that the representatives executing this Release on behalf of each of the Parties are over the age of 18 years, legally competent and authorized to execute this Release on behalf of the Party to whom they sign; that each of the Parties appreciate and fully understand this Release; AND THAT BEFORE SIGNING THIS RELEASE, EACH OF THE PARTIES' AUTHORIZED REPRESENTATIVES HAVE FULLY INFORMED THEMSELVES OF ITS CONTENT AND MEANING, HAVE BEEN INSTRUCTED TO CONSULT WITH LEGAL COUNSEL, HAVE SO CONSULTED AND HAVE EXECUTED THIS RELEASE WITH KNOWLEDGE AND UNDERSTANDING THEREOF.

- b. The Parties further warrant that there are no assignees, subrogees or other third parties who have a right to participate in this settlement or receive any of the consideration provided hereunder.
- c. The Parties also warrant and agree that there are no third party beneficiaries and intended to be no third party beneficiaries who have any rights under this Release.

13. Force Majeure. Any obligation on Salida set forth in this Release may be postponed or altered if such is attributable to a force majeure, which means due to an act of god, war, state or federal government regulations, terrorism, natural disaster, strike, civil disorder, recession, state or federal government declared emergency, pandemic or other emergency beyond Salida's control that makes it impossible for Salida to perform such obligation. If any event impacts Salida's ability to meet any requirement in this Agreement, such deadline for that requirement shall be extended by the duration of the force majeure.

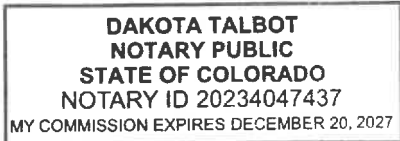
14. No Admission of Liability. The Parties acknowledge that they each deny liability or wrongdoing on their own part and that this Release is not to be construed, in any way, as an admission of liability or wrongdoing.

15. Miscellaneous Provisions.

- a. This Release and Exs. A and B to it contain the entire understanding of the Parties hereto with respect to its subject matter and supersede all prior oral and written understandings and agreements between the Parties, including as to the Term Sheet previously agreed to by the Parties.

- b. This Release shall be binding upon the Developer Plaintiffs and their owners, members, shareholders and/or successors, as well as all other persons, firms or corporations acting on the Developer Plaintiffs behalf or asserting a derivative claim. This Release shall be binding upon Poncha and Salida to the extent permitted by law.
 - c. The Parties have each participated and had an equal opportunity to participate in the drafting of this Release. No ambiguity shall be construed against any Party based upon a claim that another Party was a drafter.
 - d. This Release shall be construed and interpreted in accordance with the laws of the State of Colorado, without regard to its choice of law rules or principles.
 - e. This Release can be executed in counterparts. Electronic copies and counterparts shall suffice as originals.
16. **Applicability of Transfer Agreement.** The parties agree that this Settlement Agreement pertains to resolution of the litigation in *Town of Poncha Springs, et al v. City of Salida*, et al, Case No. 2023CV030023, Chaffee County District Court and necessarily describes the settlement elements requiring an amendment to the Transfer Agreement. Only with regards to a dispute between Salida and Poncha, in the event of any conflict between the recitation herein of those settlement elements and the Transfer Agreement, (as the same is being contemporaneously amended and approved by Poncha and Salida), the amended Transfer Agreement shall control, it being the intention of Salida and Poncha that the Transfer Agreement, as amended, be and remain the sole agreement as between Poncha and Salida governing operation of the sewer system. This provision does not apply to any dispute regarding this Agreement or the Amended Agreements involving the Developer Plaintiffs because the Developer Plaintiffs are not parties to the First Amendment to the Intergovernmental Agreement for Transfer of Sewer System.

[Release continues on next page]



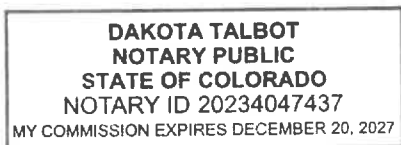
Kent Townsend
[Signature], as authorized representative of
Tailwinds Group, LLC

STATE OF COLORADO)
) SS.
COUNTY OF Chaffee)

Subscribed and sworn to before me on this 15th day of January, 2025.

Witness my hand and official seal.

My Commission expires Dec 20 2027.



Dakota Talbot
Notary Public
Carrie J. Mesch
[Signature], as authorized representative of Full
Views Matter, LLC

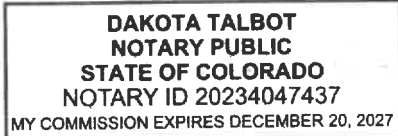
STATE OF COLORADO)
) SS.
COUNTY OF Chaffee)

Subscribed and sworn to before me on this 15th day of January, 2025.

Witness my hand and official seal.

My Commission expires Dec 20, 2027.

Dakota Talbot
Notary Public



_____, as authorized representative of
Poncha

STATE OF COLORADO)
) SS.
COUNTY OF Chaffee)

Subscribed and sworn to before me on this 15th day of January, 2025.

Witness my hand and official seal.

My Commission expires December 20, 2027

Dakota Talbot
Notary Public

Dan Shore, Mayor, as authorized representative of
Salida

STATE OF COLORADO)
) SS.
COUNTY OF Chaffee)

Subscribed and sworn to before me on this _____ day of _____, 2025.

Witness my hand and official seal.

My Commission expires _____.

Notary Public

EXHIBIT A
(SEWER LINE EXTENSION AND CONNECTION
AGREEMENTS)

**SEWER LINE EXTENSION AND CONNECTION AGREEMENT PRE-1375 ERU'S
(Name of Development)**

THIS SEWER LINE EXTENSION AND CONNECTION AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 20__, by and between the CITY OF SALIDA, COLORADO, a Colorado statutory city ("Salida"), and **full legal entity name**, ("Developer") (each a "Party" and together the "Parties").

Section 1 - Recitals

- 1.1 The Developer contends that it is the fee title owner of certain lands known as the "**Name of Development**" and more particularly described on attached **Exhibit A** (the "Property").
- 1.2 The Property is located within the current corporate boundaries of the Town of Poncha Springs ("Poncha Springs" or "Town") and within Salida's Wastewater Service Plan Area as defined in Section 13-2-20 of the Salida Municipal Code.
- 1.3 This Agreement pertains to the Property, as described on attached **Exhibit A**.
- 1.4 Salida provides sewer service in Poncha Springs pursuant to and in accordance with the terms and conditions of two intergovernmental agreements between Salida and Poncha Springs: the Intergovernmental Agreement for Transfer of Sewer System dated April 6, 2010 ("System IGA") as amended effective February 4, 2025, and the Intergovernmental Agreement for Provision of Sewer Services dated April 6, 2010 ("Service IGA").
- 1.5 In accordance with the Poncha Springs Land Use Code, the Developer has submitted a plat to the Town of Poncha Springs for the **Name of Development/Subdivision** and has obtained _____ plat approval of the subdivision by the Town Board, on ____ [date] ____.
- 1.6 Under the System IGA, Salida operates, maintains, and expands its sewer system to accommodate and not inhibit planned growth and development within Poncha Springs's planning and zoning jurisdiction.
- 1.7 Under the Service IGA, Poncha Springs shall not record any final plat for any development within Poncha Springs until the Town has received written confirmation from Salida that the developer has executed a line extension agreement or line connection agreement with Salida or has otherwise applied for and been granted service per the Salida Municipal Code.
- 1.8 The Property currently is not serviced by a Salida sewer line, and the Developer wishes to perform all excavations, construction, installations, connections and other work necessary to establish a connection to a Salida sewer main ("Sewer Line Extension"), as shown on the Sewer Plans attached as **Exhibit B**.
- 1.9 The Developer and Salida wish to enter into this Agreement in satisfaction of the requirement for an executed extension or line connection agreement under the Service IGA, and to provide for Salida's provision of sewer service to **Name of Development**.

- 1.10 The Developer and Salida acknowledge that the terms and conditions hereinafter set forth are reasonable, within the authority of each to perform, and consistent with the System IGA and the Service IGA and the Amended IGA.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, Salida 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 Sewer Line Extension and Connection Agreement. The Recitals in Section 1 above are fully incorporated into this Agreement and made a part hereof by this reference.
- 2.2 “Appurtenant Sewer Service Lines” means all service lines and laterals necessary to deliver wastewater from the Property into the Sewer Main(s).
- 2.3 “City” means the City of Salida, a Colorado statutory city.
- 2.4 “City Administrator” means the City Administrator of the City of Salida, Colorado, and the City Administrator’s designee.
- 2.5 “City Council” means the City Council of the City of Salida, Colorado.
- 2.6 “Developer” means **full legal entity name**, and its successor(s).
- 2.7 “Development” means all work on the Property required to accomplish construction and installation of the Public Improvements. When the context so dictates, the verb “Develop” may be used in place of the noun “Development.”
- 2.8 “Effective Date” means the date on which City Council approved the execution of this Agreement. On the Effective Date, this Agreement will become binding upon and enforceable by Salida and the Developer.
- 2.9 “Extension Taps” means sewer taps for which Salida will provide service through the Sewer Line Extension.
- 2.10 “Performance Guarantee” means the bond or letter of credit of **_____** posted by the Developer in accordance with the terms of its Subdivision Improvements Agreement with Poncha Springs dated **_____**.
- 2.11 “Property” means the land that is known as the “**Name of Development**” and described in attached **Exhibit A**.

- 2.12 “Public Improvements” means those Required Improvements constructed and installed by the Developer and dedicated to Salida in accordance with this Agreement, including without limitation wastewater collection mains and laterals and sewer manholes. The Required Improvements that are also Public Improvements are identified on the Bid Tab attached as **Exhibit C**.
- 2.13 “Reimbursable Costs and Fees” means all fees and costs incurred by Salida in connection with Salida’s processing and review of the Public Improvements, and Salida’s drafting, review, and execution of this Agreement.
- 2.14 “Required Improvements” means the public and other improvements that the Developer is required to make to the Property to connect, consistent and in compliance with the final plat approval and with the construction plans and drawings submitted to Salida and Poncha Springs for review and approval.
- 2.15 “Salida Municipal Code” means the City of Salida Municipal Code, as amended.
- 2.16 “Service IGA” means the Intergovernmental Agreement for Provision of Sewer Services made by and between the City of Salida and the Town of Poncha Springs on April 6, 2010.
- 2.17 “Sewer Line Extension” means [REDACTED] linear feet of [REDACTED]-inch and [REDACTED]-inch sewer main to be constructed and installed by the Developer as shown on **Exhibit B**, to allow the Developer to connect to a sewer main with sufficient capacity to enable Salida to provide sewer service to the Extension Taps.
- 2.18 “System IGA” means the Intergovernmental Agreement for Transfer of Sewer System made by and between the City of Salida and the Town of Poncha Springs on April 6, 2010, as amended effective February 4, 2025 by the First Amendment to the Intergovernmental Agreement for Transfer of Sewer System.
- 2.19 “Town” means the Town of Poncha Springs.
- 2.20 “Warranty Period” means a period of one year from the date that the Salida Public Works Director or City Engineer, in accordance with the terms and conditions of paragraph 5.10 below, approves the Public Improvements and certifies their compliance with approved specifications.

Section 3 – Purpose of Agreement and Binding Effect

- 3.1 Contractual Relationship. The purpose of this Agreement is to establish a contractual relationship between Salida and the Developer with respect to extension of sewer service to the Property. 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 and Covenant Running with the Land. This Agreement benefits and is binding upon Salida, 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. Notwithstanding anything to the contrary herein, and to the extent that Salida becomes aware of new information with respect to the Property or the Sewer Line Connection following execution of this Agreement, Salida reserves the right to require new terms or conditions for the Required Improvements or new obligations for the Developer with respect to such improvements.

**Section 4 – Connection to Sewer Line, Extension of Sewer Line,
and Provision of Sewer Service**

- 4.1 Salida agrees to provide sewer service to the Property, and the Developer agrees that it will construct and install the Public Improvements, including without limitation the Sewer Line Extension and all Appurtenant Sewer Service Lines, only in accordance with the terms and conditions of this Agreement, the System IGA, and the Service IGA, and with the following:
- 4.1.1 All requirements of the Town Code and the Town's Subdivision Approval Ordinance;
 - 4.1.2 All requirements of the Salida Municipal Code;
 - 4.1.3 The City of Salida's Standard Specifications for Construction, as amended;
 - 4.1.4 The City of Salida Department of Public Works' Design Criteria Manual for Water, Sewer, and Streets, as amended;
 - 4.1.5 The Town's applicable engineering standards for construction and installation of the Sewer Line Extension and Appurtenant Sewer Service Lines, including without limitation standards for compaction in trenches, under pavement, under sidewalks, at valve boxes, and around manholes; and
 - 4.1.6 All other applicable laws and regulations, including without limitation all Town Ordinances and regulations, all State statutes and regulations, and all Federal laws and regulations.
- 4.3 The Developer acknowledges and agrees that in accordance with paragraph 1.c of the Service IGA and in accordance with the Salida Municipal Code, Salida is and will be under no obligation to provide sewer service to the Property until the Public Improvements required hereunder for each approved phase have been completed and accepted by Salida; and that in accordance with paragraph 1.d of the Service IGA, Salida will have no obligation to provide sewer service to the Property until Salida has formally approved and accepted the Required Improvements for each phase and has confirmed in writing to

Poncha Springs that all terms and conditions of the System IGA and the Service IGA have been complied with to Salida's satisfaction.

For any development where the Subdivision Improvement Agreement (including amendments to the Subdivision Improvement Agreements) allows the release of lots for sale in phases, Salida will provide sewer service for each phase when the Public Improvements for each phase are completed and accepted by Salida.

Section 5 – Terms and Conditions for Sewer Line Extension and Provision of Sewer Service

- 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 System IGA, the Service IGA, the Salida Municipal Code, and all other applicable laws and regulations, including without limitation all Town Ordinances and regulations, all State statutes and regulations, and all Federal laws and regulations.
- 5.2 Submittals to and Approvals by City Administrator. Unless this Agreement specifically provides to the contrary, all submittals to Salida in connection with this Agreement must be made to the City Administrator. In addition, unless this Agreement specifically provides to the contrary, the City Administrator and/or City Council must provide all approvals required of the City in connection with this Agreement.
- 5.3 Limitations on Wastewater Delivered Through Sewer Line Connection. The Developer acknowledges and agrees that Salida's obligation to provide sewer service to the Property is contingent upon the Developer's construction and installation, and Salida's written approval pursuant to paragraph 5.10 below, of the Public Improvements for each phase associated with the Sewer Line Extension.
- 5.3.1 Until and through December 31, 2029, this Agreement is revocable by Salida if Developer cannot provide proof of funds and/or financing for final plat subdivision infrastructure within twelve (12) months of the Effective Date of this Agreement.
- 5.4 Required Improvements and Performance Guarantee. Attached **Exhibit C** provides a detailed list of the Required Improvements for which the Developer is responsible under the Town's final plat approval of the Property, along with the reasonably estimated costs of those Required Improvements, including both labor and materials. Under the Developer's Subdivision Improvement Agreement for the Property, a copy of which agreement is attached as **Exhibit D**, the Developer will furnish a Performance Guarantee, pursuant to Salida Municipal Code section 16-2-60(a), (in the form of **Exhibit E**) in the amount of \$ [REDACTED], which represents an amount equal to one hundred twenty-five percent (125%) of the estimated cost of said improvements to ensure timely completion of the Required Improvements.
- 5.4.1 In accordance with paragraph 1.c of the Service IGA, the Town made Salida a third-party beneficiary of the Performance Guarantee associated with sewer service installation sections of the Developer's Subdivision Improvements Agreement for

the Property.

- 5.4.2 Also in accordance with paragraph 1.c of the Service IGA, the Developer agrees that Salida is a third-party beneficiary of the Developer's Subdivision Improvements Agreement for the Property, that any default by the Developer hereunder will be deemed a default under the Subdivision Improvements Agreement, and that the Performance Guarantee (or rights to and in the same), to the extent of any estimated costs of the Public Improvements, may be made available to Salida in sufficient amounts in the event of default to provide for the completion of the Public Improvements.
- 5.4.3 In accordance with paragraph 1.d of the Service IGA, Salida agrees to perform all necessary inspections and, when appropriate, to provide required written confirmations in a timely fashion and within the time limitations, if any, imposed on Poncha Springs for inspecting the Required Improvements.
- 5.5 Prior Approval of Plans for Sewer Line Connection. Before the Developer commences construction or installation of the Public Improvements, the Salida Public Works Director or City Engineer must review and approve the drawings and plans for such improvements and proposed phasing, which drawings and plans must be stamped by the engineer retained by the Developer.
- 5.6 Construction Standards. The Developer shall ensure that all construction is performed in accordance with this Agreement, industry standards, and Salida's rules, regulations, requirements, and criteria governing such construction.
- 5.7 Conveyance of Public Improvements. Within twenty-eight (28) days of Salida's final acceptance of the Public Improvements in accordance with paragraph 5.11 below, the Developer, at no cost to Salida, shall do the following:
- 5.7.1 Execute and deliver to Salida 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. Consistent with Section 16-2-60(j) of the Salida Municipal Code, acceptance of the Bill of Sale must be authorized by City Council.
- 5.7.2 Execute and deliver to Salida a good and sufficient General Warranty Deed conveying to Salida, 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 [REDACTED] subdivision plat recorded at

Reception No. [REDACTED]. Easements for public utilities must be at least twenty feet wide, ten feet wide on either side of the relevant infrastructure.

5.7.3 Deliver to Salida all engineering designs, current surveys, current field surveys, and as-built drawings and operation manuals for the Public Improvements, or make reasonable provision for the same to be delivered to Salida. The legal description of all utility service lines must be prepared by a registered land surveyor at the Developer's sole expense.

5.8 Warranty. The Developer shall warrant the Public Improvements in accordance with Salida Municipal Code section 16-2-60(f) for the Warranty Period, which is one year from the date that the Salida Public Works Director or City Engineer, in accordance with paragraph 5.10 below, approves the Public Improvements and certifies their compliance with approved specifications. The Developer shall provide a one-year Warranty Bond or furnish a letter of credit, for the Public Improvements, including without limitation the Sewer Line Extension and all Appurtenant Sewer Service Lines. In the Warranty Bond or letter of credit, the Developer shall list Salida as the benefitted owner of the Public Improvements.

5.8.1 Specifically, but not by way of limitation, the Developer shall warrant the following:

- (1) That the title conveyed shall be good and its transfer rightful; and
- (2) Any and all facilities conveyed shall be free from any security interest or other lien or encumbrance; and
- (3) Any and all facilities so conveyed shall be free of any and all defects in materials or workmanship.

5.8.2 In the event of any defect in workmanship or quality during the Warranty Period, the Developer shall correct the defect in workmanship or material.

5.8.3 In the event that any corrective work is performed by the Developer during the Warranty Period, the warranty on said corrected work will be extended for one year from the date on which it is completed.

5.8.4 Should the Developer default in its obligation to correct any defect in workmanship or material during the Warranty Period, the City will be entitled to draw on the Warranty Bond or letter of credit and/or to pursue any other remedy described in Section 7 below.

5.8.5 In addition to warranting the Public Improvements as described herein, the Developer shall perform routine maintenance on the Public Improvements for the duration of the Warranty Period.

5.8.6 Pursuant to Salida Municipal Code section 16-2-60(n), the performance guarantee issued pursuant to this Agreement shall be fully released and discharged upon

expiration of the one (1) warranty period, and the correction of any defects discovered during such warranty period.

- 5.9 Observation of Development and Inspection of Public Improvements. Salida may observe all Development on the Property, and may inspect and test and/or require the Developer's qualified professional consultant(s) to inspect and test each component of the Public Improvements.
- 5.9.1 The Developer shall hire a qualified geotechnical consultant to provide quality assurance testing during the construction and installation of the Public Improvements, and shall deliver to Salida copies of all test reports.
- 5.9.2 The Developer shall hire a professional engineering consultant to provide construction management and inspections during the construction and installation of the Public Improvements, and to stamp the drawings and plans for the Public Improvements before such drawings and plans are reviewed and approved by the Salida Public Works Director or City Engineer pursuant to paragraph 5.5 above.
- 5.9.3 The Developer shall reimburse Salida for any and all costs associated with Salida's observation of Development on the Property and inspection and testing of the Public Improvements, and Salida will not give its written approval of the Public Improvements, as described in paragraph 5.10 below, until such costs, if any, have been reimbursed. Such observation and inspection may occur at any point before, during, or upon completion of construction and installation.
- 5.10 Salida's Written Approval of Public Improvements. Upon the Developer's request, the Salida Public Works Director or City Engineer shall inspect the Public Improvements for each phase to ascertain whether they have been completed in conformity with the approved plans and specifications. The Salida Public Works Director or City Engineer shall confirm in writing the date on which the Public Improvements for each phase have been completed in conformity with the approved plans and specifications. The Developer shall make all corrections necessary to bring the Public Improvements into conformity with the approved plans and specifications.
- 5.11 Final Acceptance of Public Improvements. Upon expiration of the Warranty Period, and provided that any breaches of warranty have been cured and any defects in workmanship and/or materials have been corrected, Salida shall issue its final written acceptance of the Public Improvements. Thereafter, Salida shall maintain such Public Improvements.
- 5.12 Inspection Distinguished from Approval. A Salida official's inspection and/or verbal approval of the Development, at any particular time, will not constitute Salida's approval of the Public Improvements as required hereunder. Such written approval will be given by the City only in accordance with paragraph 5.10 above.
- 5.13 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 the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act), the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response Compensation and Liability Act.

5.14 Reimbursable Costs and Fees. The Developer shall pay to Salida the fees described below at the time set forth below:

5.14.1 The Developer shall reimburse Salida for all fees and actual costs incurred by Salida in connection with Salida's processing and review of the proposed Public Improvements, including without limitation Salida's review of the Developer's Subdivision Improvements Agreement with Poncha Springs and supporting documentation; and Salida's drafting, review, and execution of this Agreement ("Reimbursable Costs and Fees"). The Reimbursable Costs and Fees include but are not limited to Salida's costs incurred for engineering, surveying, and legal services, including the services of outside City consultants and/or counsel; recording fees; printing and publication costs; and any and all other reasonable costs incurred by Salida in connection with processing and review of the proposed Public Improvements.

5.14.2 Reimbursable Costs and Fees attributable to work completed by City staff, not including the City Attorney, will be determined based on the then-effective City of Salida Schedule of Fees.

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

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

5.15 System Development Fee. Until and through December 31, 2029, Developer shall require its individual lot purchasers to pay fifty percent (50%) of the then-applicable wastewater system development fee to Salida upon closing, with the remaining fifty percent (50%) of the system development fee to Salida upon building permit approval. Said individual lot purchasers will have their wastewater system development fee locked in at the amount applicable at the time of lot closing, based upon the then-effective City of Salida Schedule of Fees, and that fee amount shall continue to be in effect as the applicable system development fee on the property until paid in full at building permit approval. However,

this requirement does not arise until the individual lots are sold and does not arise if the Developer is selling the entire development. Subject to Salida's approval as to proper documentation recorded with the Chaffee County Clerk and Recorder, if the Developer sells the entire development, this obligation will arise when the Developer's successor sells the individual lots, but at no point shall this obligation be due later than the time of building permit application.

Section 6 – Development Schedule

- 6.1 Development Schedule. Attached **Exhibit G** provides the schedule according to which Development will occur, including construction and installation of the Public Improvements.
- 6.2 Development Phases. Each phase of Development must be planned so that the Developer's failure to proceed to a subsequent stage will not have an adverse impact on Salida's wastewater treatment system, process, or facilities.
- 6.3 Deadline for Completion and Approval of Sewer Line Extension. The Developer shall construct and install the Sewer Line Extension, and shall obtain Salida's written approval of the Sewer Line Extension in accordance with paragraph 5.10 above, no later than [REDACTED]. The Developer acknowledges and agrees that this deadline is applicable regardless of the number of units constructed within the Property as of [REDACTED].

Section 7 – Default by Developer and Salida's Remedies

- 7.1 Salida's Remedies on Developer's Default. In the event of the Developer's default with respect to any term or condition of this Agreement, Salida may take any action necessary or appropriate to enforce its rights, including without limitation any or all of the following:
 - 7.1.1 Suspension of all further activities and approvals related to the Public Improvements.
 - 7.1.2 A demand that the Performance Guarantee be paid or honored.
 - 7.1.3 Any other remedy available in equity or at law.
- 7.2 Notice of Default. Consistent the Salida Municipal Code, before taking remedial action hereunder, Salida shall give written notice to the Developer of the nature of the default and an opportunity to be heard before the City Council concerning such default. If the default has not been cured within thirty days of receipt of the notice or the date of any hearing before the City Council, whichever is later, Salida will consider whether the Developer has undertaken reasonable steps to timely complete the cure if additional time is required.
- 7.3 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.

- 7.4 Waiver. Any waiver by Salida 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.
- 7.5 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 8 – Indemnification and Release

- 8.1 Release of Liability. The Developer acknowledges that Salida cannot be legally bound by the representations of any of its officers or agents or their designees except in accordance with the Salida Municipal 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 Salida 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 Salida or its officers or agents or their designees.

8.2 Indemnification

- 8.2.1 The Developer shall indemnify and hold harmless Salida, and Salida'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) acts or omissions by the Developer or its officers, employees, agents, consultants, contractors, or subcontractors in connection with this Agreement; (b) Salida'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 Property or the construction and installation of the Public Improvements; provided that such disposal or cleanup obligations do not arise from any hazardous substance, pollutant, or contaminant generated or deposited by Salida upon the Property or the Public Improvements; or (c) any other item contained in this Agreement.
- 8.2.2 The Developer shall reimburse Salida for all fees, expenses, and costs, including attorneys' fees and costs, incurred in any action brought against Salida as a result of Salida's approval of the Public Improvements; and shall reimburse Salida for all fees, expenses, and costs, including attorneys' fees and costs, associated with any referendum election, review of petition for referendum, protest, or any other proceedings to challenge Salida's approval of the Public Improvements. Nothing in this Agreement obligates or compels Salida to proceed with any action or referendum position.

- 8.2.3 Fees, expenses, and costs attributable to work completed by Salida staff, not including the City Attorney, will be determined based on the then-effective City of Salida Schedule of Fees.
- 8.2.4 Fees, expenses, and costs attributable to work completed by the City Attorney or by Salida's outside consultants and/or counsel will be equal to the actual costs and fees billed to and paid by Salida for that work.

Section 9 – Representations and Warranties

- 9.1 **Developer's Representations and Warranties.** The Developer represents and warrants to Salida 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:
 - 9.1.1 **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.
 - 9.1.2 **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.
 - 9.1.3 **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 approved final plat.
 - 9.1.4 **Compliance with environmental laws and regulations.** To the best of the Developer's knowledge, the Public Improvements and associated easements to be conveyed to Salida hereunder are in compliance with all Federal and State environmental protection and anti-pollution laws, rules, regulations, orders, or requirements, including without limitation the Clean Water Act, the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response Compensation and Liability Act.
 - 9.1.5 **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.

- 9.2 Salida's Representations and Warranties. Salida represents and warrants to the Developer that the following are true and correct as of the date of Salida's execution of this Agreement and will be true and correct as of the Effective Date:
- 9.2.1 Authority. Upon execution, this Agreement will have been duly authorized by City Council as a legal, valid, and binding obligation of Salida, and is enforceable as to Salida in accordance with its terms.
- 9.2.2 Authorized signatory. The person executing this Agreement on behalf of Salida is duly authorized and empowered to execute this Agreement on behalf of Salida.
- 9.2.3 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 Salida is a party or by which Salida is bound or affected.

Section 10 – General Provisions

- 10.1 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 Salida 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 any Ordinances or resolutions authorizing or adopting this Agreement.
- 10.2 Final Agreement. This Agreement supersedes and controls all prior written and oral agreements and representations of the Parties with respect to the subject hereof, and is the total integrated agreement between the Parties with respect to that subject.
- 10.3 Modifications. This Agreement may be modified only by a subsequent written agreement executed by both Parties.
- 10.4 Voluntary Agreement. The Developer agrees to comply with all of the terms and conditions of this Agreement on a voluntary and contractual basis.
- 10.5 Survival. Salida'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.
- 10.6 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 Salida: City of Salida
Attn: City Administrator and City Attorney
448 East First Street
Salida, CO 81201

Copy to: Salida City Attorney Nina P. Williams
c/o Wilson Williams Fellman Dittman
1314 Main Street, Suite 101
Louisville, CO 80027

Notice to the Developer: legal entity name
[address
Salida, CO 81201]

- 10.7 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.
- 10.8 Recording. Salida shall record this Agreement with the Clerk and Recorder of Chaffee County, Colorado, at the Developer's expense.
- 10.9 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 Salida and the Developer.
- 10.10 No Waiver of Immunity. Nothing in this Agreement, express or implied, waives or is intended to waive Salida's immunity under Colorado State law, including without limitation the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 through -120.
- 10.11 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.
- 10.12 Subject to Annual Appropriation. Any financial obligation of Salida 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.
- 10.13 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.
- 10.14 Counterparts. This Agreement may be executed in multiple counterparts, all of which taken together constitute one and the same document.

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

CITY OF SALIDA, COLORADO

By:

_____, Mayor

ATTEST:

City Clerk

STATE OF COLORADO)
) ss.
COUNTY OF CHAFFEE)

Acknowledged, subscribed, and sworn to before me this _____ day of _____ 2025,
by Dan Shore, as Mayor, and by _____, as City Clerk, on behalf of the City of
Salida, Colorado.

WITNESS my hand and official seal.

My Commission expires: _____.

Notary Public

ENTITY NAME, LLC

By:

Name: _____
Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF)

Acknowledged, subscribed, and sworn to before me this _____ day of _____ 2025 by
_____.

WITNESS my hand and official seal. My Commission expires: _____.

Notary Public

**SEWER LINE EXTENSION AND CONNECTION AGREEMENT POST-1375 ERU'S
(Name of Development)**

THIS SEWER LINE EXTENSION AND CONNECTION AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 20__, by and between the CITY OF SALIDA, COLORADO, a Colorado statutory city ("Salida"), and **full legal entity name**, ("Developer") (each a "Party" and together the "Parties").

Section 1 - Recitals

- 1.1 The Developer contends that it is the fee title owner of certain lands known as the "**Name of Development**" and more particularly described on attached **Exhibit A** (the "Property").
- 1.2 The Property is located within the current corporate boundaries of the Town of Poncha Springs ("Poncha Springs" or "Town") and within Salida's Wastewater Service Plan Area as defined in Section 13-2-20 of the Salida Municipal Code.
- 1.3 This Agreement pertains to the Property, as described on attached **Exhibit A**.
- 1.4 Salida provides sewer service in Poncha Springs pursuant to and in accordance with the terms and conditions of two intergovernmental agreements between Salida and Poncha Springs: the Intergovernmental Agreement for Transfer of Sewer System dated April 6, 2010 ("System IGA") as amended effective February 4, 2025, and the Intergovernmental Agreement for Provision of Sewer Services dated April 6, 2010 ("Service IGA").
- 1.5 In accordance with the Poncha Springs Land Use Code, the Developer has submitted a plat to the Town of Poncha Springs for the **Name of Development/Subdivision** and has obtained _____ plat approval of the subdivision by the Town Board, on ____ [date] ____.
- 1.6 Under the System IGA, Salida operates, maintains, and expands its sewer system to accommodate and not inhibit planned growth and development within Poncha Springs's planning and zoning jurisdiction.
- 1.7 Under the Service IGA, Poncha Springs shall not record any final plat for any development within Poncha Springs until the Town has received written confirmation from Salida that the developer has executed a line extension agreement or line connection agreement with Salida or has otherwise applied for and been granted service per the Salida Municipal Code.
- 1.8 The Property currently is not serviced by a Salida sewer line, and the Developer wishes to perform all excavations, construction, installations, connections, and other work necessary to establish a connection to a Salida sewer main ("Sewer Line Extension"), as shown on the Sewer Plans attached as **Exhibit B**.
- 1.9 The Developer and Salida wish to enter into this Agreement in satisfaction of the requirement for an executed extension or line connection agreement under the Service IGA, and to provide for Salida's provision of sewer service to **Name of Development**.

- 1.10 The Developer and Salida acknowledge that the terms and conditions hereinafter set forth are reasonable, within the authority of each to perform, and consistent with the System IGA and the Service IGA and the Amended IGA.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, Salida 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 Sewer Line Extension and Connection Agreement. The Recitals in Section 1 above are fully incorporated into this Agreement and made a part hereof by this reference.
- 2.2 “Appurtenant Sewer Service Lines” means all service lines and laterals necessary to deliver wastewater from the Property into the Sewer Main(s).
- 2.3 “City” means the City of Salida, a Colorado statutory city.
- 2.4 “City Administrator” means the City Administrator of the City of Salida, Colorado, and the City Administrator’s designee.
- 2.5 “City Council” means the City Council of the City of Salida, Colorado.
- 2.6 “Developer” means **full legal entity name**, and its successor(s).
- 2.7 “Development” means all work on the Property required to accomplish construction and installation of the Public Improvements. When the context so dictates, the verb “Develop” may be used in place of the noun “Development.”
- 2.8 “Effective Date” means the date on which City Council approved the execution of this Agreement. On the Effective Date, this Agreement will become binding upon and enforceable by Salida and the Developer.
- 2.9 “Extension Taps” means sewer taps for which Salida will provide service through the Sewer Line Extension.
- 2.10 “Performance Guarantee” means the bond or letter of credit of **_____** posted by the Developer in accordance with the terms of its Subdivision Improvements Agreement with Poncha Springs dated **_____**.
- 2.11 “Property” means the land that is known as the “**Name of Development**” and described in attached **Exhibit A**.

- 2.12 “Public Improvements” means those Required Improvements constructed and installed by the Developer and dedicated to Salida in accordance with this Agreement, including without limitation wastewater collection mains and laterals and sewer manholes. The Required Improvements that are also Public Improvements are identified on the Bid Tab attached as **Exhibit C**.
- 2.13 “Reimbursable Costs and Fees” means all fees and costs incurred by Salida in connection with Salida’s processing and review of the Public Improvements, and Salida’s drafting, review, and execution of this Agreement.
- 2.14 “Required Improvements” means the public and other improvements that the Developer is required to make to the Property to connect, consistent and in compliance with the final plat approval and with the construction plans and drawings submitted to Salida and Poncha Springs for review and approval.
- 2.15 “Salida Municipal Code” means the City of Salida Municipal Code, as amended.
- 2.16 “Service IGA” means the Intergovernmental Agreement for Provision of Sewer Services made by and between the City of Salida and the Town of Poncha Springs on April 6, 2010.
- 2.17 “Sewer Line Extension” means [REDACTED] linear feet of [REDACTED]-inch and [REDACTED]-inch sewer main to be constructed and installed by the Developer as shown on **Exhibit B**, to allow the Developer to connect to a sewer main with sufficient capacity to enable Salida to provide sewer service to the Extension Taps.
- 2.18 “System IGA” means the Intergovernmental Agreement for Transfer of Sewer System made by and between the City of Salida and the Town of Poncha Springs on April 6, 2010, as amended effective February 4, 2025 by the First Amendment to the Intergovernmental Agreement for Transfer of Sewer System.
- 2.19 “Town” means the Town of Poncha Springs.
- 2.20 “Warranty Period” means a period of one year from the date that the Salida Public Works Director or City Engineer, in accordance with the terms and conditions of paragraph 5.10 below, approves the Public Improvements and certifies their compliance with approved specifications.

Section 3 – Purpose of Agreement and Binding Effect

- 3.1 Contractual Relationship. The purpose of this Agreement is to establish a contractual relationship between Salida and the Developer with respect to extension of sewer service to the Property. 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 and Covenant Running with the Land. This Agreement benefits and is binding upon Salida, 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. Notwithstanding anything to the contrary herein, and to the extent that Salida becomes aware of new information with respect to the Property or the Sewer Line Connection following execution of this Agreement, Salida reserves the right to require new terms or conditions for the Required Improvements or new obligations for the Developer with respect to such improvements.

**Section 4 – Connection to Sewer Line, Extension of Sewer Line,
and Provision of Sewer Service**

- 4.1 Provision of Sewer Service. Any units above a total of 1,375 ERU connected to the Poncha Interceptor Line shall not extend or connect to the Sewer Line until construction of the expanded Poncha Interceptor Line has been complete. Therefore, Salida approval of individual sewer taps and sewer service to lots on the Property, after the 1,375 units have connected to the Interceptor Line, will be dependent on the completion of such construction. Developer agrees that it will construct and install the Public Improvements, including, without limitation, all Appurtenant Sewer Services Lines, only in accordance with the terms of this Agreement, the System IGA and the Service IGA, and that none of the Property set forth in Exhibit A will be entitled to sewer connection after the first 1,375 units have been connected until the construction of the expanded Poncha Interceptor Line is complete.
- 4.2 Salida agrees to provide sewer service to the Property, and the Developer agrees that it will construct and install the Public Improvements, including without limitation the Sewer Line Extension and all Appurtenant Sewer Service Lines, only in accordance with the terms and conditions of this Agreement, the System IGA, and the Service IGA, and with the following:
- 4.2.1 All requirements of the Town Code and the Town's Subdivision Approval Ordinance;
- 4.2.2 All requirements of the Salida Municipal Code;
- 4.2.3 The City of Salida's Standard Specifications for Construction, as amended;
- 4.2.4 The City of Salida Department of Public Works' Design Criteria Manual for Water, Sewer, and Streets, as amended;
- 4.2.5 The Town's applicable engineering standards for construction and installation of the Sewer Line Extension and Appurtenant Sewer Service Lines, including without limitation standards for compaction in trenches, under pavement, under sidewalks, at valve boxes, and around manholes; and

- 4.2.6 All other applicable laws and regulations, including without limitation all Town Ordinances and regulations, all State statutes and regulations, and all Federal laws and regulations.
- 4.3 The Developer acknowledges and agrees that in accordance with paragraph 1.c of the Service IGA and in accordance with the Salida Municipal Code, Salida is and will be under no obligation to provide sewer service to the Property until the Public Improvements required hereunder for each phase have been completed and accepted by Salida; and that in accordance with paragraph 1.d of the Service IGA, Salida will have no obligation to provide sewer service to the Property until Salida has formally approved and accepted the Required Improvements for each phase and has confirmed in writing to Poncha Springs that all terms and conditions of the System IGA and the Service IGA have been complied with to Salida's satisfaction.

For any development where the Subdivision Improvement Agreement (including amendments to the Subdivision Improvement Agreements) allows the release of lots for sale in phases, Salida will provide sewer service for each phase when the Public Improvements for each phase are completed and accepted by Salida.

Section 5 – Terms and Conditions for Sewer Line Extension and Provision of Sewer Service

- 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 System IGA, the Service IGA, the Salida Municipal Code, and all other applicable laws and regulations, including without limitation all Town Ordinances and regulations, all State statutes and regulations, and all Federal laws and regulations.
- 5.2 Submittals to and Approvals by City Administrator. Unless this Agreement specifically provides to the contrary, all submittals to Salida in connection with this Agreement must be made to the City Administrator. In addition, unless this Agreement specifically provides to the contrary, the City Administrator and/or City Council must provide all approvals required of the City in connection with this Agreement.
- 5.3 Limitations on Wastewater Delivered Through Sewer Line Connection. The Developer acknowledges and agrees that Salida's obligation to provide sewer service to the Property is contingent upon the Developer's construction and installation, and Salida's written approval pursuant to paragraph 5.10 below, of the Public Improvements associated with the Sewer Line Extension.
- 5.3.1 Salida approval of individual sewer taps and sewer service to lots on the Property which are above the total of 1,375 ERU connected to the Poncha Interceptor Line will be dependent upon completion of construction of the expanded Poncha Interceptor Line. Regardless of final written acceptance of the Public Improvements by Salida, such acceptance shall not constitute a warranty or promise by Salida to provide sewer services, if the unit(s) is/are above the total of 1,375

ERU connected to the Poncha Interceptor Line and if construction of the expanded Poncha Interceptor Line has not yet been completed. Additionally, until and through December 31, 2029, this Agreement is revocable by Salida if Developer cannot provide proof of funds and/or financing for final plat subdivision infrastructure within twelve (12) months of the Effective Date of this Agreement.

5.4 Required Improvements and Performance Guarantee. Attached **Exhibit C** provides a detailed list of the Required Improvements for which the Developer is responsible under the Town's final plat approval of the Property, along with the reasonably estimated costs of those Required Improvements, including both labor and materials. Under the Developer's Subdivision Improvement Agreement for the Property, a copy of which agreement is attached as **Exhibit D**, the Developer will furnish a Performance Guarantee, pursuant to Salida Municipal Code section 16-2-60(a), (in the form **Exhibit E**) in the amount of \$ [REDACTED], which represents an amount equal to one hundred twenty-five percent (125%) of the estimated cost of said improvements to ensure timely completion of the Required Improvements.

5.4.1 In accordance with paragraph 1.c of the Service IGA, the Town made Salida a third-party beneficiary of the Performance Guarantee associated with sewer service installation sections of the Developer's Subdivision Improvements Agreement for the Property.

5.4.2 Also in accordance with paragraph 1.c of the Service IGA, the Developer agrees that Salida is a third-party beneficiary of the Developer's Subdivision Improvements Agreement for the Property, that any default by the Developer hereunder will be deemed a default under the Subdivision Improvements Agreement, and that the Performance Guarantee (or rights to and in the same), to the extent of any estimated costs of the Public Improvements, may be made available to Salida in sufficient amounts in the event of default to provide for the completion of the Public Improvements.

5.4.3 In accordance with paragraph 1.d of the Service IGA, Salida agrees to perform all necessary inspections and, when appropriate, to provide required written confirmations in a timely fashion and within the time limitations, if any, imposed on Poncha Springs for inspecting the Required Improvements.

5.5 Prior Approval of Plans for Sewer Line Connection. Before the Developer commences construction or installation of the Public Improvements, the Salida Public Works Director or City Engineer must review and approve the drawings and plans for such improvement, which drawings and plans must be stamped by the engineer retained by the Developer.

5.6 Construction Standards. The Developer shall ensure that all construction is performed in accordance with this Agreement, industry standards, and Salida's rules, regulations, requirements, and criteria governing such construction.

5.7 Conveyance of Public Improvements. Within twenty-eight (28) days of Salida's final acceptance of the Public Improvements in accordance with paragraph 5.11 below, the Developer, at no cost to Salida, shall do the following:

5.7.1 Execute and deliver to Salida 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. Consistent with Section 16-2-60(j) of the Salida Municipal Code, acceptance of the Bill of Sale must be authorized by City Council.

5.7.2 Execute and deliver to Salida a good and sufficient General Warranty Deed conveying to Salida, 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 [REDACTED] subdivision plat recorded at Reception No. [REDACTED]. Easements for public utilities must be at least twenty feet wide, ten feet wide on either side of the relevant infrastructure.

5.7.3 Deliver to Salida all engineering designs, current surveys, current field surveys, and as-built drawings and operation manuals for the Public Improvements, or make reasonable provision for the same to be delivered to Salida. The legal description of all utility service lines must be prepared by a registered land surveyor at the Developer's sole expense.

5.8 Warranty. The Developer shall warrant the Public Improvements in accordance with Salida Municipal Code section 16-2-60(f) for the Warranty Period, which is one year from the date that the Salida Public Works Director or City Engineer, in accordance with paragraph 5.10 below, approves the Public Improvements and certifies their compliance with approved specifications. The Developer shall provide a one-year Warranty Bond or furnish a letter of credit, for the Public Improvements, including without limitation the Sewer Line Extension and all Appurtenant Sewer Service Lines. In the Warranty Bond or letter of credit, the Developer shall list Salida as the benefitted owner of the Public Improvements.

5.8.1 Specifically, but not by way of limitation, the Developer shall warrant the following:

- (1) That the title conveyed shall be good and its transfer rightful; and
- (2) Any and all facilities conveyed shall be free from any security interest or other lien or encumbrance; and
- (3) Any and all facilities so conveyed shall be free of any and all defects in materials or workmanship.

5.8.2 In the event of any defect in workmanship or quality during the Warranty Period, the Developer shall correct the defect in workmanship or material.

- 5.8.3 In the event that any corrective work is performed by the Developer during the Warranty Period, the warranty on said corrected work will be extended for one year from the date on which it is completed.
- 5.8.4 Should the Developer default in its obligation to correct any defect in workmanship or material during the Warranty Period, the City will be entitled to draw on the Warranty Bond or letter of credit and/or to pursue any other remedy described in Section 7 below.
- 5.8.5 In addition to warranting the Public Improvements as described herein, the Developer shall perform routine maintenance on the Public Improvements for the duration of the Warranty Period.
- 5.8.6 Pursuant to Salida Municipal Code section 16-2-60(n), the performance guarantee issued pursuant to this Agreement shall be fully released and discharged upon expiration of the one (1) warranty period, and the correction of any defects discovered during such warranty period.
- 5.9 Observation of Development and Inspection of Public Improvements. Salida may observe all Development on the Property, and may inspect and test and/or require the Developer's qualified professional consultant(s) to inspect and test each component of the Public Improvements.
 - 5.9.1 The Developer shall hire a qualified geotechnical consultant to provide quality assurance testing during the construction and installation of the Public Improvements, and shall deliver to Salida copies of all test reports.
 - 5.9.2 The Developer shall hire a professional engineering consultant to provide construction management and inspections during the construction and installation of the Public Improvements, and to stamp the drawings and plans for the Public Improvements before such drawings and plans are reviewed and approved by the Salida Public Works Director or City Engineer pursuant to paragraph 5.5 above.
 - 5.9.3 The Developer shall reimburse Salida for any and all costs associated with Salida's observation of Development on the Property and inspection and testing of the Public Improvements, and Salida will not give its written approval of the Public Improvements, as described in paragraph 5.10 below, until such costs, if any, have been reimbursed. Such observation and inspection may occur at any point before, during, or upon completion of construction and installation.

- 5.10 Salida's Written Approval of Public Improvements. Upon the Developer's request, the Salida Public Works Director or City Engineer shall inspect the Public Improvements for each phase to ascertain whether they have been completed in conformity with the approved plans and specifications. The Salida Public Works Director or City Engineer shall confirm in writing the date on which the Public Improvements for each phase have been completed in conformity with the approved plans and specifications. The Developer shall make all corrections necessary to bring the Public Improvements into conformity with the approved plans and specifications.
- 5.11 Final Acceptance of Public Improvements. Upon expiration of the Warranty Period, and provided that any breaches of warranty have been cured and any defects in workmanship and/or materials have been corrected, Salida shall issue its final written acceptance of the Public Improvements. Thereafter, Salida shall maintain such Public Improvements.
- 5.12 Inspection Distinguished from Approval. A Salida official's inspection and/or verbal approval of the Development, at any particular time, will not constitute Salida's approval of the Public Improvements as required hereunder. Such written approval will be given by the City only in accordance with paragraph 5.10 above.
- 5.13 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 the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act), the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response Compensation and Liability Act.
- 5.14 Reimbursable Costs and Fees. The Developer shall pay to Salida the fees described below at the time set forth below:
- 5.14.1 The Developer shall reimburse Salida for all fees and actual costs incurred by Salida in connection with Salida's processing and review of the proposed Required Improvements, including without limitation Salida's review of the Developer's Subdivision Improvements Agreement with Poncha Springs and supporting documentation; and Salida's drafting, review, and execution of this Agreement ("Reimbursable Costs and Fees"). The Reimbursable Costs and Fees include but are not limited to Salida's costs incurred for engineering, surveying, and legal services, including the services of outside City consultants and/or counsel; recording fees; printing and publication costs; and any and all other reasonable costs incurred by Salida in connection with processing and review of the proposed Public Improvements.
- 5.14.2 Reimbursable Costs and Fees attributable to work completed by City staff, not including the City Attorney, will be determined based on the then-effective City of Salida Schedule of Fees.

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

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

5.15 System Development Fee. Until and through December 31, 2029, Developer shall require its individual lot purchasers to pay fifty percent (50%) of the then-applicable wastewater system development fee to Salida upon closing, with the remaining fifty percent (50%) of the system development fee to be paid to Salida upon building permit approval. Said individual lot purchasers will have their wastewater system development fee locked in at the amount applicable at the time of lot closing, based upon the then-effective City of Salida Schedule of Fees, and that fee amount shall continue to be in effect as the applicable system development fee on the property until paid in full at building permit approval.

Section 6 – Development Schedule

6.1 Development Schedule. Attached **Exhibit G** provides the schedule according to which Development will occur, including construction and installation of the Public Improvements.

6.2 Development Phases. Each phase of Development must be planned so that the Developer's failure to proceed to a subsequent stage will not have an adverse impact on Salida's wastewater treatment system, process, or facilities.

6.3 Deadline for Completion and Approval of Sewer Line Extension. The Developer shall construct and install the Sewer Line Extension, and shall obtain Salida's written approval of the Sewer Line Extension in accordance with paragraph 5.10 above, no later than . The Developer acknowledges and agrees that this deadline is applicable regardless of the number of units constructed within the Property as of .

Section 7 – Default by Developer and Salida's Remedies

7.1 Salida's Remedies on Developer's Default. In the event of the Developer's default with respect to any term or condition of this Agreement, Salida may take any action necessary or appropriate to enforce its rights, including without limitation any or all of the following:

- 7.1.1 Suspension of all further activities and approvals related to the Public Improvements.
- 7.1.2 A demand that the Performance Guarantee be paid or honored.
- 7.1.3 Any other remedy available in equity or at law.
- 7.2 Notice of Default. Consistent with the Salida Municipal Code, before taking remedial action hereunder, Salida shall give written notice to the Developer of the nature of the default and an opportunity to be heard before the City Council concerning such default. If the default has not been cured within thirty days of receipt of the notice or the date of any hearing before the City Council, whichever is later, Salida will consider whether the Developer has undertaken reasonable steps to timely complete the cure if additional time is required.
- 7.3 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.
- 7.4 Waiver. Any waiver by Salida 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.
- 7.5 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 8 – Indemnification and Release

- 8.1 Release of Liability. The Developer acknowledges that Salida cannot be legally bound by the representations of any of its officers or agents or their designees except in accordance with the Salida Municipal 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 Salida 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 Salida or its officers or agents or their designees.
- 8.2 Indemnification.
 - 8.2.1 The Developer shall indemnify and hold harmless Salida, and Salida'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) acts or omissions by the Developer or its officers, employees, agents, consultants, contractors, or subcontractors in connection with this Agreement; (b) Salida'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 Property or the construction and installation of the Public Improvements; provided that such disposal or cleanup obligations do not arise from any hazardous substance, pollutant, or contaminant generated or deposited by Salida upon the Property or the Public Improvements; or (c) any other item contained in this Agreement.

- 8.2.2 The Developer shall reimburse Salida for all fees, expenses, and costs, including attorneys' fees and costs, incurred in any action brought against Salida as a result of Salida's approval of the Public Improvements; and shall reimburse Salida for all fees, expenses, and costs, including attorneys' fees and costs, associated with any referendum election, review of petition for referendum, protest, or any other proceedings to challenge Salida's approval of the Public Improvements. Nothing in this Agreement obligates or compels Salida to proceed with any action or referendum position.
- 8.2.3 Fees, expenses, and costs attributable to work completed by Salida staff, not including the City Attorney, will be determined based on the then-effective City of Salida Schedule of Fees.
- 8.2.4 Fees, expenses, and costs attributable to work completed by the City Attorney or by Salida's outside consultants and/or counsel will be equal to the actual costs and fees billed to and paid by Salida for that work.

Section 9 – Representations and Warranties

- 9.1 Developer's Representations. The Developer represents and warrants to Salida 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:
 - 9.1.1 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.
 - 9.1.2 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.
 - 9.1.3 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 approved final plat.

- 9.1.4 Compliance with environmental laws and regulations. To the best of the Developer's knowledge, the Public Improvements and associated easements to be conveyed to Salida hereunder are in compliance with all Federal and State environmental protection and anti-pollution laws, rules, regulations, orders, or requirements, including without limitation the Clean Water Act, the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response Compensation and Liability Act.
- 9.1.5 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.
- 9.2 Salida's Representations and Warranties. Salida represents and warrants to the Developer that the following are true and correct as of the date of Salida's execution of this Agreement and will be true and correct as of the Effective Date:
 - 9.2.1 Authority. Upon execution, this Agreement will have been duly authorized by City Council as a legal, valid, and binding obligation of Salida, and is enforceable as to Salida in accordance with its terms.
 - 9.2.2 Authorized signatory. The person executing this Agreement on behalf of Salida is duly authorized and empowered to execute this Agreement on behalf of Salida.
 - 9.2.3 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 Salida is a party or by which Salida is bound or affected.

Section 10 – General Provisions

- 10.1 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 Salida 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 any Ordinances or resolutions authorizing or adopting this Agreement.
- 10.2 Final Agreement. This Agreement supersedes and controls all prior written and oral agreements and representations of the Parties with respect to the subject hereof, and is the total integrated agreement between the Parties with respect to that subject.
- 10.3 Modifications. This Agreement may be modified only by a subsequent written agreement

executed by both Parties.

- 10.4 Voluntary Agreement. The Developer agrees to comply with all of the terms and conditions of this Agreement on a voluntary and contractual basis.
- 10.5 Survival. Salida'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.
- 10.6 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 Salida: City of Salida
 Attn: City Administrator and City Attorney
 448 East First Street
 Salida, CO 81201

Copy to: Salida City Attorney Nina P. Williams
 c/o Wilson Williams Fellman Dittman
 1314 Main Street, Suite 101
 Louisville, CO 80027

Notice to the Developer: full legal entity name
 [address
 Salida, CO 81201]

- 10.7 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.
- 10.8 Recording. Salida shall record this Agreement with the Clerk and Recorder of Chaffee County, Colorado, at the Developer's expense.
- 10.9 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 Salida and the Developer.
- 10.10 No Waiver of Immunity. Nothing in this Agreement, express or implied, waives or is intended to waive Salida's immunity under Colorado State law, including without limitation the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 through -120.
- 10.11 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.

- 10.12 Subject to Annual Appropriation. Any financial obligation of Salida 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.
- 10.13 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.
- 10.14 Counterparts. This Agreement may be executed in multiple counterparts, all of which taken together constitute one and the same document.

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

[Remainder of page intentionally blank]

CITY OF SALIDA, COLORADO

By:

_____, Mayor

ATTEST:

City Clerk

STATE OF COLORADO)
) ss.
COUNTY OF CHAFFEE)

Acknowledged, subscribed, and sworn to before me this _____ day of _____ 2025,
by _____, as Mayor, and by _____, as City Clerk, on behalf of the City
of Salida, Colorado.

WITNESS my hand and official seal.

My Commission expires:_____.

Notary Public

ENTITY NAME

By:

Name: _____
Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF)

Acknowledged, subscribed, and sworn to before me this _____ day of _____ 2025 by
_____.

WITNESS my hand and official seal. My Commission expires: _____.

Notary Public

EXHIBIT B
(FIRST AMENDMENT TO THE TRANSFER
AGREEMENT)