



REQUEST FOR CITY COUNCIL ACTION

Meeting Date: May 4, 2021:

AGENDA ITEM NO. Consent Agenda	ORIGINATING DEPARTMENT: Public Works	PRESENTED BY: David Lady
--	--	------------------------------------

ITEM: Council Action Approving a Sewer Line Connection Agreement for McFarland Annexation No. 1 in Poncha Springs

BACKGROUND:

McFarland Properties, LLC, the owner of Property recently annexed into the Town of Poncha Springs known as “McFarland Annexation No. 1,” has requested to complete a sewer line connection agreement for the Property, as required to connect to a private service line serving the Property. This Property is located on the western edge of the current corporate boundaries of the Town of Poncha Springs, near the intersection of Highway 50 and US-285, and within Salida’s Wastewater Service Area. A Shell gas station and small café is currently located on the Property.

The intent of this agreement is to allow the owner to connect a private service line located on the Property to an existing sewer main line with sufficient capacity to provide sewer services to the Property.

This Sewer Line Connection Agreement for McFarland Annexation No. 1 has been prepared in accordance with the Salida City Code and requirements set forth in the Salida-Poncha IGAs, as described below.

In accordance with the Salida and Poncha Springs Intergovernmental Agreement for Transfer of Sewer System dated April 6, 2010 (“System IGA”), Salida operates, maintains, and expands its sewer system to accommodate planned growth and development within Poncha Springs planning and zoning jurisdiction.

In accordance with the Salida and Poncha Springs Intergovernmental Agreement for Provision of Sewer Services dated April 6, 2010 (“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/owner has executed a line extension agreement or line connection agreement with Salida or has otherwise applied for an been granted service per the Salida Municipal Code.



VICINITY MAP



REQUEST FOR CITY COUNCIL ACTION

Meeting Date: May 4, 2021:

AGENDA ITEM NO. Consent Agenda	ORIGINATING DEPARTMENT: Public Works	PRESENTED BY: David Lady
--	--	------------------------------------

FISCAL NOTE:

There are no anticipated budget implications with the approval of this agreement.

STAFF RECOMMENDATION:

Staff recommends approval of this Sewer Line Connection Agreement.

SUGGESTED MOTIONS:

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

Followed by a second and then a voice vote.

**SEWER LINE CONNECTION AGREEMENT
(McFarland Annexation No. 1)**

THIS SEWER LINE CONNECTION AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2021, by and between the CITY OF SALIDA, COLORADO, a Colorado statutory city (“Salida”), and **McFarland Properties, LLC**, (“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 “**McFarland Annexation No. 1**” 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”), 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 completed annexation into the Town of Poncha Springs **for McFarland Annexation No. 1** and has obtained approval by the Town Board of a Development Improvements Agreement, executed on March 19, 2021.
- 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 is currently serviced by a Salida sewer line, and the Developer wishes to perform all work necessary to connect to a Salida sewer main (“Sewer Line Connection”), 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 a line connection agreement under the Service IGA, and to provide for Salida’s provision of sewer service to **McFarland Annexation No. 1**.

- 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.

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 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 **McFarland Properties, LLC**, and its successor(s).
- 2.7 “Development” means all work on the Property required to accomplish construction and installation of the Sewer Line Connection. 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 “Property” means the land that is known as the “**McFarland Annexation No. 1**” and described in attached **Exhibit A**.
- 2.10 “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.
- 2.11 “Required Improvements” means the improvements that the Developer is required to make to the Property to connect the existing sewer main line to a private service line to be located on the Property and to provide service to Property, including all Appurtenant Sewer Service Lines, consistent with 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.

- 2.12 “Salida Municipal Code” means the City of Salida Municipal Code, as amended.
- 2.13 “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.
- 2.14 “Sewer Line Connection” means the connection to be constructed by the Developer on the Property as shown on **Exhibit B**, to allow the Developer to connect a private service line located on the Property to an existing sewer main line with sufficient capacity to enable Salida to provide sewer service to the Property.
- 2.15 “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.
- 2.16 “Town” means the Town of Poncha Springs.

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 the provision 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 and Provision of Sewer Service

- 4.1 Provision of Sewer Service. Salida approval of individual sewer taps and sewer service to lots on Property will be dependent on the capacity of downstream infrastructures at the time of an Application for Service within the Service Plan Areas (Salida Municipal Code, Section 13-2-30), as set forth in the Salida Sewer Collection System Build-Out Infrastructure Plan completed by Providence Infrastructure Consultants dated November 13, 2019 (“Plan”), or subsequent updated plans or data that may supersede it, as accepted and approved by the Salida City Council serving in its capacity as the governing body of the wastewater enterprise, and the Developer agrees that it will construct and install the Required 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.

- 4.2 Salida agrees to provide sewer service to the Property, and the Developer agrees that it will construct and install the Required Improvements, 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 Required Improvements, 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 Required Improvements required hereunder 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 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.
- 4.4 The Developer acknowledges and agrees that in accordance with paragraphs 5.c and 5.d of the System IGA, Salida may impose special assessments within its sewer service area to fund specific improvements and upgrades as may be necessary from time to time, and that such special assessments may be imposed following the Effective Date.

Section 5 – Terms and Conditions for Sewer Line Connection 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 Required Improvements.
- 5.4 Salida approval of individual sewer taps and sewer service to lots on the Property will be dependent on the capacity of downstream infrastructures at the time of application, as determined by and in the context of the Salida Sewer Collection System Build-Out Infrastructure Plan completed by Providence Infrastructure Consultants dated November 13, 2019 ("Plan"), or subsequent updated plans that may supersede it, as accepted and approved by the Salida City Council serving in its capacity as the governing body of the wastewater enterprise. The depth of flow to diameter of pipe ratio ("d/D") capacity threshold of .8 (the maximum Colorado Department of Public Health ("CDPHE") allowable d/D ratio at peak flow) is currently identified in the Plan as a Flow Rate (GPM) of 615 (Plan, Table 4, Technical Memo 7).
- 5.5 Final Acceptance Not a Warranty that Sewer Service Will be Available. 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 capacity of the sewer system does not allow for the provision of such service. Salida approval of individual sewer taps and sewer service to lots on the Property will be dependent on the capacity of downstream infrastructures at the time of application, as determined by and in the context of the Plan, or subsequent updated plans or data that may supersede it, as accepted and approved by the Salida City Council serving in its capacity as the governing body of the wastewater enterprise.
- 5.6 Required Improvements. 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.
- 5.5.1 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.
- 5.6 Prior Approval of Plans for Sewer Line Connection. Before the Developer commences construction or installation of the Required Improvements, the Salida Public Works Director or City Engineer must review and approve the drawings and plans for such improvements, which drawings and plans must be stamped by the engineer retained by the Developer.

- 5.7 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.
- 5.8 Observation of Development and Inspection of Required 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 Required Improvements.
- 5.8.1 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.
- 5.8.2 The Developer shall hire a professional engineering consultant to provide construction management and inspections during the construction and installation of the Required Improvements, and to stamp the drawings and plans for the Required 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.
- 5.8.3 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 Required 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.
- 5.9 Salida's Written Approval of Required Improvements. Upon the Developer's request, the Salida Public Works Director or City Engineer shall inspect the Required Improvements 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 all Required Improvements have been completed in conformity with the approved plans and specifications. The Developer shall make all corrections necessary to bring the Required Improvements into conformity with the approved plans and specifications.
- 5.10 Final Acceptance of Required Improvements. Upon completion of the Required Improvements, Salida shall issue its final written acceptance of the Required Improvements.
- 5.11 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 Required Improvements as required hereunder. Such written approval will be given by the City only in accordance with paragraph 5.10 above.

- 5.12 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.
- 5.13 Reimbursable Costs and Fees. The Developer shall pay to Salida the fees described below at the time set forth below:
- 5.13.1 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.
- 5.13.2 Reimbursable Costs and Fees attributable to work completed by City staff, not including the City Attorney, will be determined based on the fee schedule attached to Salida's then-effective Open Records Policy. The fee schedule attached to the Open Records Policy in effect as of the date of this Agreement is attached as **Exhibit D**.
- 5.13.3 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.
- 5.13.4 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.

Section 6 – Default by Developer and Salida's Remedies

- 6.1 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:

- 6.1.1 Suspension of all further activities and approvals related to the Required Improvements.
- 6.1.2 Any other remedy available in equity or at law.
- 6.2 Notice of Default. Consistent with Section 16-2-60(o) of 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.
- 6.3 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.
- 6.4 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.
- 6.5 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 7 – Indemnification and Release

- 7.1 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.
- 7.2 Indemnification.
 - 7.2.1 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.

- 7.2.2 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.
- 7.2.3 Fees, expenses, and costs attributable to work completed by Salida staff, not including the City Attorney, will be determined based on the fee schedule attached to Salida's then-effective Open Records Policy. The fee schedule attached to the Open Records Policy in effect as of the date of this Agreement is attached as **Exhibit D**.
- 7.2.4 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 8 – Representations

- 8.1 **Developer's Representations.** The Developer represents 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:
 - 8.1.1 **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.
 - 8.1.2 **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.
 - 8.1.3 **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.

- 8.1.4 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.
- 8.1.5 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.
- 8.2 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:
- 8.2.1 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.
- 8.2.2 Authorized signatory. The person executing this Agreement on behalf of Salida is duly authorized and empowered to execute this Agreement on behalf of Salida.
- 8.2.3 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 9 – General Provisions

- 9.1 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.
- 9.2 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.
- 9.3 Modifications. This Agreement may be modified only by a subsequent written agreement executed by both Parties.
- 9.4 Voluntary Agreement. The Developer agrees to comply with all of the terms and conditions of this Agreement on a voluntary and contractual basis.

9.5 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.

9.6 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

Notice to the Developer: McFarland Properties, LLC
P.O. Box 206
Salida, CO 81201

9.7 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.

9.8 Recording. Salida shall record this Agreement with the Clerk and Recorder of Chaffee County, Colorado, at the Developer's expense.

9.9 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.

9.10 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.

9.11 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.

9.12 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.

9.13 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.

9.14 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:

P.T. Wood, Mayor

ATTEST:

City Clerk

STATE OF COLORADO)
) ss.
COUNTY OF)

Acknowledged, subscribed, and sworn to before me this _____ day of _____ 2021, by P.T. Wood, as Mayor, and by Erin Kelley, as Clerk, on behalf of the City of Salida, Colorado.

WITNESS my hand and official seal.

My Commission expires: _____.

Notary Public

MCFARLAND PROPERTIES, LLC

By:

Name: Randy McFarland
Title: President

STATE OF COLORADO)
) ss.
COUNTY OF)

Acknowledged, subscribed, and sworn to before me this _____ day of _____ 2021 by _____.

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

Notary Public