



CITY COUNCIL REGULAR MEETING

448 E. 1st Street, Room 190 Salida, Colorado 81201

February 18, 2025 - 6:00 PM

AGENDA

Register for Regular City Council Meeting

<https://zoom.us/j/94566900437?pwd=LofScMlctMkI58imQPLIjhbohLUIFH.1>

After registering, you will receive a confirmation email containing information about joining the webinar.

To watch live meetings: <http://www.youtube.com/@cityofsalidacolorado>

CIVILITY INVOCATION

CALL TO ORDER

Pledge of Allegiance

Roll Call

CONSENT AGENDA

1. Approve Agenda
2. Approve February 4, 2025 Minutes
3. Approval for City Administrator to sign and submit an application to the State of Colorado GovGrants program for a State Internet Portal Authority (SIPA) grant
4. Approve contract with Ehlers and Associates, Inc. for municipal advisory services

CITIZEN COMMENT—Three (3) Minute Time Limit

UNFINISHED BUSINESS / ACTION ITEMS

5. **Ordinance 2024-09** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, AMENDING THE CITY CODE TO ADD SECTION 10-7-90 ENTITLED KNOWINGLY ALLOWING UNDERAGE PERSONS TO POSSESS OR CONSUME ETHYL ALCOHOL AND/OR MARIJUANA ON PRIVATE PROPERTY TO THE SALIDA MUNICIPAL CODE. **Second Reading previously scheduled for July 16th; NO PUBLIC HEARING WILL BE HELD**

NEW BUSINESS / ACTION ITEMS

6. **Resolution 2025-07** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, APPROVING AN AMENDMENT TO SECTION 7, ENTITLED "INCLUSIONARY HOUSING," OF THE DEVELOPMENT IMPROVEMENT; SUBDIVISION IMPROVEMENT; AND INCLUSIONARY HOUSING AGREEMENT FOR THE HOLMAN COURT PLANNED DEVELOPMENT AND MAJOR SUBDIVISION
7. **Resolution 2025-08** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, APPROVING CITIZEN APPOINTMENTS TO THE PUBLIC ARTS COMMISSION PURSUANT TO SECTION 2-16-30 OF THE SALIDA MUNICIPAL CODE
8. **Ordinance 2025-04** AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF SALIDA, GRANTING A NON-EXCLUSIVE FRANCHISE TO ATMOS ENERGY CORPORATION FOR THE PURPOSE OF PROVIDING, SELLING, AND DELIVERING NATURAL GAS TO THE CITY AND ITS RESIDENTS, AND APPROVING AN GAS UTILITY FRANCHISE AGREEMENT CONCERNING THE SAME. **First reading and setting second reading and public hearing for March 4, 2025**
9. **Ordinance 2025-05** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO APPROVING TENDERFOOT COMMUNICATION SITE LEASE WITH VISIONARY BROADBAND. **First Reading and setting the Second Reading and Public Hearing for March 4, 2025**

Individuals with disabilities needing auxiliary aid(s) may request assistance by contacting the City Clerk at 448 E. 1st Street, Ste. 112, Salida, CO 81201, Ph.719-530-2630 at least 48 hours in advance.

COUNCILORS, MAYOR AND CITY TREASURER REPORTS

Council Reports

Stephens - Airport Board and PROST

Fontana - Finance Committee and Greater Salida Recreation Corporation Board

Naccarato - CHA and Sustainability Board

Pappenfort - Finance Committee

Critelli

Martin

Mayor Report

Treasurer Report

Attorney Report

Department Updates

[10.](#) Department Updates

EXECUTIVE SESSION

11. **Executive Session** For discussion of a personnel matter under C.R.S. Section 24-6- 402(4)(f) and not involving: any specific employees who have requested discussion of the matter in open session; any member of this body or any elected official; the appointment of any person to fill an office of this body or of an elected official; or personnel policies that do not require the discussion of matters personal to particular employees; AND THE FOLLOWING ADDITIONAL DETAILS ARE PROVIDED FOR IDENTIFICATION PURPOSES: **City Administrator's and City Attorney's annual performance evaluations**

ADJOURN



City Clerk | Deputy City Clerk

Mayor Dan Shore



CITY COUNCIL REGULAR MEETING

448 E. 1st Street, Room 190 Salida, Colorado 81201

February 04, 2025 - 6:00 PM

MINUTES

Register for Regular City Council Meeting

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CIVILITY INVOCATION

CALL TO ORDER

Pledge of Allegiance

Roll Call

PRESENT

Council Member Suzanne Fontana

Council Member Dominique Naccarato

Council Member Justin Critelli

Council Member Aaron Stephens

Council Member Alisa Pappenfort

Council Member Wayles Martin

Mayor Dan Shore

Treasurer Ben Gilling

CONSENT AGENDA

Council Member Martin moved to combine and approve items on the consent agenda, Seconded by Council Member Pappenfort.

Voting Yea: Council Member Fontana, Council Member Naccarato, Council Member Critelli, Council Member Stephens, Council Member Pappenfort, Council Member Martin

Approve Agenda

Approve January 21, 2025 Minutes

MOTION PASSED

CITIZEN COMMENT—Three (3) Minute Time Limit

Sarah Green and David LaRochelle spoke during citizen comment.

UNFINISHED BUSINESS / ACTION ITEMS

NEW BUSINESS / ACTION ITEMS

Update from Brittany Petterson's Office

Justin Kurth gave an update from Representative Brittany Pettersen's office.

Approval of Release and Settlement Agreement between Plaintiffs Town of Poncha Springs, Tailwind Group, LLC and Full Matters, LLC and Defendant City of Salida

Council Member Critelli moved to approve the Release and Settlement Agreement, Seconded by Council Member Fontana.

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Voting Yea: Council Member Fontana, Council Member Naccarato, Council Member Critelli, Council Member Stephens, Council Member Pappenfort, Council Member Martin

MOTION PASSED

Resolution 2025-05 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, APPROVING FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT FOR TRANSFER OF SEWER SYSTEM BETWEEN CITY OF SALIDA AND TOWN OF PONCHA SPRINGS

Council Member Pappenfort moved to approve Resolution 2025-05, Seconded by Council Member Naccarato. Voting Yea: Council Member Fontana, Council Member Naccarato, Council Member Critelli, Council Member Stephens, Council Member Pappenfort, Council Member Martin

MOTION PASSED

Ordinance 2025-03 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, ACTING AS THE GOVERNING BODY OF THE WATER AND WASTEWATER ENTERPRISE OF THE CITY OF SALIDA, LIFTING THE TEMPORARY MORATORIUM IMPOSED BY ORDINANCE 2023-09 ON THE ACCEPTANCE, PROCESSING AND APPROVAL OF APPLICATIONS FOR CONNECTION TO THE WASTEWATER SYSTEM FOR THOSE PROPERTIES BENEFITTING FROM THE PONCHA INTERCEPTOR AND AFFECTED BY ITS CAPACITY LIMITATIONS, AND DECLARING AN EMERGENCY

Council Member Martin moved to approve Ordinance 2025-03, Seconded by Council Member Fontana. Voting Yea: Council Member Fontana, Council Member Naccarato, Council Member Critelli, Council Member Stephens, Council Member Pappenfort, Council Member Martin

MOTION PASSED

Resolution 2025-06 A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF SALIDA, COLORADO AMENDING THE 2025 FEE SCHEDULES

Council Member Critelli moved to approve Resolution 2025-06 amending the 2025 fee schedule to include the system development fees to be effective February 2025 and the monthly service fees to be effective March 2025 and removing footnote #3, Seconded by Council Member Pappenfort.

Voting Yea: Council Member Fontana, Council Member Naccarato, Council Member Critelli, Council Member Stephens, Council Member Pappenfort, Council Member Martin

MOTION PASSED

COUNCILORS, MAYOR AND CITY TREASURER REPORTS

Council Reports

- Martin, Naccarato, Pappenfort, Stephens, Critelli, Fontana

Reports were given. Council member Martin requested that staff work with David LaRoche regarding the requirement of Inclusionary Housing at 711 Holman Court, Council Members and the Mayor were in support.

Mayor Report

Report was given.

Treasurer Report

Attorney Report

Department Updates

ADJOURN

The meeting adjourned at 6:55pm



City Clerk | Deputy City Clerk

Mayor Dan Shore



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Community Development	Carolyn Poissant - Senior Planner	February 18, 2025

AGENDA ITEM

Council Action: Authorize the City Administrator to sign and submit an application to the State of Colorado GovGrants program for a State Internet Portal Authority (SIPA) grant for permitting and mapping software.

BACKGROUND

Community Development staff have researched the use of permitting and mapping software, which would greatly enhance custom service, ease of access to public records, and efficient processing of land development and building permit applications. Currently, applications are posted as fillable pdfs and must be submitted in person or via email and review comments are circulated via email, which is very cumbersome. Payments are generally handled in-person at city hall. An online permitting system allows applicants to create an account and submit materials to the system portal where staff and reviewers all have access. Fees, comments, plan redlines, etc. are consolidated and relayed to the applicant and payment can be made online.

There are two potential components to the grant application: 1) processing of building permit and land development (subdivisions, etc.) applications including online payment; 2) establishing a publicly-accessible and interactive GIS platform to include comprehensive, parcel-based mapping, similar to the County's qPublic.net GIS but with city zoning, overlays, subdivisions, recorded documents, and links to city code sections etc. included and selectable.

SIPA is a state agency that provides grant funding for these types of software products. There is no match required. The anticipated budget for a pilot project is approximately \$45,000 for start-up and one year of implementation, which would be fully covered by the grant. This is a state-wide competitive grant and the application deadline is February 21, 2025.

RECOMMENDATION

Staff recommends City Council authorize the City Administrator to sign and submit the SIPA grant application for the current 2025 grant cycle.

FISCAL IMPACT

The necessary on-going maintenance of the permitting software is expected to be less than \$10,000 and could potentially be covered by additional grant funding.

MOTION

A City Council member should state, " I move to combine and approve the items on the consent agenda," followed by a roll call and vote.



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Finance	Aimee Tihonovich - Finance Director	February 18, 2025

AGENDA ITEM

Consent agenda – Contract with Ehlers and Associates, Inc. for municipal advisory services.

BACKGROUND

Municipalities often engage specialized advisors to provide expert guidance on matters such as investment management, rate studies, debt issuance, and the affordability of long-term plans. Recently, the City issued a Request for Qualifications (RFQ) for municipal advisory services and received five responses. A selection committee, consisting of four staff members and one finance committee representative, conducted interviews with the top four candidates. After careful consideration, the committee collectively determined that continuing the partnership with Ehlers and Associates, Inc. would best serve the City's needs. Ehlers has been the City's trusted municipal advisor for the past five years, and this process has reaffirmed that they are the ideal choice moving forward.

FISCAL NOTE

The agreed upon fee schedule is in the attached agreement. Generally, as a project need is determined, Ehlers will provide a cost estimate. Thus far, we anticipate engaging Ehler's to assist with the financing of the Poncha Interceptor project and the fees associated with that will be refined as we move forward. We do not anticipate any other project costs for 2025.

RECOMMENDATION

Staff recommends approval of the contract with Ehlers and Associates, Inc.

MOTION

A Councilmember should make a motion to “combine and approve the items on the consent agenda”, followed by a second and a roll call vote.



Salida Professional Service Agreement for Municipal and Investment Advisory Services

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") dated as of February 18, 2025, is entered into by and between Ehlers and Associates, Inc, whose business address is 3060 Centre Point Drive, Roseville, MN 55113, ("**Contractor**") and the City of Salida, Colorado, a **statutory municipality of the State of Colorado** ("**City**" and, together with the Contractor, "**Parties**").

RECITALS AND REPRESENTATIONS

WHEREAS, the City desires to have performed certain professional services as described in this Agreement; and

WHEREAS, the Contractor represents that the Contractor has the skill, ability, and expertise to perform the services described in this Agreement and within the deadlines provided by the Agreement; and

WHEREAS, the City desires to engage the Contractor to provide the services described in this Agreement subject to the terms and conditions of the Agreement.

NOW, THEREFORE, in consideration of the benefits and obligations of this Agreement, the Parties mutually agree as follows:

1. SERVICES AND CONTRACTOR PERFORMANCE

1.1. Services and Work Product. As directed by and under the supervision of the City Administrator or the Finance Director for the City of Salida, the Contractor shall provide the City with the services described in **Exhibit A, attached hereto and incorporated herein** ("**Services**"). For purposes of this Agreement, "**Work Product**" shall consist of deliverables and/or product to be created, provided, or otherwise tendered to the City as described in the Services.

1.2. Changes to Services. At any time, the City may request a change or changes in the Services. Any changes that are mutually agreed upon between the City and the Contractor shall be made in writing and upon execution by both Parties shall become an amendment to the Services described in this Agreement. To be effective, any written change must be signed by the Contractor and by the Salida City Council ("**City Council**").

1.3. Independent Contractor. The Contractor shall perform the Services as an independent contractor and shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, employer/employee, or other relationship with the City other than as a contracting party and independent contractor. The City shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for the Contractor or the Contractor's employees, sub-consultants, contractors, agents, or representatives, including coverage or benefits related but not limited to: local, state, or federal income or other tax contributions; insurance contributions (e.g., FICA);



workers' compensation; disability, injury, or health; professional liability insurance, errors, and omissions insurance; or retirement account contributions.

1.4. Standard of Performance. In performing the Services, the Contractor shall use that degree of care, skill, and professionalism ordinarily exercised under similar circumstances by members of the same profession practicing in the State of Colorado. Contractor represents to the City that the Contractor is, and its employees performing such Services are, properly licensed and/or registered within the State of Colorado for the performance of the Services (if licensure and/or registration is required by applicable law) and that the Contractor and employees possess the skills, knowledge, and abilities to competently, timely, and professionally perform the Services in accordance with this Agreement.

1.5. Patent Indemnification. Contractor shall indemnify, defend and hold City harmless from any and all claims, demands, and causes of action (including reasonable attorneys' fees and costs of suit) for actual or asserted infringement or actual or asserted appropriation or use by City of trade secrets, proprietary information, know-how, copyright rights, or patented inventions included in any design or specification furnished by Contractor or arising from the use or sale of materials, equipment, methods, processes, designs, and information, furnished by Contractor in connection with the Services. Contractor shall include the foregoing indemnification provision as a term of each agreement utilized by it in the performance of its work which shall extend expressly from the vendor or subcontractor to City.

1.6. Safety. When and to the extent that Contractor or any of its employees, agents, or subcontractors are working under the terms of this Agreement, Contractor will comply, and cause all its employees, agents, and subcontractors to comply, with applicable safety rules and security requirements.

1.7. Qualified Personnel. Contractor will make available all qualified Contractors, drafters, technical and clerical personnel necessary to fulfill its obligations under this Agreement. Prior to commencement of work, Contractor will provide City with the names of all Contractor personnel and their then current hourly rates, if applicable, whose services are to be employed in performance of the Services. Removal or re-assignment of personnel by Contractor will only be done with prior written approval of City.

1.8. Removal of Personnel by City. City may, in its discretion, require Contractor to dismiss from performance of the Services any personnel of Contractor or any subcontractor for any reason, effective upon written notice from City of such dismissal. City will not be required to pay salary, or any other costs associated with dismissed personnel effective upon Contractor's receipt of notice to dismiss from City.

1.9. Representations and Warranties. Contractor represents and warrants that the Services will be performed in a manner consistent with other reasonable professionals providing similar services under similar circumstances. Contractor will complete the Services in accordance with the Agreement and applicable United States laws, regulations, ordinances, and codes in existence at the time the Agreement is executed.

1.10. Maintenance of and Access to Records. Contractor will maintain detailed records of all matters relating to the Services during the term of the Agreement and for a period after its cancellation or termination of not less than five (5) years. City will have the right to copy and audit during regular business



hours all records of any kind which in any way related to the Services, whether created before, during, or after the termination of this Agreement. Access to such records will be provided to City at no cost.

1.11. Colorado Open Records Act. The parties understand that all material provided or produced under this Agreement may be subject to the Colorado Open Records Act, § 24-72-201, et seq., C.R.S. In the event of the filing of a lawsuit to compel such disclosure, the City shall inform the Contractor and will tender all such material to the court for judicial determination of the issue of disclosure and the Contractor agrees to intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material or waive the same

1.12. Disclosure of Adverse Information. Contractor will promptly disclose to City any and all information which Contractor may learn, or which may have a material adverse impact on the Services or the Work Product or City's ability to utilize the Work Product in the manner and for the purpose for which the Work Product is intended.

2. COMPENSATION

2.1. Commencement of and Compensation for Services. Following execution of this Agreement by the City, the Contractor shall be authorized to commence performance of the Services as described in **Exhibit A** subject to the requirements and limitations on compensation as provided by this **Section 2.0 COMPENSATION** and its Sub-Sections.

- A. For Time and Materials Task Orders.** The CONTRACTOR shall perform the Services and shall invoice the CITY for work performed based on the rates described in **Exhibit B.**
- B. Reimbursable Expenses.** The following shall be considered "Reimbursable Expenses" for purposes of this Agreement and may be billed to the City without administrative mark-up but which must be accounted for by the Contractor and proof of payment shall be provided by the Contractor with the Contractor's monthly invoices:
- Vehicle Mileage (billed at not more than the prevailing per-mile charge permitted by the Internal Revenue Service as a deductible business expense)
 - Printing and Photocopying Related to the Services
 - Charges incidental to securing needed information (e.g., charges imposed to obtain recorded documents)
 - Postage and Delivery Services
 - Lodging and Meals (only with prior written approval of the City as to dates and maximum amount permitted)
- C. Non-reimbursable Costs, Charges, Fees, or Other Expenses.** Any fee, cost, charge, penalty, or expense incurred by the Contractor not otherwise specifically authorized by this Agreement shall be deemed a non-reimbursable cost and shall be borne by the Contractor and shall not be billed or invoiced to the City and shall not be paid by the City.



- D. Increases in Compensation or Reimbursable Expenses.** Any increases or modification of compensation or Reimbursable Expenses shall be subject to the approval of the City and shall be made only by written amendment of this Agreement executed by both Parties.

2.2. Payment Processing. The Contractor shall submit invoices and requests for payment in a form acceptable to the City. Invoices shall not be submitted more often than once each month unless otherwise approved by this Agreement or in writing by the City. Unless otherwise directed or accepted by the City, all invoices shall contain sufficient information to account for all Contractor time (or other appropriate measure(s) of work effort) and all authorized Reimbursable Expenses for the Services during the stated period of the invoice. Following receipt of a Contractor's invoice, the City shall promptly review the Contractor's invoice.

2.3. City Dispute of Invoice or Invoiced Item(s). The City may dispute any Contractor time, Reimbursable Expense, and/or compensation requested by the Contractor described in any invoice and may request additional information from the Contractor substantiating any and all compensation sought by the Contractor before accepting the invoice. When additional information is requested by the City, the City shall advise the Contractor in writing, identifying the specific item(s) that are in dispute and giving specific reasons for any request for information. The City shall pay the Contractor within forty-five (45) days of the receipt of an invoice for any undisputed charges or, if the City disputes an item or invoice and additional information is requested, within thirty (30) days of acceptance of the item or invoice by the City following receipt of the information requested and resolution of the dispute. To the extent possible, undisputed charges within the same invoice as disputed charges shall be timely paid in accordance with this Agreement. Payment by the City shall be deemed made and completed upon hand delivery to the Contractor or designee of the Contractor or upon deposit of such payment or notice in the U.S. Mail, postage prepaid, addressed to the Contractor.

3. CONTRACTOR'S GENERAL RESPONSIBILITIES

3.1. The Contractor shall become fully acquainted with the available information related to the Services. The Contractor is obligated to affirmatively request from the City such information that the Contractor, based on the Contractor's professional experience, should reasonably expect is available and which would be relevant to the performance of the Services.

3.2. The Contractor shall perform the Services in accordance with this Agreement and shall promptly inform the City concerning ambiguities and uncertainties related to the Contractor's performance that are not addressed by the Agreement.

3.3. The Contractor shall provide a proposal will cost estimates outlining the work to be done and the anticipated fee for such services.

3.4. The Contractor shall provide all the Services in a timely and professional manner.

3.5. The Contractor shall promptly comply with any written City request from the City or any of the City's duly authorized representatives to reasonably access and review any books, documents, papers, and



records of the Contractor that are pertinent to the Contractor's performance under this Agreement for the purpose of the City performing an audit, examination, or other review of the Services.

3.6. The Contractor shall comply with all applicable federal, state, and local laws, ordinances, regulations, and resolutions.

3.7. The Contractor shall be responsible at the Contractor's expense for obtaining, and maintaining in a valid and effective status, all licenses and permits necessary to perform the Services unless specifically stated otherwise in this Agreement.

4. TERM AND TERMINATION

4.1. Term. The provision of services under this Agreement shall commence on February 18, 2025 (the "**Effective Date**") and continue for consecutive automatically renewing one-year periods ending on December 31, 2029 (cumulatively, the "**Term**"), unless sooner terminated as provided herein or extended by mutual agreement of the Parties. The Contractor understands and agrees that the City has no obligation to extend this Agreement's Term or contract for the provision of any future services, and makes no warranties or representations otherwise. Any Party may choose not to renew this Agreement upon sixty (60) days written notice to the other Party prior to the expiration of the annual term (i.e. by November 1st).

4.2. Continuing Services Required. The Contractor shall perform the Services in accordance with this Agreement commencing on the Effective Date until such Services are terminated or suspended in accordance with this Agreement. The Contractor shall not temporarily delay, postpone, or suspend the performance of the Services without the written consent of the City Council.

4.3. City Unilateral Termination. This Agreement may be terminated by the City for any or no reason upon written notice delivered to the Contractor at least ten (10) days prior to termination. In the event of the City's exercise of the right of unilateral termination as provided by this paragraph:

- A.** Unless otherwise provided in any notice of termination, the Contractor shall provide no further services in connection with this Agreement after receipt of a notice of termination; and
- B.** All finished or unfinished documents, data, studies, and reports prepared by the Contractor pursuant to this Agreement shall be delivered by the Contractor to the City and shall become the property of the City, subject to the ownership restrictions in **Section 6.0** of this Agreement; and
- C.** The Contractor shall submit to the City a final accounting and final invoice of charges for all outstanding and unpaid Services and Reimbursable Expenses performed prior to the Contractor's receipt of notice of termination and for any services authorized to be performed by the notice of termination as provided by **Sub-Section 4.3(A)** above. Such final accounting and final invoice shall be delivered to the City within thirty (30) days of the date of termination; thereafter, no other invoice, bill, or other form of statement of charges owing to the Contractor shall be submitted to or accepted by the City.



4.4. Termination for Non-Performance. Should a party to this Agreement fail to materially perform in accordance with the terms and conditions of this Agreement, this Agreement may be terminated by the performing party if the performing party first provides written notice to the non-performing party which notice shall specify the non-performance, provide both a demand to cure the non-performance and reasonable time to cure the non-performance and state a date upon which the Agreement shall be terminated if there is a failure to timely cure the non-performance. For purposes of this **Sub-Section 4.4**, “reasonable time” shall be not less than five (5) business days. In the event of a failure to timely cure a non-performance and upon the date of the resulting termination for non-performance, the Contractor shall prepare a final accounting and final invoice of charges for all performed but unpaid Services and authorized Reimbursable Expenses. Such final accounting and final invoice shall be delivered to the City within fifteen (15) days of the date of termination; thereafter, no other invoice, bill, or other form of statement of charges owing to the Contractor shall be submitted to or accepted by the City. Provided that notice of non-performance is provided in accordance with this **Sub-Section 4.4**, nothing in this **Sub-Section 4.4** shall prevent, preclude, or limit any claim or action for default or breach of contract resulting from non-performance by a Party.

4.5. Unilateral Suspension of Services. The City may suspend the Contractor's performance of the Services at the City's discretion and for any reason by delivery of written notice of suspension to the Contractor which notice shall state a specific date of suspension. Upon receipt of such notice of suspension, the Contractor shall immediately cease performance of the Services on the date of suspension except: (1) as may be specifically authorized by the notice of suspension (e.g., to secure the work area from damage due to weather or to complete a specific report or study); (2) for the submission of an invoice for Services performed prior to the date of suspension in accordance with this Agreement or (3) as required by law.

4.6. Reinstatement of Services Following City's Unilateral Suspension. The City may at its discretion direct the Contractor to continue performance of the Services following suspension. If such direction by the City is made within thirty (30) days of the date of suspension, the Contractor shall recommence performance of the Services in accordance with this Agreement. If such direction to recommence suspended Services is made more than thirty-one (31) days following the date of suspension, the Contractor may elect to: (1) provide written notice to the City that such suspension is considered a unilateral termination of this Agreement pursuant to **Sub-Section 4.3**; or (2) recommence performance in accordance with this Agreement; or (3) if suspension exceeded sixty (60) consecutive days, request from the City an equitable adjustment in compensation or a reasonable re-start fee and, if such request is rejected by the City, to provide written notice to the City that such suspension and rejection of additional compensation is considered a unilateral termination of this Agreement pursuant to **Sub-Section 4.3**. Nothing in this Agreement shall preclude the Parties from executing a written amendment or agreement to suspend the Services upon terms and conditions mutually acceptable to the Parties for any period of time.

4.7. Delivery of Notice of Termination. Any notice of termination permitted by this **Section 4.0 TERM AND TERMINATION** and its subsections shall be addressed to the persons identified in **Section 9.17** herein and at the addresses provided therein or such other address as either party may notify the other of and shall be deemed given upon delivery if personally delivered, or forty-eight (48) hours after deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested.



5. INSURANCE

5.1. Insurance Generally. The Contractor shall obtain and shall continuously maintain during the Term of this Agreement insurance of the kind and in the minimum amounts specified in this **Sub-Section 5.1**. The Required Insurance shall be procured and maintained with insurers with an A- or better rating as determined by Best's Key Rating Guide. All Required Insurance shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor.

The Contractor shall secure and maintain the following ("**Required Insurance**"):

- A. Worker's Compensation Insurance in the minimum amount required by applicable law for all employees and other persons as may be required by law. Such policy of insurance, if any, shall be endorsed to include the City as a Certificate Holder.
- B. Comprehensive General Liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000.00) Dollars for each occurrence and of Two Million Dollars (\$2,000,000.00) aggregate. The policy shall be applicable to all premises and all operations of the Contractor. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision. Coverage shall be provided on an "occurrence" basis as opposed to a "claims made" basis. Such insurance shall be endorsed to name the City as Certificate Holder and name the City, and its elected officials, officers, employees, and agents as additional insured parties.
- C. Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury of not less than of One Hundred Thousand Dollars (\$100,000.00) each person and each accident and for property damage of not less than Fifty Thousand Dollars (\$50,000.00) each accident with respect to each of the Contractor's owned, hired and non-owned vehicles assigned to or used in performance of the Services. The policy shall contain a severability of interests provision. Such insurance coverage must extend to all levels of subcontractors. Such coverage must include all automotive equipment used in the performance of the Agreement, both on the work site and off the work site, and such coverage shall include non-ownership and hired cars coverage. Such insurance shall be endorsed to name the City as Certificate Holder and name the City, and its elected officials, officers, employees, and agents as additional insured parties.
- D. Professional Liability (errors and omissions) Insurance with a minimum limit of coverage of One Million Dollars (\$1,000,000.00) per claim and annual aggregate. Such policy of insurance shall be obtained and maintained for one (1) year following completion of all Services under this Agreement. Such policy of insurance shall be endorsed to include the City as a Certificate Holder.

5.2. Additional Requirements for All Policies. In addition to specific requirements imposed on insurance by this **Section 5.0 INSURANCE** and its subsections, insurance shall conform to all of the following:



- A. For Required Insurance and any other insurance carried by Contractor (“**Contractor Insurance**”), all policies of insurance shall be primary insurance, and any insurance carried by the City, its officers, or its employees shall be excess and not contributory insurance to that provided by the Contractor; provided, however, that the City shall not be obligated to obtain or maintain any insurance whatsoever for any claim, damage, or purpose arising from or related to this Agreement and the Services. The Contractor shall not be an insured party for any City-obtained insurance policy or coverage.
- B. For both Required Insurance and Contractor Insurance, the Contractor shall be solely responsible for any deductible losses.
- C. For Required Insurance, no policy of insurance shall contain any exclusion for bodily injury or property damage arising from completed operations.
- D. For Required Insurance, every policy of insurance shall provide that the City will receive notice no less than thirty (30) days prior to any cancellation, termination, or a material change in such policy.

5.3. Failure to Obtain or Maintain Insurance. The Contractor’s failure to obtain and continuously maintain policies of insurance in accordance with this **Section 5.0 INSURANCE** and its subsections shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Contractor arising from performance or non-performance of this Agreement. Failure on the part of the Contractor to obtain and to continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Agreement upon which the City may immediately terminate this Agreement, or, at its discretion, the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Contractor to the City immediately upon demand by the City, or at the City’s sole discretion, the City may offset the cost of the premiums against any monies due to the Contractor from the City pursuant to this Agreement.

5.4. Insurance Certificates. Prior to commencement of the Services, the Contractor shall submit to the City applicable certificates of insurance for all Required Insurance. Insurance limits, terms of insurance, insured parties, and other information sufficient to demonstrate conformance with this **Section 5.0 INSURANCE** and its subsections shall be indicated on each certificate of insurance. Certificates of insurance shall reference the “Project Name” as identified on the first page of this Agreement. The City may request, and the Contractor shall provide within three (3) business days of such request a current certified copy of any policy of Required Insurance and any endorsement of such policy. The City may, at its election, withhold payment for Services until the requested insurance policies are received and found to be in accordance with the Agreement.

6. OWNERSHIP OF DOCUMENTS

6.1. Work Product is Property of City. Upon complete payment for services rendered, the Work Product, as defined in **Sub-Section 1.1**, shall be deemed work made for hire and made in the course of Services performed under this Agreement and will be the exclusive property of the City. City will have unlimited right to make, have made, use, reconstruct, repair, modify, reproduce, publish, distribute and sell



the Work Product, in whole or in part, or combine the Work Product with other matter, or not use the Work Product at all, as it sees fit. Any reuse of the Work Product produced under this Agreement for any purpose not directly related to this Agreement will be at the sole risk of City.

6.2. Obligations of Contractor's Personnel and Subcontractors. Contractor warrants it has enforceable written agreements with all of its personnel and subcontractors to be involved in performing the Services that:

- A. assign to Contractor ownership of all patents, copyrights, and other proprietary rights created in the course of their employment or engagement; and
- B. obligate such personnel or subcontractors, as the case may be, upon terms and conditions no less restrictive than are contained in this **Section 6.0 OWNERSHIP OF DOCUMENTS**, not to use or disclose any proprietary rights or information learned or acquired during the course of such employment or engagement including, without limitation, any Work Product, all Contractor property and any other information pursuant to this **Section 6.0 OWNERSHIP OF DOCUMENTS**.

6.3. Assignment of Proprietary Rights. To the extent that any title to any Work Product may not, by operation of law, vest in City, or such Work Product may not be considered to be work made for hire, Contractor hereby irrevocably transfers and assigns to City in perpetuity all worldwide right, title and interest in and to the patent rights, copyrights, trade secrets, and other proprietary rights in and ownership of, the Work Product.

6.4. City Furnished Information. Title to all materials and all documentation furnished by the City to Contractor will remain in the City. Contractor will deliver to the City any all Work Products and property, including copies thereof on whatever media rendered, upon the first to occur of:

- A. the City's written request; or
- B. completion of the Services under this Agreement; or
- C. termination of this Agreement.

6.5. The Contractor waives any right to prevent its name from being used in connection with the Services.

6.6. Notwithstanding the foregoing, the Contractor shall retain all rights, titles, and interests, including but not limited to all ownership and intellectual property rights, in all inventions, improvements, discoveries, methodologies, models, formats, software, algorithms, processes, procedures, designs, specifications, findings, and other intellectual properties developed, gathered, compiled or produced by the Contractor prior to or independently of any of its services under this Agreement ("Background IP"), including such Background IP that the Contractor may employ in the performance of this Agreement, or may incorporate into any part of the Work Product. The Contractor grants the City an irrevocable, non-exclusive, transferable, royalty-free license in perpetuity to use, disclose, and derive from such Background IP, but only as an inseparable part of the Work Product. Third-party content that may be used or incorporated in



the Work Product shall not become the property of the City. The Contractor shall secure all licenses necessary to any third-party content incorporated into the Contractor's Work Product for the City to utilize the Contractor's services and the Work Product for their intended purposes.

7. CONFLICT OF INTEREST

The Contractor shall refrain from providing services to other persons, firms, or entities that would create a conflict of interest for the Contractor with regard to providing the Services pursuant to this Agreement. The Contractor shall not offer or provide anything of benefit to any City official or employee that would place the official or employee in a position of violating the public trust as provided by C.R.S. §24-18-109, as amended, the Salida City Code of Ethics, as amended or the City's ethical principles.

8. REMEDIES

In addition to any other remedies provided for in this Agreement, and without limiting its remedies available at law, the City may exercise the following remedial actions if the Contractor substantially fails to perform the duties and obligations of this Agreement. Substantial failure to perform the duties and obligations of this Agreement shall mean a significant, insufficient, incorrect, or improper performance, activities, or inactions by the Contractor. The remedial actions include:

- 8.1. Suspend the Contractor's performance pending necessary corrective action as specified by the City without the Contractor's entitlement to an adjustment in any charge, fee, rate, price, cost, or schedule; and/or
- 8.2. Withhold payment to the Contractor until the necessary services or corrections in performance are satisfactorily completed; and/or
- 8.3. Deny payment for those services which have not been satisfactorily performed, and which, due to circumstances caused by the Contractor, cannot be performed, or if performed would be of no value to the City; and/or
- 8.4. Terminate this Agreement in accordance with this Agreement.

The foregoing remedies are cumulative and the City, in its sole discretion, may exercise any or all of the remedies individually or simultaneously.

9. MISCELLANEOUS PROVISIONS

9.1. **No Waiver of Rights.** A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party. The City's approval or acceptance of, or payment for, services shall not be construed to operate as a waiver of any rights or benefits to be provided under this Agreement. No covenant or term of this Agreement shall be deemed to be waived by the City except in writing signed by the City Council or by a person expressly authorized to sign such waiver by resolution of the City Council of the City of Salida,



and any written waiver of a right shall not be construed to be a waiver of any other right or to be a continuing waiver unless specifically stated.

9.2. No Waiver of Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the City, its officials, employees, contractors, or agents, or any other person acting on behalf of the City and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

9.3. Affirmative Action. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Contractor will take affirmative action to ensure applicants are employed, and employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

9.4. Americans with Disabilities Act. Contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this contract or from activities provided for under this contract. As a condition of accepting and executing this contract, the Contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. §35.130, and all other regulations promulgated under Title II of The Americans with Disabilities Act.

9.5. Binding Effect. The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this **Section 9.5** shall not authorize assignment.

9.6. No Third-Party Beneficiaries. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant, or sub-contractor of Contractor. Absolutely no third-party beneficiaries are intended by this Agreement. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

9.7. Article X, Section 20/TABOR. The Parties understand and acknowledge that the City is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the City are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the City's current fiscal period ending upon the next succeeding December 31. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the City, and other applicable laws. Upon the failure to appropriate such funds, this Agreement shall be terminated.



9.8. Governing Law, Venue, and Enforcement. This Agreement shall be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement shall be in the appropriate court for Chaffee County, Colorado, and the parties consent and agree to the jurisdiction of such courts. To reduce the cost of dispute resolution and to expedite the resolution of disputes under this Agreement, the Parties hereby waive any and all right either may have to request a jury trial in any civil action relating primarily to the enforcement of this Agreement. The Parties agree the rule providing ambiguities in a contract are to be construed against the drafting party shall not apply to the interpretation of this Agreement. If there is any conflict between the language of this Agreement and any exhibit or attachment, the language of this Agreement shall govern.

9.9. Survival of Terms and Conditions. The Parties understand and agree that all terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.

9.10. Assignment and Release. All or part of the rights, duties, obligations, responsibilities, or benefits set forth in this Agreement shall not be assigned by Contractor without the express written consent of the City Council. Any written assignment shall expressly refer to this Agreement, specify the particular rights, duties, obligations, responsibilities, or benefits so assigned, and shall not be effective unless approved by resolution or motion of the City Council. No assignment shall release the Applicant from performance of any duty, obligation, or responsibility unless such release is clearly expressed in such written document of assignment.

9.11. Paragraph Captions. The captions of the paragraphs are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

9.12. Integration and Amendment. This Agreement represents the entire and integrated agreement between the City and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. Any amendments to this must be in writing and be signed by both the City and the Contractor.

9.13. Severability. Invalidation of any of the provisions of this Agreement or any paragraph sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.

9.14. Incorporation of Exhibits. Unless otherwise stated in this Agreement, exhibits, applications, or documents referenced in this Agreement shall be incorporated into this Agreement for all purposes. In the event of a conflict between any incorporated exhibit and this Agreement, the provisions of this Agreement shall govern and control.

9.15. Non-Liability of City for Indirect or Consequential Damages or Lost Profits. Parties agree that the City shall not be liable for indirect or consequential damages, including lost profits that result from the City's declaration that the Contractor is in default of the Agreement, so long as the City acts in good faith.



9.16. Indemnity. To the fullest extent permitted by law, Contractor shall indemnify and defend the City, its members, affiliates, officers, directors, partners, employees, and agents (collectively referred to as the “City” for the purposes of this **Section 9.16**) from and against all claims, damages, losses, and expenses, including but not limited to reasonable attorney’s fees (collectively referred to “Losses”), arising out of the performance of the Services, provided that (a) any such claim, damage, loss or expense is caused by any negligent act or omission of (i) Contractor, (ii) anyone directly or indirectly employed by Contractor or (iii) anyone for whose acts Contractor may be liable; and (b) such indemnification shall not apply to the extent that such Losses are caused by the negligence of the City or other party indemnified hereunder. If Contractor is providing architectural, engineering, or surveying services; design; construction; alteration; repair; or maintenance of any building, structure, highway, bridge, viaduct, water, sewer, or gas distribution system, or other works dealing with construction, or any moving, demolition, or excavation connected with such construction, the extent of Contractor’s obligation to indemnify and defend the City is enforceable only to the extent and for an amount represented by the degree or percentage of negligence or fault attributable to the Contractor or the Contractor’s agents, representatives, subcontractors, or suppliers. If the Contractor is a person or entity providing architectural, engineering, surveying, or other design services, then the extent of Contractor’s obligation to indemnify and defend the City may be determined only after the Contractor’s liability or fault has been determined by adjudication, alternative dispute resolution, or otherwise resolved by mutual agreement between the Contractor and City. The indemnification in this **Section 9.16** shall be construed to comply with C.R.S. § 13-50.5-102(8) et. seq.

9.17. Notices. Unless otherwise specifically required by a provision of this Agreement any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when deposited in the United States Mail and properly addressed to the intended recipient. Written notice may also be provided by electronic mail which shall be deemed delivered when receipt is acknowledged by reply of the recipient.

If to the City:

City of Salida
Christy Doon, City Administrator
448 E. First Street, Suite 112
Salida, CO 81201
christy.doon@cityofsalida.com

If to the Contractor:

Ehlers and Associates, Inc.
Bruce Kimmel, Senior Municipal Advisor
3060 Centre Point Drive
Roseville, MN 55113
bkimmel@ehlers-inc.com

With Copy to:

City Attorney
Nina P. Williams
Wilson Williams Fellman Dittman
1314 Main Street, Suite 101
Louisville, CO 80027
nina@wwfdlaw.com



Aimee Tihonovich, Finance Director
 448 E. First Street, Suite 112
 Salida, CO 81201
 aimee.tihonovich@cityofsalida.com

10. AUTHORITY

The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of City of Salida and the Contractor and bind their respective entities.

THIS AGREEMENT is executed and made effective as provided above.

CITY OF SALIDA

CONTRACTOR

By: _____

By: _____

Name: Christy Doon

Name: _____

Title: City Administrator

Title: _____



EXHIBIT A
("Services")

JANUARY 15, 2025

PROPOSAL TO PROVIDE MUNICIPAL & INVESTMENT ADVISORY SERVICES TO:

The City of Salida, Colorado



Ehlers & Associates, Inc.
3060 Centre Point Drive
Roseville, MN 55113

Municipal Advisor Registration Number: K0165
SEC CIK Number: 0001604197

ehlers-inc.com

Ehlers Investment Partners
3060 Centre Point Drive
Roseville, MN 55113

SEC#: 801-69849
CRD#: 146385

ehlers-inc.com

EHLERS' ADVISORS:

Bruce Kimmel

Senior Municipal Advisor
bkimmel@ehlers-inc.com
651-697-8572

Dan Tienter

Municipal Advisor
dtienter@ehlers-inc.com
651-697-8537

Ryan Miles, CPFIM

Senior Investment Adviser
Managing Director
rmiles@ehlers-inc.com
651-697-8590

TABLE OF CONTENTS

SECTION 1: COVER LETTER	3
SECTION 2: COMPANY PROFILE	6
SECTION 3: KEY PERSONNEL	19
SECTION 4: APPROACH & METHODOLOGY	24
SECTION 5: REFERENCES	26
SECTION 6: FEES & COMPENSATION	28
SECTION 7: LEGAL DISCLOSURES	33

January 15, 2025

Aimee Tihonovich
Finance Director
City of Salida
448 E. First Street, Suite 112
Salida, Colorado 81201



Item 4.

RE: Proposal to provide municipal advisory services to the City of Salida, CO

Ehlers is pleased to present this proposal to provide independent municipal advisory, investment advisory, and consulting services to the City of Salida. From 2019 to present, Ehlers had the extraordinary privilege to serve as the City's municipal advisor, and expand this work to include investment advisory services in 2020. Over the course of our relationship, we have advised Salida on the entirety of the requested scope of services, including numerous fiscal planning efforts and studies to support the City's strategic initiatives.

Given our history with Salida, we can confidently state that Ehlers has a strong understanding of the City's current and planned debt, key fiscal factors, investing profile and community engagement needs. Our commitment to delivering exceptional service is demonstrated by our assigned team, which includes personnel who collectively have over 200 years of advisory and direct government experience. As you will read in our proposal, Ehlers can effectively provide every aspect of the scope of work in the Request for Proposals. We believe our extensive knowledge of the City, commitment to client service, and breadth of expertise will deliver the highest value to you.

Ehlers brings together the strongest collaborative model of debt issuance and management, development and redevelopment, investment management, and fiscal advisory services. We are excited about the opportunity to continue demonstrating Ehlers' passion for what we do and our preparedness to be the City's full-service municipal advisor for years to come.

For 70 years, Ehlers has helped municipal clients build strong and vibrant communities through financial planning, debt issuance and management, economic development, and investment management services. In the last five years alone, our firm has:

- » Advised on nearly 2,500 debt issues totaling more than \$15 billion
- » Completed nearly 100 long-term financial plans
- » Established over 200 TIF districts and provided guidance on hundreds of economic development & redevelopment projects ranging from \$500,000 to \$640 million
- » Advised on the development of more than 4,000 affordable housing units (over 3 years)
- » Completed more than 225 utility rate studies (regulated and non-regulated entities)
- » Delivered investment advisory services to more than 230 clients with total assets under management (AUM) of \$2.6 billion
- » Provided arbitrage consulting services to 420 clients with more than 1,750 issues under current monitoring

- » Prepared & disseminated continuing disclosures for more than 700 clients, monitoring all respective debt issues

We believe the following factors position us as the advisor most qualified to deliver the services requested:

Our Independence. Independence is simply another way of saying we always place your best interests above our own throughout every engagement, not just debt issuance.

Independence has been at the heart of our firm long before it was codified in the municipal advisor rule, and we stay true to that principle to this day. Because we don't represent investors, underwriters, or private developers, you can rest assured working with Ehlers will result in solutions that deliver the highest unbiased value to you.

The City can choose to engage a municipal advisor that is affiliated with a broker-dealer (underwriter). Certainly, that firm and its advisors must provide advice that puts the City's interests above its own, which is a regulatory requirement of any municipal advisor. However, engaging a municipal advisor that is affiliated with a broker-dealer means that firm cannot underwrite the City's bond offerings. This reduces the number of potential capital providers available to the City. Is it really in your interest to limit the number of firms that can buy your bonds? The City's largest cost when issuing debt is not costs of issuance; it is interest expense. As such, the City's primary objective should be to engage with a municipal advisor that presents no conflict between providing unbiased advice and affording the widest pool of bond purchasers in the marketplace.

As an independent advisory firm, Ehlers is not affiliated with a broker-dealer, and therefore will not reduce the number of capital providers available to the City. A small difference of even a few basis points can mean tens or even hundreds of thousands of dollars in interest expense over the life of an issue. Municipal advisors who are affiliated with a broker-dealer will state that having access to their underwriting desk is a benefit to their issuer clients. Engaging directly with underwriting desks is indeed an excellent way to gather feedback and market insight. That's why we don't limit ourselves to a single underwriting desk for information. Rather, we consistently interact with all major underwriting desks across the country, increasing our ability to seek the best possible execution for your debt issues.

Our Process. A pioneer in the municipal advisory business, Ehlers leverages bond market knowledge and industry best practices to proactively guide our clients through the debt issuance and management process from start to finish. Every transaction on which we advise goes through a rigorous internal quality assurance process prior to the publication of the preliminary official statement (POS) and well in advance of the sale date. We similarly bring this level of rigor to our financial planning and economic development services. In all occasions, our client work is reviewed by one or more senior team members prior to delivery.

Our Integrated Approach. Ehlers isn't in this business simply to complete transactions. We're here to help you realize a vision and act as an extension of your organization in all aspects of our engagements. Our integrated, best practice, high-value client service model empowers clients to collaborate with a single advisory firm for:

- » Capital & financial planning
- » Debt issuance & management
- » Post-issuance compliance, monitoring & reporting
- » Economic development & redevelopment
- » Tax increment financing, monitoring & reporting
- » Utility rate analysis & structuring
- » Investment advisory & arbitrage consulting
- » Housing finance & asset management

We rely on our deep and knowledgeable bench strength when creating client teams. Our Senior Municipal Advisors lead each client relationship, leveraging the specialty expertise of their colleagues, including our Fiscal Consultants and Financial Analysts, Bond Marketing and Sales Team, Disclosure and Compliance Team, Investment Advisers and Arbitrage Consultants to deliver exactly the right solution - exactly when needed.

Our Performance. Our qualifications can best be illustrated by our performance. According to Bloomberg data from January 1, 2023 to September 30, 2024, Ehlers ranks second nationally for the number of competitive bond sales advised and first in number of bond sales of \$10 million or less.

Our Client-First Values. Ehlers prides itself on transparent communication, proactive service and an unwavering dedication to helping clients deploy resources in the most efficient and effective way possible. Ultimately, we propose to provide value to the City with ongoing dialogue and idea-sharing, insightful analysis, options customized to your situation and a competitive fee structure.

Thank you for including Ehlers in this RFQ process. We greatly appreciate your consideration and look forward to discussing how Ehlers can continue to partner with and even better serve the City of Salida.

Respectfully submitted,



Bruce Kimmel
Senior Municipal Advisor
bkimmel@ehlers-inc.com
651-697-8572



Dan Tienter
Municipal Advisor
dtienter@ehlers-inc.com
651-697-8537



Ryan Miles, CPFIM
Senior Investment Adviser
Managing Director
rmiles@ehlers-inc.com
651-697-8590



SECTION 2: **COMPANY PROFILE**

Company Profile

BUILDING COMMUNITIES. IT'S WHAT WE DO.

Ehlers helps public sector clients build outstanding places to live, work, learn and play by delivering focused, fully-integrated municipal financial advisory services.

We build strong, long-lasting client relationships - working directly and collaboratively with your staff - to complete projects and drive initiatives forward.

We leverage decades of industry experience, deep market and community knowledge, and our unique team-based approach to successfully guide clients through all facets of public finance.

Ehlers' services include:



Founded in Minnesota in 1955, Ehlers consists of more than 85 advisors, fiscal consultants, financial analysts and client support staff. Ehlers is an S-Corporation, 100% employee-owned by all staff members with at least one year of service. We are headquartered in Roseville, Minnesota with an additional, fully-staffed office in Waukesha, Wisconsin.

Our firm and each of its municipal advisors are registered with the Securities and Exchange Commission and the Municipal Securities Rulemaking Board, and meet all professional testing standards and continuing education requirements. **Our registration credentials are located on the cover page of this proposal.**

Today, Ehlers serves more than 1,500 public sector and non-profit clients across five states. We do not represent developers, investors, broker-dealers or any for-profit clientele.

Experience Working with Comparable Clients

Since Ehlers began serving Colorado clients in 2013, we have provided comprehensive municipal advisory services to several mountain and river communities with characteristics similar to the City of Salida. While not an exhaustive list, some of those comparable municipalities – in addition to the City itself – include Basalt, Winter Park, Fraser, and Granby. Proposed lead Advisor Bruce Kimmel also serves as the primary relationship advisor for Mountain Village, Pueblo County, Pueblo Urban Renewal Authority, Pueblo West Metro District and Fossil Ridge Metro District. **Ehlers stands alone in its ability to effectively advise clients like Salida across all areas of public finance.** Our fully integrated, team-based business model allows us to craft holistic strategies that seamlessly weave all public finance disciplines together to provide our clients with pragmatic and executable solutions.

Our experience in communities similar to the City reflects the fundamental nature of our fiduciary approach to advising clients on how best to fund projects using a.) a pay-as-you-go approach, b.) an application of reserves or c.) from debt proceeds. One of the most important and valuable aspects of our advisory practice is engaging with clients on how to effectively access capital - issuing in the capital markets through competitive or negotiated underwriting or bank financing through direct purchase. Bond underwriting firms and commercial banks throughout Colorado and the country have a strong appetite for municipal credit. We have found that competitive sales draw a broad audience from underwriting firms across the country. We carefully consider the quantitative and qualitative attributes of each issuance method for each financing as they relate to the specifics of a project and the revenue source(s) supporting the debt. And, because Ehlers is an independent advisor, our engagement does not eliminate a source of capital for the City and preserves all options when seeking to secure financing at the lowest cost and most favorable terms.

Experience Providing Scope of Services

Ehlers brings decades of experience to fulfilling all the services detailed in the City's RFQ. As we mentioned in our cover letter, over the last five years alone, we have:

- » Advised on nearly 2,500 debt issues totaling more than \$15 billion
- » Completed nearly 100 long-term financial plans
- » Established over 200 TIF districts and provided guidance on hundreds of economic development & redevelopment projects ranging from \$500,000 to \$640 million
- » Advised on the development of more than 4,000 affordable housing units (over 3 years)
- » Completed more than 225 utility rate studies (regulated and non-regulated entities)
- » Delivered investment advisory services to more than 230 clients with total assets under management (AUM) of \$2.6 billion
- » Provided arbitrage consulting services to 420 clients with more than 1,750 issues under current monitoring
- » Prepared & disseminated continuing disclosures for more than 700 clients, monitoring all their respective debt issues

What's more, our clients engage Ehlers - and stay with Ehlers - because we can provide effective and efficient advisory services for every facet of public finance under one roof. Unlike certain peer firms, Ehlers has no need to subcontract any advisory or analysis work. We have all the necessary expertise to complete it in-house, which provides our clients with assurance of our highly collaborative approach with expert resources available for every client engagement.

Financial Management Planning

Whether it's creating an annual budget, developing a capital improvement plan, assessing financial policies and procedures or crafting alternative financing plans, Ehlers delivers strategic, yet practical fiscal guidance - with an emphasis on transparency and diligent process - to help the City achieve both its immediate and long-term financial goals.

We work with our clients to create dynamic plans that give leaders a "road map" to help determine needs and viable options and make prudent decisions based on impacts and benefits.

Our general approach to fiscal projects appears on the following page:



Ehlers frequently assists clients with measuring the fiscal repercussions of important financial decisions using forecasting and modeling, tax impact analyses and utility rate studies.

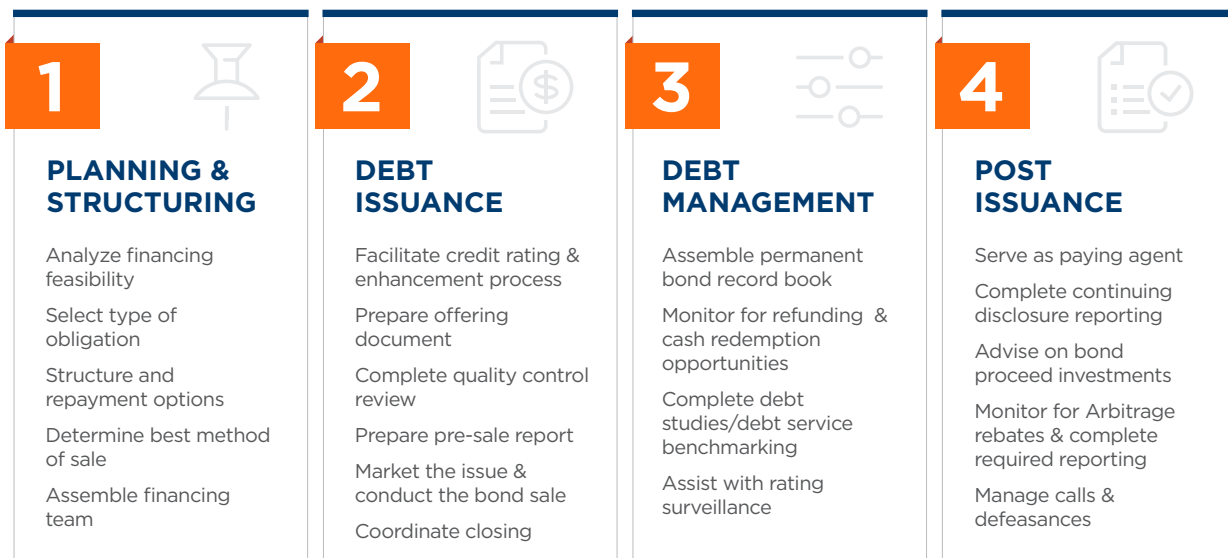
Financial Modeling

Ehlers Fiscal Consultants have decades of experience developing and customizing financial modeling tools that help our clients make informed decisions. We regularly leverage flexible financial models to deliver practical, easy-to-understand situation analyses for our clients. Our models are designed to be “living documents” that can be regularly updated to reflect unexpected challenges and new opportunities.

Debt Planning, Issuance & Oversight

Planning & Development

Ehlers leverages deep market knowledge, strong relationships with the rating agencies, daily engagement with underwriters and commercial banks, and industry best practices to proactively guide clients through the debt issuance and oversight process from start to finish.



Financing Plan Considerations

Ehlers collaborates with clients to ensure the following factors are incorporated into each debt issuance:

- » Legal options, tax-exemption & arbitrage considerations
- » Revenue sources identified to repay debt
- » Credit rating impact
- » Method of sale: competitive, negotiated or private placement
- » Current indebtedness & future capital plans
- » Alternatives including combined issues, delayed or accelerated principal payments
- » Parity considerations or indenture requirements
- » Refunding opportunities
- » Market conditions & direct feedback from underwriters and direct purchasers on various structures
- » Pricing structures, bidding parameters & optional redemption provisions

Method of Sale Advisory

Ehlers is and always has been a strong proponent of competitive bond sales for our local government clients as we believe they generally result in the lowest available interest costs for certain types of offerings. While we advise on hundreds of competitive bond sales each year, we also assist with dozens of negotiated and private placement transactions.

In a negotiated sale, the paramount consideration of an independent municipal advisor is to represent - at times relentlessly - the anticipated needs and best interests of the issuer while staying true to the spirit of collaboration with all other parties involved in the transaction.

Given today's market and economic uncertainties, along with regulatory changes, we believe representation by an independent municipal advisor in negotiated transactions and direct purchase is more important than ever for local governments to secure the most advantageous structure and terms.

Coordination of the Financing Team, including Bond Counsel

We have cultivated strong working relationships with all outside professionals that must work as a cohesive team in conducting a successful debt issuance. This includes bond and other legal counsel, bond purchasers, external auditors, paying agents, trustees, bond insurers, etc. As the City's Municipal Advisor, we will work closely with all team members to coordinate services, including reviewing transaction and disclosure documents.

Credit Rating Consultation

One of Ehlers' distinguishing strengths is its relationship with the major rating agencies - relationships built on trust and credibility. We know the mechanics and nuances of each firm's methodology. In fact, we have reverse-engineered each firm's scorecard and are adept at adjusting for anticipated notching factors. We advise on hundreds of public offerings each year, the vast

majority of which are rated. As such, we are in nearly constant contact with the rating agencies and their analysts. We understand the “hot-button” issues and can readily anticipate the points of discussion that will be addressed during the rating call and rating committee review because of the level of familiarity with our issuer clients.

Ehlers’ standard approach with respect to ratings on a new debt issue is - there is no standard approach. Instead, we gain a detailed understanding of an issuer’s credit profile and the security for the issue which helps us anticipate the likely conversations with rating analysts. At times, the analyst may simply ask boilerplate general questions during the rating call. However, there may be times when certain “stressors” need to be identified and addressed with additional information or a prepared presentation. We also understand and can help you mitigate how a particular metric may lead to notching factors if not properly explained. Finally, there are instances where an almost adversarial position needs to be taken due to any number of factors. On these occasions, the rating agency relationship may be in question (i.e. “do we switch?”), or a site visit may be in order.

Bond Marketing

A well-designed bond issue takes into consideration not only the issuer’s goals and needs but also the requirements of underwriters and municipal market investors.

Market & Pricing Information

Ehlers is active in the market every day. As such, our best set of information comes from the hundreds of public offerings we advise on each year. Few firms in the country can rely on their own transactions as being representative of “the market.” This volume of work puts us in near-daily contact with all major underwriting desks in the United States and gives us keen insight into both dealer and investor demand and any shifts across the municipal market.

Ehlers uses a variety of market-monitoring tools to provide our personnel and clients with the most current, complete and relevant pricing information. They include Bloomberg, EMMA, our established network of underwriter contacts and banks, and our internal database. Using a combination of these tools helps us ensure the marketing and pricing of our clients’ bonds remain uncompromised. Our proven track-record of identifying the proper method of sale, relevant trading activity, and market trends can result in more aggressive, on-market pricing for our clients.

We also leverage communication among all our advisors and analysts to gather insight into pricing and transactional details of private market transactions so we can knowledgeably evaluate all options on behalf of our clients. This also includes regularly communication with regional and national commercial lenders regarding direct purchase pricing.

Quality Control

For each bond sale, Ehlers conducts a comprehensive quality control process involving municipal advisors, disclosure coordinators, financial analysts and investment and arbitrage specialists. We hold a Quality Control (QC) meeting to review and analyze the bond structure, terms, market rate estimates, sale parameters and federal and state statutory considerations.

We are highly-experienced with the level of communication market participants require to be attracted to our clients' debt issues. We will serve as the City's lead agent in all communication and coordination with underwriters and potential investors. We provide market participants with timely and accurate offering documents and legal instruments. We post the issuer's Official Statement on our website, www.ehlers-inc.com/bond-sales, and disseminate it with other information about the issue to regional and national underwriters and information repositories.

Bond Sale

Our full-time bond sale team conducts a comprehensive, hands-on sale process for every issue.

For competitive issues, we:

- » Distribute sale details & preliminary official statements to national & regional underwriters as well as various information repositories for posting
- » Arrange for the method, time & place for the receipt of bids/proposals
- » Analyze each bid for compliance with the terms & conditions
- » Compile the bid tabulation & make a formal recommendation regarding the award or rejection of such bids/proposals
- » Communicate throughout the day with the issuer & other team members on the status of the process
- » Attend any necessary public meetings to present the sales results & answer questions

Given the volume of bond issues conducted in our offices each year, we have developed a seamless process for conducting and executing a sale. Time matters to underwriters and the other professionals involved in a debt issue, and we take pride in our ability to meet and exceed expectations on behalf of our clients.

For negotiated issues, we:

- » Evaluate & prioritize desired financing characteristics
- » Assemble the financing team, including assistance in preparing & evaluating Request for Proposals for professional services
- » Solicit & evaluate proposals from investment banking or placement agent firms
- » Review underwriter's disclosures
- » Assist the issuer with underwriter/capital provider due diligence efforts
- » Negotiate & establish material terms, conditions and covenants
- » Assist with drafting all legal & disclosure documents
- » Assist with the rating process, including pitch book & strategy
- » Evaluate & recommend credit support options/alternatives
- » Review pre-pricing comparables with the issuer & underwriter
- » Establish preliminary pricing & sales strategy before order period

- » Finalize bond size & structure on day of sale, including analysis of couponing alternatives
- » Review bond purchase agreement & order allocations, if applicable
- » Complete a post-pricing analysis to review quality of underwriting & to certify tax-exempt status
- » Coordinate all closing activities with the underwriter & other parties

Bond Closing

Ehlers' goal is to make bond closing as "invisible" as possible for our clients. We coordinate the closing with all parties - bond counsel, Depository Trust Company (DTC) and the purchaser (underwriter) - to minimize your workload. Our Investment Services team assists with preparation of draw schedules and the creation of investment options, as requested. Our detailed closing document provides clear and concise information to support preparation of financial statements, guides the administration of the City's debt portfolio, and summarizes important details in one place for convenient reference.

Post-Issuance Debt Oversight

Ehlers' fully integrated service model empowers clients to work with a single, independent advisory firm to complete all fundamental debt management tasks. Our experienced post-issuance professionals partner with Ehlers' Municipal Advisors to ensure strong management of debt proceeds, payments and mandatory reporting. Services include:

Investments

Ehlers' investment advisors construct and manage investment portfolios that seek to optimize allowable earnings, maintain liquidity, and comply with federal regulations. We currently work with 230+ clients and manage approximately \$2.6 billion in assets. We believe appropriately managing debt proceeds throughout the lifecycle of a project is as important, if not more so, than the debt issuance itself. Our priority in meeting clients' investment needs is to adhere to the principles of safety, liquidity and yield - in that order - so we can help them seek optimal allowable earnings. Our Investment team also provides bidding agent services for advance and current refunding escrows, as well as cash defeasance. Services include:

- » Policy development & evaluation
- » Strategy development & implementation
- » Cash flow analysis & forecasting
- » General & Enterprise funds investments
- » Treasury management consulting
- » Compliance monitoring

Continuing Disclosures (Dissemination Agent)

Ehlers provides disclosure services for several hundred clients consisting of thousands of underlying issues. In 2014, we responded immediately to the SEC MCDC program by hiring additional staff and conducting our own research prior to the September deadline for underwriters

to report. Our efforts were able to prevent underwriters from reporting dozens of our clients to the SEC because the underwriters either had faulty data or did not understand the evolution of disclosure rules since 1995 (i.e. limited disclosure vs. full disclosure).

Arbitrage Rebate Management

Arbitrage strategy and management is a key component of the City's' debt proceeds management toolkit. Ehlers boasts a highly experienced arbitrage staff and a process-oriented practice to ensure clients remain in full compliance with the Internal Revenue Service. We work collaboratively with you to:

- » Create arbitrage strategies, policies & procedures
- » Monitor debt obligations subject to yield restriction
- » Collect & maintain records necessary for compliance
- » Prepare arbitrage reports & IRS forms
- » Deliver IRS audit guidance & support
- » Provide client training & work support

Paying Agent Services

Changes in DTC requirements make it critical that your bond principal and interest payments are constructed and submitted carefully via a strictly prescribed method. Ehlers offers complete paying agent services to clients so you can rest assured knowing debt payments are made accurately and on time. Our services include:

- » Paying agent
- » Registrar
- » Fiscal agent
- » Payment deadline reminders
- » Call notice/ redemption filing
- » Mandatory term bond redemptions

Ongoing Debt Monitoring & Management

As a value-add, no-fee service, we help our clients manage their existing debt and plan for future financing needs. Ehlers routinely reviews our clients' existing debt well in advance of the call date and prepares quarterly reports detailing current and future refunding opportunities.

Economic Development & Redevelopment

Ehlers has more economic development, redevelopment and housing experience than our peer firms. **We advise communities across a wide spectrum of redevelopment/economic development processes, with projects ranging from \$500,000 to \$640 million.** In the last three years, we have **assisted our clients with creation of over 115 tax increment districts**, along with dozens of modifications.

Our general approach for development initiatives is as follows:



Our Performance

Item 4.

At Ehlers, we believe our experience is best demonstrated by the work we’ve done. As we mentioned in our cover letter, we’ve been privileged to advise the City on the following initiatives:

- » Debt
 - » 2023 Certificates of Participation
- » Arbitrage reporting
- » Continuing disclosure
- » Fiscal Planning & Studies
 - » 2020 Poncha Springs Interceptor Study
 - » 2020 Utility Rate Studies
 - » 2020 Financial Management Plan
 - » 2021 Utility Rate Studies
 - » 2021 System Development Fee Update
 - » 2023 Financial Management Plan
 - » 2023 System Development Fee Update
 - » 2024 Sewer Rate Study
- » Investments
 - » 2020 Relationship Inception
 - » 2020 Banking Services RFQ
 - » 2023 COP Bonds Proceeds Investment
 - » \$13.8 Million of General Reserves & \$1.8 Million of Bond Funds Under Management

In addition, we offer two relationship overviews of Colorado clients with characteristics and needs similar to those of the City:

The Town of Basalt, Colorado (2013 - Present)
<ul style="list-style-type: none">» Advised on seven GO Bond and COP issuances to-date, totaling \$30.5 million. Projects include river floodplain mitigation and community pool enhancements, downtown streetscape, green infrastructure, affordable housing, and public works facility.» Constructed a comprehensive financial management plan, including capital and operating budget projections.» Completed over 20 housing and economic development projects, including analyzing developer pro formas and negotiating City participation.» Provide continuing disclosure services for outstanding debt issuances.» Deliver arbitrage rebate management services.

The Town of Winter Park, Colorado (2013 - Present)

- » Advised on four COP issuances totaling \$28 million for the Town amphitheater and stage, parking garage, workforce housing, and public works facility.
- » Completed multiple iterations of a financial management plan with a particular focus on cash and debt funding solutions for capital projects.
- » Held discussions and facilitated negotiations with developers regarding additional workforce housing developments.
- » Provided both continuing disclosure and arbitrage rebate management services.



SECTION 3: **KEY PERSONNEL**

Key Personnel

Primary Relationship Contact & Client Service Team

Mr. Bruce Kimmel and Mr. Dan Tienter will serve as Salida's primary relationship contacts, They will be joined by another advisor to ensure exceptional client service and technical expertise. To fulfill all needs identified in the City's RFQ, we recommend the following client service team:

MUNICIPAL ADVISORS

Bruce Kimmel

Senior Municipal Advisor & Primary Contact
Debt Planning, Structure & Issuance, Economic Development & Financial Planning

Dan Tienter

Municipal Advisor & Secondary Contact
Debt Support, Financial Planning

Brian Reilly, CFA

Senior Municipal Advisor | Managing Director
Debt Support

PROFESSIONAL STAFF

Alicia Gage

Senior Financial Analyst
Debt Structure & Monitoring Analysis

Annie Mallon

Lead Public Finance Analyst
Continuing Disclosures

Jeanne Vogt

Senior Fiscal Consultant
Financial Management Planning, Utility Rate Analysis & Fiscal Studies

April Weller

Senior Fiscal Consultant
Financial Management Planning, Utility Rate Analysis & Fiscal Studies

INVESTMENT & ARBITRAGE MANAGEMENT STAFF

Ryan Miles, CPFIM

Investments Managing Director
Investment Policy, Strategy & Portfolio Creation

Jim Groetsch

Investment Adviser
Portfolio Creation & Management

Stephen Broden

Arbitrage Managing Director
Arbitrage Rebate Monitoring & Reporting

Joel Melstrom, CFA

Senior Arbitrage Consultant
Arbitrage Rebate Monitoring & Reporting

As mentioned in our transmittal letter, instead of assigning a single advisor to manage client relationships and day-to-day needs, we take a team approach to ensure we're delivering the most appropriate solutions and technical expertise in the most effective and cost efficient way. Our philosophy and commitment is simple: **We're here for you whenever and however you need us.**

**Bruce Kimmel****Senior Municipal Advisor | Primary Relationship Contact**

Bruce brings 25 years of municipal and financial advisory experience to his clients in Minnesota, Colorado and Kansas. His practice focuses on financing public utility infrastructure and other capital improvements, as well as analyzing and negotiating many forms of public participation in private development projects. His knowledge of capital budgeting and infrastructure finance helps Ehlers' clients find creative, effective ways to fund essential improvements while also mitigating future fiscal risks for the community.

**Dan Tienter****Municipal Advisor**

Dan is a Municipal Advisor who regularly assists clients with municipal debt transactions, economic development and redevelopment initiatives, long-term financial planning, fiscal studies and utility rate analyses. Dan brings 10 years of direct local government experience to his role with the firm, most recently serving as the Director of Finance for the City of Fridley. He also worked in leadership and administrative roles for the City of Winsted and Dakota County. Dan has exceptional experience in developing and executing capital improvement plans, crafting and managing multi-million dollar budgets and managing public investment portfolios in excess of \$40 million.

**Brian Reilly, CFA****Senior Municipal Advisor | Managing Director**

Brian is a Senior Municipal Advisor and works with local units of government, special districts, authorities, and public agencies in the areas of debt issuance, fiscal planning, special studies, economic development and tax increment. He has advised clients on billions of dollars in debt issuance and also has experience with non-profit and municipally owned healthcare financing. He currently leads Ehlers' Minnesota Municipal Team as one of the firm's Managing Directors and serves as the President of our Investment Management Team. Brian has been with Ehlers since 2003. He holds the Series 50, 54 and 65 licenses, and carries the Chartered Financial Analyst designation.

**Alicia Gage****Senior Financial Analyst**

Alicia is a Senior Financial Analyst with our Minnesota Team. Prior to joining Ehlers in 2011, she served as a Municipal Finance Project Manager working with local governments in Iowa, Kansas, Minnesota, Missouri, North Dakota and Wisconsin. She leverages extensive experience with financial analysis software to develop tailored models that exceed our clients' expectations. Alicia helps governmental clients construct and implement long-term debt management strategies. Her special areas of expertise include debt structure and documentation, refundings and cash defeasances, multi-issue and multi-purpose debt structures, and financial analysis using Munex and Excel.

**Annie Mallon****Senior Public Finance Analyst**

Annie serves as a Senior Public Finance Analyst on our Continuing Disclosure team, serving all of Ehlers' client regions. She regularly assists our clients with their disclosure compliance needs, including verifying past filings, and compiling and submitting required filings. Annie also helps our Wisconsin clients prepare legal and financial documentation related to Tax Incremental Financing (TIF) districts. She has been with Ehlers for 10 years.

**Jeanne Vogt****Senior Fiscal Consultant**

Jeanne works on our Minnesota Municipal Finance Team. She partners with cities, Cityships, counties, public utilities and special districts to develop and implement long-term financial planning, particularly in the area of sewer and water rates studies. Prior to joining Ehlers in 2008, she worked for more than a decade as an Accountant for Ramsey County and most recently as Finance Director for the City of Vadnais Heights. Clients rely on Jeanne for her general accounting expertise, as well. She regularly assists her clients with budgeting, bond accounting and audit preparation.

**April Weller****Senior Fiscal Consultant**

April, a Senior Fiscal Consultant with our Minnesota Municipal Finance team, regularly assists clients with long-term financial management planning, utility rate studies, and tax increment financing administration and reporting. Prior to joining Ehlers, April amassed more than seven years of direct local government experience, most recently serving as the Finance Manager for the City of St. Louis Park, Minnesota.

**Ryan Miles, CPFIM****Senior Investment Adviser | Managing Director**

Ryan joined Ehlers in 2018 as a Senior Investment Adviser, bringing over 10 years' financial and investment management experience to that role. As Managing Director, he oversees our Investment Advisers, client service personnel and trading desk activities. Ryan received his Bachelor of Arts in Business Administration from Eastern Washington University and earned his MBA in Finance through LSU-Shreveport. Ryan holds his Series 65 license and is a Certified Public Funds Investment Manager (CPFIM).

**Jim Groetsch****Investment Adviser**

Jim serves as an Adviser on our Investment team, where he helps clients with public funds portfolio strategy, development and management. He brings more than 14 years of retail and institutional investment experience to the firm, most recently working as a Vice President and Financial Consultant with a national brokerage firm, where he managed a practice of 300 high-value relationships totaling over \$500,000,000 in assets.

**Stephen Broden****Senior Arbitrage Consultant**

Stephen brings more than 15 years' experience in providing arbitrage calculations and bond compliance training to his role as a Senior Arbitrage Consultant. Prior to joining the firm in 2018, Stephen managed the national arbitrage practice at Arbitrage Compliance Specialists, Inc. and spent an additional decade working in the financial services industry. His proactive approach to arbitrage compliance guides clients through the complexities of Internal Revenue Service reporting requirements and rebate analysis.

**Joel Melstrom****Senior Arbitrage Consultant**

Joel joined Ehlers in 2019 as a Senior Arbitrage Consultant. Previously, he held a managerial position with a nationally recognized arbitrage firm where he provided arbitrage consulting and related bond compliance services to issuers across the nation. Joel holds Bachelor of Science degree in Finance, as well as the Chartered Financial Analyst designation.



SECTION 4:

APPROACH & METHODOLOGY

Approach & Methodology

Ehlers has been privileged to partner with the City as its municipal advisor since 2019. During that time, we have had the opportunity to perform the stated scope of services and assist the City's staff and Council craft and implement its long-term vision through thoughtful planning, stakeholder engagement, and financing execution. Our work with the City has been grounded in achieving fiscal sustainability in light of the constraints many Colorado communities must grapple with.

Our goal has been to act as an extension of the City's staff, providing expert resources across multiple disciplines. This holistic approach to our relationship affords Ehlers the ability to deliver independent advice that is greater than the sum of its parts. Our Municipal Advisors have an intimate understanding of the City's fiscal profile, including the general and enterprise funds, which enhances our ability to structure debt, facilitate credit discussions, and provide recommendations on accessing capital. Additionally, this institutional knowledge lends itself to collaborating with our Investment Advisors who can craft an investment strategy that takes into consideration the City's liquidity needs and risk profile, as well as integrate investment of bond proceeds into the overall financing strategy with the guidance of our Arbitrage Consultants.

While we have set out an assigned City service team, please know that Salida has access to all Ehlers' resources, which spans more than 40 Municipal Advisors, over a dozen Fiscal Consultants, including former City Administrators/Managers and Finance Directors, and six registered investment advisers. In fact, we have added Dan Tienter to enhance our lead municipal advisory team. Dan is a former City Administrator for a rural community and Finance Director of a major metro city. Assigning Dan as a primary contact recognizes the large role we've played specifically related to the City finance function and its long-term fiscal planning efforts. Mr. Tienter's knowledge expands into policy formation and organizational structure, should the City wish to explore these areas more intently. Dan will buttress Ehlers service continuity, adding another trusted resource to an already-strong team.

We are confident that few, if any, other firms serving Colorado municipalities can offer a comparable breadth and depth of professional experience and technical aptitudes. As stated in our cover letter, we feel strongly that our independence is of great value to Salida. With Ehlers representing the City as municipal advisor, you will not lose access to what could be an important source of investment banking capital, nor will we ever seek to excuse ourselves as your fiduciary to sit across the table from you to purchase your debt. Similarly, our investment advice will never be colored by any tinge of conflict as a direct transaction counterparty in a principal transaction. You will always retain the full universe of options, relying on our independent viewpoints as a guide in your decision making.

We propose to continue serving Salida from our Minnesota-based office and wish to re-emphasize our collective commitment to deliver any in-person needs the City has. As always, if you need any members of our team to come to City offices, we are happy to be there for you.



EXHIBIT B
("Rates")



SECTION 6: **FEES**

Fees & Compensation

Ehlers may not always be the price leader for financial advisory services. **We are the value leader.** The following attributes demonstrate the value that sets us apart from competing firms:

- » Unsurpassed technical skill sets across all aspects of the City's desired scope of services with personnel who work collaboratively to deliver creative, yet practical solutions
- » Firm-wide commitment to client service, with advisory and support teams structured to provide the highest level of availability to ensure client needs are met
- » First-hand experience in governmental leadership roles, including finance and community development
- » An integrated and comprehensive suite of advisory solutions that make the whole greater than the sum of its parts. One call solves it all

Please note: All fees are negotiable. We believe our fees are competitive in the marketplace, but would always prefer to have an open dialogue about fees if it is determined Ehlers is the firm best suited to meet your needs.

Our fee/cost schedules relative to the City's requested scope of services is as follows:

Debt Issuance Fees

Ehlers' debt issuance fees are based on the amount issued. The below schedule applies to both competitive and negotiated transactions:

Par Value	Fee/\$1,000
First \$500,000	\$21.00
Next \$500,000	\$11.25
Next \$1,000,000	\$6.50
Next \$3,000,000	\$3.25
Next \$5,000,000	\$2.75
Next \$5,000,000	\$1.50
Next \$5,000,000	\$1.25
Next \$5,000,000	\$1.10
Greater than \$25,000,000	\$0.50

- » Multi-purpose issues are charged at 75% of fee schedule by statutory purpose or distinct repayment source, but in no case greater than 150% of the applicable fee based on issue par amount.
- » Contemporaneously sold issues with the same security are charged with the largest issue at full fee and all other issues at 85% of the fee schedule.

SECTION 6: FEES & COMPENSATION

- » Advance refunding issues require an additional \$2,500 for added technical support per is Item 4.
- » Use of open market securities within a defeasance escrow requires an additional \$1,000 per escrow.

The Client will be responsible for credit rating fees, legal services, publication of notices (if any), paying agent fees (if any), escrow agent fees (if any), verification agent (if any), and any fees charged by third parties for information required for the official statement.

Non-Bond Related Fees

Most non-bond related advisory services requested by Clients will be billed on an hourly basis, according to the following rates:

Position	Hourly Rate
Senior Municipal Advisor	\$300 - \$350
Municipal Advisor	\$275 - \$300
Financial Analyst	\$275
Senior Fiscal Consultant	\$295 - \$310
Fiscal Consultant	\$265 - \$295
General Staff	\$150
Developer-Funded Pro Forma Review	\$400

Estimated ranges for specific scopes of non-bond related work are detailed on the following page:

Project	Fee Range
Long-Term Financial Management Plan	\$10,000 - \$85,000
Utility Rate Study	\$10,000 - \$70,000
Renovation & Renewal TIF District Creation	\$12,500 - \$18,000
Housing TIF District Creation	\$10,500 - \$12,500
Economic Development TIF District Creation	\$10,500 - \$12,500
Other TIF District Creation	\$10,500 - \$18,000
Tax Abatement	\$3,500 - \$5,000

Continuing Disclosure Fees

Ehlers will assess Continuing Disclosure fees as follows:

Continuing Disclosure Undertakings (CDUs)	Annual Fee
1-3 CDUs	\$3,150
4-6 CDUs	\$3,700
7+ CDUs	\$4,250
Limited Disclosures	\$850
Periodic Filings	\$500

Arbitrage Consulting Fees

Ehlers will assess fixed fees for the following analyses:

Fee	Analysis	Services
\$1,000	<i>Spending Exceptions</i>	
\$3,750	<i>Arbitrage Reporting</i>	<ul style="list-style-type: none"> » Per 5-year analysis period » Prorated for interim reports
\$1,000	<i>Arbitrage Review</i>	<ul style="list-style-type: none"> » Per analysis » Up to 5 years

Ehlers will charge \$300 per hour for Arbitrage Consulting services outside of the fixed-fee analysis schedule.

Paying Agent Service Fees

Ehlers will assess paying agent fees annually on a per-issue basis:

Fee	Item	Services
\$450	<i>Initial Set-up (one-time fee)</i>	<ul style="list-style-type: none"> » Review final bond documents » Communicate with bond counsel & municipal advisor » Coordinate delivery of bonds for closing » Establish necessary accounts & records
\$475	<i>Annual Administration (per issue)</i>	<ul style="list-style-type: none"> » Invoice & collect debt service payments from issuer » Document & transmit bond payments per schedule » Coordinate with the Depository Trust Company » Maintain issuer's account » Process optional redemption notices, as needed

Fee	Item	Services
\$100	Additional Services (per notice)	» Process mandatory sinking fund notices

Investment Management Fees

Ehlers proposes the following fee schedule for managing the City’s generally investable assets, as well as debt proceeds:

Assets Under Management	Annualized Fee
Up to \$5 million	0.250%
Next \$5 million	0.225%
Next \$5 million	0.200%
Next \$5 million	0.175%
Next \$5 million	0.150%
Over \$25 million	0.125%

Please note that investment managerment services are provided under a separate engagement agreement with Ehlers Investment Partners, LLC.



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Police	Russ Johnson - Police Chief	February 18, 2025

AGENDA ITEM

Social Host Ordinance 2024-09: An ordinance for the City of Salida adding a Social Host Ordinance to the Municipal Code.

BACKGROUND

A local initiative was created several years ago to address teen drinking in Chaffee County. Data collected from the "Healthy Kids Survey" showed an above average use of alcohol by teens in our area. This survey also showed that teens in Chaffee County start drinking at an earlier age than the state average.

Over the past few years, Family Youth Initiative (FYI) worked on marketing and education campaigns against teen alcohol use. There has also been a committee working on adding a new ordinance to help curb underage parties at residences in our community. At the time of this beginning, police were able to charge a felony for people providing alcohol to a minor. However, it is not utilized very often and is a very lengthy process.

The working group, which included Salida PD personnel, created a new local ordinance that allowed police to issue a summons to a homeowner, tenant, lessee, or person organizing an underage party at their house. Under this ordinance, the person that knowingly allowed this to happen would be cited into Municipal Court. If found guilty, the court would issue a fine, educational material, and require a person to attend a class. A tiered approach was created for subsequent violations.

The County Commissioners and Buena Vista Trustees were also asked to adopt similar ordinances to keep consistency throughout Chaffee County. However, as a result of recent meetings and changes in state statutes we are moving away from this. We have a state statute that is adequate in addressing this issue and the group feels we can now focus on something else.

FISCAL NOTE

There is no fiscal impact at this time.

RECOMMENDATION

Staff, FYI and the City Prosecuting Attorney have decided to utilize a state statute that will be more relevant. We are now recommending not adopting the Social Host Ordinance 2024-09 into the Municipal Code.

MOTION

A City Councilmember should state "I move to deny the adoption Social Host Ordinance 2024-09", followed by a second and a roll call vote.

CITY OF SALIDA, COLORADO
ORDINANCE NO. 09
(Series of 2024)

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO,
 AMENDING THE CITY CODE TO ADD SECTION 10-7-90 ENTITLED KNOWINGLY
 ALLOWING UNDERAGE PERSONS TO POSSESS OR CONSUME ETHYL ALCOHOL
 AND/OR MARIJUANA ON PRIVATE PROPERTY TO THE SALIDA MUNICIPAL
 CODE**

WHEREAS, the City of Salida (the “City”), is a statutory city, duly organized and existing under the laws of the State of Colorado; and

WHEREAS, pursuant to C.R.S. § 31-15-401, the City possesses the authority to adopt laws and ordinances within its police power in furtherance of the public health, safety, and welfare; and

WHEREAS, the consumption of alcoholic beverages and marijuana by persons under the age of twenty-one (21) is known to be harmful to their health and development; and

WHEREAS, gatherings of person under the age of twenty-one (21) in which alcoholic beverages and/or marijuana are consumed are known to correlate with an increase of hospitalizations, emergency service responses, and illegal behaviors such as impaired driving, assault, and violence; and

WHEREAS, previous gatherings of underage persons in the City have been facilitated by adults who have provided private property of which to host the gatherings, and also the alcoholic beverages or marijuana which was consumed by the underage persons present, either directly or through lack of reasonable precaution; and

WHEREAS, therefore, the City prohibits any responsible person from knowingly allowing or permitting any person under twenty-one (21) years of age, except for those exempt under C.R.S. § 18-13-122, to possess or consume an alcoholic beverage or marijuana at a residence or other private property under their control.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, ORDAINS:

Section 1. The City Council incorporates the foregoing recitals as conclusions, determinations and findings by the City Council.

Section 2. Code Section 10-7-90. Knowingly allowing underage persons to possess or consume ethyl alcohol and/or marijuana on private property is hereby added to read as follows:

Sec. 10-7-90. – Knowingly allowing underage persons to possess or consume ethyl alcohol and/or marijuana on private property.

(a) Definitions

(1) “Responsible Person” means a person with control of the residence or other private property where underage consumption occurs, which may include but is not limited to:

- a) an owner of the residence or other private property;
- b) a tenant, lessee, or short-term renter of the residence or other private property;
- c) the person(s) in charge of the residence or other private property;
- d) the person(s) who organizes, supervises, conducts, or controls the gathering or any other person(s) accepting responsibility for the gathering.

(b) Violations

(1) It is a violation of this ordinance for any responsible person to knowingly allow or permit any person under twenty-one (21) years of age, except those exempt under C.R.S. § 18-13-122, to possess or consume an alcoholic beverage or marijuana at a residence or other private property under their control.

(c) Penalties

(1) A first violation of this section shall be punishable by a fine of up to \$250. A copy of the “Social Host Ordinance Pamphlet” shall be provided by the City to the responsible person, with details about consequences for further violations.

(2) A second violation of this section by the same responsible person within a three-year period shall be punishable by a fine of \$1,000 and 20 hours of community service. The fine and community service will be imposed but suspended upon voluntary completion by the responsible person of an educational course on youth substance use, which will be provided by the Chaffee County Department of Human Services or another suitable organization as designated by the Chaffee County Department of Human Services. If the course is not completed within one year from the date of the second violation the fine and community service will be imposed.

(3) A third or subsequent violation of this section by the same responsible person within a three-year period shall be punishable by a fine of no less than \$2,650 and no less than 40 hours or community service.

Section 3. Severability. The provisions of this ordinance are severable and the invalidity of any section, phrase, clause, or portion of the ordinance as determined by a court of competent jurisdiction shall not affect the validity or effectiveness of the remainder of the ordinance.

INTRODUCED ON FIRST READING on this 2nd day of July, 2024, ADOPTED and ORDERED PUBLISHED IN FULL in a newspaper of general circulation by the City Council on this 5th day of July, 2024, and set for second reading and public hearing on the 16th day of July, 2024.

CITY OF SALIDA

By: _____

(SEAL)

Mayor Dan Shore

ATTEST: _____

City Clerk/Deputy City Clerk



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Community Development	Bill Almquist - Community Development Director	February 18, 2025

AGENDA ITEM

Resolution 2025-07:: A Resolution of the City Council of the City of Salida, Colorado, Approving an Amendment to Section 7, Entitled “Inclusionary Housing,” of the Development Improvements; Subdivision Improvements; and Inclusionary Housing Agreement for the Holman Court Planned Development and Major Subdivision.

BACKGROUND

The Holman Court Planned Development and Subdivision was approved by City Council on April 6, 2021 following recommendation of approval by Planning Commission. The project included 14 units (7 duplex buildings) each of which have subsequently been subdivided into their own lots. The project was approved via a negotiated process through which the applicant received deviations from the underlying R-2 zone district dimensional standards, including minimum lot frontage on a public street, maximum parking/access lot coverage, and minimum landscape area. As part of the negotiation, the applicants, Holman Court LLC, represented by David LaRoche and Mark Lee, agreed to build two Inclusionary Housing units to be sold at a maximum of 80% AMI. At the time, City policy required 1 built IH unit per 8 total units (the policy also provided an option for a fee-in-lieu of built units, to be assessed on each market-rate unit). The PD approval required that both IH units be built and receive certificate of occupancy prior to the 10th market-rate unit.

Project construction began in the summer of 2021 and, on February 21st, 2023, the applicants returned to Council to request that the maximum AMIs for the two IH units be increased from the previously agreed upon 80% AMI price level to 120% AMI and 160% AMI, respectively, consistent with the updated Inclusionary Housing policy. The request was related to unexpected construction costs. Council ultimately agreed, via Resolution 2023-09, to amend the Inclusionary Housing agreement to allow the two units to be deed restricted at up to 120% and 140% AMI, respectively, plus to pay a fee equal to .33 of the fee-in-lieu (FIL) at the time (the staff report estimated approximately \$61,000 in total fees for all market units). The additional FIL accounted for the fact that the new policy requires 1 built IH unit for every 6 units in the project, and the two built IH units left a “remainder” of two market-rate units. According to records, only \$16,575 of the FIL has been paid to date, leaving \$44,475 to be paid.

Since the 2023 amendment to the original agreement, the applicants have completed all 14 units. All but one of the market-rate units have sold and the applicants have sold the 140% AMI deed-restricted unit. According to their request detailed in the attached email, however, they have not yet been able to sell the 120% AMI deed-restricted unit. The applicants state that they have tried selling

it for as low as at \$389K, but sales have fallen through for a variety of factors including, but not limited to: loan conditions, eligibility issues, and inability of buyers to afford the mortgage payments with recent interest rate increases.

REQUEST

The applicants are now requesting that City Council waive the requirement to sell the second deed-restricted unit and allow them to pay a fee-in-lieu of the built unit at \$22/SF for the one affordable unit in question, or \$32,142 (according to County Assessor records, the unit in question, 711 Holman Court, is 1461 square feet and $\$22 \times 1461 = \$32,142$). For clarity, current Inclusionary Housing policy requires that developers build and deed restrict 1 unit for every 6 units in the development (with fees-in-lieu only applying to projects with less than 6 units and to “fractional” remainders). When fees-in-lieu are required, they are applied across *all* applicable market-rate units, not just one, at the effective rate. Below is a summary of the differences between the original agreement, the 2023 amendment to the agreement, the applicant’s current request, and the remaining FIL if just 1 IH unit were to be allowed and fees are applied according to code:

2021 Inclusionary Housing Agreement (Approved):

Market-Rate Units	IH Units	Max. AMI of IH units	Add'l FIL to be paid
12	2	80% & 80%	\$0

2023 Amended Inclusionary Housing Agreement (Approved):

Market-Rate Units	IH Units	Max. AMI of IH units	Add'l FIL to be paid
12	2	120% & 140%	.33 FIL or ~ \$61,000 (\$16,575 paid, \$44,475 due)

Applicant’s Current Request:

Market-Rate Units	IH Units	Max. AMI of IH unit	Add'l FIL to be paid
13	1	140%	$\$61,000 - \$16,575 = \$44,475$ <i>plus</i> $\$22.00/\text{SF} \times 1461 = \$32,142$

If 1 IH unit were allowed and FILs were applied according to code:

Market-Rate Units	IH Units	Max. AMI of IH unit	Add'l FIL to be paid
13	1	140%	$\$61,000 - \$16,575 = \$44,475$ <i>plus</i> $\$13.59/\text{SF} \times 1523 \times 8 = \$165,580$

According to the County Assessor, the development currently has 8 units at 1544 SF, 4 units at 1513 SF, and 2 units (the IH units) at 1461 SF. The average square footage for all units is 1523 SF. If we multiplied the current FIL of \$13.59 times the average size of all units, that would result in a FIL of \$20,697.57 for each market rate unit *not* covered by the 1 already-sold and deed restricted IH unit (a total of 8 market rate units under the current code).

$\$13.59/\text{SF} \times 1523 \text{ SF} \times 8 \text{ units} = \mathbf{\$165,580.56}$

RECOMMENDATION

Staff recommends amending the SIA/IH to allow the applicant to pay a fee-in-lieu of the previously agreed upon built IH unit in the amount of \$165,580 plus the unpaid fees-in-lieu from the previous inclusionary housing agreement which allowed for the increase in AMI on the sold IH unit (\$44,475). The total payment would be \$210,055. A more formalized resolution would be drafted up by the City Attorney to reflect the agreed upon terms.

FISCAL IMPACT

The fiscal impact of this Resolution is to forego one deed-restricted workforce unit in exchange for a total contribution of \$210,055 to the affordable housing fund for use in future affordable housing projects.

MOTION

A City Councilmember should state “I move to Approve/Deny Resolution 2025-07, A Resolution of the City Council of the City of Salida, Colorado, Approving an Amendment to Section 7, Entitled “Inclusionary Housing,” of the Development Improvement; Subdivision Improvement; and Inclusionary Housing Agreement for the Holman Court Planned Development and Major Subdivision”, followed by a second and a roll call vote.

Attachments:

- Resolution 2025-07
- Original (2021) Recorded Planned Development Approval Plans
- 2023 Subdivision Improvements/Inclusionary Housing Agreement Amendment Packet Items
- Emails from applicant and applicant’s realtor dated 02/10/25 and 12/19/2024 with request and AMI sheet for IH unit and financial hardship summary

**CITY OF SALIDA, COLORADO
RESOLUTION NO. 07
(Series of 2025)**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, APPROVING AN AMENDMENT TO SECTION 7, ENTITLED “INCLUSIONARY HOUSING,” OF THE DEVELOPMENT IMPROVEMENTS; SUBDIVISION IMPROVEMENTS; AND INCLUSIONARY HOUSING AGREEMENT FOR THE HOLMAN COURT PLANNED DEVELOPMENT AND MAJOR SUBDIVISION

WHEREAS, Holman Court, LLC (“Developer”) are owners and developers of the Holman Court Planned Development and Major Subdivision;

WHEREAS, on April 6, 2021, the City Council approved Ordinance No. 2021-03 for the Holman Court Planned Development and Major Subdivision which consists of seven (7) lots and fourteen (14) units on the 1.72 acres (“Property”);

WHEREAS, on July 8, 2021, the City Council thereafter approved Resolution 2021-23 to execute a Development Improvements; Subdivision Improvements; and Inclusionary Housing Agreement with Developer for the Holman Court Planned Development and Major Subdivision (“Agreement”);

WHEREAS, on February 21, 2023, the City Council subsequently approved Resolution 2023-09 which amended such Agreement with Developer, at Developer’s request, to more closely align with the updated inclusionary housing requirements of Salida Municipal Code Section 16-13-20(g) reflected in Ordinance 2022-05, which acknowledged the need to increase the ratio of required deed-restricted units, provide deed-restricted units across a greater diversity of incomes and differentiate income requirements between for-rent and for-sale units;

WHEREAS, Section 7 of such Agreement, entitled “Inclusionary Housing,” was therefore amended to reflect Developer’s commitment to construct and deed restrict two (2) inclusionary housing dwelling units to be sold as affordable to households earning up to 120% and 140%, respectively, of the Area Median Income for Chaffee County;

WHEREAS, since that time, both inclusionary housing units have been built, and the 140% AMI unit has been sold;

WHEREAS, Developer has expressed an inability over the last two years to sell the second (120% AMI) inclusionary housing dwelling unit due to a variety of current market and practical factors, and is therefore now requesting that the City amend the requirement to sell the second unit as a deed-restricted affordable unit and instead permit the Developer to pay a fee-in-lieu to the City’s Affordable Housing Fund;

WHEREAS, the Council desires to amend the Agreement to reflect such change removing the deed restriction from the second inclusionary housing unit and replacing

such term with the requirement to pay a fee-in-lieu to the City's Affordable Housing Fund, and;

WHEREAS, the Council therefore approves the amendment of Section 7, entitled "Inclusionary Housing," of the Development Improvements; Subdivision Improvements; and Inclusionary Housing Agreement with Developer for the Holman Court Planned Development and Major Subdivision, and authorizes the Mayor to execute such amendment.

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

1. The City Council incorporates the foregoing recitals as findings by the City Council.
2. The City Council hereby approves the amendment of Section 7, entitled "Inclusionary Housing," of the Development Improvements; Subdivision Improvements; and Inclusionary Housing Agreement with Developer for the Holman Court Planned Development and Major Subdivision.
3. The City Council hereby directs the City Attorney draft the applicable amendments to Section 7, entitled "Inclusionary Housing," of the Development Improvements; Subdivision Improvements; and Inclusionary Housing Agreement with Developer to effectuate the removal of the requirement to sell the second unit as a deed-restricted affordable unit and the insertion of the requirement of the Developer to pay a fee-in-lieu to the City's Affordable Housing Fund and authorizes the Mayor to execute same.

RESOLVED, APPROVED AND ADOPTED this 18th day of February, 2025.

CITY OF SALIDA, COLORADO

[SEAL]

By _____
Mayor Dan Shore

[ATTEST]

City Clerk/Deputy City Clerk



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Planning	Kathryn Dunleavy - Planner	February 21, 2023

ITEM

Resolution No. 2023-09 Approving the Amended Development Improvements; Subdivision Improvements; and Inclusionary Housing Agreement for the Holman Court PD and Major Subdivision.

BACKGROUND

- The Holman Court Planned Development and Subdivision was approved by City Council on April 6, 2021 by Ordinance 2021-03 and contained 14 total units; 12 units at market rate and 2 units of inclusionary housing.
- The Holman Court Development Improvements; Subdivision Improvements; and Inclusionary Housing Agreement (SIA) was approved by the City Council with the adoption of Resolution 2021-23 on July 06, 2021. This SIA states in paragraph 7.1: "Developer hereby agrees to construct and deed restrict two (2) dwelling units which will be affordable to households earning 80% or less of the Area Median Income..."
- On March 18, 2022, City Council approved Ordinance 2022-05 amending Chapter 16, Article XIII, Inclusionary Housing of the Salida Municipal Code. That ordinance updated a number of criteria within Article XIII. The updates relevant to this request are:
 - Deed restricted unit requirement increased from 1 out of 8 units to 1 out of 6 units.
 - A broader array of deed restricted price levels could be utilized. Specifically, for-sale units could be offered up to 120% AMI, 140% AMI, and 160% AMI with the average across multiple units never going above 140% AMI.
 - Deed restricted units match the same for-sale vs. rental ratio as market rate units.

REQUEST

The developer is requesting to modify their SIA to more closely align with the requirements of Ordinance 2022-05, rather than the requirements that were in effect at the time of their Planned Development and Subdivision approval.

A Planned Development is a negotiated agreement. As such, when the Holman Court PD and Major Subdivision went through the public hearing process at both Planning Commission and City Council, changes were made to the original proposal to increase the provision of inclusionary housing units from 100% of the code requirement to 114% of the code requirement.

The reasons supporting an increase to income levels for for-sale inclusionary housing units were detailed by the City during the discussion and subsequent approval of the updated Inclusionary Housing Ordinance 2022-05, approved approximately one year ago. With this proposed SIA amendment, staff has evaluated the proposal to determine if it provides parity with what was approved in the planned development. The charts below outline (1) the PD Approval, (2) how the PD



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Planning	Kathryn Dunleavy - Planner	February 21, 2023

approval would strictly translate using the updated IH Code requirements, and (3) staff recommended modifications to better align with community needs:

(1)

Original Holman Court Planned Development Approval:			
A	Total Units In Development	14	
B	Code Required IH %:	12.50%	
C	Resulting #:	1.75	
D	Approved PD: IH Units Provided	2	Both at 80% AMI
E	% of Provided Units to Required Units:	114%	

(2)

Strict Application of Updated IH Code with PD Approval:			
F	Total Units In Development	14	
G	Code Required IH %:	16.67%	
H	Resulting #:	2.33	
I	(x) 114% for parity with current PD Approval (Line E)	2.67	
J	IH Units Provided:	2	1 unit @ 120% AMI; 1 unit @ 160% AMI
K	Remaining IH Fee-in-lieu:	0.67	+/- \$ 121,000

(3)

STAFF RECOMMENDED ADJUSTMENT:			
L	Total Units In Development	14	
M	Code Required IH %:	16.67%	
N	Resulting #:	2.33	
O	(x) 114% for parity with current PD Approval (Line E)	2.67	
P	IH Units Provided*	2	1 unit @ 120% AMI; 1 unit @ 140% AMI
Q	Remaining IH Fee-in-lieu*	0.33	+/- \$ 61,000
+ allow option for Developer to maintain ownership and rent the units, 1 @ 80% AMI and 1 @ 100% AMI			

* The staff recommended adjustment reduces the maximum AMI of one for-sale unit from 160% to 140% to provide a better value for our workforce households. In exchange, staff recommends reducing the fee-in-lieu to 0.33 from 0.66, which keeps the total IH commitment at 2.33, or 16.67%.



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Planning	Kathryn Dunleavy - Planner	February 21, 2023

Additionally, given the need for rental housing, staff recommends allowing the possibility that the Developer could choose to maintain ownership of one or both units and rent them. If only one unit were a rental, the maximum allowable rent would be for a household earning up to 80% AMI and if both units are rentals, the maximum rent for the second rental would be up to 100% AMI. In the case of one rental and one for-sale, the maximum AMI would be 80% for the rental and 120% for the for-sale unit.

STAFF RECOMMENDATION

Staff recommends approval of the Amended Subdivision Improvements and Development Improvement Agreement for the Holman Court Subdivision.

SUGGESTED MOTION

A council person should make the motion "I move to approve Resolution 2023-09 to approve the Amended Development Improvements; Subdivision Improvements; and Inclusionary Housing Agreement for the Holman Court PD and Major Subdivision."

Attachments:

- Application Materials
- Resolution 2023-09
- Amended SIA for the Holman Court PD and Major Subdivision



GENERAL DEVELOPMENT APPLICATION

448 East First Street, Suite 112

Salida, CO 81201

Phone: 719-530-2626 Fax: 719-539-5271

Email: planning@cityofsalida.com

1. TYPE OF APPLICATION (Check-off as appropriate)

- | | |
|--|---|
| <input type="checkbox"/> Annexation | <input type="checkbox"/> Administrative Review:
(Type) _____ |
| <input type="checkbox"/> Pre-Annexation Agreement | |
| <input type="checkbox"/> Variance | <input checked="" type="checkbox"/> Limited Impact Review:
(Type) <u>SIA/DIA Amendment</u> |
| <input type="checkbox"/> Appeal Application | |
| <input type="checkbox"/> Certificate of Approval | <input type="checkbox"/> Major Impact Review:
(Type) _____ |
| <input type="checkbox"/> Creative Sign Permit | |
| <input type="checkbox"/> Historic Landmark/District | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> License to Encroach | |
| <input type="checkbox"/> Text Amendment to Land Use Code | |
| <input type="checkbox"/> Watershed Protection Permit | |
| <input type="checkbox"/> Conditional Use | |

2. GENERAL DATA (To be completed by the applicant)

A. Applicant Information

Name of Applicant: Holman Court, LLC

Mailing Address: c/o Karp Neu Hanlon, P.C., P.O. Drawer 2030, Glenwood

Telephone Number: 970-384-2004 FAX: 970-945-7336

Email Address: wea@mountainlawfirm.com

Power of Attorney/ Authorized Representative: Wilton E. Anderson
 (Provide a letter authorizing agent to represent you, include representative's name, street and mailing address, telephone number, and FAX)

B. Site Data

Name of Development: Holman Court Major Subdivision

Street Address: Lots 1-7, Holman Court, Salida, CO

Legal Description: Lot _____ Block _____ Subdivision Holman Court (attach description)

Disclosure of Ownership: List all owners' names, mortgages, liens, easements, judgments, contracts and agreements that run with the land. (May be in the form of a current certificate from a title insurance company, deed, ownership and encumbrance report, attorney's opinion, or other documentation acceptable to the City Attorney)

I certify that I have read the application form and that the information and exhibits herewith submitted are true and correct to the best of my knowledge.

Signature of applicant/agent Wilton E. Anderson Date 2/14/23

Signature of property owner _____ Date _____



Wilton E. Anderson
Associate Attorney

Glenwood Springs – Main Office
201 14th Street, Suite 200
P. O. Drawer 2030
Glenwood Springs, CO 81602

Basalt
200 Basalt Center
Suite 200
Basalt, CO 81621

Aspen
0133 Prospector Road
Suite 4102-J
Aspen, CO 81611

wea@mountainlawfirm.com
Direct: 970.384.2004
Office: 970.945.2261
Fax: 970.945.7336
**Direct Mail to Glenwood Springs*

February 14, 2023

City of Salida Community Development Department
c/o Kathryn Dunleavy, Planner
448 E. 1st Street, #112
Salida, CO 81201

Sent via e-mail: kathryn.dunleavy@cityofsalida.com

RE: Application Narrative, Limited Impact Review, Holman Court Subdivision

Dear Ms. Dunleavy:

Our client Holman Court, LLC (“Holman”) seeks approval of proposed amendments to the Development Improvements; Subdivision Improvements; and Inclusionary Housing Agreement recorded in Chaffee County, Colorado on July 9, 2021 at Reception No. 472148 (the “Agreement”), and the Restrictive Housing Covenant and Agreement, dated September 29, 2022 (the “Deed Restriction”). Specifically, Holman requests that the City of Salida (the “City”) approve amendments to the Agreement and the Deed Restriction that: (1) increase the Area Median Income (“AMI”) restriction applicable to the two affordable housing units within Holman Court Subdivision from 80%, to 120% for one unit and 140% for the other unit, to align with Salida Land Use Code § 16-13-60(a); and (2) increase the inclusionary housing unit requirement from 12.5% to 16.7% as provided in the Code § 16-13-20. Applying the 16.7% inclusionary housing requirement to the 14 Unit project will increase Holman’s inclusionary housing obligation from 1.75 to 2.33. As discussed in prior correspondence, Holman intends to pay the 0.33 fee in lieu as an alternative to dedicating a third affordable housing unit.

Increasing the AMI applicable to Holman Court under the Agreement and Restriction is necessary and appropriate because the current 80% AMI restriction drastically limits, and may eliminate, the pool of potential purchasers that qualify and are able to obtain financing. Increasing AMI restriction will more effectively promote the terms, purposes and conditions of the original PD Plan and the City’s inclusionary housing goals. Under the 80% AMI restriction, the maximum sale price for an affordable dwelling unit is estimated to be \$286,000, and an individual’s annual income must be less than \$45,000 to qualify. Generally, an individual making less than \$45,000 per year cannot secure financing necessary to purchase a \$286,000 property. Additionally, Holman is likely to lose more than \$200,000 on each affordable unit based on the maximum sale price and \$500,000 in estimated construction costs per unit. Under the circumstances, the 80% AMI restriction conflicts with the stated purpose of the Inclusionary Housing code provisions because it is not flexible enough for people that live or work in the City to qualify for affordable housing, and it gives little to no incentive for developers to create more affordable housing.

Page 2

To reiterate, Holman respectfully requests that the City approve amending the Agreement and the Deed Restriction to increase the AMI restriction applicable to sale prices and income qualifications to 120% for one affordable unit and 140% for the other affordable unit, and to increase the inclusionary housing requirement to 16.7%. to align with the recent Code amendments. If approved, Holman intends to pay the 0.33 fee in lieu in conjunction with finalizing and recording instruments necessary to document the proposed amendments.

Thank you for your consideration. Please do not hesitate to contact me with any questions or comments you may have regarding this matter.

Very truly yours,

KARP NEU HANLON, P.C.



Wilton E. Anderson

CC: Client; Nina Williams

**CITY OF SALIDA, COLORADO
RESOLUTION NO. 2023-09
(Series 2023)**

**A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF SALIDA, COLORADO
APPROVING AN AMENDMENT TO THE DEVELOPMENT IMPROVEMENT;
SUBDIVISION IMPROVEMENT; AND INCLUSIONARY HOUSING AGREEMENT
FOR THE HOLMAN COURT PLANNED DEVELOPMENT AND MAJOR
SUBDIVISION.**

WHEREAS, the property owners, Holman Court, LLC (“Developer”) are owners of the proposed Holman Court Planned Development and Major Subdivision; and

WHEREAS, on April 6, 2021 the City Council approved Ordinance No. 2021-03 for the Holman Court Planned Development and Major Subdivision which consists of seven (7) lots and 14 units on the 1.72 acres (“Property”); and

WHEREAS, on July 8, 2021 the City Council therefore approved Resolution 2021-23 to execute a Development Improvements; Subdivision Improvements; and Inclusionary Housing Agreement with Developer for the Holman Court Planned Development and Major Subdivision; and

WHEREAS, on March 18, 2022 the City Council approved Ordinance No. 2022-05 amending Section 16-13-20(g) of the Land Use Code, regrading inclusionary housing requirements, and

WHEREAS, approved Ordinance No 2022-05 acknowledges the need to increase the ratio of required deed-restricted units; to provide deed-restricted units across a greater diversity of incomes; and to differentiate income requirements between for-rent and for-sale units, and

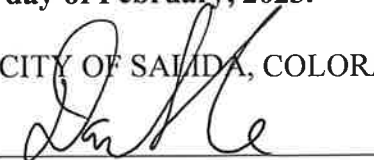
WHEREAS, the Developer is requesting to modify their Agreement with the City to more closely align with the current inclusionary housing requirements of Section 16-13-20(g).

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

The Development Improvements; Subdivision Improvements; and Inclusionary Housing Agreement for the Holman Court Planned Development and Major Subdivision, annexed hereto and incorporated herein as “Exhibit A” is hereby approved.

RESOLVED, APPROVED AND ADOPTED on this 21st day of February, 2023.

CITY OF SALIDA, COLORADO


Dan Shore

(SEAL)

486078

Item 6.

486078 3/7/2023 9:37 AM
2 of 29 RESC R\$153.00 D\$0.00

Lori A Mitchell
Chaffee County Clerk

ATTEST:

Erim Kelly
City Clerk/Deputy City Clerk



486078

486078 3/7/2023 9:37 AM
3 of 29 RESC R\$153.00 D\$0.00

Lori A Mitchell
Chaffee County Clerk

Item 6.

Exhibit A

Development Improvements; Subdivision Improvement; and Inclusionary Housing Agreement

**AMENDED DEVELOPMENT IMPROVEMENTS; SUBDIVISION IMPROVEMENTS;
AND INCLUSIONARY HOUSING AGREEMENT
(Holman Court PD and Major Subdivision)**

THIS AMENDED DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this 21st day of February, 2023, by and between the CITY OF SALIDA, COLORADO, a Colorado statutory city ("City"), and HOLMAN COURT, LLC, a limited liability corporation ("Developer") (each a "Party" and together the "Parties").

Section 1 - Recitals

- 1.1 The Developer contends that it is the fee title owner of certain lands known as Holman Court Planned Development and Major Subdivision (the "Project"), and more particularly described on attached **Exhibit A**, which is incorporated herein by this reference (the "Property"). The Property is located within the boundaries of the City.
- 1.2 The Developer received Planned Development overlay approval and approval for a 7-lot major subdivision for the residential project on a 1.72 acre site zoned R-2 on April 6, 2021 when the City Council adopted Ordinance 2021-03 on second reading.
- 1.3 Section 16-2-60 of the Salida Municipal Code requires that the applicants enter into development and subdivision improvements agreements with the City. Pursuant to Section 16-13-20 (g) of the Land Use Code, residential developments must enter into an inclusionary housing development agreement with the City Council. Such agreements may be part of a development improvements or subdivision improvements agreement. The agreement shall address the total number of units; the number of affordable units provided; standards for parking, density and other development standards for projects meeting the requirements; design standards for the affordable units and any restrictive covenants necessary to carry out the purposes of the inclusionary housing requirements.
- 1.4 Pursuant to Section 16-2-60 of the Land Use Code, the City and the Developer wish to enter into this Agreement to set forth their understanding concerning requirements of the Project including fees; provision of affordable housing, and on-site public improvements to be constructed and installed on the Property in association with the Developer's activities under any building permit issued under the Permit Application, if approved ("Building Permit").
- 1.5 The development plan for the Planned Development was recorded on July 9, 2021 at reception number 472147 of the Chaffee County Recorder's Office.
- 1.6 The City wishes to advance development within municipal boundaries in accordance with the City of Salida Comprehensive Plan adopted April 16, 2013, as it may be amended.

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

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

Section 2 – Definitions

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

- 2.1 “Agreement” means this Development Improvements; Subdivision Improvements; and Inclusionary Housing Agreement. The Recitals in Section 1 above are fully incorporated into this Agreement and made a part hereof by this reference.
- 2.2 “Affordable Housing” means units that are deed restricted to be rented or sold to income levels as further specified and provided for in Section 7.1.
- 2.3 “Building Permit” means any building permit issued under the Permit Application, if approved.
- 2.4 “City” means the City of Salida, a Colorado statutory City.
- 2.5 “City Administrator” means the City Administrator of the City of Salida, and the City Administrator’s designee.
- 2.6 “City Code” means the City of Salida Municipal Code.
- 2.7 “City Council” means the City Council of the City of Salida, Colorado.
- 2.8 “Dark Sky-Compliant” means lighting in compliance with Section 16-8-100 of the Land Use Code and intended to protect the night sky from nuisance glare and stray light from poorly aimed, poorly placed, poorly maintained, or poorly shielded light sources.
- 2.9 “Developer” means HOLMAN COURT, LLC, and its successor(s)-in-interest with respect to the Property.
- 2.10 “Development” means all work on the Property required to transform the Property into the Holman Court Planned Development and Major Subdivision approved by the City by means of Ordinance 2021-03. The term “Development” includes, without limitation, the demolition of existing structures; grading; construction of new structures; and

construction of improvements, including without limitation streets, signage, landscaping, drainage improvements, sidewalks, utilities, and other improvements. When the context so dictates, the verb “Develop” may be used in place of the noun “Development.”

- 2.11 “Drainage Plan” means the drainage system designed for the subdivision in accordance with Section 16-8-60 of the Land Use Code.
- 2.12 “Easement Lands” means all real property to be dedicated to the City hereunder in the form of easements.
- 2.13 “Effective Date” means the date on which City Council adopted a resolution approving the execution of this Agreement. On the Effective Date, this Agreement will become binding upon and enforceable by the City and the Developer.
- 2.14 “Force Majeure” means acts of God, fire, abnormal weather, explosion, riot, war, labor disputes, terrorism, or any other cause beyond the applicable Party’s reasonable control. A lack of money or inability to obtain financing does not constitute Force Majeure.
- 2.15 “Land Use Code” means the City’s Land Use and Development Code, Title 16 of the City Code.
- 2.16 “Native Vegetation” means “native plant” as defined in the Colorado Noxious Weed Act, C.R.S. § 35-5.5-103(15).
- 2.17 “Noxious Weed” takes the meaning given to that term in the Colorado Noxious Weed Act, C.R.S. § 35-5.5-103(16).
- 2.18 “Other Required Improvements Warranty Period” means a period of two years from the date that the City Engineer or the City Engineer’s designee, in accordance with the terms and conditions of paragraph 5.9 below, approves the Required Improvements that are not Public Improvements, and certifies their compliance with approved specifications.
- 2.19 “Performance Guarantee” means cash, a letter of credit, a cash bond, a performance bond, or other security acceptable to the City Attorney to secure the Developer’s construction and installation of the Required Improvements, in an amount equal to 125% of the estimated cost of said Required Improvements.
- 2.20 “Permit Application” means the Developer’s full and complete application for a building permit for any residential units to be constructed on the Property. The Permit Application is on file in the office of the City Administrator and is fully incorporated herein and made a part hereof by this reference.
- 2.21 “Property” means the land that is known as the “Holman Court Planned Development and Major Subdivision” and described in attached **Exhibit A**.

- 2.22 **“Public Improvements”** means Required Improvements constructed and installed by the Developer and dedicated to the City in accordance with this Agreement, including without limitation water mains, water service lines, water laterals, fire hydrants, and other water distribution facilities; irrigation lines and facilities; wastewater collection mains, lines, laterals, and related improvements; drainage facilities in public rights-of-way; handicap ramp improvements; and required curbs, sidewalks, and street improvements. The Required Improvements that are also Public Improvements are identified on attached **Exhibit B**.
- 2.23 **“Public Improvements Warranty Period”** means a period of one year from the date that the City Engineer or City Engineer’s designee, in accordance with the terms and conditions of paragraph 5.9 below, approves the Public Improvements and certifies their compliance with approved specifications.
- 2.24 **“Reimbursable Costs and Fees”** means all fees and costs incurred by the City in connection with the City’s processing and review of the Development Plan, Subdivision Plat, Permit Application and the Building Permit; and the City’s drafting, review, and execution of this Agreement.
- 2.25 **“Required Improvements”** means the public and other improvements that the Developer is required to make to the Property in association with the Developer’s activities under the Permit Application and the Building Permit, including without limitation improvements for roads, signage, landscaping, drainage improvements, sidewalks, and utilities.
- 2.26 **“Subdivision Plat”** means Holman Court major subdivision of the Property approved by Ordinance No. 2021-03.
- 2.27 **“Water Facilities”** means the water main, service line, and all other appurtenances and necessary components of the water distribution system to be constructed by the Developer to extend City water service to the Property.

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

Section 3 – Purpose of Agreement and Binding Effect

- 3.1 **Holman Court Planned Development and Major Subdivision**. The Holman Court Planned Development and Major Subdivision is a residential project consisting of residential uses in conformance with specific requirements stated in Ordinance 2021-03. The Developer intends to develop the project including 14 residential units for rental or sale; of which 2 must be rented or sold as affordable housing.

- 3.2 **Contractual Relationship.** The purpose of this Agreement is to establish a contractual relationship between the City and the Developer with respect to the improvements the Developer is required to make to the Property in association with the Developer's activities under the Permit Application and the Building Permit, and to establish terms and conditions for such improvements. The terms, conditions, and obligations described herein are contractual obligations of the Parties, and the Developer waives any objection to the enforcement of the terms of this Agreement as contractual obligations.
- 3.3 **Binding Agreement.** This Agreement benefits and is binding upon the City, the Developer, and the Developer's successor(s). The Developer's obligations under this Agreement constitute a covenant running with the Property.
- 3.4 **Reservation.** To the extent that the City becomes aware of new information about the Property, and notwithstanding anything to the contrary herein, the City reserves the right to require new terms, conditions, or obligations with respect to the Required Improvements for the Property.

Section 4 – Development of Property

- 4.1 The City agrees to the Development of the Property, and the Developer agrees that it will Develop the Property, only in accordance with the terms and conditions of this Agreement and all requirements of the City Code; Ordinance No. 2021-03; and all other applicable laws and regulations, including without limitation all City Ordinances and regulations, all State statutes and regulations, and all Federal laws and regulations.
- 4.2 The approval of the planned development and major subdivision by the City Council on April 6, 2021 constitutes approval of the site specific development plan and establishment of vested property rights for the project per Section 16-2-20 of the Code. An established vested property right precludes any zoning or land use action by the City or pursuant to an initiated measure which would alter, impair, prevent, diminish, impose a moratorium on development, or otherwise delay the development or use of the property as set forth in the approved site specific development plan.

Section 5 – Terms and Conditions for Development of Property

- 5.1 **Other Applicable Laws and Regulations.** All terms and conditions imposed by this Agreement are in addition to and not in place of any and all requirements of the City Code as it may be amended, including without limitation the Land Use Code, and all other applicable laws and regulations, including all City Ordinances and regulations, all State statutes and regulations, and all Federal laws and regulations.
- 5.2 **Submittals to and Approvals by City Administrator.** Unless this Agreement specifically provides to the contrary, all submittals to the City in connection with this Agreement must be made to the City Administrator. In addition, unless this Agreement specifically provides

to the contrary, the City Administrator and/or City Council must provide all approvals required of the City in connection with this Agreement.

- 5.3 Required Improvements. Attached **Exhibit B**, which is incorporated herein by this reference, provides a detailed list of the Required Improvements for which the Developer is responsible, along with the reasonably estimated costs of those Required Improvements, including both labor and materials. The Required Improvements must be designed, built, and installed in conformity with the City's Standard Specifications for Construction, as those Standard Specifications may be amended, and must be designed, approved, and stamped by a registered professional engineer retained by the Developer. Before the Developer's commencement of construction or installation of the Required Improvements, the City Engineer or City Engineer's designee must review and approve the drawings and plans for such improvements. In addition to warranting the Required Improvements as described in paragraph 5.9 below, the Developer shall perform routine maintenance on the Public Improvements for the duration of the Public Improvements Warranty Period and on the other Required Improvements for the duration of the Other Required Improvements Warranty Period.
- 5.4 Construction Standards. The Developer shall ensure that all construction is performed in accordance with this Agreement and with the City's rules, regulations, requirements, criteria, and standards governing such construction, as they may be amended.
- 5.5 Observation of Development and Inspection of Required Improvements. The City may observe all Development on the Property, and may inspect and test each component of the Required Improvements. Consistent with Section 16-2-20(r) of the Land Use Code, the Developer shall reimburse the City for all costs associated with the City's observation of Development on the Property and inspection of the Required Improvements, and the City shall not give its written approval of the Required Improvements, as described in paragraph 5.7 below, until such costs have been reimbursed. Such observation and inspection may occur at any point before, during, or upon completion of construction.
- 5.6 City Engineer's Written Approval of Required Improvements. At the Developer's request, the City Engineer or the City Engineer's designee shall inspect the Required Improvements to ascertain whether they have been completed in conformity with the approved plans and specifications. The City Engineer or the City Engineer's designee shall confirm in writing the date(s) on which (i) individual Required Improvements have been completed in conformity with the approved plans and specifications, and (ii) all Public Improvements have been completed in conformity with the approved plans and specifications. The Developer shall make all corrections necessary to bring the Required Improvements into conformity with the approved plans and specifications.
- 5.7 Performance Guarantee. Before commencement of construction under the Development Plan or Subdivision Plat, as approved, and the Building Permit, if issued, the Developer shall furnish the City with an effective Performance Guarantee in the amount of 125% of

the total estimated cost of the Required Improvements, as shown on **Exhibit B**. The total estimated cost of the Required Improvements, including both labor and materials, is \$383,147.66; however, that also accounts for a private street which will not be owned by the City. Therefore, the Performance Guarantee must be in an amount equal to \$383,147.66.

- 5.7.1 The Performance Guarantee must provide for payment to the City upon demand, based upon the City's written certified statement that the Developer has failed to construct, install, maintain, or repair, as required by this Agreement, any of the Required Improvements.
- 5.7.2 The Developer shall extend or replace the Performance Guarantee at least thirty days prior to its expiration. In the event that the Performance Guarantee expires, or the entity issuing the Performance Guarantee becomes non-qualifying, or the City reasonably determines that the cost of the Required Improvements is greater than the amount of the Performance Guarantee, then the City shall give written notice to the Developer of the deficiency, and within thirty days of receipt of such notice, the Developer shall provide the City an increased or substituted Performance Guarantee that meets the requirements of this paragraph 5.7 and the Land Use Code.
- 5.7.3 Upon completion of portions of the Required Improvements ("Completed Improvements"), the Developer may apply to the City for a release of part of the Performance Guarantee. Any such application must include submittal of as-built drawings and a detailed cost breakdown of the Completed Improvements. Upon the City Engineer's inspection and written approval of the Completed Improvements in accordance with paragraph 5.9 below, the City Council may authorize a release of the Performance Guarantee in the amount of 75% of the documented cost of the Completed Improvements.
- 5.7.4 Upon the City Engineer's inspection and written approval of all Required Improvements in accordance with paragraph 5.9 below, the City Council shall authorize a release of the Performance Guarantee in the amount of 90% of the total estimated cost of all Required Improvements, as shown on **Exhibit B**.
- 5.7.5 Upon the expiration of both the Public Improvements Warranty Period and the Other Required Improvements Warranty Period described in paragraph 5.9 below, the Developer's correction of all defects discovered during such periods, and the City's final acceptance of the Public Improvements in accordance with paragraph 5.9 below, the City Council shall authorize a full release of the Performance Guarantee.
- 5.7.6 Failure to provide or maintain the Performance Guarantee in compliance with this paragraph 5.5 will constitute an event of default by the Developer under this Agreement. Such default will be subject to the remedies, terms, and conditions

listed in Section 8 below, including without limitation the City's suspension of all activities, approvals, and permitting related to the Subdivision Plats or Development Plan.

- 5.8 Conveyance of Public Improvements. Within twenty-eight days of the City's final acceptance of the Public Improvements in accordance with paragraph 5.9 below, the Developer shall, at no cost to the City, do the following:
- 5.8.1 Execute and deliver to the City a good and sufficient bill of sale describing all of the Public Improvements constructed, connected, and installed by the Developer pursuant to this Agreement, together with all personal property relating to the Public Improvements ("Bill of Sale"). In the Bill of Sale, the Developer shall warrant the conveyance of the Public Improvements as free from any claim, demand, security interest, lien, or encumbrance whatsoever. Pursuant to Section 16-2-60(j) of the Land Use Code, acceptance of the Bill of Sale must be authorized by City Council.
- 5.8.2 Execute and deliver to the City a good and sufficient General Warranty Deed conveying to the City, free and clear of liens and encumbrances, all easements necessary for the operation and maintenance of the Public Improvements to the extent the Public Improvements are not constructed within dedicated easements or rights-of-way as shown on the Holman Court subdivision plat recorded at Reception No. _____.
- 5.8.3 Deliver to the City all engineering designs, current surveys, current field surveys, and as-built drawings and operation manuals for the Public Improvements and for all improvements made for utilities, or make reasonable provision for the same to be delivered to the City. The legal description of all utility service lines must be prepared by a registered land surveyor at the Developer's sole expense.
- 5.9 Warranty. The Developer shall warrant the Public Improvements for one year from the date that the City Engineer, in accordance with paragraph 5.10 below, approves the Public Improvements and certifies their compliance with approved specifications ("Public Improvements Warranty Period"). The Developer shall warrant all other Required Improvements for a period of two years from the date that the Director of Public Works, in accordance with paragraph 5.10 below, approves the other Required Improvements and certifies their compliance with approved specifications ("Other Required Improvements Warranty Period"). In the event of any defect in workmanship or quality during the Public Improvements Warranty Period or the Other Required Improvements Warranty Period, the Developer shall correct the defect in workmanship or material. In the event that any corrective work is performed by the Developer during either Warranty Period, the warranty on said corrected work will be extended for one year from the date on which it is completed. Should the Developer default in its obligation to correct any defect in workmanship or material during either the Public Improvements Warranty Period or the Other Required

Improvements Warranty Period, the City will be entitled to draw on the Performance Guarantee and/or to pursue any other remedy described in Section 8 below.

- 5.10 Final Acceptance of Public Improvements. Upon expiration of the Public Improvements Warranty Period, and provided that any breaches of warranty have been cured and any defects in workmanship and/or materials have been corrected, the City shall issue its final written acceptance of the Public Improvements. Thereafter, the City shall maintain such Public Improvements.
- 5.11 Inspection Distinguished from Approval. Inspection, acquiescence, and/or verbal approval by any City official of construction on the Property, at any particular time, will not constitute the City's approval of the Required Improvements as required hereunder. Such written approval will be given by the City only in accordance with paragraph 5.10 above.
- 5.12 Revegetation. Any area disturbed by construction must be promptly revegetated with Native Vegetation following completion of such work unless a building permit application has been requested for such area. In addition, the Developer shall control all Noxious Weeds within such area to the reasonable satisfaction of the City.
- 5.13 Local Utilities. In addition to the Required Improvements, the Developer shall install service lines for both on-site and off-site local utilities necessary to serve the Property, including without limitation service lines for telephone, electricity, natural gas, cable television, and street lights. The Developer shall install such service lines underground to the maximum extent feasible. If such lines are placed in a street or alley, they must be in place prior to surfacing.
- 5.14 Public Use Dedication. Consistent with Section 16-6-140 of the Land Use Code and Condition #12 of Exhibit C of Ordinance 2021-03, and at the Developer's election, the Developer shall pay the fee per residential unit, applicable at time of building permit submittal, in lieu of dedication of land for Fair Contributions for Public School Sites. Consistent with Section 16-7-40(c)(2) of the Land Use Code and Condition #12 of Exhibit C of Ordinance 2021-03, and at the Developer's election, the Developer shall pay the fee per residential unit, applicable at the time of building permit submittal, in lieu of dedication of land for parks, trails, and open space.
- 5.15 Landscape Improvements. As shown on **Exhibit B**, certain of the Required Improvements are landscape improvements. The Developer shall construct all landscape improvements in accordance with the requirements of Section 16-8-90 of the Land Use Code. The Developer or homeowner's association shall be responsible for the Other Required Improvements Warranty Period.
- 5.15.1 Each lot shall have, at minimum, one tree located between the private drive and the front of the proposed units. In addition, the applicant will provide as many

trees within the common open spaces as will result in a total of at least 14 across the entire development site.

- 5.15.2 The applicant shall erect a visible barrier/fence [with entry point(s)] around the perimeter of the common open space area and provide reasonable facilities such as picnic table(s), bench(es), children's playground equipment, etc., to encourage the area's use.
- 5.16 Drainage Improvements. As shown on **Exhibit B**, certain of the Required Improvements are drainage improvements.
- 5.16.1 In accordance with Section 16-8-60 of the Land Use Code, the Developer shall retain a registered professional engineer to prepare a drainage study of the Property and to design a drainage system according to generally accepted storm drainage practices. The drainage plan must conform to the City's flood control regulations, as given in Article XI of the Land Use Code, and must be reviewed and approved in writing by the City Engineer before commencement of construction activities, including overlot grading.
- 5.16.2 All site drainage, including drainage from roof drains, must be properly detained and diverted to the drainage system approved in the drainage plan before any certificate of occupancy will be issued for the Property.
- 5.16.3 All drainage improvements within public rights-of-way will be dedicated to the City as Public Improvements. All drainage improvements on private property will be maintained by the Developer, subject to easements to allow the City access in the event that the Developer fails to adequately maintain the drainage facilities.
- 5.17 Slope Stabilization. Any slope stabilization work must be performed in strict compliance with applicable law, including City Ordinances and regulations, State statutes and regulations, and Federal law and regulations. The City will determine on a case-by-case basis whether additional requirements apply to slope stabilization work.
- 5.18 Blasting and Excavation. Any removal of rock or other materials from the Property by blasting, excavation, or other means must be performed in strict compliance with applicable law, including City Ordinances and regulations, State statutes and regulations, and Federal law and regulations. The City will determine on a case-by-case basis whether additional requirements apply to blasting and excavation work.

- 5.16 Trash, Debris, and Erosion. During construction, the Developer shall take all necessary steps to control trash, debris, and erosion (whether from wind or water) on the Property. The Developer also shall take all necessary steps to prevent the transfer of mud or debris from construction sites on the Property onto public rights-of-way. If the City reasonably determines and gives the Developer written notice that such trash, debris, or erosion causes or is likely to cause damage or injury, or creates a nuisance, the Developer shall correct any actual or potential damage or injury and/or abate such nuisance within five working days of receiving such written notice. When, in the opinion of the City Administrator or Chief of Police, a nuisance constitutes an immediate and serious danger to the public health, safety, or welfare, or in the case of any nuisance in or upon any street or other public way or public ground in the City, the City has authority to summarily abate the nuisance without notice of any kind consistent with Section 7-1-60 of the City Code. Nothing in this paragraph limits or affects the remedies the City may pursue under Section 8 of this Agreement.
- 5.19 Compliance with Environmental Laws. During construction, the Developer shall comply with all Federal and State environmental protection and anti-pollution laws, rules, regulations, orders, or requirements, including solid waste requirements; and shall comply with all requirements pertaining to the disposal or existence of any hazardous substances, pollutants, or contaminants as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and regulations promulgated thereunder.
- 5.20 Fees. The Developer shall pay to the City the fees described below at the time set forth below:
- 5.20.1 Developer's Reimbursement of Processing Fees. The Developer shall reimburse the City for all fees and actual costs incurred by the City in connection with the City's processing and review of the Permit Application and the Building Permit; and the City's drafting, review, and execution of this Agreement ("Reimbursable Costs and Fees"). The Reimbursable Costs and Fees include but are not limited to the City's costs incurred for engineering, surveying, and legal services, including the services of outside City consultants and/or counsel; recording fees; printing and publication costs; and any and all other reasonable costs incurred by the City.
- 5.18.2 Work by City staff other than City Attorney. Reimbursable Costs and Fees attributable to work completed by City staff, not including the City Attorney, will be determined based on the fee schedule attached to the City's then-effective Open Records Policy. The fee schedule attached to the Open Records Policy in effect as of the date of this Agreement is attached as **Exhibit D**.
- 5.18.3 Work by City Attorney. Reimbursable Costs and Fees attributable to work completed by the City Attorney or by the City's outside consultants and/or counsel will be equal to the actual costs and fees billed to and paid by the City for that work.

5.18.4 Amounts due and unpaid. Interest will be imposed at rate of 1.5% per month on all balances not paid to the City within 30 days of the effective date of the City's invoicing of the Developer for the Reimbursable Costs and Fees, with that effective date determined in accordance with the notice provisions of paragraph 11.6 below. In addition to any and all remedies available to the City and in the event the City is forced to pursue collection of any amounts due and unpaid under this provision or under this Agreement, the City shall be entitled to collect attorneys' fees and costs incurred in said collection efforts in addition to the amount due and unpaid.

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

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

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

Section 6 – Construction Schedule

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

6.2 Site Restoration. If the Developer fails to commence or complete construction in accordance with the Construction Schedule, the Developer nonetheless shall complete all site restoration work necessary to protect the health, safety, and welfare of the City's residents and the aesthetic integrity of the Property ("Site Restoration Improvements"). Site Restoration Improvements will include, at minimum, all excavation reclamation, slope stabilization, and landscaping improvements identified as Required Improvements on **Exhibit B**.

- 6.3 **Force Majeure.** If the Developer fails to commence or complete construction in accordance with the Construction Schedule due to Force Majeure, the City shall extend the time for completion by a reasonable period. In such an event, the City and the Developer shall amend the Construction Schedule in writing to memorialize such extension(s).

Section 7 – Inclusionary Housing

- 7.1 **Agreement to Provide Affordable Housing Consistent with Article XIII of the Land Use Code.** Developer hereby agrees to construct and deed restrict two (2) dwelling units. If such dwelling units are for-rent, one rental unit shall be affordable to households earning 80% or less of the Area Median Income, and one rental unit shall be affordable to households earning 100% or less of the Area Median Income. If such dwelling units are for-sale, one for-sale unit shall be affordable to households earning 120% or less of the Area Median Income, and one for-sale unit shall be affordable to households earning 140% or less of the Area Median Income for Chaffee County as defined by the Colorado Housing and Finance Authority. If one unit is for-sale and one unit is for rent, the for-sale unit shall be affordable to households earning 120% or less of the Area Median Income and the rental unit shall be affordable to households earning 80% or less of the Area Median Income. In addition to constructing two (2) deed restricted units, developer hereby agrees to contribute a fee-in-lieu equivalent to 0.33 of a unit. Development of the affordable housing units shall be according to the additional standards specified below:
- 7.1.1. Both affordable units shall be built and receive certificate of occupancy (CO) prior to the tenth (10th) unit on the site receiving certificate of occupancy.
- 7.1.2. The affordable units shall be comparable to the market rate housing units in exterior finish and design by meeting the architectural standards for the subdivision and any required architectural design approval required by the subdivision's design guidelines.
- 7.1.3 Developer agrees to record a deed restriction on the two affordable units that meets the requirements of Sections 16-13-20(a)(1) and (2) and (c) through (f) which defines income eligibility; permanency of restriction; comparable design of units; and good faith marketing requirements as agreed to by Parties.
- 7.1.4. The Chaffee Housing Authority (CHA) shall approve the system to be employed to determine eligibility and priority of buyers/tenants. In the case that the CHA is unable to review and approve such a system, such responsibility shall fall to the City or the City's designee. Developer shall make annual reports to the CHA or City regarding any changes to the pricing of the affordable units that occurs with changes to the Colorado Housing and Finance Authority County Income and Rent Tables for Chaffee County.

7.1.5. Occupants of any deed-restricted affordable units within the homeowners' association shall not be responsible for any assessments nor dues beyond those fairly-priced specifically for utilities, trash services, and the like. Should the Developer or HOA desire, they may renegotiate the condition with the Chaffee Housing Authority based upon the Authority's guidelines for such dues.

7.1.6. For any affordable unit(s) required to be built through the PD, the Developer shall pay the applicable Inclusionary Housing fee-in-lieu for each unit built prior to receiving certificate of occupancy for those units. Once the required affordable unit(s) has received certificate of occupancy, those fees-in-lieu shall be returned to the Developer.

Section 8 – Default by Developer and City's Remedies

- 8.1 City's Remedies on Developer's Default. In the event of the Developer's default with respect to any term or condition of this Agreement, the City may take any action necessary or appropriate to enforce its rights, including without limitation any or all of the following: The refusal to issue any further building permits or a certificate of occupancy to the Developer. The revocation of any building permit previously issued and under which construction directly related to such building permit has not commenced; provided, however, that this remedy will not apply to a third party. Suspension of all further activities, approvals, and permitting related to the Permit Application and the Building Permit. A demand that the Performance Guarantee be paid or honored. Any other remedy available in equity or at law.
- 8.2 Notice of Default. Pursuant to Section 16-2-60(o) of the Land Use Code, before taking remedial action hereunder, the City shall give written notice to the Developer of the nature of the default and an opportunity to be heard before the City Council concerning such default. If the default has not been cured within thirty days of receipt of the notice or the date of any hearing before the City Council, whichever is later, the City will consider whether the Developer has undertaken reasonable steps to timely complete the cure if additional time is required.
- 8.3 Immediate Damages on Developer's Default. The Developer recognizes that the City may suffer immediate damages from a default. In the event of such immediate damages resulting from the Developer's default with respect to any term or condition of this Agreement, the City may seek an injunction to enforce its rights hereunder.
- 8.4 Jurisdiction and Venue. The District Court of the County of Chaffee, State of Colorado, will have exclusive jurisdiction to resolve any dispute over this Agreement.
- 8.5 Waiver. Any waiver by the City of one or more terms of this Agreement will not constitute, and is not to be construed as constituting, a waiver of other terms. A waiver of any provision of this Agreement in any one instance will constitute, and is not to be construed as constituting, a waiver of such provision in other instances.

- 8.6 Cumulative Remedies. Each remedy provided for in this Agreement is cumulative and is in addition to every other remedy provided for in this Agreement or otherwise existing at law or in equity.

Section 9 – Indemnification and Release

- 9.1 Release of Liability. The Developer acknowledges that the City cannot be legally bound by the representations of any of its officers or agents or their designees except in accordance with the City Code, City Ordinances, and the laws of the State of Colorado. The Developer further acknowledges that it acts at its own risk with respect to relying or acting upon any representation or undertaking by the City or its officers or agents or their designees. Accordingly, the Developer expressly waives and releases any current or future claims related to or arising from any such representation or undertaking by the City or its officers or agents or their designees.

9.2 Indemnification.

- 9.2.1 The Developer shall indemnify and hold harmless the City, and the City's officers, agents, employees, and their designees, from and against any and all claims, damages, losses, and expenses, including but not limited to attorneys' fees and costs, arising from or in connection with the following: (a) the City's approval of the Planned Development or the Subdivision Plats or the City's issuance of the Building Permit if the Permit Application is approved; (b) acts or omissions by the Developer, its officers, employees, agents, consultants, contractors, or subcontractors in connection with the Planned Development or the Subdivision Plats or Permit Application, if it is approved, and the Building Permit, if it is issued; (c) the City's required disposal of hazardous substances, pollutants, or contaminants; required cleanup necessitated by leaking underground storage tanks, excavation, and/or backfill of hazardous substances, pollutants, or contaminants; or environmental cleanup responsibilities of any nature whatsoever on, of, or related to the Easement Lands; provided that such disposal or cleanup obligations do not arise from any hazardous substance, pollutant, or contaminant generated or deposited by the City upon the Easement Lands; or (d) any other item contained in this Agreement.
- 9.2.2 The Developer shall reimburse the City for all fees, expenses, and costs, including attorneys' fees and costs, incurred in any action brought against the City as a result of the City's approval of the Planned Development or Subdivision Plat, or issuance of the Building Permit if the Permit Application is approved; and shall reimburse the City for all fees, expenses, and costs, including attorneys' fees and costs, associated with any referendum election, review of petition for referendum, protest, or any other proceedings to challenge the City's approval of the Planned Development or Subdivision Plats, or issuance of the Building Permit if the Permit Application is approved. Nothing in this Agreement obligates or compels the City to proceed with any action or referendum position.

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

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

Section 10 – Representations and Warranties

10.1 **Developer's Representations and Warranties.** The Developer hereby represents and warrants to the City that the following are true and correct as of the date of the Developer's execution of this Agreement and will be true and correct as of the Effective Date:

10.1.1. **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.

10.1.2 **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.

10.1.3 **No litigation or adverse condition.** To the best of the Developer's knowledge, there is no pending or threatened litigation, administrative proceeding, or other claim pending or threatened against the Developer that, if decided or determined adversely, would have a material adverse effect on the ability of the Developer to meet its obligations under this Agreement; nor is there any fact or condition of the Property known to the Developer that may have a material adverse effect on the Developer's ability to complete construction on the Property as contemplated under the Permit Application.

10.1.4 **Compliance with environmental laws and regulations.** To the best of the Developer's knowledge, all Easement Lands to be dedicated to the City hereunder are in compliance with all Federal and State environmental protection and anti-pollution laws, rules, regulations, orders, or requirements, including solid waste requirements; and all such dedicated property is in compliance with all requirements pertaining to the disposal or existence of any hazardous substances, pollutants, or contaminants as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and regulations promulgated thereunder.

10.1.5 **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.

- 10.2 City's Representations and Warranties. The City hereby represents and warrants to the Developer that the following are true and correct as of the date of the City's execution of this Agreement and will be true and correct as of the Effective Date:
- 10.2.1 Authority. Upon execution, this Agreement will have been duly authorized by City Council as a legal, valid, and binding obligation of the City, and is enforceable as to the City in accordance with its terms.
- 10.2.2 Authorized signatory. The person executing this Agreement on behalf of the City is duly authorized and empowered to execute this Agreement on behalf of the City.
- 10.2.3 No adverse condition. To the best of the City's knowledge, there is no fact or condition of the Property known to the City that may have a material adverse effect on the Developer's ability to develop the Property as contemplated under the Development Plan or as proposed in the Subdivision Plat.
- 10.2.4 No conflict. Neither the execution of this Agreement nor the consummation of the transaction contemplated by this Agreement will constitute a breach under any contract, agreement, or obligation to which the City is a party or by which the City is bound or affected.

Section 11– General Provisions

- 11.1 Waiver of Defects. In executing this Agreement, the Developer waives all objections it may have to any defects in the form or execution of this Agreement concerning the power of the City to impose conditions on the Developer as set forth herein. The Developer further waives all objections it may have to the procedure, substance, and form of the ordinances or resolutions of City Council adopting this Agreement.
- 11.2 Final Agreement. This Agreement supersedes and controls all prior written and oral agreements and representations of the Parties with respect to a Development Improvements Agreement; Subdivision Improvements Agreement; and Inclusionary Housing Agreement associated with development of the Property, and is the total integrated agreement between the Parties with respect to that subject.
- 11.3 Modifications. This Agreement may be modified only by a subsequent written agreement executed by both Parties.
- 11.4 Voluntary Agreement. The Developer agrees to comply with all of the terms and conditions of this Agreement on a voluntary and contractual basis.
- 11.5 Survival. The City's and the Developer's representations, covenants, warranties, and

obligations set forth herein, except as they may be fully performed before or on the Effective Date, will survive the Effective Date and are enforceable at law or in equity.

- 11.6 Notice. All notices required under this Agreement must be in writing and must be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the Parties as set forth below. All notices so given will be considered effective immediately upon hand-delivery, and seventy-two hours after deposit in the United States Mail with the proper address as set forth below. Either Party by notice so given may change the address to which future notices are to be sent.

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

Notice to the Developer: Holman Court, LLC
P.O. Box 691
Salida, CO 81201

- 11.7 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.
- 11.8 Recording. The City shall record this Agreement with the Clerk and Recorder of Chaffee County, Colorado, at the Developer's expense
- 11.9 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, confers or is intended to confer any rights or remedies whatsoever upon any person or entity other than the City, the Developer, and the Developer's successor(s).
- 11.10 No Waiver of Immunity. Nothing in this Agreement, express or implied, waives or is intended to waive the City's immunity under Colorado State law, including without limitation the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 through -120.
- 11.11 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.
- 11.12 Subject to Annual Appropriation. Any financial obligation of the City arising under this Agreement and payable after the current fiscal year is contingent upon funds for that

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486078
22 of 29

3/7/2023 9:37 AM
RESC R\$153.00 D\$0.00

Lori A Mitchell
Chaffee County Clerk

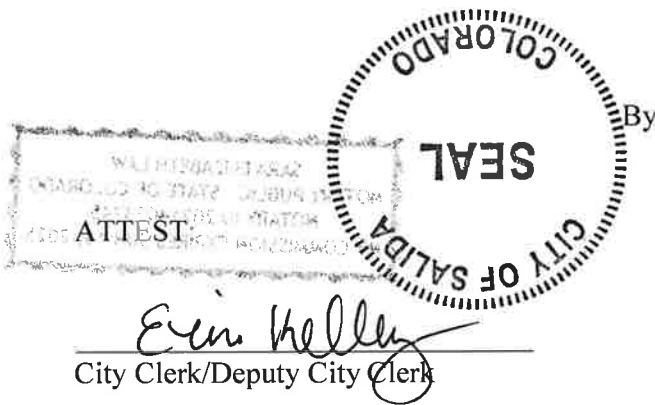
Item 6.

purpose being annually appropriated, budgeted, and otherwise made available by the City Council in its discretion.

11.13 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.

11.14 Counterparts. This Agreement may be executed in multiple counterparts, all of which taken together constitute one and the same document.

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



CITY OF SALIDA, COLORADO

By [Signature]
Mayor

[Signature]
City Clerk/Deputy City Clerk

STATE OF COLORADO)
) ss.
COUNTY OF CHAFFEE)

Acknowledged, subscribed, and sworn to before me this 21st day of February 2023
by Dan Shore, 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: June 18, 2025.



[Signature]
Notary Public

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486078 3/7/2023 9:37 AM
23 of 29 RESC R\$153.00 D\$0.00

Lori A Mitchell
Chaffee County Clerk

Item 6.

DEVELOPER:



David Larochelle or Mark Lee
Holman Court, LLC

STATE OF COLORADO)
) ss.
COUNTY OF CHAFFEE)

Acknowledged, subscribed, and sworn to before me this 2nd day of March 2023 by

 David Larochelle

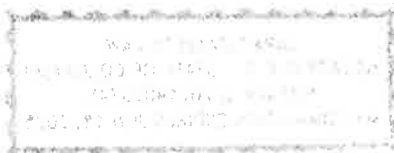
WITNESS my hand and official seal.

My Commission expires: June 18, 2025.





Notary Public



486078

Item 6.

486078
24 of 29

3/7/2023 9:37 AM
RESC R\$153.00 D\$0.00

Lori A Mitchell
Chaffee County Clerk

Exhibit A

Legal Description

LOT 2 AMBROSE SUBDIVISION, PER PLAT RECORDED MAY 10, 2005 AS RECEPTION NO. 350696, CITY OF
SALIDA, CHAFFEE COUNTY, COLORADO

486078

Item 6.

486078
25 of 29

3/7/2023 9:37 AM
RESC R\$153.00 D\$0.00

Lori A Mitchell
Chaffee County Clerk

Exhibit B

Cost Estimates for Public Improvements

Y & K EXCAVATION, INC

PO BOX 507
SALIDA, CO. 81201

Phone # 7195394108
Fax # 719-539-2878

YKEXCAVATION@YAHOO.COM

ESTIMATE

DATE	ESTIMATE #
2/4/2021	21-12

NAME / ADDRESS
DAVID LAROCHELLE

PROJECT

DESCRIPTION	QTY	RATE	Total
HOLMAN AVE. SUBDIVISION BASED OFF OF 80% PLANS BY W.E. WALKER ENGINEERING DATED 12/18/2020 SEWER			
1. SEWER MAIN-FURNISH AND INSTALL 8" SEWER MAIN-LF	620	65.00	40,300.00
2. SEWER LINE-FURNISH AND INSTALL 4" SEWER SERVICES-EA	16	1,800.00	28,800.00
3. MANHOLES-FURNISH AND INSTALL MANHOLES-EA	3	5,500.00	16,500.00
4. SEWER-CONNECT TO EXISTING SEWER-EA	1	5,500.00	5,500.00
SUBTOTAL			91,100.00
WATER			
5. WATER MAIN-FURNISH AND INSTALL 8" WATER MAIN-LF	640	60.00	38,400.00
6. WATER SERVICE-FURNISH AND INSTALL 1" SERVICES-EA	7	4,850.00	33,950.00
7. WET TAP-EA	1	6,500.00	6,500.00
8. FIRE HYDRANT-FURNISH AND INSTALL FIRE HYDRANT-EA	2	8,000.00	16,000.00
SUBTOTAL			94,850.00

Y & K EXCAVATION, INC

PO BOX 507
SALIDA, CO. 81201

Phone # 7195394108
Fax # 719-539-2878

YKEXCAVATION@YAHOO.COM

ESTIMATE

DATE	ESTIMATE #
2/4/2021	21-12

486078

NAME / ADDRESS
DAVID LAROCHELLE

486078 3/7/2023 9:37 AM
26 of 29 RESC R\$153.00 D\$0.00

Lori A Mitchell
Chaffee County Clerk

PROJECT

DESCRIPTION	QTY	RATE	Total
STREETS			
9. INSTALL 4" CLASS 6/ SUBGRADE UNDER STREET-SY	2,266	21.50	48,719.00
10. ASPHALT WORK-3" ASPHALT PAVING-SY	2,266	20.75	47,019.50
11. ACCESS EASEMENT (ALLEY)-SY BY OTHERS	0	0.00	0.00
12. CURB AND GUTTER-INSTALL CURB AND GUTTER-LF	1,200	38.00	45,600.00
13. SIDEWALK-INSTALL 4' SIDEWALK-SY	250	56.50	14,125.00
14. ADA RAMPS-FURNISH AND INSTALL ADA CURB RAMP (TYPE 1)-EA	5	1,800.00	9,000.00
15. TYPE 1 DRIVEWAY-EA	1	1,500.00	1,500.00
16. CROSSPAN-FURNISH AND INSTALL 2' CROSSPAN-LF	48	9.67	464.16
SUBTOTAL			166,427.66
MISC. CONSTRUCTION COST			
17. EROSION CONTROL-STORMWATER MANAGEMENT PLAN, PERMITS, AND INSPECTIONS-LS	1	7,200.00	7,200.00
18. CONSTRUCTION SURVEYING-LS	1	5,800.00	5,800.00

TOTAL

Y & K EXCAVATION, INC

PO BOX 507
SALIDA, CO. 81201

Phone # 7195394108
Fax # 719-539-2878

YKEXCAVATION@YAHOO.COM

ESTIMATE

DATE	ESTIMATE #
2/4/2021	21-12

NAME / ADDRESS

DAVID LAROCHELLE

486078
27 of 29

3/7/2023 9:37 AM
RESC R\$153.00 D\$0.00

486078

Lori A Mitchell
Chaffee County Clerk

PROJECT

DESCRIPTION	QTY	RATE	Total
19. TRAFFIC CONTROL CHARGE-LS	1	2,500.00	2,500.00
20. POND WITH BOULDERS-LS	1	9,270.00	9,270.00
21. BONDING FEES-LS	1	6,000.00	6,000.00
SUBTOTAL			30,770.00

IF PROPOSAL IS ACCEPTED, PLEASE SIGN AND RETURN. A SIGNATURE IS
REQUIRED BEFORE WORK CAN BEGIN.

TOTAL

\$383,147.66

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486078
28 of 29

3/7/2023 9:37 AM
RESC R\$153.00 D\$0.00

Lori A Mitchell
Chaffee County Clerk

Item 6.

Exhibit C

Time Schedule for Public Improvements

	Activity Name	Duration (Days)	Start Date	Finish Date
1	Site Prep. Demo and Grub	7.00	6/14/21	6/22/21
2	Rough Grading	14.00	6/22/21	7/9/21
3	Erosion Control BMP's	3.00	6/28/21	6/30/21
4	Rough Grade Private Road	14.00	7/8/21	7/27/21
5	Water Main	30.00	7/9/21	8/19/21
6	Fireline and Hydrants	30.00	7/12/21	8/20/21
7	Sewer and Manholes	30.00	7/20/21	8/30/21
8	Water Meter Service Lines	14.00	8/30/21	9/16/21
9	Utility Sweeps	10.00	9/1/21	9/14/21
10	Electrical Underground (Excel)	14.00	9/1/21	9/20/21
11	Gas Underground (Atmos)	14.00	9/1/21	9/20/21
12	Utility Sweeps to Lots	14.00	9/20/21	10/7/21
13	Curb and Gutter	14.00	10/7/21	10/26/21
14	Drainage and Retention Ponds	7.00	10/21/21	10/29/21
15	Sidewalks and Handicap Ramps	14.00	10/26/21	11/12/21
16	Private Road Base and Compact	7.00	10/26/21	11/3/21
17	Alley Base and Compact	7.00	10/26/21	11/3/21
18	Asphalt and Pave Private Road	7.00	11/2/21	11/10/21
19	Final grade and landscaping	10.00	10/26/21	11/8/21

Open Records Policy – Exhibit D
Fee Schedule

Charges must be paid before service is provided.

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

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

The first hour of research and retrieval service is free.

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

City Attorney \$30/hr

Assistant City Attorney \$30/hr

Information Services \$30/hr

Department Heads \$30/hr

Supervisor \$30/hr

Non-Supervisory Personnel \$20/hr

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

DVD - \$10

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

HOLMAN COURT

PLANNED DEVELOPMENT (PD)

SALIDA, COLORADO

CERTIFICATE OF DEDICATION AND OWNERSHIP

KNOW ALL PERSONS BY THESE PRESENTS THAT HOLMAN COURT, LLC, IS THE FEE OWNER OF THE FOLLOWING DESCRIBED PROPERTY:

LOT 2 AMBROSE SUBDIVISION, PER PLAT RECORDED MAY 10, 2005 AS RECEPTION NO. 350696, CITY OF SALIDA, CHAFFEE COUNTY, COLORADO

HAS LAID-OUT THE SAME INTO THE PLANNED DEVELOPMENT, AS SHOWN ON THIS DEVELOPMENT PLAN UNDER THE NAME AND STYLE OF:

HOLMAN COURT PLANNED DEVELOPMENT
IN THE
CITY OF SALIDA
CHAFFEE COUNTY, COLORADO

IN WITNESS WHEREOF THE UNDERSIGNED HAS CAUSED THESE PRESENTS TO BE EXECUTED THIS 6 DAY OF July, 2021.

BY: David LaRochelle (HOLMAN COURT, LLC REPRESENTATIVE)

COUNTY OF CHAFFEE)
STATE OF COLORADO) SS.

THE FORGOING DEDICATION WAS ACKNOWLEDGED BEFORE ME THIS 6 DAY OF July, 2021, BY David LaRochelle (HOLMAN COURT, LLC REPRESENTATIVE) WITNESS MY HAND AND SEAL.

MY COMMISSION EXPIRES April 15, 2025.

Krist A. Jefferson
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20094011745
MY COMMISSION EXPIRES April 15, 2025

CERTIFICATION OF TITLE

I, Beth Ekins, A LICENSED TITLE INSURANCE AGENT IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT I HAVE EXAMINED THE TITLE TO THE PROPERTY HEREBY DEDICATED AND AS SHOWN AND DESCRIBED ON THIS PLAT AND FOUND TITLE VESTED IN HOLMAN COURT, LLC, FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES EXCEPT AS LISTED BELOW:

Effective July 2, 2021 at 7:45 am - Deed & Trust # 4463115, Ass'n Sub # 4463116

DATED THIS 6th DAY OF July, 2021.

Beth Ekins
TITLE AGENT

LAND SURVEYOR'S CERTIFICATE

I, SYDNEY A. SCHIEREN, A REGISTERED LAND SURVEYOR LICENSED TO PRACTICE IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THIS LAND SURVEY WAS PERFORMED UNDER MY DIRECT SUPERVISION, AND THAT THE PLAT REPRESENTS THE RESULTS OF SAID SURVEY AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Sydney A. Schieren
SYDNEY A. SCHIEREN
COLORADO P.L.S. 37937
COLORADO LICENSED LAND SURVEYOR
37937
7/6/21

CITY COUNCIL APPROVAL

THIS PLAT IS APPROVED BY THE SALIDA CITY COUNCIL THIS 8th DAY OF July, 2021.

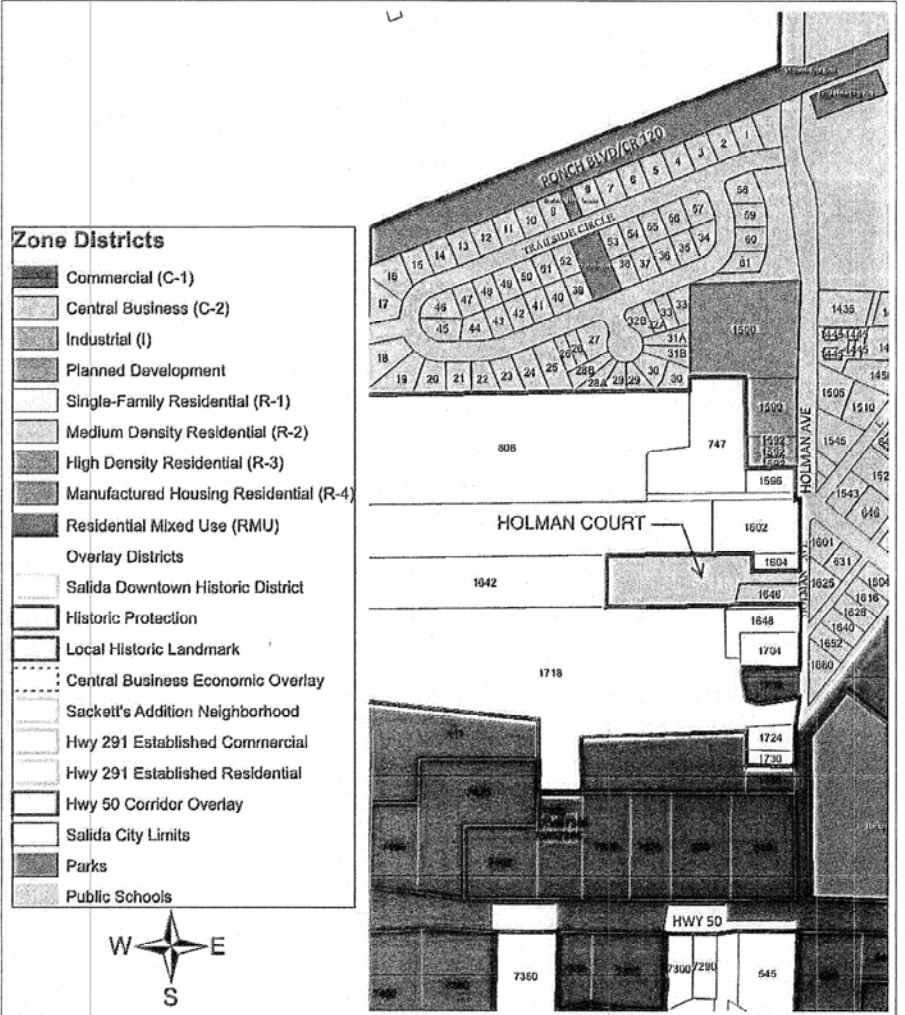
Mayor
MAYOR, CITY OF SALIDA

CLERK AND RECORDER'S CERTIFICATE

THIS PLAT WAS FILED IN THE OFFICE OF THE CLERK AND RECORDER OF CHAFFEE COUNTY, COLORADO, AT 8:09 A.M. ON THIS 9th DAY OF July, 2021 UNDER RECEPTION NUMBER 472147

Patricia Travnicsek (Deputy)
CHAFFEE COUNTY CLERK AND RECORDER

VICINITY AND ZONING MAP



CONSULTANTS

ENGINEER
Walker Engineering
905 Camino Sierra Vista Santa Fe, NM 87505
505-820-7390 morey@walkerengineering.net Fax: 505-820-3539

CONSULTANT
Land Water Concepts
Salida, Colorado
505-690-5873
andy@lwconcepts.com

LAND SURVEYOR
LANDMARK SURVEYING
202 N F Street Salida, CO 81201
719-539-4021 syd@surveycolorado.com

6/30/21

CONDITIONS OF APPROVAL

AMENDED CONDITIONS OF APPROVAL FOR HOLMAN COURT PD:

- OCCUPANTS OF ANY DEED-RESTRICTED AFFORDABLE UNITS WITHIN THE HOMEOWNERS ASSOCIATION SHALL NOT BE RESPONSIBLE FOR ANY ASSESSMENTS NOR DUES BEYOND THOSE FAIRLY-PRICED SPECIFICALLY FOR UTILITIES, TRASH SERVICES, AND THE LIKE.
- EACH LOT SHALL HAVE AT MINIMUM ONE TREE LOCATED BETWEEN THE PRIVATE DRIVE AND THE FRONT OF THE PROPOSED UNITS. IN ADDITION, THE APPLICANT WILL PROVIDE AS MANY TREES WITHIN THE COMMON OPEN SPACES AS WILL RESULT IN A TOTAL OF AT LEAST 16 ACROSS THE ENTIRE DEVELOPMENT SITE.
- TWO AFFORDABLE HOUSING UNITS SHALL BE CONSTRUCTED IN THE SEVEN LOT PROPOSAL. BOTH AFFORDABLE UNITS SHALL BE BUILT AND RECEIVE CERTIFICATE OF OCCUPANCY (CO) PRIOR TO THE TENTH UNIT ON THE SITE RECEIVING CERTIFICATE OF OCCUPANCY.
- FOR ANY AFFORDABLE UNIT(S) REQUIRED TO BE BUILT THROUGH THE PD, THE DEVELOPER SHALL PAY THE APPLICABLE INCLUSIONARY HOUSING FEE-IN-LIEU FOR EACH UNIT BUILT PRIOR TO RECEIVING CERTIFICATE OF OCCUPANCY FOR THOSE UNITS. ONCE THE REQUIRED AFFORDABLE UNIT(S) HAS RECEIVED CERTIFICATE OF OCCUPANCY, THOSE FEES-IN-LIEU SHALL BE RETURNED TO THE DEVELOPER.
- THE APPLICANT SHALL ERECT A VISIBLE BARRIER/FENCE, WITH ENTRY POINT(S), AROUND THE PERIMETER OF THE COMMON OPEN SPACE AREA AND PROVIDE REASONABLE FACILITIES SUCH AS PICNIC TABLES, BENCHES, CHILDREN'S PLAYGROUND EQUIPMENT, ETC., TO ENCOURAGE THE AREA'S USE.
- AS REQUIRED UNDER SECTION 16-6-120(11), NO RESIDENTIAL FAÇADE ELEVATION SHALL BE REPEATED MORE THAN ONCE EVERY FIVE (5) LOTS ON THE SAME SIDE OF THE STREET.

SHEET LIST TABLE	
NUMBER	SHEET TITLE
D1	COVER
D2	DEVELOPMENT PLAN

HOLMAN COURT - PLANNED DEVELOPMENT (PD)
SALIDA, CO LORADO

SAL
571A

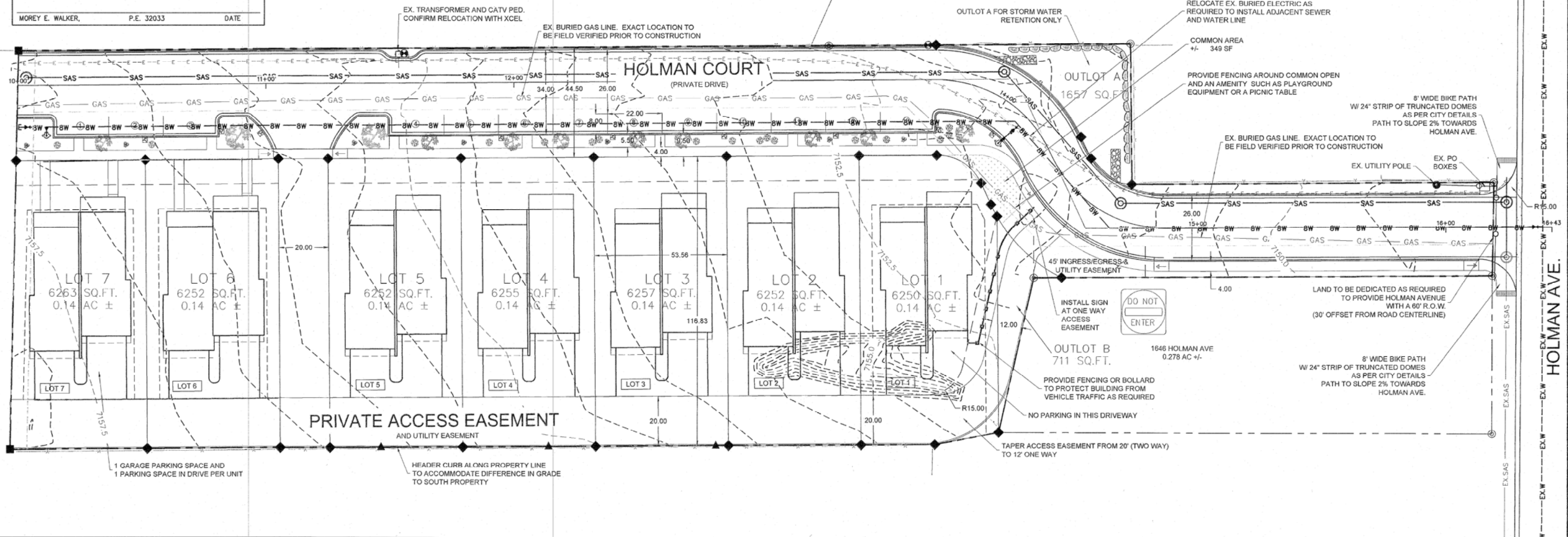
SHEET NO.
D1

472147
472147 7/9/2021 8:09 AM PLAT Lori A Mitchell
1 of 2 RS20 US0 NS0 SS3 MS0 ES0 Chaffee County Clerk

RECORD DRAWINGS

THIS RECORD DOCUMENT HAS BEEN PREPARED BASED ON THE BEST AVAILABLE INFORMATION AS PROVIDED BY OTHERS. WALKER ENGINEERING CERTIFIES THAT THE INFORMATION SHOWN IS A REASONABLE DOCUMENTATION OF THE FINAL CONSTRUCTION.

MOREY E. WALKER, P.E. 32033 DATE



SCHEDULE OF DIMENSIONAL STANDARDS

Dimensional Standard	R-2	PD
Min. lot size (sq. ft.)	5,625	5,625
Density (Min. lot sq. footage per principal dwelling unit)	3,125	3,125
Min. lot size (sq. ft.)—attached units	3,125	3,125
Min. lot frontage	37'-0"	Note 3.
Min. lot frontage—attached units	20'	20'
Max. lot coverage: structures (additive coverage total for structures and uncovered parking cannot exceed 90% except in C-2)	40%	40%
Max. lot coverage: uncovered parking/access (additive coverage total for structures and uncovered parking cannot exceed 90% except in C-2)	15%	40%
Min. landscape area	45%	30%
Min. setback from side lot line for a primary bldg.	5'	5'
Min. setback from side lot line for a detached accessory bldg.	3', 5', or 10'	3', 5', or 10'
Min. setback from rear lot line: principal bldg.	20'	20'
Min. setback from rear lot line: accessory bldg.	5'	5'
Min. setback from front lot line	20'	20'
Max. building height for a primary bldg.	35'	35'
Max. building height for a detached accessory bldg.	25'	25'

Notes:

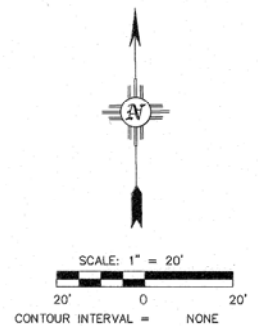
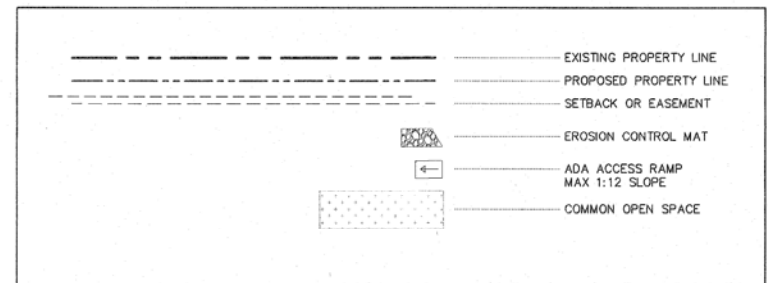
1. ESTIMATED FLOOR AREA IS THE BUILDING FOOTPRINT AND DOES NOT INCLUDE THE SECOND STORY
2. ESTIMATED DRIVEWAY AREA INCLUDES BOTH THE UNCOVERED PARKING AND THE PORTION OF THE PRIVATE ACCESS EASEMENT ON EACH LOT.
3. MINIMUM LOT FRONTAGE IS TO BE MEASURED AT HOLMAN COURT, A PRIVATE DRIVE VERSUS A PUBLIC STREET AS IS GENERALLY REQUIRED.

HOLMAN COURT SUBDIVISION - PLANNED DEVELOPMENT SUMMARY

TOTAL LOT AREA 1.712 ACRES
 TOTAL LOT AREA 74574.72 SQ. FT.
 ZONING R2 MEDIUM DENSITY RESIDENTIAL
 NUMBER OF LOTS 7
 NUMBER OF OFF STREET PARKING SPACES 13
 NUMBER OF OFF STREET PARKING SPACES INCLUDING GARAGES 27

LOT SUMMARY	NUMBER UNITS	PROPOSED USE	LOT AREA ACRES	LOT AREA SF	ESTIMATED FLOOR AREA ¹ SF	ESTIMATED FLOOR AREA ¹ %	ESTIMATED DRIVEWAY AREA ² SF	ESTIMATED DRIVEWAY AREA ² %	ESTIMATED LANDSCAPED AREA SF	ESTIMATED LANDSCAPED AREA %	MAX LOT COVERAGE %
LOT 1	2	DUPLEX	0.14	6250	1977	32%	2282	37%	1991	32%	68%
LOT 2	2	DUPLEX	0.14	6252	2158	35%	1836	29%	2258	36%	64%
LOT 3	2	DUPLEX	0.14	6257	2158	34%	1835	29%	2264	36%	64%
LOT 4	2	DUPLEX	0.14	6255	2158	35%	1832	29%	2265	36%	64%
LOT 5	2	DUPLEX	0.14	6252	2158	35%	1829	29%	2265	36%	64%
LOT 6	2	DUPLEX	0.14	6252	2158	35%	1827	29%	2267	36%	64%
LOT 7	2	DUPLEX	0.14	6263	2158	34%	1854	30%	2251	36%	64%

COMMON AREA 349 SF

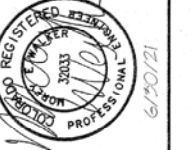


472147
 472147 7/9/2021 8:09 AM PLAT Lori A Mitchell
 2 of 2 RS20 D30 N89 S83 M90 E30 Chaffee County Clerk

Civil Engineering • Water Resources • Traffic Engineering
W-E Walker Engineering
 905 Camino Sierra Vista, • Santa Fe, NM 87505
 505-820-7980
 FAX 505-820-3539
 E-MAIL: civil@walkerengr.com

No.	REVISION	BY	APP.	DATE

DESIGNED BY:
 DRAWN BY:
 CHECKED BY:
 DATE: 5/13/21
 SCALE:



PROJECT: **HOLMAN COURT PLANNED DEVELOPMENT**
 SHEET TITLE: **DEVELOPMENT PLAN**
 DATE: 6/10/21

CITY REVIEW	DATE
DEPARTMENT	
WATER	
WASTE WATER	
TRAFFIC	
FIRE DEPARTMENT	
SOLID WASTE	
LANDSCAPE	
TRAILS/OPEN SPACE	
SUBDIVISION REVIEW	

SHEET NO. **D2**
 - 99 -



Re: 711 Holman - LaRochelle and Lee

From Davide Larochelle <davidlarochelle1@yahoo.com>

Date Mon 2/10/2025 6:55 AM

To Stacy Lowe <slowe@pinonrealestate.com>; Bill Almquist <bill.almquist@cityofsalida.com>

Hey Bill, here's that history sheet you asked for and I guess at the end of the day I would like to offer the City some money in lieu of and lift the deed restriction if that's possible. Thank you.
Sent from my iPhone

On Feb 4, 2025, at 4:39 PM, Stacy Lowe <slowe@pinonrealestate.com> wrote:

Hi
Just resending this so it is handy.
Thank you,
Stacy

From: Stacy Lowe <slowe@pinonrealestate.com>

Date: Thursday, December 19, 2024 at 10:36 AM

To: davidlarochelle1@yahoo.com <davidlarochelle1@yahoo.com>, Mark Lee <markbuilder@mac.com>, bill.almquist@cityofsalida.com <bill.almquist@cityofsalida.com>

Subject: 711 Holman - Inclusionary Housing Unit

Bill,

Here is a summary of the history for the Holman project and the Inclusionary Housing units. The Developers are asking to go back to the original offer to pay \$22/square foot in lieu of instead of trying to sell the unit on the market due to the challenges and events below. They have already sold one AMI unit, 713 Holman.

The Holman project went through the Salida City Ordinance meeting on 3/16/2021. The Developers agreed to providing two Inclusionary Housing units even though at the time the requirement was one Inclusionary Housing unit per 8 units. 14 units were built but the developers offered to do two units instead of paying \$22/square foot in lieu of.

The first phase of the Holman project and first unit was listed 10/13/21. This phase did not include the Inclusionary Housing units.
During the second phase the Inclusion Housing units were built.

The Certificate of Occupancy was received for 711 Holman on 6/14/23. Both Inclusionary Housing units were listed with Pinon Real Estate effective 5/7/23 and went live on the MLS 5/10/23. These units were listed with the Housing Authority 6/1/2023. During this time the listing agent, Stacy Lowe presented the properties regularly during staff meetings, Stacy also presented the properties to the local MLS group. She shared the details of the Inclusionary Housing program and the process to the other Realtors. The Realtors toured the unit on the tour. These were the very first Inclusionary Housing units on the market in Salida.

In addition, Stacy hosted an open house in coordination with the city for a Ribbon Cutting as well as a press release.

Item 6.

On July 8th we received two offers on unit 713 Holman. We proceeded to go under contract for 713 Holman and the second buyer changed their offer to unit 711 Holman.

Unit 713 Holman was purchased with a VA loan without difficulty.

Unit 711 Holman went under contract with an FHA loan. Buyers were preapproved by the City and their lender. The Buyers asked for improvements that totaled around \$10,000. The Sellers agreed to these improvements. At the 11th hour the lender and the city was unable to come to terms on some of the deed restriction language and the contract terminated. Sellers not only lost the additional \$10,000 in improvements they added but they also refunded their Earnest Money even though per the terms of the contract the Buyers were in default.

After the contract fell through the Sellers decided to rent the unit to someone who qualified through the city and needed a place to rent. The lease was written 11/10/23. She also intended to try and purchase during the course of her lease. She was unable to proceed with the contract to purchase because she couldn't afford the monthly mortgage payment.

She leased the property for \$1400/mo for 12 months. She moved out 11/30/24.

During her lease the Sellers and listing agent continued to try to find other qualified buyers. Mark was in touch with the Housing Authority during this time. Mike Beck applied through the city and was qualified but decided not to proceed because his payments were not feasible. Another buyer Sasha qualified but didn't like the 2% cap on the deed restriction. Karen Lincott qualifies except that she is one person and these units require a minimum of two people. The City declined to make an exception for her. Another couple Amber and partner are unable to pay a sufficient amount and still afford their mortgage payment. They made offer but it was too low for the Sellers to accept.

They have been trying to sell the unit at \$389,000 for the last 18 months. The current loan is \$435,000 so the Sellers are already taking a loss at this price which is \$46,000 under the loan amount. The current AMI allows the Sellers to sell it as high as \$464,000, the current list price is \$75,000 less than the full AMI. The Developers are taking a \$75,000 loss plus \$3500/mo for interest/loan payments over the past 18 months is \$63,000 and growing. The rent received offsets this expense by \$16,000.

Interest rates were between 3-4% when the first Holman Units were first listed. Shortly after we saw interest rates going up to 7%. This has caused a potential buyers mortgage payment to increase dramatically to a point where it was difficult for them to afford before to making it nearly impossible for someone to qualify under the terms required by the deed restrictions.

In summary, the Developers agreed to build two Inclusionary Housing units even though only one was required. This occurred 3/16/21 and by the time the two IH units were completed on 6/14/2023. There was a period of over 2 years in which the city had the opportunity to prepare for this program but the city wasn't 100% ready to implement the program even at the Ribbon Cutting when it should have been up and running by this time.

The Sellers wish to pay the in lieu of fee \$22/square foot to the City.

We appreciate your consideration.

Sincerely,

Stacy

Stacy Lowe, Broker Associate/Property Manager
slowe@pinonrealestate.com
www.pinonrealestate.com

Pinon Real Estate Group

- 101 -

NOTICE REGARDING WIRE TRANSFERS: You will never receive wiring instructions from anyone at Pinon Real Estate Group. PLEASE CALL YOUR CLOSING COMPANY TO VERIFY WIRING INSTRUCTIONS BEFORE SENDING FUNDS FOR YOUR CLOSING. If you receive wire instructions in the text of an email or an attachment, THEY MAY NOT BE VALID

From: Stacy Lowe <slowe@pinonrealestate.com>
Date: Wednesday, January 15, 2025 at 10:13 AM
To: Suzanne.fontana@salidaelected.com <Suzanne.fontana@salidaelected.com>
Subject: 711 Holman - LaRochelle and Lee

Hi Suzie,

Thank you for taking the time to look into this, we appreciate your consideration. I have attached a copy of the chart we originally sent to Bill Almquist for your reference. I will also forward another email separately that we sent to Bill and then recently to Dan Shore just to be sure you have that.

Please let me know if you have any questions or need anything else from me.

Thanks so much!

Stacy

From: Stacy Lowe <slowe@pinonrealestate.com>
Date: December 10, 2024 at 6:57:51 AM MST
To: davidlarochelle1@yahoo.com

Thanks again, Stacy may have some more information on this she can provide so I added her to this email

- If purchased $\$464,000 \times 6.844\% = \$3411/\text{mortgage payment}$
- Listed at \$389,000
- Maximum rent is \$1960
- Construction loan \$435,000 at 8.5% interest
- Current mortgage payment is \$3500
- Already paid 18 months on construction loan = \$63,000
- \$435,000 owed creates additional loss if sold \$389,000 would be \$46,000
- Builder would like to go back to original offer to pay \$22/sq foot in lieu of
- 1434 square feet x 22/ sq ft = \$31,548 to the City of Salida

<97271.png>

2024 CHAFFEE COUNTY AREA MEDIAN INCOME (AMI)

Household size	60%	80%	100%	119%	120%	139%	140%	159%	160%	179%
1 person	\$39,600	\$52,800	\$66,000	\$78,540	\$79,200	\$91,740	\$92,400	\$104,940	\$105,600	\$118,140
2 person	\$45,240	\$60,320	\$75,400	\$89,726	\$90,480	\$104,806	\$105,560	\$119,886	\$120,640	\$134,966
3 person	\$50,880	\$67,840	\$84,800	\$100,912	\$101,760	\$117,872	\$118,720	\$134,832	\$135,680	\$151,792
4 person	\$56,520	\$75,360	\$94,200	\$112,098	\$113,040	\$130,938	\$131,880	\$149,778	\$150,720	\$168,618
5 person	\$61,080	\$81,440	\$101,800	\$121,142	\$122,160	\$141,502	\$142,520	\$161,862	\$162,880	\$182,222
6 person	\$65,580	\$87,440	\$109,300	\$130,067	\$131,160	\$151,927	\$153,020	\$173,787	\$174,880	\$195,647
7 person	\$70,140	\$93,520	\$116,900	\$139,111	\$140,280	\$162,491	\$163,660	\$185,871	\$187,040	\$209,251
8 person	\$74,640	\$99,520	\$124,400	\$148,036	\$149,280	\$172,916	\$174,160	\$197,796	\$199,040	\$222,676

Incomes in blue represent the 19% additional income allowance for *ownership unit* households.

Maximum Affordable Monthly Rent (set by Colorado Housing & Finance Authority (CHFA), INCLUDES utilities)			
Unit Size	60% AMI	80% AMI	100% AMI
Studio	\$990	\$1,320	n.a.
1 bed	\$1,060	\$1,414	\$1,767
2 bed	\$1,272	\$1,696	\$2,120
3 bed	\$1,470	\$1,960	\$2,450
4 bed	\$1,639	\$2,186	\$2,732

Maximum Affordable Sales Price				
Unit Size	100% AMI	120% AMI	140% AMI	160% AMI
Studio	\$250,887	\$292,104	n.a.	n.a.
1 bed	\$271,854	\$317,372	\$380,631	n.a.
2 bed	\$335,113	\$393,176	\$469,158	\$545,141
3 bed	\$394,251	\$464,141	\$551,951	\$639,761
4 bed	\$444,787	\$524,891	\$622,737	\$720,762

Financial Hardship

- If purchased \$464,000 x 6.844%= \$3411/mortgage payment for Inclusionary Buyer
- Listed at \$389,000 (not selling)
- Maximum rent is \$1960, not feasible for owner
- Current mortgage payment is \$3500
- Construction loan \$435,000 at 8.5% interest
- Already paid 18 months on construction loan = \$63,000
- \$435,000 owed creates additional loss if sold \$389,000 would be \$46,000
- Builder would like to go back to original offer to pay \$22/sq foot in lieu of
- 1434 square feet x 22/ sq ft = \$31,548 to the City of Salida



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Arts and Culture	Diesel Post - Parks and Recreation Director	February 18, 2025

AGENDA ITEM

Resolution 2025 -08 A Resolution of the City Council for the City of Salida, Colorado, to appoint members of the Public Art Commission.

BACKGROUND

As of January 2025, 6 Public Art Commission member appointments were vacant due to resignation. 3 of the members wished to reapply. On 1/24/25, a workgroup consisting of Justin Critelli, Tina Gramann, Dania Pettus, and Diesel Post met and interviewed 6 applicants for the available appointments. Along with an application and resume review, the group asked each applicant the following questions:

- **How do you use Salida Arts & Culture services and/or programs?**
- **What programs do you participate in?**
- **What specific qualifications or qualities do you possess that would be beneficial to the commission?**
- **What is your experience on or with an advisory committee?**
- **What would you advise that City staff in the department focus their time and efforts on?**
- **What would you work on in your free time to bring to the advisory committee?**
- **Can you explain your understanding of how Salida Arts & Culture (the Public Art Commission, the Salida Steam Plant, the Creative District program, and/or city sponsored events such as Chalk Festival, Art Walk, First Fridays, Summer Concerts, etc.) are funded?**
- **What is an example of a public artwork or arts service or program (education, music, film, etc.), in any geographic location, that you admire or enjoy, and why?**

Advisory meetings will be held on the 3rd Thursday of the month.

- **Do you have time to dedicate to attending meetings and other special assignments?**
- **Is there anything else that you would like us to know?**

The workgroup interviewed and selected 3 current members, Ken Brandon, Reed Govert and Martin Jollie, as well as a new applicant, Lindsay Ernst, Kerstin Stock and Lashay Peterson, to be recommended for appointment to the PAC Board with Roni Wright appointed as an alternate.

RECOMMENDATION

The recommendation is to appoint Lindsay Ernst, Kerstin Stock, and LaShay Peterson as new members of the PAC. Appoint Ken Brandon, Reed Govert, and Martin Jollie for returning terms and appoint Roni Wright as an Alternate.

FISCAL IMPACT

There is no fiscal impact.

MOTION

A City Councilmember should state, "I move to _____ Resolution 2025-08, a resolution of the City Council for the City of Salida, Colorado approving the following appointments to the Public Art Commission," (per below) followed by a second and a roll call vote:

1. Appoint Lindsay Ernst, Kerstin Stock, and LaShay Peterson for two (2) year term- terms to expire 1/31/27
2. Appoint Ken Brandon, Reed Govert, and Martin Jollie for a three (3) year term - terms to expire 1/31/28
3. Appoint Roni Wright as an alternate member for a two (2) year term - term to expire 1/31/27

**CITY OF SALIDA, COLORADO
RESOLUTION NO. 08
(Series of 2025)**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO,
APPROVING CITIZEN APPOINTMENTS TO THE PUBLIC ARTS COMMISSION
PURSUANT TO SECTION 2-16-30 OF THE SALIDA MUNICIPAL CODE**

WHEREAS, in accordance with Section 2-16-30 of the Salida Municipal Code (“SMC”), the City Council shall appoint person(s) to serve as members of the Public Arts Commission; and

WHEREAS, six vacancies for regular members need to be filled; and

WHEREAS, nine applications were received, and all nine applicants were interviewed by a selection committee, which has provided recommendations for the appropriate appointments; and

WHEREAS, the City Council appreciates the service members of the community have devoted to bettering Salida through participation on the Public Art Commission; and

WHEREAS, in accordance with Section 2-16-30 of the Salida Municipal Code (“SMC”), the City Council shall confirm appointments by majority vote.

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

The City Council hereby appoints the following individuals to serve on the Public Art Commission in the following capacity and term:

Appoint Lindsay Ernst, Kerstin Stock, and LaShay Peterson for two (2) year terms – terms to expire 1/31/27

Appoint Ken Brandon, Reed Govert, and Martin Jollie for a three (3) year - terms to expire 1/31/28

Appoint Roni Wright as an alternate member for two (2) year term – term to expire 1/31/27

RESOLVED, APPROVED AND ADOPTED this 18th day of February, 2025.

CITY OF SALIDA, COLORADO

By _____

Mayor

[SEAL]

[ATTEST] _____

City Clerk/Deputy City Clerk



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Administration	Christy Doon - City Administrator	February 18, 2025

AGENDA ITEM

Ordinance 2025 - 4, An Ordinance of the City Council of the City of Salida, Colorado, Granting a Non-Exclusive Franchise to Atmos Energy Corporation for the Purpose of Providing, Selling, and Delivering Natural Gas to the City and its Residents, and Approving a Gas Utility Franchise Agreement Concerning the Same, first reading and setting the public hearing.

BACKGROUND

The current franchise agreement with Atmos Energy expired on October 1, 2023. The new agreement is attached. This document updates the terms of the agreement, including the new expiration date of April 3, 2040. The Fee of 5% of revenues derived annually is consistent with prior agreements.

STAFF RECOMMENDATION

Staff recommends Council approve the Ordinance on first reading and schedule a public hearing for March 4, 2025.

FISCAL IMPACT

Historically the City received between \$234,408 and \$158,134 annually from Atmos.

MOTION

A City Councilmember should state "I move to _____ Ordinance 2025 - 4, An Ordinance of the City Council of the City of Salida, Colorado, Granting a Non-Exclusive Franchise to Atmos Energy Corporation for the Purpose of Providing, Selling, and Delivering Natural Gas to the City and its Residents, and Approving a Gas Utility Franchise Agreement Concerning the Same, first reading and setting the public hearing. March 4, 2025, followed by a second and a roll call vote.

**CITY OF SALIDA, COLORADO
ORDINANCE NO. 04
(Series of 2025)**

**AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF SALIDA, COLORADO
GRANTING A NON-EXCLUSIVE FRANCHISE TO ATMOS ENERGY CORPORATION
FOR THE PURPOSE OF PROVIDING, SELLING, AND DELIVERING NATURAL GAS
TO THE CITY AND ITS RESIDENTS, AND APPROVING A GAS UTILITY FRANCHISE
AGREEMENT CONCERNING THE SAME**

WHEREAS, the City of Salida, Colorado (the “City”) is a statutory city, duly organized and existing under the laws of the state of Colorado;

WHEREAS, consistent with C.R.S. §§ 31-32-101, *et seq.*, the City has the authority to grant franchises for use of the public right-of-way by ordinance;

WHEREAS, the Atmos Energy Corporation (the “Company”) has previously been granted a non-exclusive franchise granting the Company the right to erect, construct, operate, and maintain a natural gas distribution system within the corporate boundaries of the City to provide natural gas service to persons, businesses, industries, governmental agencies, and the residents of the City;

WHEREAS, the Company seeks renewal of its non-exclusive franchise to continue providing natural gas distribution service within the City;

WHEREAS, the City and Company have negotiated a Utility Franchise Agreement, attached hereto as **Exhibit A** and incorporated herein by this reference (the “Franchise Agreement”) that outlines the terms, conditions, and mutual covenants concerning the Company’s provision of natural gas distribution service within the City, including the Company’s use of public rights-of-way and dedicated public utility easements;

WHEREAS, the City Council for the City of Salida, Colorado (the “Council”) desires to grant to Company, and Company desires to accept, the terms and conditions set forth in the Franchise Agreement;

WHEREAS, the public has had adequate notice and opportunity to comment on the Company’s proposal to continue to provided electricity service within the City and a public hearing on approval of the Franchise Agreement was lawfully noticed and held before the Council; and

WHEREAS, consistent with State law the Council has determined that it is in the best interest of the City and its residents to grant a non-exclusive franchise to Company for the term provided in the Franchise Agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF SALIDA, COLORADO AS FOLLOWS:

Section 1. The foregoing recitals are hereby incorporated as conclusions, facts, determinations, and findings by the City Council.

Section 2. The City Council hereby approves the Franchise Agreement attached hereto as **Exhibit A**. The Mayor and other City officials are hereby authorized to execute the Franchise Agreement by and on behalf of the City.

Section 3. Severability: The provisions of this Ordinance are severable and the invalidity of any section, phrase, clause, or portion of this Ordinance as determined by a Court of competent jurisdiction shall not affect the validity or effectiveness of the remainder of the Ordinance.

Section 4. City officials are hereby authorized to take such action as appropriate to implement the Franchise Agreement.

Section 5. The City Council finds and declares that this Ordinance is promulgated and adopted pursuant to the City's police power to preserve and protect the public health, safety, and welfare of the City and its residents, and bears a rational relation to the legislative objects sought to be obtained.

INTRODUCED ON FIRST READING on this 18th day of February, 2025, ADOPTED and ORDERED PUBLISHED IN FULL in a newspaper of general circulation by the City Council on this 18th day of February, 2025, and set for second reading and public hearing on the 4th day of March, 2025.

INTRODUCED ON SECOND READING, FINALLY ADOPTED and ORDERED PUBLISHED BY TITLE ONLY, by the City Council on the ____ day of _____, 20__.

City of Salida

Mayor Dan Shore

[SEAL]

ATTEST: _____
City Clerk

PUBLISHED IN FULL in the Mountain Mail after First Reading on the ____ day of _____, 20__, and BY TITLE ONLY, after final adoption on the ____ day of _____, 20__.

City Clerk/Deputy City Clerk

FRANCHISE AGREEMENT

This Franchise Agreement is entered into this __ day of _____, 2025 between the City of Salida, a Colorado statutory City and Atmos Energy Corporation, a Texas and Virginia corporation.

The parties, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

ARTICLE I

Definitions

For the purpose of this franchise, the following words and phrases shall have the meaning given in this Article. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined in this Article shall be given their common and ordinary meaning.

1.1 "City" refers to and is the City of Salida, Chaffee County, Colorado, and includes the territory as currently is or may in the future be included within the boundaries of the City of Salida.

1.2 "City Council" refers to and is the legislative body of the City of Salida.

1.3 "Company" refers to and is Atmos Energy Corporation, a Texas and Virginia corporation, and its successors and assigns.

1.4 "Distribution Facilities" refer to and are only those facilities reasonably necessary to provide gas within the City.

1.5 "Facilities" refer to and are all facilities reasonably necessary to provide gas into, within and through the City, including but not limited to, plants, works, systems, distribution lines, equipment, pipes, mains, underground links, gas

compressors, meters, meter reading devices, communication and data transfer equipment, control equipment, and gas regulator stations.

1.6 "Gas" or "Natural Gas" refers to and is such gaseous fuels as natural, artificial, synthetic, liquefied natural, liquefied petroleum, manufactured, hydrogen, or any mixture thereof.

1.7 "Other City Property" refers to the surface, the air space above the surface and the area below the surface of any property owned or hereafter owned by the City, that would not otherwise fall under the definition of Public Rights-of-Way, but which could provide a suitable location for the placement of Company facilities, as specifically provided in writing by the City as set forth in section 2.1 of this franchise. Other City Property includes parks and open space.

1.8 "Private Project" refers to any project which is not covered by the definition of public project.

1.9 "Public Project" refers to: (1) any public work or improvement within the City that is wholly or beneficially owned by the City; or (2) any public work or improvement within the City where 50 percent or more of the funding is provided by any combination of the City, the federal government, the State of Colorado, any Colorado county, or other political subdivision of the state of Colorado, but excluding all other entities established under C.R.S. tit. 32. Special District Act.

1.10 "Public Rights of Way" refer to and are streets, alleys, viaducts, bridges, roads, lanes, and easements in said City on and under which the right exists to install and maintain Facilities.

1.11 "PUC" refers to and is The Public Utilities Commission of the State of

Colorado or other authority succeeding to the regulatory authority of The Public Utilities Commission of the State of Colorado.

1.12 "Revenues" refer to and are those amounts of money which the Company receives from its customers within the City for the sale of Gas under rates, temporary or permanent, authorized by the PUC and represents amounts billed under such rates as adjusted for refunds, the net write-off of uncollectible accounts, corrections, or other regulatory adjustments.

ARTICLE II

Grant of Franchise

2.1 The City hereby grants to the Company, for the period specified and subject to the conditions, terms and provisions contained in this Agreement, the non-exclusive right to furnish, transport, sell, and distribute gas to the City and to all persons, businesses and industries within the City, the non-exclusive right to acquire, construct, install, locate, maintain, operate and extend into, within and through the City all facilities reasonably necessary to provide gas to the City and to all persons, businesses, and industries within the City and in the territory adjacent thereto; and the non-exclusive right to make reasonable use of all Public Rights of Way as may be necessary to carry out the terms of the Agreement.

2.2 Company Facilities in Other City Property as of the Effective Date of this Franchise. Company Facilities currently located in Other City Property shall be subject to the terms and conditions set forth in City license agreements, permits, or other written agreements granting the Company the right to place its Facilities in such Other City Property. To the extent that such Company Facilities in Other City Property are not specifically authorized by separate license agreements, permits or other written agreements, the Company may continue use of such

Company Facilities in Other City Property under the terms of this Franchise.

2.3 New Company Facilities in Other City Property. For all Other City Property, the City's grant to the Company of the right to locate Company Facilities in, on, over or across such Other City Property shall be subject to the Company's receiving from the City a revocable license, permit, or other agreement approving the location of such Company Facilities, which the City may grant or deny in its sole reasonable discretion; and (2) the terms and conditions of the use of such Other City Property shall be governed by this Franchise as may be reasonably supplemented in such revocable license, permit or other agreement to account for the unique nature of such Other City Property. Nothing in this subsection (C) shall modify or extinguish pre-existing Company property rights.

2.4 Terms of Franchise. The term of this franchise shall be for fifteen (15) years, beginning _____, 2025, and expiring _____, 2040.

ARTICLE III

Conditions and Limitations

3.1 Scope of Franchise. This grant shall extend to all areas within the corporate boundaries of the City as it is now or hereafter constituted that are within the Company's PUC-certificated service territory; however, nothing contained in this franchise shall be construed to authorize the Company to engage in activities other than activities consistent with the provision of gas service, nor does it affect the Company's rights and obligations pursuant to any certificate of public convenience and necessity granted by the PUC.

3.2 Subject to City Usage. The right to make reasonable use of Public Rights-of-Way to provide gas service to the City and its residents under this franchise is

subject to and subordinate to any City usage of said streets and public utility easements.

3.3 Prior Grants not Revoked. This grant does not, and is not intended to revoke any prior license, grant, or right to use the Public Right-of-Way or Other City Property.

3.4 Franchise not Exclusive. The rights granted by this franchise are not, and shall not be deemed to be, granted exclusively to the Company, and the City reserves the right to make or grant a gas franchise to any other person, firm, or corporation.

3.5 Police Powers. The Company expressly acknowledges the City's right to adopt, from time to time, in addition to the provisions contained herein, such laws, including ordinances and regulations, as it may deem necessary in the exercise of its governmental powers. If the City considers making any substantive changes in its local codes or regulations that in the City's reasonable opinion will significantly impact the rights granted pursuant to this franchise or Company's operations in the City, it will make a good faith effort to advise the Company of such consideration; provided, however, that lack of notice shall not be justification for the Company's noncompliance with any applicable local requirements. If the City makes a substantive change in its local code or regulations that significantly impacts the rights granted pursuant to this franchise or Company's operations in the City and Company may renegotiate this Agreement.

3.6 Regulation of Streets and Public Utility Easements. The Company expressly acknowledges the City's right to enforce applicable regulations concerning the Company's access to or use of the streets and public utility easements, including requirements for permits.

3.7 Compliance with Laws. The Company shall promptly and fully comply with all applicable laws, regulations, permits, and orders enacted by City.

ARTICLE IV

Franchise Fee

4.1 Franchise Fee. In consideration for the grant of this franchise, the Company shall collect and remit to the City a sum equal to five percent (5%) of the revenues derived annually from the sale of gas within the City, excluding the amount received from the City itself for gas service furnished it. Franchise fee payments shall be made in quarterly installments not more than thirty (30) days following the close of the quarter for which payment is to be made. Quarters shall end on March 31, June 30, September 30, and December 31. Payments at the beginning and end of the franchise shall be prorated. All payments shall be made to the City Finance Director.

4.2 Audit of Franchise Fee Payments.

(A) Access to Documents. The City Finance Director, or other representatives authorized by the City, shall have access to the books of the Company for the purpose of auditing or checking to ascertain that the franchise fee has been correctly computed, upon at least ten (10) business days' notice by the City. City agrees that any information marked by Company as confidential and proprietary shall be treated by the City as confidential and proprietary in accordance with applicable law, including the Colorado Open Records Act, § 24-72-203, C.R.S., to the extent that such statute applies.

(B) Company Response to Audit. If an audit contemplated by this section reveals the Company has underpaid the City, then City shall provide Company written notification regarding the existence of such underpayment, and Company shall proceed in good faith to verify the existence of the underpayment. Company shall have thirty (30) days within which to examine the City's findings. If Company agrees with the City's findings, it shall remit the amount of underpayment to City, plus interest on the past due amount computed at the rate set by the PUC for customer security deposits held by the Company within ten business (10) days after the end of the 30-day period. The cost of the audit shall be borne by the City unless the audit discloses that the Company has underpaid the franchise fee by 103% or more, in which case the reasonable costs of the audit shall be reimbursed to the City by the Company. If the Company disputes the underpayment, it shall provide the City with its formal response and make available documentation in support of its position at the end of the 30-day period. If an audit contemplated by this section reveals Company has overpaid the City, then Company shall provide City written notification regarding the existence of such overpayment, and City shall proceed in good faith to examine the Company's findings and determine if it agrees with the claim of an overpayment. The City shall have 30 days within which to examine the Company's findings. If City agrees with the Company's finding of an overpayment, it shall remit the amount of overpayment to Company within ten (10) days after the end of the 30-day period; provided however that if the overpayment exceeds \$5,000.00 the City may, in its discretion repay the overpayment in monthly installments over a period of time equal to the time period that the overpayments were made. If the parties are not able to agree on the findings of an underpayment or overpayment, each party reserves all rights it may have to collect on any

monies owed pursuant to this Franchise and/or any applicable law.

4.3 Correction of Franchise Fee Payments. In the event that either the City or the Company discovers that there has been an error in the calculation of the franchise fee payment to the City, it shall provide written notice to the other party of the error. If the party receiving written notice of error does not agree with the written notice of error, that party may challenge the written notice of error pursuant to Section 4.4 of this Article; otherwise, the error shall be corrected in the next monthly payment that has not yet been processed by the Company. However, if the error results in an overpayment of the franchise fee to the City, and said overpayment is in excess of \$5,000.00, credit for the overpayment shall be spread over the same period the error was undiscovered. All franchise fee underpayments shall be corrected in the next monthly payment, together with interest computed at the rate set by the PUC for customer security deposits held by the Company, from the date when due until the date paid. In no event shall either party be required to fund or refund any overpayment or underpayment made as a result of a Company error which occurred more than three (3) years prior to the discovery of the Company error.

4.4 Fee Disputes. Either party may challenge any written notification of error as provided for in Section 4.4 of this Article by filing a written notice to the other party within 30 days of receipt of the written notification of error. The written notice shall contain a summary of the facts and reasons for the party's notice. The parties shall make good faith efforts to resolve any such notice of error before initiating any formal legal proceedings for the resolution of such error.

4.5 Franchise Fee Payment in Lieu of Other Fees. Payment of the franchise fee by the Company is accepted by the City in lieu of any occupancy tax, license tax or similar tax, permit charge, inspection fee, assessment or excise upon the

pipes, mains, meters or other personal property of the Company or on the privilege of doing business or in connection with the physical operation thereof, but does not exempt the Company from any lawful taxation upon its real property or any other tax not related to the franchise or the physical operation thereof.

4.6. Change of Franchise Fee. Once during each calendar year of the franchise, the City Council, upon giving thirty (30) days' notice to the Company, may review and change the franchise fee that the City may be entitled to receive as a part of the franchise; provided, however, that the Council may only change the franchise fee amount such as to cause the City to receive a franchise fee under this franchise not greater than the franchise fee that the Company may pay to any other city or City in any other franchise under which the Company renders gas service in Colorado.

4.7. Contract Obligation. If the franchise fee specified in this Article is declared illegal, unconstitutional, or void for any reason by any court of proper authority, the Company is contractually bound to pay the City an amount that would be, as near as practicable, equivalent to the amount which would have been paid by the Company as a franchise fee hereunder, prior to such declaration.

ARTICLE V

Conduct of Business

5.1 The Company may establish, from time to time, such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and perform its obligations under this franchise; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the laws of the State of Colorado.

5.2 Tariffs on File. The Company shall keep on file in its nearest office copies of all its tariffs currently in effect and on file with the PUC. Said tariffs shall be available for inspection by the public.

5.3 Compliance with PUC Regulations. The Company shall comply with all rules and regulations adopted by the PUC.

5.4 Compliance with Company Tariffs. The Company shall furnish gas within the City to the City and to all persons, businesses, and industries within the City at the rates and under the terms and conditions set forth in its tariffs on file with the PUC.

5.5 Applicability of Company Tariffs. The City and the Company recognize that the lawful provisions of the Company's tariffs on file and in effect with the PUC are controlling over any inconsistent provision in this franchise dealing with the same subject matter. If PUC changes or voids any portion of this Agreement City and Company shall renegotiate this Agreement.

ARTICLE VI

Construction, Installation & Operation of Company Facilities

6.1 Location of Facilities. Company facilities shall not interfere with the City's water mains, sewer mains or other municipal and utility use of streets and other public places. Company facilities shall be located so as to cause minimum interference with public use of streets and other public places and shall be maintained in good repair and condition and in compliance with all federal, state and local statutes, ordinances, rules, and regulations.

6.2 Excavation and Construction. All construction, excavation, maintenance

and repair work done by the Company shall be done in a timely and expeditious manner that minimizes the inconvenience to the public and individuals. All such construction, excavation, maintenance and repair work done by the Company shall comply with all applicable local, state and federal codes including compliance with the City's standard permits applicable to work in the Public Rights-of-Way. The Company shall furnish to the City the plans for such work and shall obtain all necessary building permits and shall conform to all applicable zoning and subdivision regulations. Such plans shall be reviewed by the City to ascertain, inter alia, that the Company is in compliance with the following requirements: (1) that all applicable laws, including building and zoning codes and air and water pollution regulations, are complied with; (2) that aesthetic and good planning principles have been given due consideration and (3) that adverse impact on the environment has been minimized. The Company shall incorporate all reasonable changes requested by the City. The Company shall comply with the City's requests for reasonable and prompt action to remedy all damage to private property adjacent to streets or dedicated easements where the Company is performing construction, excavation, maintenance or repair work. The City reserves the right to restore property and remedy damages caused by Company activities at the expense of the Company in the event the Company fails to perform such work within a reasonable time after notice from the City and to charge the Company the cost of such restoration and remedial action and such charges shall be paid by the Company to the City within thirty (30) days.

6.3 Restoration. When the Company does any work in or affecting the Public Rights-of-Way or Other City Property, it shall, at its own expense, promptly remove any obstructions placed thereon or therein by the Company and restore such Public Rights-of-Way or Other City Property, to a condition that is substantially the same as existed before the work and meets applicable City standards for restoration contained within the City's standard Public Rights-of-Way permits. If

weather or other conditions do not permit the complete restoration required by this section, the Company may, with the approval of the City, temporarily restore the affected Public Rights-of-Way or Other City Property, provided that such temporary restoration is not at the City's expense, and provided further that the Company promptly undertakes and completes the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Upon the request of the City, the Company shall restore the Public Rights-of-Way or Other City Property to a better condition than existed before the work was undertaken, provided that the City shall be responsible for any incremental costs of such restoration if not required by then-current City standards and provided that the City seeks or grants, as applicable, any additional required approvals. If the Company fails to promptly restore the Public Rights-of-Way or Other City Property as required by this section, and if, in the reasonable discretion of the City immediate action is required for the protection of public health and safety, the City may restore such Public Rights-of-Way or Other City Property, or remove the obstruction therefrom; provided however, City actions do not interfere unreasonably with Company Facilities. The Company shall be responsible for the reasonable cost incurred by the City to restore such Public Rights-of-Way or Other City Property, or to remove any obstructions therefrom. In the course of its restoration of the Public Rights-of-Way or Other City Property under this section, the City shall not perform work on Company facilities unless specifically authorized by the Company in writing on a project-by-project basis and subject to the terms and conditions agreed to in such authorization.

6.4 Relocation of Company Facilities.

(A) *Relocation Obligation.* The Company shall temporarily or permanently remove, relocate, change, or alter the position of any Company facility (collectively, "relocate(s)," "relocation(s)," or "relocated") in Public Rights-of-Way at no cost or expense to the City whenever the City

determines such relocation is necessary for the completion of any Public Project. In the case of relocation that is necessary for the completion of any Public Project in an easement held by the Company or other third-party for the benefit of the Company (excluding City streets and public utility easements), the Company shall not be responsible for any relocation costs. For all relocations, the Company and the City agree to cooperate on the location and relocation of the Company facilities in the Public Rights-of-Way or Other City Property in order to achieve relocation in the most efficient and cost-effective manner possible. Notwithstanding the foregoing, once the Company has relocated any Company Facility at the City's direction, if the City requests that the same Company Facility be relocated within one year, the subsequent relocation shall not be at the Company's expense. Nothing provided herein shall prevent the Company from recovering its relocation costs and expenses from third parties.

(B) *Private Projects.* The Company shall not be responsible for the expenses of any relocation required by Private Projects, and the Company has the right to require the payment of estimated relocation expenses from the affected private party before undertaking the relocation.

(C) *Relocation performance.* The relocations set forth in 6.6(A) above shall be completed within a reasonable time with respect to the scope of the project, not to exceed ninety (90) days from the later of the date on which the City requests, in writing, that the relocation commence, or the date when the Company is provided all supporting documentation, subject to the parties' ability to negotiate a longer period given specific circumstances affecting the project. The Company shall notify the City within twenty (20) days of receipt of the request if the supporting documentation is insufficient to complete the project. The Company shall

receive an extension of time to complete a relocation where the Company's performance was delayed due to force majeure, the actions of a third party that is not a contractor or subcontractor or otherwise working on behalf of the Company, or the failure of the City to provide adequate supporting documentation. The Company has the burden of presenting evidence to reasonably demonstrate the basis for the delay. Upon written request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

(D) Completion. Each relocation shall be complete only when the Company actually relocates the Company Facilities, restores the relocation site in accordance with Section 6.3 of this Article or as otherwise agreed with the City, and removes from the site or properly abandons on-site (with City permission which shall not be unreasonably withheld or delayed) all unused facilities, equipment, material and other impediments.

(E) Scope of obligation. Notwithstanding anything to the contrary in this franchise, the Company shall not be required to relocate any Company Facilities from property: (a) owned by the Company in fee; or (b) in which the Company has a property right, grant, or interest, including without limitation an easement, but excluding public utility easements.

(F) Coordination. When requested in writing, the City and the Company shall meet to share information regarding coordination of anticipated projects that will require relocation of Company Facilities in the City. Such meetings shall be for the purpose of minimizing conflicts where possible and to facilitate coordination with any reasonable timetable established by the City for any public project. The City shall provide the

Company with one year's advance notice of any planned street repaving to the extent the City has such information. The Company shall make reasonable best efforts to complete any necessary or anticipated repairs or upgrades to Company Facilities that are located underneath the street within the one-year period if practicable.

(G) City revision of supporting documentation. Any revision by the City of supporting documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding facility relocation shall be deemed good cause for a reasonable extension of time to complete the relocation under this franchise.

(H) Delays. Should the City believe that the Company has failed to comply with any of its obligations contained in this Section, where the alleged delay has caused damages to be incurred by the City, the City will pursue its claim through the Company's internal claims process in an attempt to resolve the issues. The Company will process the claim in accordance with its policies and pay any amount the parties agree is due pursuant to the terms of a written settlement agreement. If the parties are unable to resolve the disputed issues through the Company's internal claims process, the City reserves all rights to seek compensation from the Company for any alleged damages and the Company reserves the right to assert no damages are owed to the City.

(I) Underground relocation. Underground facilities shall be relocated underground unless underground location is no longer the accepted standard for gas utilities. Above ground facilities shall be relocated above ground. Service to new areas shall be performed with Distribution Facilities located below ground, unless otherwise approved by the City.

6.5 Service to New Areas. If during the term of this franchise the boundaries of the City are expanded, the City will promptly notify Atmos in writing of any geographic areas annexed by the City during the term hereof ("Annexation Notice"). Any such Annexation Notice shall be sent to Atmos by certified mail, return receipt requested, or may be personally delivered in writing to Atmos and shall contain the effective date of the annexation, maps showing the annexed area and such other information as Atmos may reasonably require in order to ascertain whether there exist any customers of Atmos receiving natural gas service in said annexed area. To the extent there are such Atmos customers therein, then the gross revenues of Atmos derived from the sale and distribution of natural gas to such customers shall become subject to the franchise fee provisions hereof effective on the first day of Atmos' billing cycle immediately following Atmos' receipt of the Annexation Notice. The failure by the City to advise Atmos in writing through proper Annexation Notice of any geographic areas which are annexed by the City shall relieve Atmos from any obligation to remit any franchise fees to City based upon gross revenues derived by Atmos from the sale and distribution of natural gas to customers within the annexed area until City delivers an Annexation Notice to Atmos in accordance with the terms hereof.

6.6 Restoration of Service. In the event the Company's gas system, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore its system to satisfactory service within the shortest practicable time.

6.7 Supply and Quality of Service. The Company shall take all reasonable steps to make available an adequate supply of gas to provide service in the City. The Company's facilities shall be of sufficient quality, durability and redundancy to provide adequate and efficient gas service to the City.

6.8 Safety Regulations by the City. The City reserves the right to adopt, from time to time, reasonable regulations in the exercise of its police power which are necessary to ensure the health, safety, and welfare of the public, provided that such regulations are not in conflict of the rights granted herein. The Company agrees to comply with all such regulations, in the construction, maintenance and operation of its facilities and in the provision of gas within the City.

6.9 Inspection, Audit and Quality Control. The City shall have the right to inspect, at all reasonable times, any portion of the Company's system used to serve the City and its residents. The City also shall have the right to inspect and conduct an audit of Company records relevant to compliance with any terms of this Agreement at all reasonable times. The Company agrees to cooperate with the City in conducting the inspection and/or audit and to correct any discrepancies affecting the City's interest in a prompt and efficient manner.

6.10 City Not Required to Advance Funds. Upon receipt of the City's authorization for billing and construction, the Company shall extend its facilities to provide gas service to the City for municipal uses within the City limits or for any major municipal facility outside the City limits, without requiring the City to advance funds prior to construction.

ARTICLE VII

Purchase or Condemnation

7.1 City's Right to Purchase or Condemn. The right of City to construct, purchase or condemn any public utility works or ways, and the rights of the Company in connection therewith, as provided by the Colorado Constitution and statutes, are hereby expressly reserved.

7.2 Continued Cooperation by Company. In the event the City exercises its option to purchase or condemn, the Company agrees that, at the City's request, it will continue to supply any service it supplies under this franchise, for the duration of the term of this franchise pursuant to terms and conditions negotiated for such continued operation.

ARTICLE VIII

Removal of Company Facilities at End of Franchise

8.1. Limitations of Company Removal. In the event this franchise is not renewed at the expiration of its term or the Company terminates any service provided herein for any reason whatsoever, the City has not purchased or condemned the system and has not provided for alternative gas service, the Company shall not be required nor shall it have the right to remove said system pending resolution of the disposition of the system. The Company further agrees it will not withhold any temporary services necessary to protect the public and shall be entitled only to monetary compensation in no greater amount than it would have been entitled to were such services provided during the term of this franchise. However, in the event the obligation to maintain the facilities continues beyond the expiration of the franchise agreement, the Company and City shall negotiate the terms and conditions for such continued operation. Only upon receipt of written notice from the City stating that the City has adequate alternative gas sources to provide for the people of the City shall the Company be entitled to remove any or all of said systems in use under the terms of this franchise.

ARTICLE IX

Small Gas Production

9.1 Company to Purchase. The City expressly reserves the right to engage in

the production of gas. The Company agrees to negotiate for the purchase of City-produced gas in accordance with its tariffs and applicable Public Utilities Commission Rules and Regulations, provided that such gas is of equal quality, its source is reliable, it is produced in commercially marketable quantities, and its composition is compatible with other gas being purchased by the Company.

ARTICLE X

Termination and Cure

10.1 Notice / Cure / Remedies. Except as otherwise provided in this franchise, if a party (the "breaching party") to this franchise fails or refuses to perform any of the terms or conditions of this franchise (a "breach"), the other party (the "nonbreaching party") may provide written notice to the breaching party of such breach. Upon receipt of such notice, the breaching party shall be given a reasonable time, not to exceed thirty (30) days, in which to remedy the breach, or, if such breach cannot be remedied in thirty (30) days, such additional time as reasonably needed to remedy the breach, but not exceeding an additional thirty (30) day period, or such other time as the parties may agree. If the breaching party does not remedy the breach within the time allowed in the notice, the nonbreaching party may exercise the following remedies for such breach:

- (A) Specific performance of the applicable term or condition; and
- (B) Recovery of actual damages (excluding special or consequential damages) from the date of such breach incurred by the nonbreaching party in connection with the breach.

10.2 Termination of Franchise by City. In addition to the foregoing remedies, if

the Company fails or refuses to perform any material term or condition of this franchise (a "material breach"), the City may provide written notice to the Company of such material breach. Upon receipt of such notice, the Company shall be given a reasonable time, not to exceed ninety (90) days, in which to remedy the material breach or, if such material breach cannot be remedied in ninety (90) days, such additional time as reasonably needed to remedy the material breach, but not exceeding an additional ninety (90) day period, or such other time as the parties may agree. If the Company does not remedy the material breach within the time allowed in the notice, the City may, at its sole option, terminate this franchise. This remedy shall be in addition to the City's right to exercise any of the remedies provided for elsewhere in this franchise. Upon such termination, the Company shall continue to provide utility service to the City and its residents (and shall continue to have associated rights and grants needed to provide such service) until the City makes alternative arrangements for such service and until otherwise ordered by the PUC and the Company shall be entitled to collect from residents and shall be obligated to pay the City, at the same times and in the same manner as provided in this franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the Public Rights-of-Way.

10.3 Judicial Review. Any such termination shall be subject to judicial review as provided by law.

10.4 No Limitation. Except as provided herein, nothing in this franchise shall limit or restrict any legal rights or remedies that either party may possess arising from any alleged breach of this franchise.

ARTICLE XI

Indemnification of the City

11.1. City Held Harmless. The Company shall indemnify, defend, and save the City harmless from and against all liability or damage and all claims or demands whatsoever in nature arising out of the operations of the Company within the City pursuant to this franchise and the securing of and the exercise by the Company of the franchise rights granted in this Agreement and shall pay all reasonable expenses, including any reasonable attorney fees incurred by City in defense of any such claim or demand, arising therefrom. In fulfilling its obligation to defend and indemnify City, Company shall have the right to select defense counsel, subject to City's approval, which will not be unreasonably withheld. The City will provide prompt written notice to the Company of the pendency of any claim or action against the City arising out of the exercise by the Company of its franchise rights. The Company will be permitted, at its own expense, to appear and defend or to assist in defense of such claim. Notwithstanding any provision to the contrary, neither the City nor the Company shall be obligated to indemnify, defend or hold the other party harmless to the extent any claim, demand or lien arises out of or in connection with any negligent act or failure to act of the other party or any of its officers or employees. In the event of joint and concurrent negligence or fault of both the Company and the City, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Colorado without, however, waiving any governmental immunity available to the City under Colorado law and without waiving any of the defenses of the parties under Colorado law. If litigation arises between the parties, the substantially prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

11.2. Payment of Expenses Incurred by City in Relation to Agreement. At the

City's option, the Company shall pay in advance or reimburse the City for actual expenses incurred in the publication of notices and ordinances, and for photocopying of documents arising out of the negotiations or the process of obtaining the franchise.

11.3. Financial Responsibility. At the time of the execution of this Agreement, and from time to time at the City's request, not more frequently than annually, the Company shall submit to the City, as a confidential document, proof of its ability to meet its obligations under this Agreement, including its ability to indemnify the City as a required by this article. This proof may take the form of proof of insurance coverage, adequate funding of self-insurance, or the provision of a bond. The Company shall supply the City with a list of its insurance companies with the types of coverage, but not maximum levels of insurance. However, Company shall certify that such insurance provides a minimum of coverage equal to \$5,000,000. Said list shall be kept current by annual revisions during the term of the franchise and given to the City when requested. The City may require, from time to time, and the Company agrees to provide, additional reasonable proof of funding of the Company's indemnification obligations as a self-insured, if Company is acting as a self-insurer. Company shall cause its insurer to be required to notify City of any lapse or reduction in insurance coverage and Company shall produce to City evidence that it has completed this obligation.

11.4 Governmental Immunity. Nothing in this section or any other provision of this franchise shall be construed as a waiver of the notice requirements, defenses, immunities, and limitations the City may have under the Colorado Governmental Immunity Act (C.R.S. § 4-10-101 et seq.) or of any other defenses, immunities, or limitations of liability available to the City by law.

ARTICLE XII

Assignment; Saving Clause

12.1 Assignment. The Company shall not transfer or assign any rights under this franchise to a third party, excepting only corporate reorganizations of the company not including a third party, unless the City shall approve such transfer or assignment as required by law. Approval of the franchise or assignment shall not be unreasonably withheld by the City. However, City shall not be obligated to approve any assignment if Company is in default of any of its material obligations hereunder or if the Assignee is materially weaker than Company. For the purpose of this section, "materially weaker" means that the long-term unsecured debt rating of the Assignee is less than investment grade as rated by both S&P and Moody's. If the Assignee is materially weaker, the City may request additional documents and information reasonably related to the transaction and the legal, financial, and technical qualifications of the Assignee. Any such assignment or transfer shall require that said Assignee assume all obligations of Company be bound to the same extent as Company hereunder. If within the first 90 days after assignment to Assignee, City identifies a failure to comply with a material provision of this Franchise Agreement, City shall have the right to terminate this Franchise Agreement in accordance with the provisions of Article X.

11.2 Saving Clause. If a court of competent jurisdiction declares any portion of this franchise to be illegal or void, the remainder of the Agreement shall survive and not be affected thereby.

ARTICLE XIII**Force Majeure**

Notwithstanding anything expressly or impliedly to the contrary contained herein, in the event Company is prevented, wholly or partially, from complying with any obligation or undertaking contained herein by reason of any event of force majeure, then, while so prevented, compliance with such obligations or undertakings shall be suspended, and the time during which Company is so prevented shall not be counted against Company for any reason. The term "force majeure," as used herein, shall mean any cause not reasonably within Company control and includes, but is not limited to, acts of God, strikes, lockouts, wars, terrorism, riots, orders, or decrees of any lawfully constituted federal, state or local body (other than the City); contagions or contaminations hazardous to human life or health; fires, storms, floods, wash-outs, explosions, breakages or accidents to machinery or lines of pipe; inability to obtain or the delay in obtaining rights-of-way, materials, supplies, or labor permits; and temporary failures of gas supply.

ARTICLE XIV**Amendments**

14.1 **Proposed Amendments.** At any time during the term of this franchise, the City or the Company may propose amendments to this franchise by giving thirty (30) days' written notice to the other of the proposed amendment(s) desired, and both parties thereafter will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). However, nothing contained in this section shall be deemed to require either party to consent to any amendment proposed by the other party.

14.2 **Effective Amendments.** No alterations, amendments or modifications to this

franchise shall be valid unless executed by an instrument in writing by the parties, adopted with the same formality used in adopting this franchise, to the extent required by law. Neither this franchise, nor any term hereof, may be changed, modified or abandoned, in whole or in part, except by an instrument in writing, and no subsequent oral agreement shall have any validity whatsoever.

ARTICLE XV

Miscellaneous

15.1 **No Waiver.** Neither the City, nor the Company shall be excused from complying with any of the terms and conditions of this franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions, to insist upon or to seek compliance with any such terms and conditions.

15.2 **Successors and Assigns.** The rights, privileges, and obligations, in whole or in part, granted and contained in this franchise shall inure to the benefit of and be binding upon the Company, its successors and assigns, to the extent that such successors or assigns have succeeded to or been assigned the rights of the Company pursuant to Article XII of this franchise. Upon a transfer or assignment pursuant to Article XII, the Company shall be relieved from all liability from and after the date of such transfer.

15.3 **Third Parties.** Nothing contained in this franchise shall be construed to provide rights to third parties.

15.4 **Conflict of Interest.** The parties agree that no official, officer, or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and the Company further agrees not to hire or

contract for services any official, officer or employee of the City to the extent prohibited by law, including ordinances and regulations of the City.

15.5 Certificate of Public Convenience and Necessity. The City agrees to support the Company's application to the PUC to obtain a certificate of public convenience and necessity to exercise its rights and obligations under this franchise.

15.6 Authority. Each party represents and warrants that except as set forth below, it has taken all actions that are necessary or that are required by its ordinances, regulations, procedures, bylaws, or applicable law, to legally authorize the undersigned signatories to execute this franchise on behalf of the parties and to bind the parties to its terms. The persons executing this franchise on behalf of each of the parties warrant that they have full authorization to execute this franchise. The City acknowledges that notwithstanding the foregoing, the Company requires a certificate of public convenience and necessity from the PUC in order to operate under the terms of this franchise.

15.7 Representatives. Both parties shall designate from time to time in writing representatives for the Company and the City who will be the persons to whom notices shall be sent regarding any action to be taken under this franchise. Notice shall be in writing and forwarded by certified mail or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party, delivered in person or by certified mail. Until any such change shall hereafter be made, notices shall be sent to the City Administrator and to the Atmos Energy Manager of Public Affairs.

15.8 Parks and Open Space. The Company shall offer to grant to the City use of transmission right-of-way which it now, or in the future, owns or has an interest in within the City for the purposes set forth in and pursuant to the provisions of the

Park and Open Space Act of 1984, provided that the Company shall not be required to make such an offer in any circumstance where such offer would interfere with public safety or the Company's use of the transmission right-of-way. The Company's standard easement document shall be used. If the Company's offer is accepted by the City, then any improvements deemed appropriate by the City, approved by the Company, and consistent with the purpose of the Park and Open Space Act of 1984 shall be made by the City at its expense.

15.9 Governing Law, Venue, and Enforcement. This Agreement shall be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement shall be in the appropriate court in Colorado.

THE CITY OF SALIDA, COLORADO

By:

Mayor

ATTEST:

City Clerk

DATE: _____, 2025.

ACCEPTED AND AGREED TO:

ATMOS ENERGY CORPORATION

By:

Kathleen Ocanas
Vice President (Colorado-Kansas
Division)

City's Mailing Address and Phone Number:

City of Salida
448 E 1st St #112,
Salida, CO 81201

(719) 539-4555



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Administration	Christy Doon - City Administrator	February 18, 2025

AGENDA ITEM

Ordinance 2025 - 5, An Ordinance of the City Council of the City of Salida, Colorado, Approving Tenderfoot Communication Site Lease with Visionary Broadband, first reading and setting the public hearing.

BACKGROUND

In 2012 the City of Salida, through a grant from the Department of Local Affairs, constructed a communications site, including a tower and equipment shelter, on Tenderfoot Mountain. The site currently housing equipment for Visionary Broadband, Hilltop Broadband, Verizon, KHEN Radio and Emergency Services.

Visionary Broadband recently purchased Aristata Communications (who had previously purchased Colorado Central Telecom). A new lease was required to update the necessary terms including rent, ensure the proper business was identified and accurately reflect the existing conditions of the site.

Staff continue to work with Visionary Broadband to ensure the necessary Exhibits accurately reflect the current property conditions. Approval of this Ordinance should be based on staff approval of exhibits, prior to second reading.

STAFF RECOMMENDATION

Staff recommends Council approve the Ordinance on first reading and schedule a public hearing for March 4, 2025.

FISCAL IMPACT

Rent in the amount of \$1,500 shall be paid to the City monthly.

MOTION

A City Councilmember should state "I move to _____ Ordinance 2025 - 5, An Ordinance of the City Council of the City of Salida, Colorado, Approving Tenderfoot Communication Site Lease with Visionary Broadband, first reading and setting the public hearing for March 4, 2025", followed by a second and a roll call vote.

**CITY OF SALIDA, COLORADO
ORDINANCE NO. 05
(Series of 2025)**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO
APPROVING TENDERFOOT COMMUNICATION SITE LEASE WITH VISIONARY
BROADBAND**

WHEREAS, the City of Salida, Colorado (the “City”) is a statutory city, duly organized and existing under the laws of the state of Colorado; and

WHEREAS, in 2012 the City of Salida constructed a communications site including a tower and equipment shelter (“Tenderfoot Communications Site”) in order to facilitate additional broadband service within Salida and the surrounding area; and

WHEREAS, Chaffee County Telecom d/b/a Colorado Central Telecom, LLC entered into a lease agreement with the City of Salida via Ordinance 2013-33 to lease space at the Tenderfoot Communication Site; and

WHEREAS, Chaffee County Telecom d/b/a Colorado Central Telecom, LLC was purchased by Aristata Communications and Aristata Communications was purchased by Visionary Broadband; and

WHEREAS, Visionary Broadband wishes to lease space on the Tenderfoot Communications Site and the City of Salida wishes the same.

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

Section 1. The foregoing recitals are incorporated herein as conclusions, facts, determinations, and findings by Council.

Section 2. The City Council for the City of Salida hereby authorizes and approves the lease with Visionary Broadband on the terms and conditions contained as Exhibit A attached hereto and incorporated herein. The Mayor and other City officials are hereby authorized to execute the Lease by and on behalf of the City.

Section 3. Severability: The provisions of this Ordinance are severable and the invalidity of any section, phrase, clause, or portion of this Ordinance as determined by a Court of competent jurisdiction shall not affect the validity or effectiveness of the remainder of the Ordinance.

Section 4. City officials are hereby authorized to take such action as appropriate to implement the Lease Agreement.

Section 5. The City Council finds and declares that this Ordinance is

promulgated and adopted pursuant to the City's police power to preserve and protect the public health, safety, and welfare of the City and its residents, and bears a rational relation to the legislative objects sought to be obtained.

INTRODUCED ON FIRST READING on this 18th day of February, 2025, ADOPTED and ORDERED PUBLISHED IN FULL in a newspaper of general circulation by the City Council on this 21st day of February, 2025, and set for second reading and public hearing on the 4th day of March, 2025.

INTRODUCED ON SECOND READING, FINALLY ADOPTED and ORDERED PUBLISHED BY TITLE ONLY, by the City Council on the ____ day of _____, 20__.

CITY OF SALIDA, COLORADO

Mayor

[SEAL]

ATTEST:

City Clerk/Deputy Clerk

PUBLISHED IN FULL in the Mountain Mail after First Reading on the ____ day of _____, 20__, and BY TITLE ONLY, after final adoption on the ____ day of _____, 20__.

City Clerk/Deputy City Clerk

TOWER LEASE AGREEMENT

THIS TOWER LEASE AGREEMENT (“Agreement”), dated as of the latter of the signature dates below (the “Effective Date”), is entered into by the City of Salida, a Colorado statutory city (“Landlord”), and Visionary Communications LLC, a Wyoming limited liability company authorized to do business in the State of Colorado, with its principal office located at 1001 S. Douglas Highway, Suite 201, Gillette, Wyoming 82716 (“Tenant”).

BACKGROUND

Landlord is the owner of land and facilities located at the crest of Tenderfoot Mountain in the City of Salida, Chaffee County, State of Colorado (the “Property”), as further described on Exhibit A. Landlord is also the owner of a communications tower which is situated on a portion of the Property (the “Tower”). Tenant is a broadband communications provider and is permitted, licensed, or otherwise authorized by the applicable federal or state governmental authority to operate in all or some areas of the City of Salida. Landlord desires to permit use by Tenant and the Tenant desires to use a portion of the Property and Tower as described below in order to enable Tenant to erect, operate and maintain certain communication equipment of Tenant in connection with its broadband communications business.

1. RIGHT TO LEASE. Landlord grants to Tenant the right to lease a portion of the Property consisting of 1) physical space on the Tower to install wireless antennas, 2) space within the existing communications shelter (the “Shelter”) to install the necessary network rack, equipment and power infrastructure, and 3) space within the communications conduit to install and maintain fiber optic cable, together with a non-exclusive easement for ingress and egress and as further described on Exhibit B (collectively, the “Leased Premises”). The Leased Premises, and the specific Tenant facilities and equipment located at and on the Leased Premises as of the Effective Date are depicted on Exhibit B.

2. PERMITTED USE.

(a) Tenant shall use the Leased Premises solely for the purposes of providing broadband communications services, for which it has received all necessary approvals from either the Colorado Public Utilities Commission, the Federal Communications Commission (“FCC”), or as otherwise allowed by law.

(b) The Leased Premises may be used for the transmission and reception of communications signals and the installation, construction, maintenance, repair and operation of communications fixtures and related equipment, cables, accessories and improvements, which may include associated antennas, equipment shelters or cabinets and any other items necessary to the successful and secure use of the Leased Premises (collectively, the “Communications Facilities”). Tenant has the right to install and operate transmission cables from the Shelter to the antennas, electric lines from the main feed to the Shelter or cabinet and communication lines from the main entry point to the Shelter or cabinet in the locations depicted on Exhibit B. Tenant may also install and maintain a fiber-optic cable within the conduit that runs from the Shelter to the power infrastructure as noted in Exhibit B. It is acknowledged that Landlord owns the existing

conduit. Tenant accepts the Leased Premises, including, without limitation, the existing conduit “As-Is, Where-Is” with all faults. It is understood and agreed that when another tenant of the Landlord locates cabling in trenches along the roadway to the Tower site and removes all of the existing exposed conduit, Tenant shall supply its own new conduit and relocate its Communications Facilities into these trenches at Tenant’s expense, whereupon Tenant shall own such conduit. Tenant may upgrade or exchange any equipment that is like kind, and of the same size, location and general appearance as that equipment being replaced. Tenant agrees to comply with all applicable governmental laws, rules, statutes and regulations, relating to its use of the Communications Facilities on the Property and/or Tower. Tenant shall be responsible for the cost of any repairs for any damage caused to the Tower or any other part of the Property during installation, use, maintenance and removal of Tenant’s Communications Facilities.

(c) All existing Communications Facilities shall be specifically identified in the drawings attached as Exhibit C. Except as provided herein, prior to any alteration or modification to Tenant’s Communications Facilities Tenant shall submit copies of the site plan, floor plan, sections, elevations, structural plans, and specifications to Landlord for prior approval. Landlord shall give such written approval or provide Tenant with its requirements for changes upon completion of the development application review process. Notwithstanding the foregoing, prior approval of Landlord is not required for routine maintenance, repairs, the like-kind replacement of the Communications Facilities, or any modifications to the interior of the equipment shelter or items housed therein, so long as the resulting Communications Facilities are of comparable size and exterior appearance, do not extend beyond the space indicated for any of the Communications Facilities identified on Exhibit B, and are in full compliance with this Agreement and all applicable laws and regulations.

(d) Smoking; Solicitations; Dangerous Activities. The Leased Premises are a smoke-free environment. Tenant shall not permit any smoking, canvassing, soliciting or peddling on the Leased Premises. Tenant shall not permit dangerous activities on the Leased Premises.

3. TERM.

(a) The Initial Term of this Agreement shall be five (5) years commencing on April 3, 2025 (the “Commencement Date”), unless it is terminated earlier as expressly provided in this Agreement. The Initial Term will terminate on the fifth (5th) annual anniversary of the Commencement Date.

(b) This Agreement will automatically renew for three (3) additional five (5) year terms (the “Extension Terms”), upon the same terms and conditions, unless either the Tenant or Landlord notifies the other in writing of their respective intention not to renew this Agreement no more than one-hundred and eighty (180) days and no less than ninety (90) days prior to the end of the Initial Term of this Agreement or any Extension Term, whichever is applicable.

(c) The Initial Term and any Extension Terms are collectively referred to as the “Term.”

4. RENT.

(a) Tenant shall pay to Landlord an annual rental in the amount of Eighteen Thousand Dollars (\$18,000.00) (the "Rent") in monthly installments of One Thousand Five Hundred Dollars (\$1,500.00) at the address set forth below. The annual rental and monthly installments shall be increased each year as set forth in Section 4(b) below. The first monthly installment of Rent shall be paid by Tenant to Landlord upon the Commencement Date and subsequent monthly installments of Rent shall be due and payable on or before the first day of each calendar month thereafter during the Term. Rent shall be payable to Landlord at City of Salida, 448 E. First Street, Suite 112, Salida, CO 81201; Attention: Payables/Finance Department.

(b) The Rent and monthly installments shall increase four percent (4%) annually during the Term on each anniversary of the Commencement Date.

(c) Tenant shall pay Landlord a late payment charge equal to ten percent (10%) of the late payment for any payment 30-days past due. Any amounts not paid when due shall bear interest until paid at the rate of one and one half percent (1.5%) per month.

5. APPROVALS.

(a) Landlord agrees that Tenant's ability to use the Leased Premises is contingent upon the suitability of the Leased Premises for Tenant's permitted use and Tenant's ability to obtain and maintain all government approvals. Landlord authorizes Tenant to prepare, execute and file any required applications to obtain government approvals for Tenant's permitted use under this Agreement and further agrees to cooperate with Tenant, at no cost to Landlord, in making such applications for and with obtaining and maintaining the government approvals required for the provision of communication services.

(b) Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of Tenant's choice, and Tenant shall be responsible for any costs or fees incurred in connection therewith. In the event Tenant determines, in its reasonable discretion, due to the title report results or survey results, that the condition of the Leased Premises will not permit the use granted under this Agreement, Tenant will have the right to terminate this Agreement upon thirty (30) days' written notice to Landlord.

6. TERMINATION. This Agreement may be terminated as follows:

(a) by either party on ten (10) days' prior written notice, if the other party remains in default after the applicable cure period expires;

(b) by either party upon six (6) months prior written notice to the other party;

(c) by Landlord if any government body, other than Landlord, passes an ordinance, law, or regulation that would interfere or render impossible performance of this Agreement or if the structure to which Tenant's equipment is attached is scheduled for removal or deconstruction. If permissible, Landlord shall provide Tenant with ninety (90) days' notice to surrender the Leased

Premises and all interests to the Landlord. Tenant shall have no claim against the Landlord for any loss or damage; or

(d) by Landlord upon sixty (60) days' written notice if it determines, (i) based on a certified structural review that there exists structural damage or (ii) destruction of all or part of the Property from any source, provided that Landlord shall first undertake reasonable efforts, as determined by Landlord, to recover any applicable damages from the party causing such damage or destruction and thereafter if Landlord is unable to recover such damages after undertaking such efforts to collect such amounts, Tenant shall then be offered the opportunity to repair the damage. All structural repairs performed by Tenant shall become the property of the Landlord immediately upon completion of such repairs. The cost of such repairs shall be applied towards future monthly Rent charges.

(e) This Agreement shall terminate automatically if events occur and notice is provided as described in Sections 18 and 19 of this Agreement.

(f) Force Majeure. Neither party shall be liable for its inability to perform its obligations under this Agreement, excluding, however, any payment obligations, which payment obligations must always be performed, if caused by conditions beyond its reasonable control including but not limited to acts of terrorism, environmental conditions, pandemics, epidemics, labor strikes, protests, perils and hazards, and acts of God. In the event either party is prevented or delayed in the performance of any of its obligations under this Agreement by reason beyond its reasonable control, that party shall have a reasonable time, under the circumstances, to perform the affected obligation under this Agreement or to procure a substitute for such obligation which is satisfactory to the other party. If either party believes that a reason beyond its reasonable control has prevented or delayed its compliance with the terms of this Agreement, that party shall provide documentation as reasonably required by the other party to substantiate the claim. If the party has not yet cured the deficiency, it shall also provide the other party with its proposed plan for remediation, including the timing for such cure. In order to be entitled to an excuse for any delay or failure to perform under this Agreement pursuant to this subsection (f), the party claiming such excuse shall promptly give written notice to the other party to this Agreement of any event or occurrence which it believes falls within the contemplation of this subsection, and shall not be in default so long as that party is diligently working toward complying with its obligations under this Agreement at the earliest possible time.

(g) If an event causing damage to the Tower and/or Shelter renders the Tenant unable to operate its Communications Facilities, all Tenant payment obligations outlined in the Agreement shall be maintained so long as the Landlord is making a good faith effort to restore the Tower and/or Shelter to a usable state. If the required repairs to render the Tower and/or Shelter usable take longer than sixty (60) days, and if other temporary options to allow for operation of the Communication Facilities at a level of performance that is comparable to the levels obtained from the Communication Facilities on the Tower are not available to Tenant, the monthly Rent owed by Tenant shall be suspended until its Communications Facilities can be utilized. Notwithstanding the foregoing, if the event causing damage to the Tower and/or Shelter was caused by Tenant or its contractors' acts or omissions, Tenant's payment obligations outlined in this Agreement shall continue uninterrupted and Tenant shall be solely responsible for any required

repairs to render the Tower and/or Shelter usable.

7. **INSURANCE.**

(a) During the Term of the Agreement, Tenant shall maintain, or cause to be maintained, in full force and effect and at its sole cost and expense, the following types and limits of insurance:

(i) Worker's compensation insurance meeting applicable statutory requirements and employer's liability insurance with limits of One Hundred Thousand Dollars (\$100,000.00) for each accident/disease/policy limit.

(ii) Commercial general liability insurance with limits of Two Million Dollars (\$2,000,000.00) per occurrence for bodily injury (including death) and property damage and Five Million Dollars (\$5,000,000.00) general aggregate, including for bodily injury, blanket contractual liability insurance for all written contracts, products and completed operations liability, and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage.

(iii) Automobile liability insurance covering all owned, hired, and non-owned vehicles in use by Tenant, its employees, or agents, with limits of One Million Dollars (\$1,000,000.00) combined single limit each accident for bodily injury and property damage.

(b) All policies other than those for Worker's Compensation and Employer's Liability shall be written on an occurrence and not on a claims made basis.

(c) The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated above.

(d) All policies, except for the Worker's Compensation and Employer's Liability policies, shall name Landlord and its officers, boards, commissions and employees as additional insureds (collectively, the "Additional Insureds").

(e) Certificates of insurance for each insurance policy required to be obtained by Tenant in compliance with this Section 7 shall be provided to the Landlord annually during the Term of the Agreement. Tenant shall immediately advise Landlord of any claim or litigation that may result in liability to Landlord.

(f) **Cancellation of Policies of Insurance.** All insurance policies required pursuant to this Agreement shall contain the following endorsement:

"At least thirty (30) days prior written notice of cancellation or change of any required coverage shall be given to the City of Salida, 448 E. First Street, Suite 112, Salida, CO 81201; Attention: City Administrator."

(g) Insurance Companies. All insurance shall be effected under valid and enforceable policies, issued by insurers licensed, authorized or permitted to do business by the State of Colorado or surplus line carriers on the State of Colorado Insurance Commissioner's approved list of companies qualified to do business in the State of Colorado. All insurance carriers and surplus line carriers shall be rated A-:VII or better by A.M. Best Company.

(h) Deductibles. Tenant agrees to indemnify and hold harmless Landlord and the Additional Insureds from and against the payment of any deductible and from and against the payment of any premium on any insurance policy required to be obtained and maintained by Tenant under this Agreement.

(i) Contractors. Tenant shall require that every one of its contractors and their subcontractors who perform work on the Leased Premises and/or the Tower carry, in full force and effect, substantially the same coverage with substantially the same limits as required of Tenant.

(j) Review of Limits. Landlord may periodically review the insurance coverages to be carried by Tenant. If Landlord reasonably determines that higher limits of coverage are necessary to protect the interests of Landlord or the Additional Insureds then upon prior written notice to Tenant, Tenant shall obtain the additional limits of insurance, at its sole cost and expense.

8. INTERFERENCE.

(a) Upon the written request of the Tenant, where there are existing radio frequency user(s) on the Property and/or the Tower, the Landlord (to the best of its abilities) will provide Tenant with a list of all existing radio frequency user(s) on the Property and/or the Tower to allow Tenant to evaluate the potential for interference. Tenant warrants that its use of the Leased Premises will not interfere with existing radio frequency user(s) on the Property and/or the Tower so disclosed by Landlord, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations. Tenant further agrees that it will cooperate with Landlord and with any other radio frequency user(s) Landlord permits to be on the Property and/or the Tower, by sharing the requisite information to determine what potential interference issues may exist and to take all reasonable steps necessary to avoid such interference.

(b) Landlord will not grant, after the date of this Agreement, a lease, license or any other right to any third party for use of the Property, if such use may in any way adversely affect or interfere with the Communications Facilities, the operations of Tenant or the rights of Tenant under this Agreement.

(c) The Tenant's Communications Facilities shall be of the type and frequency which will not cause measurable interference, as defined by the FCC, to any currently leased and legally operating communications equipment of the Landlord, other existing entities on the Property, or adjacent landowners. In the event Tenant's Communications Facilities cause such interference, Tenant shall take all reasonable steps necessary to correct and eliminate the interference.

(d) Prior to commencing operations of its Communications Facilities, Tenant shall provide written assurance, in a format reasonable and customarily accepted by the federal government, ensuring that Tenant's Communications Facilities comply with all federal requirements for radio frequency ("RF") emissions, and that Tenant's Communications Facilities will not cause measurable interference with the equipment located on the Property and/or adjacent property. The Landlord may, at the commencement of any Extension Term, in response to a formal interference claim, or at any other time in its reasonable discretion not to exceed one (1) time in any calendar year, require Tenant to engage in testing through a qualified radio frequency engineer, to determine Tenant's RF emissions levels at the Property, as they relate to the total RF environment related to operations on the Tower. All costs of testing and compliance shall be borne equally by Tenant and such other tenants that are similarly situated. Notwithstanding the foregoing, tenants operating equipment, all of which is below the 500Mhz threshold, and tenants operating exclusively equipment on the Tower that is used for public safety and/or emergency communications shall be exempt from paying any of the foregoing testing and compliance costs.

(e) Tenant understands that no use of the Leased Premises and/or Property will be permitted which exceeds federal RF emissions standards within and at the boundaries of the Leased Premises and/or Property. If the cumulative RF emissions levels ever exceed federal standards, all users of the Leased Premises and/or Property that are not public sector entities, including Tenant, will be required to modify operations on a reasonably comparable level, in order to bring the overall RF emissions into compliance.

(f) Notwithstanding any other provision to the contrary, Tenant's activities shall not interfere with the peaceful enjoyment of the Property by Landlord and/or any other tenants, lessees, or licensees, or endanger the health or safety of Landlord's employees and/or such other tenants, lessees, or licensees.

9. INDEMNIFICATION.

(a) Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage, or liability (or any claims in respect of the foregoing), costs or expenses arising from the installation, use, maintenance, repair, or removal of the Communications Facilities or Tenant's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Landlord, its employees, or agents.

(b) Notwithstanding anything to the contrary in this Agreement, Tenant and Landlord each waives any claims that each may have against the other with respect to consequential, incidental, or special damages.

(c) The provisions of this Section 9 shall survive the expiration or earlier termination of this Agreement.

10. WARRANTIES. Tenant and Landlord each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power and authority to enter into this Agreement and bind itself hereto through the party set forth as signatory for the party below.

11. **HAZARDOUS SUBSTANCES.**

(a) Tenant represents and warrants that its use of the Leased Premises and/or Tower will not generate any Hazardous Substance, and it will not store or dispose of on the Leased Premises and/or Tower nor transport to or over the Leased Premises and/or Property any Hazardous Substance. Tenant further represents and warrants that its installation and maintenance of its Communications Facilities will not involve the bringing of any asbestos containing material onto the Property. Tenant further agrees to hold Landlord harmless from and indemnify Landlord against any release of any such Hazardous Substance and any damage, loss, expense, or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof except any release caused by the negligence of Landlord, its employees, or agents. Landlord shall be responsible for any release of a Hazardous Substance caused by Landlord, including any damage, loss, expense, or liability resulting from such release. "Hazardous Substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous, or other similar term, by any federal, state, or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations, or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death, or disease.

(b) Tenant's indemnification obligations set forth in this Section 11 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Property conditions or any clean-up, remediation, removal, or restoration work required by any governmental authority.

(c) In the event Tenant becomes aware of any Hazardous Substance on the Property that was not caused by Tenant, its employees, agents, or contractors, or any environmental or industrial hygiene condition or matter relating to the Property that, in Tenant's reasonable determination, renders the condition of the Leased Premises unsuitable for Tenant's use that was not caused by Tenant, its employees, agents, or contractors, or if the leasing or continued leasing of the Leased Premises would expose Tenant to undue risks of government action, intervention, or third-party liability, which action, intervention, or third-party liability was not caused by Tenant, its employees, agents, or contractors, Tenant will have the right, in addition to any other rights it may have at law or in equity, to terminate the Agreement upon written notice to Landlord.

(d) Notwithstanding anything to the contrary herein, Tenant shall have the right to store and use standard quantities of batteries, diesel fuel for backup generators, and any other substances required for the operation of Tenant's Communications Facilities so long as it does so in full compliance with all applicable laws.

12. **ACCESS.**

(a) At all times throughout the Term of this Agreement, and at no additional charge to Tenant, Tenant and its employees, agents, and contractors, will have reasonable access, including emergency access, twenty-four (24) hours per day, seven (7) days per week pedestrian and

vehicular access to and over the Property, to the Leased Premises, for the installation, maintenance and operation of the Communications Facilities and any utilities serving the Leased Premises. All work to the maximum extent possible however, shall be performed by Tenant on non-holiday weekdays between 7:00 am and 5:00 pm. Tenant shall immediately call Chaffee County Dispatch at (719) 539-2596, or such other number as may be provided by Landlord to Tenant, to report any emergency to Landlord. Tenant shall provide to the Landlord a twenty-four (24) hour per day, seven (7) day per week, emergency contact name and telephone number. Notwithstanding the foregoing, Tenant understands and acknowledges that the Landlord may install Christmas lights above the road leading to the Tower at a height of approximately ten (10) feet during the months of November through January. In connection with accessing the Leased Premises during this time period, Tenant is solely responsible for ensuring that its vehicles and equipment can safely access the Leased Premises without causing any damage, including, without limitation, damage to the Christmas lights. Should Tenant, its employees or contractors cause any damage, including, without limitation damage to the Christmas lights, Tenant shall immediately repair such damage to Landlord's reasonable satisfaction at Tenant's sole cost and expense. Tenant shall additionally post such emergency contact information in a visible location at the Leased Premises. Tenant and its contractors' vehicles shall be clearly marked with a company logo or shall be otherwise reasonably identifiable. Landlord grants to Tenant a license for such access and Landlord agrees to provide to Tenant such codes, keys and other instruments necessary for such access at no additional cost to Tenant. In the event any public utility is unable to use the access provided to Tenant then the Landlord agrees to work with Tenant to identify and grant additional access in a location acceptable to both parties either to Tenant or to the public utility, for the benefit of Tenant.

(b) Security and Invitees. Landlord does not represent that the Property or Leased Premises are safe from theft, injury, or damage to Tenant or Tenant's property. Landlord does not represent that locks or security services or equipment, if any, are provided to protect Tenant's safety, property, or the Leased Premises. Notwithstanding any provision to the contrary, Landlord is not liable for any lack of security with respect to the Property or Leased Premises or for any damages caused by any error or other action regarding the admission to or exclusion from the Property of any person. Tenant is solely responsible for the security of the Leased Premises and its personal property on the Leased Premises. Tenant shall make good faith efforts to monitor and control the conduct of its staff and agents while on the Leased Premises. Tenant shall at all times bear the entire risk of loss to Tenant's property and equipment.

13. REMOVAL/RESTORATION. All portions of the Communications Facilities brought onto the Leased Premises by Tenant will be and will remain Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during the Term. Landlord covenants and agrees that no part of the Communications Facilities constructed, erected, or placed on the Leased Premises by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of the Landlord that all improvements of every kind and nature constructed, erected, or placed by Tenant on the Leased Premises will be and remain the property of the Tenant and may be removed by Tenant at any time during the Term. Within ninety (90) days following the expiration or earlier termination of this Agreement, Tenant will remove all of Tenant's improvements and Tenant will restore the Leased Premises to its condition immediately preceding the installation of such improvements. Any property not removed within such ninety (90) day period shall be deemed abandoned and thereafter, Landlord shall have a right to keep,

dispose, or sell such property in its sole discretion and to recover, if applicable, any expenses it may have in connection therewith from Tenant.

14. MAINTENANCE/UTILITIES.

(a) Tenant will keep and maintain the Leased Premises in good condition. Tenant shall maintain the outward appearance of any equipment shelter or other ground equipment.

(b) Landlord will maintain and repair the Property and access thereto, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements. Notwithstanding the foregoing, it is acknowledged that Tenant along with other tenants at the Property store certain of their equipment in the Shelter owned by the Landlord, which Shelter is located on a portion of the Leased Premises. Landlord will from time to time during the Term of this Agreement renovate, make repairs to and maintain all components of such Shelter in its sole discretion. Landlord may request that Tenant perform and pay for any costs associated with updates or maintenance in return for equal credits towards the monthly Rent.

(c) Notwithstanding any other provision to the contrary and at Landlord's sole discretion, Landlord may at any time examine, inspect and protect the Property and make alterations, renovations, restorations, repairs, and/or improvements to the Property as long as they do not interfere with Tenant's ability to operate its Communications Facilities.

(d) In addition to the payment of Rent to Landlord, Tenant shall pay to the Landlord Forty Dollars (\$40.00) per month as its share of the utilities used at the Tower site (the "Monthly Utilities Expense"). The first Monthly Utilities Expense payment shall be paid by Tenant to Landlord upon the Commencement Date and subsequent Monthly Utilities Expense payments shall be due and payable on or before the first day of each calendar month thereafter during the Term. The Monthly Utilities Expense shall increase ten percent (10%) during each Extension Term.

(e) Tenant shall pay Landlord a late payment charge equal to ten percent (10%) of the late payment for any payment 30 days past due. Any amounts not paid when due shall bear interest until paid at the rate of one and one half percent (1.5%) per month.

15. DEFAULT AND RIGHT TO CURE.

(a) The following will be deemed a default by Tenant and a breach of this Agreement: (i) non-payment of Rent if such Rent remains unpaid for more than ten (10) days after receipt of written notice from Landlord of such failure to pay; (ii) Tenant's failure to perform any other term or condition under this Agreement within thirty (30) days after receipt of written notice from Landlord specifying the failure; or (iii) if Tenant is adjudicated as bankrupt, makes any assignment for the benefit of creditors, or if Tenant becomes insolvent. No such failure, however, except for payment of Rent, will be deemed to exist if Tenant has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default, except for payment of Rent, will be excused if due to causes beyond the reasonable control of Tenant. If Tenant remains in default beyond any applicable cure period,

Landlord will have the right to exercise any and all rights and remedies available to it at law or in equity.

(b) The following will be deemed a default by Landlord and a breach of this Agreement: (i) Landlord's failure to provide access to the Leased Premises or cure any interference problem within twenty-four (24) hours after written notice of such default or (ii) Landlord's failure to perform any term, condition, or breach of any warranty or covenant under this Agreement within thirty (30) days after receipt of written notice from Tenant specifying the failure. No such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, Tenant will have the right to exercise any and all rights available to it at law or in equity.

16. ASSIGNMENT.

(a) Tenant may not assign, sublet or otherwise transfer any portion of its interest in this Agreement or the Communications Facilities, by operation of law or otherwise, without the prior written consent of Landlord, which may be withheld in Landlord's sole and absolute discretion. An assignment, subletting, or transfer in violation of this section shall be null and void and unenforceable against Landlord. Notwithstanding the immediately preceding sentences, Tenant may assign its interest under this Agreement and to the Communications Facilities without Landlord's consent but upon at least thirty (30) days prior written notice to Landlord to (a) one or more entities which shall control, be controlled by, or be under common control with, Tenant, or (b) to any entity which acquires all or substantially all of Tenant's stock or assets in the market defined by the FCC in which the Property is located, in connection with any merger, consolidation or reorganization of Tenant.

(b) Except with respect to any pending claim of default under this Agreement, effective upon transfer by Landlord of Landlord's interest in the Property and/or Tower, Landlord shall be released from all obligations and liabilities arising out of this Agreement.

(c) The parties hereby expressly agree and acknowledge that it is the intention of both parties that in the event that during the Term of this Agreement, Tenant shall become a debtor in any voluntary or involuntary bankruptcy proceeding under the United States Bankruptcy Code, 11 U.S.C. 101, et seq. (the "Code"), for the purposes of proceeding under the Code, this Agreement shall be treated as an unexpired lease of nonresidential real property under Section 365 of the Code, as it may be amended, and, accordingly, shall be subject to the provisions of subsections (d)(3) and (d)(4) of Section 365 of the Code. Any person or entity to which this Agreement is assigned pursuant to the provisions of the Code, shall be deemed without further act to have assumed all of the obligations of the Tenant arising under this Agreement both before and after the date of such assignment. Any such assignee shall upon demand execute and deliver to the Landlord an instrument confirming such assumption. Any monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid to the Landlord, shall be the exclusive property of the Landlord, and shall not constitute property of the Tenant or of the estate of the Tenant within the meaning of the Code. Any monies or other considerations constituting

the Landlord's property under the preceding sentence not paid or delivered to the Landlord shall be held in trust for the benefit of the Landlord and be promptly paid to the Landlord.

17. NOTICES. All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, postage prepaid, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused, or returned undelivered. Notice will be addressed to the parties as follows:

If to Tenant: Visionary Communications LLC
1001 S. Douglas Highway, Suite 201
Gillette, WY 82716
Attention: Brian Shepherd, VP – Grant Engagement

If to Landlord: City of Salida, Colorado
448 E. First Street, Suite 112
Salida, CO 81201
Attention: City Administrator

Either party hereto may change the place for the giving of notice to it by thirty (30) days written notice to the other party given in the manner as provided for herein.

18. CONDEMNATION AND EMINENT DOMAIN.

(a) In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within fifteen (15) days. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's reasonable determination, to render the Leased Premises unsuitable for Tenant's permitted use, this Agreement will terminate as of the date the title vests in the condemning authority. Tenant shall have the right at its sole option and at its sole cost and expense, to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant on account of any and all damage to Tenant's business and any costs or expenses incurred by Tenant in moving/removing its equipment, personal property and leasehold improvements.

(b) If the entire Property or a portion sufficient to render the Leased Premises unfit for occupancy or make it impossible for Tenant to conduct its business is taken by the power of eminent domain, this Agreement shall terminate as of the date of taking. Tenant shall immediately surrender the Leased Premises and all interests to the Landlord. Tenant shall have no claim against Landlord for any loss or damage.

19. CASUALTY. Landlord will provide notice to Tenant of any casualty affecting the Property within seven (7) days of the casualty if the casualty is not caused by Tenant, its employees, agents, or contractors, and if such casualty renders the Leased Premises unsuitable for Tenant's operations. If any part of the Communications Facilities or Property is damaged by fire or other casualty so as to render the Leased Premises unsuitable, in Tenant's reasonable determination, then Tenant may terminate this Agreement by providing written notice to the

Landlord, which termination will be effective as of the date of such damage or destruction so long as such damage was not caused by Tenant, its employees, agents, or contractors. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof. Tenant shall have no other claims against Landlord for any loss by fire, the elements, or other cause. If notice of termination is not given, and should Landlord or Tenant undertake to rebuild the Communications Facilities and/or Tower, Landlord agrees to use its reasonable efforts to permit Tenant to place temporary transmission and reception facilities on the Property and Rent shall be abated until such time as Tenant is able to activate a replacement transmission facility at another location or the reconstruction of the Communications Facilities and/or Tower are completed.

20. WAIVER OF LANDLORD'S LIENS. Landlord waives all lien rights it may have, statutory or otherwise, concerning the Communications Facilities or any portion thereof. The Communications Facilities shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law, and Landlord consents to Tenant's right to remove all or any portion of the Communications Facilities from time to time in Tenant's sole discretion and without Landlord's consent.

21. MECHANICS' AND MATERIALMANS' LIENS. Tenant shall not permit any mechanics' or materialmen's liens to be filed against the Leased Premises or the Property by reason of work, labor, services, or materials performed or furnished to or for the benefit of Tenant, its transferees, successors, or permitted assigns. If any such lien is filed, Tenant may contest the same in good faith, but notwithstanding contest, Tenant shall, within thirty (30) days after the filing thereof, cause such lien to be released of record by payment, bond, entry of an order of court of competent jurisdiction, or otherwise. The provisions of this Section 21 shall survive the expiration or earlier termination of this Agreement.

22. TAXES.

(a) Landlord is exempt from paying taxes. Tenant shall be solely responsible for and shall timely pay all personal property taxes levied and assessed against it or its personal property.

(b) Tenant shall have the right to, at its sole option and at its sole cost and expense, to contest all taxes, assessments, charges and impositions assessed against its personal property or improvements.

23. MISCELLANEOUS.

(a) **Amendment; Waiver.** This Agreement cannot be amended, modified, or revised unless done so in writing and then signed by an authorized agent of the Landlord and an authorized agent of the Tenant. No provision, benefit, or obligation under this Agreement shall be deemed waived, unless such waiver is in writing and signed by the party charged with such waiver. No course of dealing between the parties nor any failure by either party at any time, or from time to time, to enforce any term or condition of this Agreement shall constitute a waiver of such term or condition, nor shall such course of dealing or failure affect such term or condition in any way, or

affect the right of the parties at any time to avail themselves of such remedies as they may have for any breach of such term or condition.

(b) **Inurement.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

(c) **Third Party Rights.** This Agreement does not create a standard of care for Landlord and does not enlarge Landlord's duties under any applicable law, regulation, or ordinance. This Agreement is for the sole benefit of the parties and their respective successors and permitted assigns. This Agreement affords no claim, benefit, or right of action to any third party. Any party besides Landlord or Tenant receiving services or benefits under this Agreement is only an incidental beneficiary.

(d) **Entire Agreement.** This Agreement together with the exhibits attached hereto constitutes the entire agreement of the parties hereto and supersede all prior offers, negotiations, and agreements with respect to the subject matter of this Agreement.

(e) **Governing Law; Venue.** The provisions of this Agreement shall be governed by the laws of the State of Colorado, without giving effect to any conflict of law provisions. Any judicial proceeding brought hereunder shall be brought exclusively in Chaffee County, Colorado. Each party hereby consents to the jurisdiction of such county and waives any defense or objection to such jurisdiction and/or venue.

(f) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "including" will be interpreted to mean "including, without limitation"; (iii) whenever a party's consent is required under this Agreement, except as otherwise stated in the Agreement, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of the Agreement and are incorporated by reference into this Agreement; (v) use of the terms "termination" or "expiration" are interchangeable; and (vi) reference to a default will take into consideration any applicable notice, grace and cure periods.

(g) **Estoppel.** Either party will, at any time upon twenty (20) business days prior written notice from the other, execute, acknowledge and deliver to the other a statement in writing (i) certifying that this Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying this Agreement, as so modified, is in full force and effect) and the date to which the Rent and other charges are paid in advance, if any, and (ii) acknowledge that there are not, to such party's knowledge, any uncured defaults on the part of the other party hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Property. The requested party's failure to deliver such statement within such time will be conclusively relied upon by the requesting party that (i) this Agreement is in full force and effect, without modification except as may be properly represented by the requesting party, (ii) there are no uncured defaults in either party's performance, and (iii) no more than one month's Rent has been paid in advance.

(h) **W-9.** Landlord agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Agreement and at such other times as may be reasonably requested by Tenant.

(i) **Severability.** If any term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein.

(j) **Counterparts; Signatures.** This Agreement may be executed in two (2) or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties. It being understood that all parties need not sign the same counterpart. Signatures on this Agreement delivered by facsimile or electronically in a portable document format (pdf) shall be deemed to constitute original signatures.

(k) **Survival of Provisions.** Any obligation of the parties relating to monies owed, as well as those provisions relating to limitations on liability and actions, shall survive the expiration or earlier termination of this Agreement.

(l) **Subordination.** Tenant accepts this Agreement subject and subordinate to any mortgage, deed of trust, or other lien presently existing or hereafter arising upon the Property and to any renewals, modifications, consolidation, refinancing, and extensions thereof, but Tenant agrees that any such mortgagee shall have the right at any time to subordinate such mortgage, deed of trust, or other lien to this Agreement on such terms and subject to such conditions as such mortgagee may deem appropriate in its discretion. This provision is hereby declared to be self-operative and no further instrument shall be required to effect such subordination of this Agreement.

(m) **Attorney's Fees.** In the event of any action filed in relation to this Agreement, the prevailing party in such matter shall be entitled to recover from the other party its reasonable attorney's fees and costs.

(n) **TABOR.** Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the City of Salida not performed during the current fiscal year is subject to annual appropriation by the City of Salida, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt, or liability beyond the current fiscal year.

(o) **Governmental Immunity.** The City of Salida is relying on and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the City of Salida.

(p) **Open Records.** The parties understand and agree that as a public entity, the City is subject to the Colorado Open Records Act, C.R.S. § 24-72-200, *et seq.*, as amended, and as such, this Agreement is subject to public disclosure.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of the last signature below.

LANDLORD
City of Salida, Colorado

DATE: _____

By: _____
Print Name: _____
City Administrator

TENANT
Visionary Communications LLC,
a Wyoming limited liability company

DATE: _____

By: _____
Print Name: _____
Title: _____

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

[INSERT]

EXHIBIT B

Description of Leased Premises with Drawings and Description/Location of Permitted Tower Use and Related Utility Easements

[INSERT]

EXHIBIT C

Existing Communication Facilities

[INSERT]



DEPARTMENT UPDATES

DEPARTMENT	PRESENTED BY	DATE
Administration	Christy Doon - City Administrator	October 15, 2024

Administration and Human Resources

- Working with CivicBrand on website, social media and templates for future newsletters
- Presented to 30 employees about Record Retention and Management
- Finalized ADA PDF Accessibility Guide for City
- Held elections for Sustainability Committee and Tree Board
- Began the transition from Mission Square to Colorado Retirement Association

Arts and Culture

- Steamplant:
 - Repairs:
 - Painting: Ballroom
- Events:
 - Total Events: 42
 - 14 Total Events were not paid rentals (this includes Boy/Girl/Cub Scout Mtgs, Creative Mixer, City Events/meetings, movie night)
 - 18 different groups using the space.
 - SteamPlant Events: 24
 - Scout Hut:Events: 18
 - Total Number of People Attending SteamPlant/Scout Hut Events: TBD (over 1,200 guesstimate)
 - The highest attendance events in January were the RokSchool Showcase, Blessings of the Water, and Backcountry Film Fest
 - Lowest Attendance: Movie night (hosted by City of Salida)
- Engagement and Programs:
 - Over 30 artists participated in the "Follow the heARTS" call for art for the Paquette Gallery featuring 50+ works of all mediums from established and emerging local artists. Over 100 people attended the opening and Creative Mixer on February 6 where the community celebrated the artists and viewed the work. The art is available for purchase and the community is encouraged to come and view the exhibit during the month of February.
 - Salida Arts & Culture partners with Shelby Cox for a very special preshow before the screening of Oscar nominated film The Wild Robot Movie Night on February 20. Arts & Culture staff will provide a Robot Craft project using found and recycled materials and artist Shelby Cox will give a presentation about his work before the movie.
 - Registration for Summer Creativity Camps opens Friday, February 14. For the third year, Salida Arts & Culture will provide full day, one-week art camps during the summer where children can learn from local artists and teachers. Each week features a different local artist, a different medium, and culminates in an end of the week Art Show for family and friends.
 - Tina met with Colorado Creative Industries Executive Director Josh Blanchard and is working on the quarterly report of the Salida Creative District for CCI.
 - Arts & Culture staff began the rollout of a new "Arts & Culture" newsletter, a comprehensive letter to subscribers that will combine all the news, programs, and events from the Steam Plant, Salida Creative



DEPARTMENT UPDATES

DEPARTMENT	PRESENTED BY	DATE
Administration	Christy Doon - City Administrator	October 15, 2024

District, and the Public Art Commission. News of the change was shared with subscribers in February, and the new format will begin in March.

- Public Art:
 - The City of Salida Creative District Program and Anne Walker present the Salida Community Mosaic project! Community members can sign up to participate in free mosaic making workshops where they also help complete the 60'-foot-long mural to be installed at Chisholm Park this summer. Funded in part by the City of Salida Public Arts Commission, the Salida Community Mosaic workshops are offered on Thursdays from 12pm-2pm at the Salida Scout Hut.
 - An interview team consisting of council members, a current PAC member, and Arts & Culture staff completed interviews for membership to the Public Art Commission. 7 members and an alternate will be presented to council for approval on February 18.

City Clerk

- We have successfully switched the remote meeting software from GoToWebinar to Zoom Webinar meetings.
- The CORA software has been installed successfully, to review all requests that have been fulfilled click on the following link: [Completed CORA requests](#) So far this year we have had 10 requests fulfilled.
- The Agenda and Packet software will be implemented in April. We will have an overview of the updated agenda and packets at our March 31st work session. Our vendor CivicPlus will be emailing how-to videos to all Council Members before the March 31st work session.
- Municipal Court dates have changed from the third Friday of each month to the third Thursday of each month. February 2025 has 37 cases.

Community Development

- No report available at this time.

Finance

- Before the auditors can audit the financial transactions for the year, staff need to perform reconciliations on every balance sheet account and prepare schedules that describe the activities in the accounts. There are also year end journal entries required that places transactions in the correct calendar year (i.e. if the bill for a 2024 expense is paid in 2025, we need to make sure it is recorded in 2024). We also must make sure the proper accounting treatment is applied to all transactions and correct any mispostings throughout the year. This work is underway and will be completed in time for the audit field work scheduled to begin March 17.
- Software used for billing water and wastewater services provided to citizens will be updated to correspond to the new fee schedules adopted this month.
- Efforts made to increase the number of customers who have their water/wastewater bills emailed to them is paying off with 42 people signing up for email delivery in January (a 1% increase, but it's progress!)
- The following table shows some of the key daily accounting work that is accomplished in the office.



DEPARTMENT UPDATES

DEPARTMENT	PRESENTED BY	DATE
Administration	Christy Doon - City Administrator	October 15, 2024

Finance Office - Key Operating Metrics	2024			2025
	<u>Oct</u>	<u>Nov</u>	<u>Dec</u>	<u>Jan</u>
Number of front desk customers served	246	181	200	220
Number of invoices paid	415	409	315	375
Number of utility bills processed	4,335	4,331	4,354	4,362
Number of online utility payments received	2,773	2,811	2,798	2,890
Number of delinquent utility accounts processed	487	389	472	375
Number of journal entries prepared	56	22	63	58
Number of payroll checks processed	321	340	303	321
Number of utility service orders processed	116	56	53	35
Number of new construction utility accounts	4	6	1	5
Number of Accounts Receivable billings	40	37	44	33

Fire

- **New Salida Fire House Opens Its Doors:** We are thrilled to announce the official opening of the new Salida Fire House! On February 3rd, our crew began moving into the new facility, and by Wednesday, February 5th, we proudly raised our flag to mark the start of a new era for the department. While the station is still not yet open to the public, it is a monumental milestone not only for the Salida Fire Department but also for the City of Salida as the 124 E St. location was the 7th oldest operating fire station in the nation. The support of our community has made this possible, and we are deeply grateful. The new fire house is equipped with state-of-the-art technologies and response mechanisms, enhancing our ability to better serve and protect Salida. With this upgraded infrastructure, we are excited to take our service to the next level and respond more effectively to emergencies.
- **NCCC and SCC Continue Mitigation Efforts Around Salida:** We extend our sincere thanks to the National Civilian Community Corps (NCCC) and Southwest Conservation Corps (SCC) for their ongoing wildfire mitigation efforts in Salida and the surrounding areas. Their work is crucial to protecting our community from the increasing threat of wildfire. The SCC crew will soon begin residing at the old fire station on 124 E Street, and they are excited to be in the heart of Downtown Salida. The City of Salida's housing support for the SCC crew is a perfect collaboration, offering housing for the team while enhancing the city's fire safety efforts. Chief Jonke prioritizes maintaining this housing arrangement and advancing further mitigation projects to ensure our community remains up to date with fire safety standards.
- **Salida Fire Department Holds Testing and Interviews for Full Time Firefighting Position:** On February 6th and 7th, the Salida Fire Department held an action-packed series of hands-on evaluations and interviews for our Full-Time Firefighter position! Candidates faced four dynamic testing stations where they were put to the test on everything from patient assessment and ladder techniques (ascension, descension, and throwing) to executing a high stakes search and rescue operation. This thrilling evaluation showcased the power of our cutting-edge testing facility, providing the perfect setting to evaluate the skills of future team members who will help us protect and serve our community!
- **South Arkansas Fire Protection District Crew Returns Home:** We are excited to share that our South Arkansas Fire Protection District crew members, part of the same department as the Salida Fire Department,



DEPARTMENT UPDATES

DEPARTMENT	PRESENTED BY	DATE
Administration	Christy Doon - City Administrator	October 15, 2024

have safely returned home, along with the Type 3 Engine, after their dedicated service in Southern California.. We welcomed them home last weekend with great appreciation for their hard work and unwavering bravery in the face of adversity. As of now, the fire in Southern California has been 100% contained, thanks in no small part to the tireless efforts of our crew and many others who have worked around the clock to protect lives and property. Their commitment to providing critical assistance during this challenging time reflects the strength and resilience of our fire service community. We are incredibly proud of their service and thankful for their safe return.

- **Helping Our Neighbors:** At the Salida Fire Department, we pride ourselves on being there for our community, 24/7. Whether it's day or night, our dedicated team is ready to respond to emergencies across Chaffee County, Howard, and all areas in between. From fire response and medical emergencies to rescue operations and everything in between, we are committed to providing rapid, professional assistance whenever it's needed most. We understand that when an emergency strikes, time is of the essence. That's why we ensure our team is always prepared to deliver fast, effective service, keeping our neighbors safe and supported in their time of need. We're proud to serve our community and be a dependable resource that you can count on, no matter the time. Together, we make Chaffee County and surrounding areas a safer place to live and thrive.

Parks and Recreation

- Parks
 - McCormick Park Improvements
 - QWEL Training (efficient use of water and irrigation)
 - PW-Parks Workshop Remodel Wrap-up
- Aquatics
 - SHS Swim team has completed their season
 - Holding a lifeguard class this month – I have had several more inquiries, so I may need to have another class, sooner than later
 - Starting the second week in March the pool will be open all day- no 1-4pm closure
 - Swim lessons end on Wednesday, February 12
 - Lifeguard IIs are being shadowed during shifts to make sure expectations are being met. They are being guided into a leadership role.
- Recreation
 - Basketball is half way done with over 230 kids participating. We had our first photo day for a league, and it seems like it was a success. We'll probably be offering photo days for most of our leagues going forward now.
 - Wrestling just started with over 60 kids participating
 - Youth coed volleyball registration has 50 kids signed up, and starts in 3 weeks.
 - Open gym basketball, and open gym volleyball for adults have both been seeing good numbers. Around 10 for basketball, and 20 for volleyball weekly.
 - The ski bus is running on Fridays and Saturdays, \$5/rider and must register ahead of time.
 - Adult dodgeball registration closed, and we have 8 teams signed up. Play starts in 1 week on February 19.
 - Adult women's volleyball has 6 teams signed up, and play starts mid March. We expect 3 more teams to join.
 - The youth intro to kayak course has filled up once again, with 14 kids for the month of February.
 - Baseball and Softball registration will be opening soon!
 - The rec dept has some sort of programming happening 7 days a week for the months of January – March



DEPARTMENT UPDATES

DEPARTMENT	PRESENTED BY	DATE
Administration	Christy Doon - City Administrator	October 15, 2024

- We are planning a volunteer appreciation event for all of our volunteer coaches at the end of April. More details to come. We'd love to have council or city admin attend to show their appreciation.
- Facilities:
 - Building assessments have started to be completed and will continue to be updated. 3 of the 19 buildings have been completed. More to come.
 - Plumbing repairs at the aquatic center.
 - New windows in the KHEN building. Old windows were single pane and cracked.
- Events
 - **Event:** A Run Through Time
 - **Date(s):** 3/8/25
 - **Time:** 7:00 AM – 4:00 PM
 - **Location:** Riverside Park & S Mountain
 - **Attendance:** 500

Police

- No report available at this time.



DEPARTMENT UPDATES

DEPARTMENT	PRESENTED BY	DATE
Administration	Christy Doon - City Administrator	February 18, 2025

Public Works

- Planning and Construction
 - Streets
 - Oak Street – Winter construction closure. Design and cost updates coordinated with contractor.
 - West SH-291 Improvements – FOR plans being finalized for submittal to CDOT.
 - Downtown Improvement Project – Mailings set out to adjacent property owners with detailed information and notification of an April 2025 start date.
 - SRTS CDOT Local Agency Project - Final FOR plans submitted to CDOT. To be bid after West SH-291 Improvements due to grant timelines.
 - 50-291 Intersection (CDOT Project) Attended and updated design scoping meeting with CDOT.
 - Utilities
 - Rate Study drafting by Ehlers completed. Data and capital project input support.
 - Finalized Design and Engineering contracting for Harrington Ditch
 - Updating Poncha Sewer line plans based on direction provided.
 - Other CIP Items
 - South Ark Neighborhood – Preliminary site plans being drafted as well as project coordination with river restoration project team members.
 - Fleet move to Multi-Use Facility completed. Three lifts and air lines installed (see picture)
- Operations
 - Streets
 - Assistance with sanding and helping utilities.
 - Move of fleet and parks/streets/utilities bays finalized.
 - Completed pothole patching across town.
 - Utilities
 - Meter maintenance due to cold snap and related frozen meters. Recorded the most frozen meters in a 10-year period. (~100 total this year compared to 8 last year). In speaking with other utilities, others saw similar results across the state and the situation was an anomaly. Snow cover in town helps to insulate the meter and reduce occurrences.
 - Staff completed a water main repair in the downtown area. Work was afterhours and in single digit temps. The leak was a result of the line reaching the end of its useful life and not a result of temps.
 - WTP staff building framework for asset management software for treatment plant.
 - Integration of WTP SCADA re-build in progress.



DEPARTMENT UPDATES

DEPARTMENT	PRESENTED BY	DATE
Administration	Christy Doon - City Administrator	February 18, 2025



Figure 1 - New Lift Installations and Fleet Setup at Multi-Use Facility



Figure 2 - Emergency Water Main Repair Downtown