

**FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT
FOR TRANSFER OF SEWER SYSTEM**

THIS FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT FOR TRANSFER OF SEWER SYSTEM is made and entered into as of the ____ day of February 2025, by and between the CITY OF SALIDA, Colorado, a municipal corporation and political subdivision of the state of Colorado, acting through its Water and Wastewater Enterprise (hereinafter "Salida" or the "City"), and the TOWN OF PONCHA SPRINGS, Colorado, a municipal corporation and political subdivision of the state of Colorado (hereinafter "Poncha Springs" or the "Town"), together referred to as the "Parties."

WHEREAS, pursuant to CRS 29-1-201, et seq and Article XIV, Section 18 of the Colorado Constitution, Poncha Springs and Salida are authorized to enter into an intergovernmental agreement for the ownership, construction, operation, maintenance, management, and financing of the sewer system serving both communities; and

WHEREAS, on April 6, 2010 the Parties entered into an Intergovernmental Agreement for Transfer of Sewer System (the "Transfer Agreement"), generally providing for Salida, acting through its water and wastewater enterprise, to assume full responsibility for the provision of sewer services in Poncha Springs, including responsibility for the Town's sewer facilities and related equipment; and

WHEREAS, the Transfer Agreement contains specific provisions with respect to the rates, fees and charges which would be imposed upon the customers of the combined sewer system; and

WHEREAS, properties located within the Poncha Springs Municipal Service Area requiring connection to the sewer system operated by Salida must enter into a "Line Extension and Connection Agreement" with the City; and

WHEREAS, on April 6, 2010 the City and the Town also entered into an Intergovernmental Agreement for Provision of Sewer Services (the "Service Agreement") which provides for conditions on final plat recordation, Salida as a referral agency, and the mechanics of performance guarantees, issuance of building permits, and other mechanics of the provision of sewer services; and

WHEREAS, on June 6, 2023 the City imposed a moratorium on the approval of any further line extension agreements or connections to the sewer system "for properties in or around the Poncha Springs Service Area benefiting from the necessary Interceptor capital improvements"; and

WHEREAS, on June 7, 2023 the Town and two individual Poncha Springs property developers filed an amended complaint in Case No. 2023CV030023, Chaffee County District Court against the City, alleging breaches of the two agreements ("the Lawsuit"); and

WHEREAS, the Parties entered into mediation of the dispute in Case No. 2023CV030023 and have executed a Release and Settlement Agreement resolving all issues and claims brought in the Lawsuit; and

WHEREAS, as a condition of and to memorialize the Release and Settlement Agreement, the Parties agreed to execute this First Amendment to Intergovernmental Agreement for Transfer of Sewer System; and

WHEREAS, in satisfaction of the requirements of the Release and Settlement Agreement, the Parties hereby wish to amend the 2010 Transfer Agreement in the manner set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements of the Parties and other good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Section 1. The Transfer Agreement dated April 6, 2010 is amended in the following particulars: Sections 5(c) and 5(d) of the Transfer Agreement are hereby deleted and replaced in their entirety with the following new Sections 5(c), (d), (e), (f), (g), (h), (i) and (j):

5(c) Definitions. As used in this Agreement, the following terms shall have these meanings:

- *Interceptor* means that physical sewer pipe that runs along US Highway 50 from approximately State Highway 291 in Salida to Poncha Springs Lane in Poncha Springs which currently serves as the sole conveyance of wastewater from Poncha Springs to the Salida treatment plant, as such interceptor presently exists and is contemplated to be expanded or replaced pursuant to the terms of this First Amendment to Intergovernmental Agreement for Transfer of Sewer System.
- *Interceptor upgrade* means the expansion and/or replacement of the Interceptor described in Section 5(h) hereof with a 21 inch pipeline as outlined in the Providence Infrastructure Consultants' Technical Memoranda concerning the Poncha Interceptor Flow Analysis dated September 13, 2022.
- *Line extension and connection agreement* means an agreement entered into between the City and all Poncha developers, and an agreement entered between the City and Salida developers whose property would connect directly to the Interceptor, establishing conditions under which said developers are permitted to connect to the sewer system.
- *Poncha Springs development or developers* means development of any real property within the current municipal boundaries of the Town of Poncha Springs or within the future municipal boundaries of the Town of Poncha Springs identified as the "Poncha Springs Sewer Services Area," such Sewer Services Area not to exceed 4,000 acres in size, all as shown on the map attached as **Exhibit A** to this Agreement and which, as a requirement for development thereof, requires sewer service from the sewer system. At the time sewer service has been extended to 3,500 acres within the Poncha Springs Sewer Services Area, the parties shall meet to discuss adjustments, if any, needed to this Agreement at that time.
- *Sewer system* means that network of public wastewater infrastructure, including wastewater mains, lines, laterals, and other wastewater pipes and appurtenances, lift stations, meter stations and all other parts of the sanitary system except the wastewater

service line, owned and operated by the Salida Water and Wastewater Enterprise, as defined in Section 13-2-10 of the Salida Municipal Code ("*Municipal Wastewater System or Wastewater System*").

- *Salida development or developers* means development of (1) the approximate 133 acre parcel owned by the City and located east of Highway 285 and south of the present Poncha Springs municipal boundary identified as Parcel No. 380515200215, and (2) any real property within the current municipal boundaries of the City of Salida or within the future municipal boundaries of the City of Salida which, as a requirement for development, requires sewer service from the sewer system.
- *Sewer plant investment fee or SPIF*¹ means the fee charged to new customers by Salida for capacity contributions and connection to the sewer system, applied in equivalent resident units (ERUs) such that one ERU is charged one SPIF fee.

5(d) Fees, rates, charges, and penalties: generally. The following provisions shall govern the amount, timing and manner of imposition of fixed² fees, rates, charges, assessments and penalties for customer access to and use of the sewer system:

- i. Salida shall have the sole responsibility and authority to set fees, rates, charges and penalties necessary for the operation, maintenance, upgrade, improvement, and expansion of the sewer system.
- ii. Except as provided in Section 5(e), Salida agrees to charge Poncha Springs' customers, developers and development at the same fixed fees, rates, charges, assessments and penalties as the same type of property as Salida's in-City customers, developers and development including both the real property presently contained within the Town's corporate limits, Little River Ranch, Friend Ranch and all future annexed property.
 - a. In this regard, all such Poncha Springs Residential customers, developers and development with Water Service shall be charged the same fixed fees, rates, charges, assessments and penalties for sewer services as Salida Residential customers, developers and development with Water Service. Similarly, all such Poncha Springs Commercial and/or Industrial customers, developers and development with Water Service shall be charged the exact same fixed fees, rates, charges, assessments and penalties for sewer services as Salida Commercial and/or Industrial customer, developers and development with Water Service. These charges will be based upon the applicable customer classification and ERU use listed in Sections 13-4-210 and 13-4-220 of the Salida Municipal Code, as amended.
 - b. Poncha Springs customers, developers and development without water service shall be charged the same fixed fees, rates, charges, assessments and

¹ Also known as Tap Fees or System Development Fees (SDF).

²Both water and wastewater monthly charges consist of a fixed service charge component for each and a non fixed volume charge component for each. When the term "fixed" is used throughout this IGA it refers to only the fixed service charge components. As to the non fixed volume charge component for both water and wastewater, Salida will use the same rate for both Poncha Springs and Salida customers, but the amount billed will vary depending on the volume used by a given property.

penalties as Salida customers, developers and development without water service, i.e. as Sewer Only customers.

- c. Poncha Springs' customers, developers and development shall never be charged as Out-of-City Customers.

5(e) Sewer plant investment fee (SPIF) also known as Tap Fees or System Development Fees (SDF).

- i. Effective February 4, 2025, the SPIF for all new residential connections of Poncha Springs development to the sewer system shall be increased from \$5,206 to \$11,600 per equivalent residential unit (ERU), which is an increase of \$6,394 (the "Poncha increased amount"). This SPIF will remain the same for a period of five years, unless raised for reasons stated in 5(e) iii.b. and iv.
- ii. The SPIF for commercial or industrial taps for Poncha Springs shall be set at rates equal to those for Salida commercial or industrial customers, comparable to the \$11,600 new Poncha Springs residential rate.
- iii. The Parties agree that the establishment of the \$11,600 SPIF for Poncha Springs residential development shall be matched with and ultimately be the same as the SPIF for Salida residential development under the following schedule commencing on the effective date hereof:
 - a. Effective February 4, 2025 the SPIF for Salida residential developments shall be increased by at least \$1,279 per year at the beginning January 1, 2025 of each year until it equals \$11,600 per ERU.
 - b. The SPIF for both Poncha Springs and Salida developments may also be increased during this five-year period, provided that the increase is uniform as applied to Poncha Springs and Salida developments: for example, a \$2000 increase to the Poncha Springs SPIF above the base amount will result in a \$2000 increase to the then-current Salida SPIF. Any such increases must result in the Salida and Poncha Springs SPIF being the same at the beginning of the fifth year.
 - c. Such increases during this five-year period may only be imposed by Salida for system improvements other than the Interceptor upgrade project as described in Section 5(h) below.
- iv. Only in the event no reasonable bid from the RFP described in Section 5(h) below for construction of the Interceptor upgrade is received by Salida for the amount anticipated and bonded, Salida may institute a uniform increase in SPIF fees applicable to both Poncha Springs and Salida developments within the five-year period to assist in funding the excess in cost above the bond amount.
- v. In addition to any specific increases described in Section 5(e) i, ii, iii, and iv above, future SPIF increases will apply uniformly to both Poncha Springs developers and Salida developers of the same given type of property, i.e. all residential, once the

SPIF fees for both Salida and Poncha Springs have reached the same amount. Thus, beginning the fifth year described above, SPIF fees for Salida developers and customers will be the same as SPIF fees for Poncha developers and customers.

- vi. Salida may adopt any reduced SPIF schedule for multi-family and/or permanent legally or deed-restricted affordable housing projects, provided that whether such projects are located in the Town or the City, the fee shall be the same percentage reduction for both Poncha Springs developers and Salida developers.

5(f) Line extension and connection agreements. In addition to payment of the required SPIF, and as a condition of being permitted to connect a property to the sewer system, Poncha Springs properties located within the Poncha Springs Sewer Services Area identified in **Exhibit A**, as well as Salida properties that would directly connect to the Interceptor, are required to execute Line Extension and Connection Agreements. The following provisions apply to the execution of such agreements:

- i. For properties within the current municipal boundaries of the Town of Poncha Springs or within the future municipal boundaries of the Town of Poncha Springs, as well as properties within Salida that would directly connect to the Interceptor, future Line Extension and Connection Agreements will be in the revised form attached as **Exhibit A** to the Release and Settlement Agreement.
- ii. Line Extension and Connection Agreements for property served by the Interceptor are revocable by Salida if Poncha Springs developers subject to such agreements, cannot provide proof of funds/financing for final plat subdivision infrastructure within 12 months of execution of such agreements. This proof of funds/financing requirement shall not apply to the line extension agreements for the first 310 units for the Tailwinds and Full Views projects.
- iii. Future Line Extension and Connection Agreements, including the currently platted units, shall also require developers for lots served by the Interceptor to require their lot purchasers to pay 50% of the SPIF fee to Salida upon closing (on their individual purchases of lots within those developments), with the remaining 50% of the SPIF fee paid to Salida at the time of building permit approval. The specific amount of the SPIF fee will be established at the time lot purchasers close on their purchase, and that SPIF fee amount will remain applicable and enforceable with respect to that lot, irrespective of later increases or decreases in the SPIF fee imposed by Salida.
- iv. The requirement that developers provide proof of funds and the requirement that they pay 50% of these SPIF fees upon closing will terminate on December 31, 2029.

5(g) Additional line extension and connection agreements.

- i. Any Line Extension and Connection Agreements other than the first 310 Full Views and Tailwinds units will be approved on a first-come first-served basis. Salida agrees it shall allow connections for Poncha Springs developers under this category of Line Extension and Connection Agreements until a total of 1375 ERUs of connected taps to the sewer system has been reached on the Interceptor. Line Extension and Connection Agreements may continue to be approved after 1375

ERUs are connected, provided however, that such agreements shall contain an advisement that the actual physical connections for lots subject to such agreements will not occur until the Interceptor upgrade is complete.

- ii. Once construction of the Interceptor upgrade is complete, Salida's right to deny Line Extension and Connection Agreements under Section 5(g)(i) will expire.

5(h) Interceptor upgrade.

- i. Salida agrees to initiate the process for upgrading the Interceptor to provide for additional capacity promptly after the approval of this First Amendment to Intergovernmental Agreement for Transfer of Sewer Services.
- ii. In order to finance the Interceptor upgrade, on or before 30 days after approval of by both Parties of this First Amendment to Intergovernmental Agreement for Transfer of Sewer Services, Salida agrees to issue a request for proposal ("RFP") for the financial/municipal advisor to be used with the bond process for the Interceptor upgrade. The Parties agree that bond counsel shall be Kimberley Crawford of Butler Snow, so long as she is available, and if not, Dalton L. Kelley or another similarly experienced attorney of Butler Snow.
- iii. All bond related costs, including but not limited to bond counsel fees, bank fees, bank attorney fees, and financial advisors shall be divided equally between Poncha Springs and Salida and will be paid promptly by each upon receipt of invoices or bills. These costs will not be included in the bonding amount. Poncha Springs' contribution toward these expenses shall be capped at \$40,000. Any excess in bond related costs above that amount shall be paid by Salida or may be included in the bonding. Salida agrees to arrange for invoices from Butler Snow, bank counsel and financial advisors to be issued jointly by those entities and allocated to Salida and Poncha Springs in equal shares until the \$40,000 Poncha Springs cap has been reached. In no event shall any fees or costs charged by Salida's litigation counsel, City Attorney, or City staff be charged to Poncha Springs.
- iv. Salida agrees to issue an RFP for construction of the Interceptor upgrade within six months of the bonding being complete and final financing becoming available. Salida agrees to include in the RFP process a request for construction start within 12 months of a bid being approved, to make reasonable efforts to commence construction within 12 months after the bond financing is complete, and to use reasonable efforts to complete construction as soon as practicable. Salida may in its sole discretion issue the construction RFP or start construction earlier.

5(i) Poncha Park development. Poncha Springs has provided evidence that it is the owner of two properties totaling approximately 30 acres, previously owned by Ute Development and Salida Housing Development (senior center), hereinafter referred to as the Poncha Park Property. Poncha Springs agrees to limit the Poncha Park Property development to recreational uses and recreation-based building development until the interceptor upgrade is complete. Salida shall provide Poncha Springs with up to five ERUs prior to any Interceptor upgrade for this future recreational development on the Poncha Park Property. These ERUs

will be counted toward the 1375 maximum ERUs to be permitted prior to completion of the Interceptor upgrade.

5(i) Special Assessments. Salida may impose special assessments in addition to SPIF fee charges on individual developments within Poncha Springs and Salida to fund specific improvements, public projects and upgrades made necessary by the specific development to be served by the Sewer System and specially benefiting from such improvements. It is the intention of the Parties that special assessments provided herein shall be for those unique circumstances by example, but not limited to, subdivision-specific or development-specific circumstances such as the need for a lift station. Notwithstanding the foregoing, Salida shall maintain the right to determine if such facility is to become public or remain private infrastructure under the maintenance and ownership of the development or Owner's Association. Any and all special assessments shall use the same criteria throughout the Sewer System. In no event may any special assessment (by whatever term) be imposed or used to fund any portion of the Interceptor, nor to fund any capital improvement, repair, maintenance, or operating cost of the Salida sewer treatment plant itself. With the exception of special assessments, any and all assessments, taxes, fees, or impact fees shall be consistently applied throughout the Sewer System.

Section 2 : Section 22 of the Transfer Agreement is amended to read in its entirety:

22. Binding Effect; No Third Party Beneficiaries. This Agreement shall be binding upon and inure solely to the benefit of the Parties hereto and their respective heirs, successors, and assigns. It is not the intent of the Parties, nor shall it be the effect of this Agreement, to vest rights of any nature or form in individuals or entities not executing this Agreement. This Agreement therefore does not confer nor is it intended to confer upon any person or entity other than the Parties any rights or remedies hereunder.

Section 3: Section 24 of the Transfer Agreement is amended to read in its entirety:

24. Notices. Written notices permitted or required under this Agreement and all other correspondence between the parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested:

Notice to Salida: City Administrator
 City of Salida
 448 1st. Street Suite 112
 P. O. Box 417
 Salida, Colorado 81201

With copy to: City Attorney
 Wilson Williams Fellman Dittman
 1314 Main Street, Suite 101
 Louisville, CO 80027

Notice to Poncha Springs: Town Administrator
 Town of Poncha Springs
 P. O. Box 190

333 Burnett Avenue
Poncha Springs Colorado 81242

With copy to:

Town Attorney
Town of Poncha Springs
P. O. Box 190
333 Burnett Avenue
Poncha Springs, Colorado 81242

The foregoing First Amendment to Intergovernmental Agreement for Transfer Sewer System is approved by the City Council of the City of Salida, Colorado at its regular meeting held on the ____ day of _____ 2025 and approved by the Board of Trustees of the Town of Poncha Springs, Colorado at its regular meeting held on the 28 day of January 2025.


City of Salida, Colorado, acting through
its Water and Wastewater Enterprise

By: _____
Dan Shore, Mayor

ATTEST:

Kristi Jefferson, Town Clerk

Town of Poncha Springs, Colorado

By:  _____
Ben Scanga, Mayor

ATTEST:


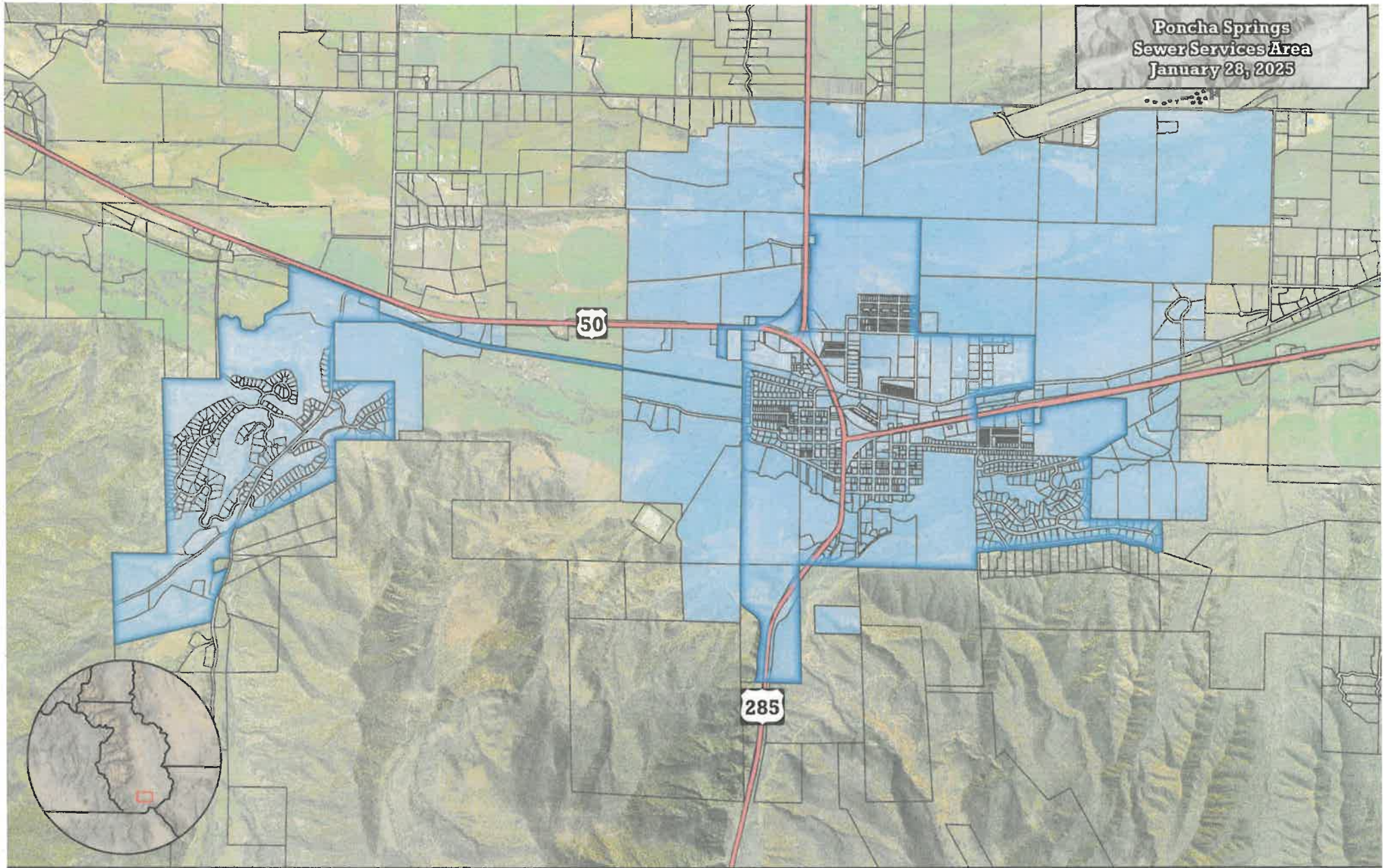





Trisha Arosemena, Town Clerk

Exhibit A
Poncha Springs Sewer Services Area
[attached]

Poncha Springs
Sewer Services Area
January 28, 2025



-  Poncha Springs Sewer Services Area (3,800 acres)
-  City Limits
-  Parcel
-  Highway

