



CITY COUNCIL REGULAR MEETING

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

February 04, 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 January 21, 2025 Minutes

CITIZEN COMMENT—Three (3) Minute Time Limit

UNFINISHED BUSINESS / ACTION ITEMS

NEW BUSINESS / ACTION ITEMS

3. Update from Brittany Petterson's Office
4. Approval of Release and Settlement Agreement between Plaintiffs Town of Poncha Springs, Tailwind Group, LLC and Full Matters, LLC and Defendant City of Salida
5. **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
6. **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
7. **Resolution 2025-06** A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF SALIDA, COLORADO AMENDING THE 2025 FEE SCHEDULES

COUNCILORS, MAYOR AND CITY TREASURER REPORTS

Council Reports

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

Mayor Report

Treasurer Report

Attorney Report

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.

Department Updates

ADJOURN



City Clerk | Deputy City Clerk

Mayor Dan Shore



CITY COUNCIL REGULAR MEETING

448 E. 1st Street, Room 190 Salida, Colorado 81201
January 21, 2025 - 6:00 PM

MINUTES

Please register for Regular City Council Meeting
<https://attendee.gotowebinar.com/register/3742005742374996822>.

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

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 Pappenfort moved to combine and approve items on the consent agenda and moved Item #6 to New Business, Seconded by Council Member Martin.

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

Approve Agenda

Approve January 7, 2025 Minutes

Approve Memorandum of Understanding with the Upper Arkansas Watershed Partnership

Approve Special Event Liquor License for Elks Lodge 808

Approve contract with Colorado Concrete Repair

MOTION PASSED

CITIZEN COMMENT—Three (3) Minute Time Limit

Deborah Cameron, Carlin Walsh (Virtual), Madelyne Felsch, Cassie Stauch, Rick White, Eric Lee, Rikki Boucher, Kamber Sokulsky, C. Shark Lambdin, Adam Martinez (virtual) and Monica Haskell (virtual) spoke during Citizen Comment

PROCLAMATIONS

Black History Month

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UNFINISHED BUSINESS / ACTION ITEMS

Ordinance 2024-20 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO APPROVING A LOAN FROM THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY ("CWRPDA") IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$163,403.76; AUTHORIZING THE FORM AND EXECUTION OF THE LOAN AGREEMENT AND GOVERNMENTAL AGENCY BOND TO EVIDENCE SUCH LOAN; AUTHORIZING THE CONSTRUCTION OF A PROJECT; PRESCRIBING OTHER DETAILS IN CONNECTION THEREWITH; AND DECLARING AN EMERGENCY ON SECOND AND FINAL READING. **Second Reading and Public Hearing**

Council Member Pappenfort moved to approve Ordinance 2024-20, Seconded by Council Member Critelli.
Voting Yea: Council Member Fontana, Council Member Naccarato, Council Member Critelli, Council Member Stephens, Council Member Pappenfort, Council Member Martin

MOTION PASSED

Ordinance 2025-01 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO AMENDING SECTION 2-18-30 OF THE SALIDA MUNICIPAL CODE REGARDING MEMBERSHIP ON THE SUSTAINABILITY COMMITTEE. **Second Reading and Public Hearing**

Council Member Martin moved to approve Ordinance 2025-01, Seconded by Council Member Critelli.
Voting Yea: Council Member Fontana, Council Member Naccarato, Council Member Critelli, Council Member Stephens, Council Member Pappenfort, Council Member Martin

MOTION PASSED

NEW BUSINESS / ACTION ITEMS

Approval of the Monarch Mountain Contract

Council Member Martin moved to approve the Monarch Mountain Contract, 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

Resolution 2025-03 A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF SALIDA, COLORADO APPROVING APPOINTMENTS TO THE CHAFFEE HOUSING AUTHORITY BOARD

Council Member Stephens recused himself

Council Member Naccarato moved to approve Resolution 2025-03 appointing Cory "Salty" Riggs and Council Member Naccarato to the CHA Board, Seconded by Council Member Critelli.

Voting Yea: Council Member Naccarato, Council Member Critelli

Voting Nay: Council Member Fontana, Council Member Pappenfort, Council Member Martin

MOTION FAILED

Council Member Pappenfort moved to approve Resolution 2025-03 appointing Charlie Goodson and Council Member Naccarato to the CHA Board, Seconded by Council Member Fontana.

Voting Yea: Council Member Fontana, Council Member Pappenfort, Council Member Martin

Voting Nay: Council Member Naccarato, Council Member Critelli

MOTION PASSED

Resolution 2025-04 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, APPROVING CITIZEN APPOINTMENTS TO THE SUSTAINABILITY COMMITTEE PURSUANT TO SECTION 2-18-10 OF THE SALIDA MUNICIPAL CODE

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.

Council Member Pappenfort moved to approve Resolution 2025-04, 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

COUNCILORS, MAYOR AND CITY TREASURER REPORTS

Council Reports

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

Reports were given.

Mayor Report

Report was given.

Treasurer Report

Report was given.

Attorney Report

Department Updates

EXECUTIVE SESSION

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**

Executive Session: "For the purpose of conferencing with the City Attorney for the purpose of receiving legal advice on specific legal questions under C.R.S Section 24-6-402(4)(b), and for the purpose of determining positions relative to matters that may be subject to negotiation, developing strategy for negotiations, and/or instructing negotiators under C.R.S. Section 24-6-402(4)(e), and the following additional details are provided for identification purposes: **Legal advice regarding lawsuit brought by the Town of Poncha Springs, Tailwind Group LLC and Full Views Matter, LLC against the City of Salida and related discussion of negotiating parameters and next steps**"

Consideration of matters and/or terms discussed in executive session, and any potential action necessitated after executive session.

Council Member Martin moved to go into Executive Session, 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

Council entered into Executive Session at 7:38pm and returned to the Regular Meeting at 10:58pm.

Council Member Naccarato made a motion to request a meeting between the 2 governing bodies to negotiate the outstanding term relating to the Municipal Services Area. We continue to be committed to a resolution and feel this is necessary so all parties feel heard. Seconded by Council Member Martin

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

Voting Nay: Council Member Fontana, Council Member Stephens

MOTION PASSED

ADJOURN

Meeting adjourned at 11:02 pm



City Clerk | Deputy City Clerk

Mayor Dan Shore



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
City Attorney	Nina P. Williams - City Attorney	February 4, 2025

AGENDA ITEM

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

BACKGROUND

In 2023, the Town of Poncha Springs, along with two developers (Tailwind Group, LLC and Full Matters, LLC), brought a lawsuit against the City of Salida. The lawsuit was in reaction to the City's responsible actions to protect the community-at-large regarding serious health and safety issues that may have otherwise resulted from overflowing sewage throughout the region.

For the last seven plus years, the City notified - and then warned - the Town (as well as the Plaintiff Developers) of the City's concerns regarding pipeline capacity due to the rapid growth approved by Poncha Springs. In 2018, engineering Providence Infrastructure Consultants established that Interceptor capacity was approaching critical flow, and that the anticipated development and current rate of growth within the Poncha Springs Service Area necessitated the need to upsize the sanitary sewer infrastructure within the next few years.

In 2022, due to these imminent capacity limitations, and no response or commitment by the Town and Developer Plaintiffs to provide a solution, the City and its Public Works Department had no choice but to not approve new sewer system connections until: (1) Sewer IGAs (between the City and Town) were renegotiated; or (2) the Developer Plaintiffs provided off-site improvements to address sewer capacity. After the Plaintiffs' failure to move forward with either option, the City Council, through Ordinance 2023-09, imposed a moratorium on sewer system connection applications for those properties benefitting from the Poncha Interceptor and affected by its noted capacity limitations.

The City is relieved that all parties have finally agreed to be part of the solution related to sewer line capacity and the capital infrastructure upgrades required as a result of significant new development. The attached Release and Settlement Agreement reflects those commitments by all parties.

Please note that pursuant to this Release and Settlement Agreement, the City agrees to execute Amended Sewer Line Extension and Connection Agreements as to both Developer Plaintiffs' first 310 units. You will find those 2 applicable agreements at the end of this packet item. Such agreements should be *conditionally approved*, subject to final approval as to form and completeness by the City Attorney and Public Works Director.

RECOMMENDATION

Staff recommends approval of the Release and Settlement Agreement between the parties, as the document reflects the City's intended terms as well as Council's goal to resolve this matter between the neighboring communities.

MOTION

A City Councilmember should state "*I move to approve the Release and Settlement Agreement between Plaintiffs Town of Poncha Springs, Tailwind Group, LLC and Full Matters, LLC and Defendant City of Salida, and conditionally approve the 2 Sewer Line Extension and Connection Agreements with the Developer Plaintiffs, subject to final approval as to form and completeness by the City Attorney and Public Works Director,*" followed by a second and a roll call vote.

RELEASE AND SETTLEMENT AGREEMENT

READ CAREFULLY BEFORE SIGNING

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

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

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

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

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

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

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

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

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

4. Bonding for Interceptor Expansion Construction.

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

5. Expansion Construction of Interceptor.

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

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

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

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

- b. The Parties further warrant that there are no assignees, subrogees or other third parties who have a right to participate in this settlement or receive any of the consideration provided hereunder.
 - c. The Parties also warrant and agree that there are no third party beneficiaries and intended to be no third party beneficiaries who have any rights under this Release.
- 13. Force Majeure.** Any obligation on Salida set forth in this Release may be postponed or altered if such is attributable to a force majeure, which means due to an act of god, war, state or federal government regulations, terrorism, natural disaster, strike, civil disorder, recession, state or federal government declared emergency, pandemic or other emergency beyond Salida's control that makes it impossible for Salida to perform such obligation. If any event impacts Salida's ability to meet any requirement in this Agreement, such deadline for that requirement shall be extended by the duration of the force majeure.
- 14. No Admission of Liability.** The Parties acknowledge that they each deny liability or wrongdoing on their own part and that this Release is not to be construed, in any way, as an admission of liability or wrongdoing.
- 15. Miscellaneous Provisions.**
- a. This Release and Exs. A and B to it contain the entire understanding of the Parties hereto with respect to its subject matter and supersede all prior oral and written understandings and agreements between the Parties, including as to the Term Sheet previously agreed to by the Parties.

- b. This Release shall be binding upon the Developer Plaintiffs and their owners, members, shareholders and/or successors, as well as all other persons, firms or corporations acting on the Developer Plaintiffs behalf or asserting a derivative claim. This Release shall be binding upon Poncha and Salida to the extent permitted by law.
- c. The Parties have each participated and had an equal opportunity to participate in the drafting of this Release. No ambiguity shall be construed against any Party based upon a claim that another Party was a drafter.
- d. This Release shall be construed and interpreted in accordance with the laws of the State of Colorado, without regard to its choice of law rules or principles.
- e. This Release can be executed in counterparts. Electronic copies and counterparts shall suffice as originals.

16. Applicability of Transfer Agreement. The parties agree that this Settlement Agreement pertains to resolution of the litigation in *Town of Poncha Springs, et al v. City of Salida, et al*, Case No. 2023CV030023, Chaffee County District Court and necessarily describes the settlement elements requiring an amendment to the Transfer Agreement. Only with regards to a dispute between Salida and Poncha, in the event of any conflict between the recitation herein of those settlement elements and the Transfer Agreement, (as the same is being contemporaneously amended and approved by Poncha and Salida), the amended Transfer Agreement shall control, it being the intention of Salida and Poncha that the Transfer Agreement, as amended, be and remain the sole agreement as between Poncha and Salida governing operation of the sewer system. This provision does not apply to any dispute regarding this Agreement or the Amended Agreements involving the Developer Plaintiffs because the Developer Plaintiffs are not parties to the First Amendment to the Intergovernmental Agreement for Transfer of Sewer System.

[Release continues on next page]

DAKOTA TALBOT
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20234047437
MY COMMISSION EXPIRES DECEMBER 20, 2027

Kent Townsend
Kent Townsend
, as authorized representative of
Tailwinds Group, LLC

STATE OF COLORADO)
) SS.
COUNTY OF Chaffee)

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

Witness my hand and official seal.

My Commission expires Dec 20 2027.

DAKOTA TALBOT
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20234047437
MY COMMISSION EXPIRES DECEMBER 20, 2027

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

STATE OF COLORADO)
) SS.
COUNTY OF Chaffee)

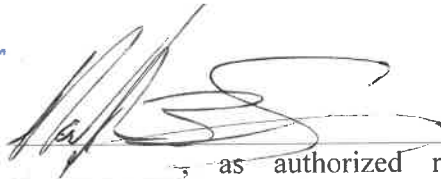
Subscribed and sworn to before me on this 15th day of January, 2025.

Witness my hand and official seal.

My Commission expires Dec 20, 2027.

Dakota Talbot
Notary Public

DAKOTA TALBOT
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20234047437
MY COMMISSION EXPIRES DECEMBER 20, 2027



_____, as authorized representative of
Poncha

STATE OF COLORADO)
) SS.
COUNTY OF Chaffee)

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

Witness my hand and official seal.

My Commission expires December 20, 2027

Dakota Talbot
Notary Public

Dan Shore, Mayor, as authorized representative of
Salida

STATE OF COLORADO)
) SS.
COUNTY OF Chaffee)

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

Witness my hand and official seal.

My Commission expires _____.

Notary Public

**EXHIBIT A
(SEWER LINE EXTENSION AND CONNECTION
AGREEMENTS)**

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

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

Section 1 - Recitals

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

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

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

Section 2 – Definitions

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

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

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

Section 3 – Purpose of Agreement and Binding Effect

- 3.1 Contractual Relationship. The purpose of this Agreement is to establish a contractual relationship between Salida and the Developer with respect to extension of sewer service to the Property. The terms, conditions, and obligations described herein are contractual obligations of the Parties, and the Developer waives any objection to the enforcement of the terms of this Agreement as contractual obligations.

- 3.2 Binding Agreement and Covenant Running with the Land. This Agreement benefits and is binding upon Salida, the Developer, and the Developer's successor(s). The Developer's obligations under this Agreement constitute a covenant running with the Property.
- 3.3 Reservation. Notwithstanding anything to the contrary herein, and to the extent that Salida becomes aware of new information with respect to the Property or the Sewer Line Connection following execution of this Agreement, Salida reserves the right to require new terms or conditions for the Required Improvements or new obligations for the Developer with respect to such improvements.

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

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

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

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

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

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

the Property.

- 5.4.2 Also in accordance with paragraph 1.c of the Service IGA, the Developer agrees that Salida is a third-party beneficiary of the Developer's Subdivision Improvements Agreement for the Property, that any default by the Developer hereunder will be deemed a default under the Subdivision Improvements Agreement, and that the Performance Guarantee (or rights to and in the same), to the extent of any estimated costs of the Public Improvements, may be made available to Salida in sufficient amounts in the event of default to provide for the completion of the Public Improvements.
- 5.4.3 In accordance with paragraph 1.d of the Service IGA, Salida agrees to perform all necessary inspections and, when appropriate, to provide required written confirmations in a timely fashion and within the time limitations, if any, imposed on Poncha Springs for inspecting the Required Improvements.
- 5.5 Prior Approval of Plans for Sewer Line Connection. Before the Developer commences construction or installation of the Public Improvements, the Salida Public Works Director or City Engineer must review and approve the drawings and plans for such improvements and proposed phasing, which drawings and plans must be stamped by the engineer retained by the Developer.
- 5.6 Construction Standards. The Developer shall ensure that all construction is performed in accordance with this Agreement, industry standards, and Salida's rules, regulations, requirements, and criteria governing such construction.
- 5.7 Conveyance of Public Improvements. Within twenty-eight (28) days of Salida's final acceptance of the Public Improvements in accordance with paragraph 5.11 below, the Developer, at no cost to Salida, shall do the following:
- 5.7.1 Execute and deliver to Salida a good and sufficient bill of sale describing all of the Public Improvements constructed, connected, and installed by the Developer pursuant to this Agreement, together with all personal property relating to the Public Improvements ("Bill of Sale"). In the Bill of Sale, the Developer shall warrant the conveyance of the Public Improvements as free from any claim, demand, security interest, lien, or encumbrance whatsoever. Consistent with Section 16-2-60(j) of the Salida Municipal Code, acceptance of the Bill of Sale must be authorized by City Council.
- 5.7.2 Execute and deliver to Salida a good and sufficient General Warranty Deed conveying to Salida, free and clear of liens and encumbrances, all easements necessary for the operation and maintenance of the Public Improvements to the extent the Public Improvements are not constructed within dedicated easements or rights-of-way as shown on the [REDACTED] subdivision plat recorded at

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

- 5.7.3 Deliver to Salida all engineering designs, current surveys, current field surveys, and as-built drawings and operation manuals for the Public Improvements, or make reasonable provision for the same to be delivered to Salida. The legal description of all utility service lines must be prepared by a registered land surveyor at the Developer's sole expense.
- 5.8 Warranty. The Developer shall warrant the Public Improvements in accordance with Salida Municipal Code section 16-2-60(f) for the Warranty Period, which is one year from the date that the Salida Public Works Director or City Engineer, in accordance with paragraph 5.10 below, approves the Public Improvements and certifies their compliance with approved specifications. The Developer shall provide a one-year Warranty Bond or furnish a letter of credit, for the Public Improvements, including without limitation the Sewer Line Extension and all Appurtenant Sewer Service Lines. In the Warranty Bond or letter of credit, the Developer shall list Salida as the benefitted owner of the Public Improvements.
- 5.8.1 Specifically, but not by way of limitation, the Developer shall warrant the following:
- (1) That the title conveyed shall be good and its transfer rightful; and
 - (2) Any and all facilities conveyed shall be free from any security interest or other lien or encumbrance; and
 - (3) Any and all facilities so conveyed shall be free of any and all defects in materials or workmanship.
- 5.8.2 In the event of any defect in workmanship or quality during the Warranty Period, the Developer shall correct the defect in workmanship or material.
- 5.8.3 In the event that any corrective work is performed by the Developer during the Warranty Period, the warranty on said corrected work will be extended for one year from the date on which it is completed.
- 5.8.4 Should the Developer default in its obligation to correct any defect in workmanship or material during the Warranty Period, the City will be entitled to draw on the Warranty Bond or letter of credit and/or to pursue any other remedy described in Section 7 below.
- 5.8.5 In addition to warranting the Public Improvements as described herein, the Developer shall perform routine maintenance on the Public Improvements for the duration of the Warranty Period.
- 5.8.6 Pursuant to Salida Municipal Code section 16-2-60(n), the performance guarantee issued pursuant to this Agreement shall be fully released and discharged upon

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

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

regulations, orders, or requirements, including without limitation the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act), the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response Compensation and Liability Act.

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

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

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

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

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

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

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

Section 6 – Development Schedule

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

Section 7 – Default by Developer and Salida's Remedies

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

- 7.4 Waiver. Any waiver by Salida of one or more terms of this Agreement will not constitute, and is not to be construed as constituting, a waiver of other terms. A waiver of any provision of this Agreement in any one instance will not constitute, and is not to be construed as constituting, a waiver of such provision in other instances.
- 7.5 Cumulative Remedies. Each remedy provided for in this Agreement is cumulative and is in addition to every other remedy provided for in this Agreement or otherwise existing at law or in equity.

Section 8 – Indemnification and Release

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

8.2 Indemnification.

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

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

Section 9 – Representations and Warranties

- 9.1 **Developer's Representations and Warranties.** The Developer represents and warrants to Salida that the following are true and correct as of the date of the Developer's execution of this Agreement and will be true and correct as of the Effective Date:
- 9.1.1 **Authority.** This Agreement has been duly authorized and executed by the Developer as a legal, valid, and binding obligation of the Developer, and is enforceable as to the Developer in accordance with its terms.
- 9.1.2 **Authorized signatory.** The person executing this Agreement on behalf of the Developer is duly authorized and empowered to execute and deliver this Agreement on behalf of the Developer.
- 9.1.3 **No litigation or adverse condition.** To the best of the Developer's knowledge, there is no pending or threatened litigation, administrative proceeding, or other claim pending or threatened against the Developer that, if decided or determined adversely, would have a material adverse effect on the ability of the Developer to meet its obligations under this Agreement; nor is there any fact or condition of the Property known to the Developer that may have a material adverse effect on the Developer's ability to Develop the Property as contemplated under the approved final plat.
- 9.1.4 **Compliance with environmental laws and regulations.** To the best of the Developer's knowledge, the Public Improvements and associated easements to be conveyed to Salida hereunder are in compliance with all Federal and State environmental protection and anti-pollution laws, rules, regulations, orders, or requirements, including without limitation the Clean Water Act, the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response Compensation and Liability Act.
- 9.1.5 **No conflict.** Neither the execution of this Agreement nor the consummation of the transaction contemplated by this Agreement will constitute a breach under any contract, agreement, or obligation to which the Developer is a party or by which the Developer is bound or affected.

- 9.2 Salida's Representations and Warranties. Salida represents and warrants to the Developer that the following are true and correct as of the date of Salida's execution of this Agreement and will be true and correct as of the Effective Date:
- 9.2.1 Authority. Upon execution, this Agreement will have been duly authorized by City Council as a legal, valid, and binding obligation of Salida, and is enforceable as to Salida in accordance with its terms.
- 9.2.2 Authorized signatory. The person executing this Agreement on behalf of Salida is duly authorized and empowered to execute this Agreement on behalf of Salida.
- 9.2.3 No conflict. Neither the execution of this Agreement nor the consummation of the transaction contemplated by this Agreement will constitute a breach under any contract, agreement, or obligation to which Salida is a party or by which Salida is bound or affected.

Section 10 – General Provisions

- 10.1 Waiver of Defects. In executing this Agreement, the Developer waives all objections it may have to any defects in the form or execution of this Agreement concerning the power of Salida to impose conditions on the Developer as set forth herein. The Developer further waives all objections it may have to the procedure, substance, and form of any Ordinances or resolutions authorizing or adopting this Agreement.
- 10.2 Final Agreement. This Agreement supersedes and controls all prior written and oral agreements and representations of the Parties with respect to the subject hereof, and is the total integrated agreement between the Parties with respect to that subject.
- 10.3 Modifications. This Agreement may be modified only by a subsequent written agreement executed by both Parties.
- 10.4 Voluntary Agreement. The Developer agrees to comply with all of the terms and conditions of this Agreement on a voluntary and contractual basis.
- 10.5 Survival. Salida's and the Developer's representations, covenants, warranties, and obligations set forth herein, except as they may be fully performed before or on the Effective Date, will survive the Effective Date and are enforceable at law or in equity.
- 10.6 Notice. All notices required under this Agreement must be in writing and must be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the Parties as set forth below. All notices so given will be considered effective immediately upon hand-delivery, and seventy-two hours after deposit in the United States Mail with the proper address as set forth below. Either Party by notice so given may change the address to which future notices are to be sent.

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

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

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

- 10.7 Severability. The terms of this Agreement are severable. If a court of competent jurisdiction finds any provision hereof to be invalid or unenforceable, the remaining terms and conditions of the Agreement will remain in full force and effect.
- 10.8 Recording. Salida shall record this Agreement with the Clerk and Recorder of Chaffee County, Colorado, at the Developer's expense.
- 10.9 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, confers or is intended to confer any rights or remedies whatsoever upon any person or entity other than Salida and the Developer.
- 10.10 No Waiver of Immunity. Nothing in this Agreement, express or implied, waives or is intended to waive Salida's immunity under Colorado State law, including without limitation the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 through -120.
- 10.11 Joint Drafting. The Parties acknowledge that this Agreement represents the negotiated terms, conditions, and covenants of the Parties, and that the Party responsible for drafting any such term, condition, or covenant is not to be prejudiced by any presumption, canon of construction, implication, or rule requiring construction or interpretation against the Party drafting the same.
- 10.12 Subject to Annual Appropriation. Any financial obligation of Salida arising under this Agreement and payable after the current fiscal year is contingent upon funds for that purpose being annually appropriated, budgeted, and otherwise made available by the City Council in its discretion.
- 10.13 Exhibits. All schedules, exhibits, and addenda attached to this Agreement and referred to herein are to be deemed to be incorporated into this Agreement and made a part hereof for all purposes.
- 10.14 Counterparts. This Agreement may be executed in multiple counterparts, all of which taken together constitute one and the same document.

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

CITY OF SALIDA, COLORADO

By:

_____, Mayor

ATTEST:

City Clerk

STATE OF COLORADO)
) ss.
COUNTY OF CHAFFEE)

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

WITNESS my hand and official seal.

My Commission expires: _____.

Notary Public

ENTITY NAME, LLC

By:

Name: _____
Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF)

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

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

Notary Public

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

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

Section 1 - Recitals

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

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

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

Section 2 – Definitions

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

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

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

Section 3 – Purpose of Agreement and Binding Effect

- 3.1 Contractual Relationship. The purpose of this Agreement is to establish a contractual relationship between Salida and the Developer with respect to extension of sewer service to the Property. The terms, conditions, and obligations described herein are contractual obligations of the Parties, and the Developer waives any objection to the enforcement of the terms of this Agreement as contractual obligations.

- 3.2 Binding Agreement and Covenant Running with the Land. This Agreement benefits and is binding upon Salida, the Developer, and the Developer's successor(s). The Developer's obligations under this Agreement constitute a covenant running with the Property.
- 3.3 Reservation. Notwithstanding anything to the contrary herein, and to the extent that Salida becomes aware of new information with respect to the Property or the Sewer Line Connection following execution of this Agreement, Salida reserves the right to require new terms or conditions for the Required Improvements or new obligations for the Developer with respect to such improvements.

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

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

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

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

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

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

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

- 5.4 Required Improvements and Performance Guarantee. Attached **Exhibit C** provides a detailed list of the Required Improvements for which the Developer is responsible under the Town's final plat approval of the Property, along with the reasonably estimated costs of those Required Improvements, including both labor and materials. Under the Developer's Subdivision Improvement Agreement for the Property, a copy of which agreement is attached as **Exhibit D**, the Developer will furnish a Performance Guarantee, pursuant to Salida Municipal Code section 16-2-60(a), (in the form **Exhibit E**) in the amount of \$ [REDACTED], which represents an amount equal to one hundred twenty-five percent (125%) of the estimated cost of said improvements to ensure timely completion of the Required Improvements.
- 5.4.1 In accordance with paragraph 1.c of the Service IGA, the Town made Salida a third-party beneficiary of the Performance Guarantee associated with sewer service installation sections of the Developer's Subdivision Improvements Agreement for the Property.
- 5.4.2 Also in accordance with paragraph 1.c of the Service IGA, the Developer agrees that Salida is a third-party beneficiary of the Developer's Subdivision Improvements Agreement for the Property, that any default by the Developer hereunder will be deemed a default under the Subdivision Improvements Agreement, and that the Performance Guarantee (or rights to and in the same), to the extent of any estimated costs of the Public Improvements, may be made available to Salida in sufficient amounts in the event of default to provide for the completion of the Public Improvements.
- 5.4.3 In accordance with paragraph 1.d of the Service IGA, Salida agrees to perform all necessary inspections and, when appropriate, to provide required written confirmations in a timely fashion and within the time limitations, if any, imposed on Poncha Springs for inspecting the Required Improvements.
- 5.5 Prior Approval of Plans for Sewer Line Connection. Before the Developer commences construction or installation of the Public Improvements, the Salida Public Works Director or City Engineer must review and approve the drawings and plans for such improvement, which drawings and plans must be stamped by the engineer retained by the Developer.
- 5.6 Construction Standards. The Developer shall ensure that all construction is performed in accordance with this Agreement, industry standards, and Salida's rules, regulations, requirements, and criteria governing such construction.

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

5.7.1 Execute and deliver to Salida a good and sufficient bill of sale describing all of the Public Improvements constructed, connected, and installed by the Developer pursuant to this Agreement, together with all personal property relating to the Public Improvements (“Bill of Sale”). In the Bill of Sale, the Developer shall warrant the conveyance of the Public Improvements as free from any claim, demand, security interest, lien, or encumbrance whatsoever. Consistent with Section 16-2-60(j) of the Salida Municipal Code, acceptance of the Bill of Sale must be authorized by City Council.

5.7.2 Execute and deliver to Salida a good and sufficient General Warranty Deed conveying to Salida, free and clear of liens and encumbrances, all easements necessary for the operation and maintenance of the Public Improvements to the extent the Public Improvements are not constructed within dedicated easements or rights-of-way as shown on the [REDACTED] subdivision plat recorded at Reception No. [REDACTED]. Easements for public utilities must be at least twenty feet wide, ten feet wide on either side of the relevant infrastructure.

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

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

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

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

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

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

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

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

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

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

Section 6 – Development Schedule

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

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

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

Section 7 – Default by Developer and Salida’s Remedies

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

- 7.1.1 Suspension of all further activities and approvals related to the Public Improvements.
- 7.1.2 A demand that the Performance Guarantee be paid or honored.
- 7.1.3 Any other remedy available in equity or at law.
- 7.2 Notice of Default. Consistent with the Salida Municipal Code, before taking remedial action hereunder, Salida shall give written notice to the Developer of the nature of the default and an opportunity to be heard before the City Council concerning such default. If the default has not been cured within thirty days of receipt of the notice or the date of any hearing before the City Council, whichever is later, Salida will consider whether the Developer has undertaken reasonable steps to timely complete the cure if additional time is required.
- 7.3 Jurisdiction and Venue. The District Court of the County of Chaffee, State of Colorado, will have exclusive jurisdiction to resolve any dispute over this Agreement.
- 7.4 Waiver. Any waiver by Salida of one or more terms of this Agreement will not constitute, and is not to be construed as constituting, a waiver of other terms. A waiver of any provision of this Agreement in any one instance will not constitute, and is not to be construed as constituting, a waiver of such provision in other instances.
- 7.5 Cumulative Remedies. Each remedy provided for in this Agreement is cumulative and is in addition to every other remedy provided for in this Agreement or otherwise existing at law or in equity.

Section 8 – Indemnification and Release

- 8.1 Release of Liability. The Developer acknowledges that Salida cannot be legally bound by the representations of any of its officers or agents or their designees except in accordance with the Salida Municipal Code, City Ordinances, and the laws of the State of Colorado. The Developer further acknowledges that it acts at its own risk with respect to relying or acting upon any representation or undertaking by Salida or its officers or agents or their designees. Accordingly, the Developer expressly waives and releases any current or future claims related to or arising from any such representation or undertaking by Salida or its officers or agents or their designees.
- 8.2 Indemnification.
- 8.2.1 The Developer shall indemnify and hold harmless Salida, and Salida's officers, agents, employees, and their designees, from and against any and all claims, damages, losses, and expenses, including but not limited to attorneys' fees and costs, arising from or in connection with the following: (a) acts or omissions by the Developer or its officers, employees, agents, consultants, contractors, or subcontractors in connection with this Agreement; (b) Salida's required disposal of

hazardous substances, pollutants, or contaminants; required cleanup necessitated by leaking underground storage tanks, excavation, and/or backfill of hazardous substances, pollutants, or contaminants; or environmental cleanup responsibilities of any nature whatsoever on, of, or related to the Property or the construction and installation of the Public Improvements; provided that such disposal or cleanup obligations do not arise from any hazardous substance, pollutant, or contaminant generated or deposited by Salida upon the Property or the Public Improvements; or (c) any other item contained in this Agreement.

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

Section 9 – Representations and Warranties

- 9.1 Developer's Representations. The Developer represents and warrants to Salida that the following are true and correct as of the date of the Developer's execution of this Agreement and will be true and correct as of the Effective Date:
- 9.1.1 Authority. This Agreement has been duly authorized and executed by the Developer as a legal, valid, and binding obligation of the Developer, and is enforceable as to the Developer in accordance with its terms.
- 9.1.2 Authorized signatory. The person executing this Agreement on behalf of the Developer is duly authorized and empowered to execute and deliver this Agreement on behalf of the Developer.
- 9.1.3 No litigation or adverse condition. To the best of the Developer's knowledge, there is no pending or threatened litigation, administrative proceeding, or other claim pending or threatened against the Developer that, if decided or determined adversely, would have a material adverse effect on the ability of the Developer to meet its obligations under this Agreement; nor is there any fact or condition of the Property known to the Developer that may have a material adverse effect on the

Developer's ability to Develop the Property as contemplated under the approved final plat.

- 9.1.4 Compliance with environmental laws and regulations. To the best of the Developer's knowledge, the Public Improvements and associated easements to be conveyed to Salida hereunder are in compliance with all Federal and State environmental protection and anti-pollution laws, rules, regulations, orders, or requirements, including without limitation the Clean Water Act, the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response Compensation and Liability Act.
- 9.1.5 No conflict. Neither the execution of this Agreement nor the consummation of the transaction contemplated by this Agreement will constitute a breach under any contract, agreement, or obligation to which the Developer is a party or by which the Developer is bound or affected.
- 9.2 Salida's Representations and Warranties. Salida represents and warrants to the Developer that the following are true and correct as of the date of Salida's execution of this Agreement and will be true and correct as of the Effective Date:
- 9.2.1 Authority. Upon execution, this Agreement will have been duly authorized by City Council as a legal, valid, and binding obligation of Salida, and is enforceable as to Salida in accordance with its terms.
- 9.2.2 Authorized signatory. The person executing this Agreement on behalf of Salida is duly authorized and empowered to execute this Agreement on behalf of Salida.
- 9.2.3 No conflict. Neither the execution of this Agreement nor the consummation of the transaction contemplated by this Agreement will constitute a breach under any contract, agreement, or obligation to which Salida is a party or by which Salida is bound or affected.

Section 10 – General Provisions

- 10.1 Waiver of Defects. In executing this Agreement, the Developer waives all objections it may have to any defects in the form or execution of this Agreement concerning the power of Salida to impose conditions on the Developer as set forth herein. The Developer further waives all objections it may have to the procedure, substance, and form of any Ordinances or resolutions authorizing or adopting this Agreement.
- 10.2 Final Agreement. This Agreement supersedes and controls all prior written and oral agreements and representations of the Parties with respect to the subject hereof, and is the total integrated agreement between the Parties with respect to that subject.
- 10.3 Modifications. This Agreement may be modified only by a subsequent written agreement

terms, conditions, and covenants of the Parties, and that the Party responsible for drafting any such term, condition, or covenant is not to be prejudiced by any presumption, canon of construction, implication, or rule requiring construction or interpretation against the Party drafting the same.

- 10.12 Subject to Annual Appropriation. Any financial obligation of Salida arising under this Agreement and payable after the current fiscal year is contingent upon funds for that purpose being annually appropriated, budgeted, and otherwise made available by the City Council in its discretion.
- 10.13 Exhibits. All schedules, exhibits, and addenda attached to this Agreement and referred to herein are to be deemed to be incorporated into this Agreement and made a part hereof for all purposes.
- 10.14 Counterparts. This Agreement may be executed in multiple counterparts, all of which taken together constitute one and the same document.

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

[Remainder of page intentionally blank]

**EXHIBIT B
(FIRST AMENDMENT TO THE TRANSFER
AGREEMENT)**

**SEWER LINE EXTENSION AND CONNECTION AGREEMENT PRE-1375 ERU'S
(Tailwinds Village Filing II)**

THIS SEWER LINE EXTENSION AND CONNECTION AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2025, by and between the CITY OF SALIDA, COLORADO, a Colorado statutory city ("Salida"), and Tailwind Group LLC, ("Developer") (each a "Party" and together the "Parties").

Section 1 - Recitals

- 1.1 The Developer contends that it is the fee title owner of certain lands known as the "Tailwinds Village Filing II" and more particularly described on attached **Exhibit A** (the "Property").
- 1.2 The Property is located within the current corporate boundaries of the Town of Poncha Springs ("Poncha Springs" or "Town") and within Salida's Wastewater Service Plan Area as defined in Section 13-2-20 of the Salida Municipal Code.
- 1.3 This Agreement pertains to the Property, as described on attached **Exhibit A**.
- 1.4 Salida provides sewer service in Poncha Springs pursuant to and in accordance with the terms and conditions of two intergovernmental agreements between Salida and Poncha Springs: the Intergovernmental Agreement for Transfer of Sewer System dated April 6, 2010 ("System IGA") as amended in February 2025, and the Intergovernmental Agreement for Provision of Sewer Services dated April 6, 2010 ("Service IGA").
- 1.5 In accordance with the Poncha Springs Land Use Code, the Developer has submitted a plat to the Town of Poncha Springs for the Tailwinds Village Filing II and has obtained final plat approval of the subdivision by the Town Board, on April 25, 2022.
- 1.6 Under the System IGA, Salida operates, maintains, and expands its sewer system to accommodate and not inhibit planned growth and development within Poncha Springs's planning and zoning jurisdiction.
- 1.7 Under the Service IGA, Poncha Springs shall not record any final plat for any development within Poncha Springs until the Town has received written confirmation from Salida that the developer has executed a line extension agreement or line connection agreement with Salida or has otherwise applied for and been granted service per the Salida Municipal Code.
- 1.8 The Property currently is not serviced by a Salida sewer line, and the Developer wishes to perform all excavations, construction, installations, connections and other work necessary to establish a connection to a Salida sewer main ("Sewer Line Extension"), as shown on the Sewer Plans attached as **Exhibit B**.
- 1.9 The Developer and Salida wish to enter into this Agreement in satisfaction of the requirement for an executed extension or line connection agreement under the Service IGA,

and to provide for Salida's provision of sewer service to Tailwinds Village Filing II.

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

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

Section 2 – Definitions

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

- 2.1 "**Agreement**" means this Sewer Line Extension and Connection Agreement. The Recitals in Section 1 above are fully incorporated into this Agreement and made a part hereof by this reference.
- 2.2 "**Appurtenant Sewer Service Lines**" means all service lines and laterals necessary to deliver wastewater from the Property into the Sewer Main(s).
- 2.3 "**City**" means the City of Salida, a Colorado statutory city.
- 2.4 "**City Administrator**" means the City Administrator of the City of Salida, Colorado, and the City Administrator's designee.
- 2.5 "**City Council**" means the City Council of the City of Salida, Colorado.
- 2.6 "**Developer**" means Tailwind Group LLC, and its successor(s).
- 2.7 "**Development**" means all work on the Property required to accomplish construction and installation of the Public Improvements. When the context so dictates, the verb "**Develop**" may be used in place of the noun "**Development**."
- 2.8 "**Effective Date**" means the date on which City Council approved the execution of this Agreement. On the Effective Date, this Agreement will become binding upon and enforceable by Salida and the Developer.
- 2.9 "**Extension Taps**" means sewer taps for which Salida will provide service through the Sewer Line Extension.
- 2.10 "**Performance Guarantee**" means the bond or letter of credit of \$849,175.00 posted by the Developer in accordance with the terms of its Subdivision Improvements Agreement with Poncha Springs dated January 31, 2025.
- 2.11 "**Property**" means the land that is known as the "Tailwinds Village Filing II" and described in attached **Exhibit A**.

- 2.12 “**Public Improvements**” means those Required Improvements constructed and installed by the Developer and dedicated to Salida in accordance with this Agreement, including without limitation wastewater collection mains and laterals and sewer manholes. The Required Improvements that are also Public Improvements are identified on the Bid Tab attached as **Exhibit C**.
- 2.13 “**Reimbursable Costs and Fees**” means all fees and costs incurred by Salida in connection with Salida’s processing and review of the Public Improvements, and Salida’s drafting, review, and execution of this Agreement.
- 2.14 “**Required Improvements**” means the public and other improvements that the Developer is required to make to the Property to connect, consistent and in compliance with the final plat approval and with the construction plans and drawings submitted to Salida and Poncha Springs for review and approval.
- 2.15 “**Salida Municipal Code**” means the City of Salida Municipal Code, as amended.
- 2.16 “**Service IGA**” means the Intergovernmental Agreement for Provision of Sewer Services made by and between the City of Salida and the Town of Poncha Springs on April 6, 2010.
- 2.17 “**Sewer Line Extension**” means 2308 linear feet of 10 inch diameter PVC sewer main, 3550 linear feet of 8 inch PVC sewer main, 2808 linear feet of 4 inch PVC sewer service and 112 linear feet of 6 inch PVC sewer service to be constructed and installed by the Developer as shown on **Exhibit B**, to allow the Developer to connect to a sewer main with sufficient capacity to enable Salida to provide sewer service to the Extension Taps.
- 2.18 “**System IGA**” means the Intergovernmental Agreement for Transfer of Sewer System made by and between the City of Salida and the Town of Poncha Springs on April 6, 2010, as amended in February 2025 by the First Amendment to the IGA for Transfer of Sewer System.
- 2.19 “**Town**” means the Town of Poncha Springs.
- 2.20 “**Warranty Period**” means a period of one year from the date that the Salida Public Works Director or City Engineer, in accordance with the terms and conditions of paragraph 5.10 below, approves the Public Improvements and certifies their compliance with approved specifications.

Section 3 – Purpose of Agreement and Binding Effect

- 3.1 **Contractual Relationship.** The purpose of this Agreement is to establish a contractual relationship between Salida and the Developer with respect to extension of sewer service to the Property. The terms, conditions, and obligations described herein are contractual obligations of the Parties, and the Developer waives any objection to the enforcement of the terms of this Agreement as contractual obligations.

- 3.2 **Binding Agreement and Covenant Running with the Land.** This Agreement benefits and is binding upon Salida, the Developer, and the Developer's successor(s). The Developer's obligations under this Agreement constitute a covenant running with the Property.
- 3.3. **Reservation.** Notwithstanding anything to the contrary herein, and to the extent that Salida becomes aware of new information with respect to the Property or the Sewer Line Connection following execution of this Agreement, Salida reserves the right to require new terms or conditions for the Required Improvements or new obligations for the Developer with respect to such improvements.

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

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

accepted the Required Improvements for each phase and has confirmed in writing to Poncha Springs that all terms and conditions of the System IGA and the Service IGA have been complied with to Salida's satisfaction.

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

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

- 5.1 **Other Applicable Laws and Regulations.** All terms and conditions imposed by this Agreement are in addition to and not in place of any and all requirements of the System IGA, the Service IGA, the Salida Municipal Code, and all other applicable laws and regulations, including without limitation all Town Ordinances and regulations, all State statutes and regulations, and all Federal laws and regulations.
- 5.2 **Submittals to and Approvals by City Administrator.** Unless this Agreement specifically provides to the contrary, all submittals to Salida in connection with this Agreement must be made to the City Administrator. In addition, unless this Agreement specifically provides to the contrary, the City Administrator and/or City Council must provide all approvals required of the City in connection with this Agreement.
- 5.3 **Limitations on Wastewater Delivered Through Sewer Line Connection.** The Developer acknowledges and agrees that Salida's obligation to provide sewer service to the Property is contingent upon the Developer's construction and installation, and Salida's written approval pursuant to paragraph 5.10 below, of the Public Improvements for each phase associated with the Sewer Line Extension.
- 5.3.1 Until and through December 31, 2029, this Agreement is revocable by Salida if Developer cannot provide proof of funds and/or financing for final plat subdivision infrastructure within twelve (12) months of the Effective Date of this Agreement.
- 5.4 **Required Improvements and exhibit Guarantee.** Attached **Exhibit C** provides a detailed list of the Required Improvements for which the Developer is responsible under the Town's final plat approval of the Property, along with the reasonably estimated costs of those Required Improvements, including both labor and materials. Under the Developer's Subdivision Improvement Agreement for the Property, a copy of which agreement is attached as **Exhibit D**, the Developer will furnish a Performance Guarantee, pursuant to Salida Municipal Code section 16-2-60(a), (in the form of **Exhibit E**) in the amount of \$849,175.00, which represents an amount equal to one hundred twenty-five percent (125%) of the estimated cost of said improvements to ensure timely completion of the Required Improvements.
- 5.4.1 In accordance with paragraph 1.c of the Service IGA, the Town made Salida a third-party beneficiary of the Performance Guarantee associated with sewer service

installation sections of the Developer's Subdivision Improvements Agreement for the Property.

- 5.4.2 Also in accordance with paragraph 1.c of the Service IGA, the Developer agrees that Salida is a third-party beneficiary of the Developer's Subdivision Improvements Agreement for the Property, that any default by the Developer hereunder will be deemed a default under the Subdivision Improvements Agreement, and that the Performance Guarantee (or rights to and in the same), to the extent of any estimated costs of the Public Improvements, may be made available to Salida in sufficient amounts in the event of default to provide for the completion of the Public Improvements.
- 5.4.3 In accordance with paragraph 1.d of the Service IGA, Salida agrees to perform all necessary inspections and, when appropriate, to provide required written confirmations in a timely fashion and within the time limitations, if any, imposed on Poncha Springs for inspecting the Required Improvements.
- 5.5 **Prior Approval of Plans for Sewer Line Connection.** Before the Developer commences construction or installation of the Public Improvements, the Salida Public Works Director or City Engineer must review and approve the drawings and plans for such improvements and proposed phasing, which drawings and plans must be stamped by the engineer retained by the Developer.
- 5.6 **Construction Standards.** The Developer shall ensure that all construction is performed in accordance with this Agreement, industry standards, and Salida's rules, regulations, requirements, and criteria governing such construction.
- 5.7 **Conveyance of Public Improvements.** Within twenty-eight (28) days of Salida's final acceptance of the Public Improvements in accordance with paragraph 5.11 below, the Developer, at no cost to Salida, shall do the following:
- 5.7.1 Execute and deliver to Salida a good and sufficient bill of sale describing all of the Public Improvements constructed, connected, and installed by the Developer pursuant to this Agreement, together with all personal property relating to the Public Improvements ("Bill of Sale"). In the Bill of Sale, the Developer shall warrant the conveyance of the Public Improvements as free from any claim, demand, security interest, lien, or encumbrance whatsoever. Consistent with Section 16-2-60(j) of the Salida Municipal Code, acceptance of the Bill of Sale must be authorized by City Council.
- 5.7.2 Execute and deliver to Salida a good and sufficient General Warranty Deed conveying to Salida, free and clear of liens and encumbrances, all easements necessary for the operation and maintenance of the Public Improvements to the extent the Public Improvements are not constructed within dedicated easements or rights-of-way as shown on the _____ subdivision plat recorded at

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

- 5.7.3 Deliver to Salida all engineering designs, current surveys, current field surveys, and as-built drawings and operation manuals for the Public Improvements, or make reasonable provision for the same to be delivered to Salida. The legal description of all utility service lines must be prepared by a registered land surveyor at the Developer's sole expense.
- 5.8 **Warranty.** The Developer shall warrant the Public Improvements in accordance with Salida Municipal Code section 16-2-60(f) for the Warranty Period, which is one year from the date that the Salida Public Works Director or City Engineer, in accordance with paragraph 5.10 below, approves the Public Improvements and certifies their compliance with approved specifications. The Developer shall provide a one-year Warranty Bond or furnish a letter of credit, for the Public Improvements, including without limitation the Sewer Line Extension and all Appurtenant Sewer Service Lines. In the Warranty Bond or letter of credit, the Developer shall list Salida as the benefitted owner of the Public Improvements.
- 5.8.1 Specifically, but not by way of limitation, the Developer shall warrant the following:
- (1) That the title conveyed shall be good and its transfer rightful; and
 - (2) Any and all facilities conveyed shall be free from any security interest or other lien or encumbrance; and
 - (3) Any and all facilities so conveyed shall be free of any and all defects in materials or workmanship.
- 5.8.2 In the event of any defect in workmanship or quality during the Warranty Period, the Developer shall correct the defect in workmanship or material.
- 5.8.3 In the event that any corrective work is performed by the Developer during the Warranty Period, the warranty on said corrected work will be extended for one year from the date on which it is completed.
- 5.8.4 Should the Developer default in its obligation to correct any defect in workmanship or material during the Warranty Period, the City will be entitled to draw on the Warranty Bond or letter of credit and/or to pursue any other remedy described in Section 7 below.
- 5.8.5 In addition to warranting the Public Improvements as described herein, the Developer shall perform routine maintenance on the Public Improvements for the duration of the Warranty Period.
- 5.8.6 Pursuant to Salida Municipal Code section 16-2-60(n), the performance guarantee issued pursuant to this Agreement shall be fully released and discharged upon

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

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

regulations, orders, or requirements, including without limitation the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act), the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response Compensation and Liability Act.

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

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

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

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

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

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

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

Section 6 – Development Schedule

- 6.1 **Development Schedule.** Attached **Exhibit G** provides the schedule according to which Development will occur, including construction and installation of the Public Improvements.
- 6.2 **Development Phases.** Each phase of Development must be planned so that the Developer's failure to proceed to a subsequent stage will not have an adverse impact on Salida's wastewater treatment system, process, or facilities.
- 6.3 **Deadline for Completion and Approval of Sewer Line Extension.** The Developer shall construct and install the Sewer Line Extension, and shall obtain Salida's written approval of the Sewer Line Extension in accordance with paragraph 5.10 above, no later than July 1, 2027. The Developer acknowledges and agrees that this deadline is applicable regardless of the number of units constructed within the Property as of July 1, 2027.

Section 7 – Default by Developer and Salida's Remedies

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

- 7.4 **Waiver.** Any waiver by Salida of one or more terms of this Agreement will not constitute, and is not to be construed as constituting, a waiver of other terms. A waiver of any provision of this Agreement in any one instance will not constitute, and is not to be construed as constituting, a waiver of such provision in other instances.
- 7.5 **Cumulative Remedies.** Each remedy provided for in this Agreement is cumulative and is in addition to every other remedy provided for in this Agreement or otherwise existing at law or in equity.

Section 8 – Indemnification and Release

- 8.1 **Release of Liability.** The Developer acknowledges that Salida cannot be legally bound by the representations of any of its officers or agents or their designees except in accordance with the Salida Municipal Code, City Ordinances, and the laws of the State of Colorado. The Developer further acknowledges that it acts at its own risk with respect to relying or acting upon any representation or undertaking by Salida or its officers or agents or their designees. Accordingly, the Developer expressly waives and releases any current or future claims related to or arising from any such representation or undertaking by Salida or its officers or agents or their designees.
- 8.2 **Indemnification.**
- 8.2.1 The Developer shall indemnify and hold harmless Salida, and Salida's officers, agents, employees, and their designees, from and against any and all claims, damages, losses, and expenses, including but not limited to attorneys' fees and costs, arising from or in connection with the following: (a) acts or omissions by the Developer or its officers, employees, agents, consultants, contractors, or subcontractors in connection with this Agreement; (b) Salida's required disposal of hazardous substances, pollutants, or contaminants; required cleanup necessitated by leaking underground storage tanks, excavation, and/or backfill of hazardous substances, pollutants, or contaminants; or environmental cleanup responsibilities of any nature whatsoever on, of, or related to the Property or the construction and installation of the Public Improvements; provided that such disposal or cleanup obligations do not arise from any hazardous substance, pollutant, or contaminant generated or deposited by Salida upon the Property or the Public Improvements; or (c) any other item contained in this Agreement.
- 8.2.2 The Developer shall reimburse Salida for all fees, expenses, and costs, including attorneys' fees and costs, incurred in any action brought against Salida as a result of Salida's approval of the Public Improvements; and shall reimburse Salida for all fees, expenses, and costs, including attorneys' fees and costs, associated with any referendum election, review of petition for referendum, protest, or any other proceedings to challenge Salida's approval of the Public Improvements. Nothing in this Agreement obligates or compels Salida to proceed with any action or referendum position.

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

Section 9 – Representations and Warranties

- 9.1 **Developer's Representations and Warranties.** The Developer represents and warrants to Salida that the following are true and correct as of the date of the Developer's execution of this Agreement and will be true and correct as of the Effective Date:
- 9.1.1 **Authority.** This Agreement has been duly authorized and executed by the Developer as a legal, valid, and binding obligation of the Developer, and is enforceable as to the Developer in accordance with its terms.
- 9.1.2 **Authorized signatory.** The person executing this Agreement on behalf of the Developer is duly authorized and empowered to execute and deliver this Agreement on behalf of the Developer.
- 9.1.3 **No litigation or adverse condition.** To the best of the Developer's knowledge, there is no pending or threatened litigation, administrative proceeding, or other claim pending or threatened against the Developer that, if decided or determined adversely, would have a material adverse effect on the ability of the Developer to meet its obligations under this Agreement; nor is there any fact or condition of the Property known to the Developer that may have a material adverse effect on the Developer's ability to Develop the Property as contemplated under the approved final plat.
- 9.1.4 **Compliance with environmental laws and regulations.** To the best of the Developer's knowledge, the Public Improvements and associated easements to be conveyed to Salida hereunder are in compliance with all Federal and State environmental protection and anti-pollution laws, rules, regulations, orders, or requirements, including without limitation the Clean Water Act, the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response Compensation and Liability Act.
- 9.1.5 **No conflict.** Neither the execution of this Agreement nor the consummation of the transaction contemplated by this Agreement will constitute a breach under any contract, agreement, or obligation to which the Developer is a party or by which the Developer is bound or affected.

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

9.2.1 **Authority.** Upon execution, this Agreement will have been duly authorized by City Council as a legal, valid, and binding obligation of Salida, and is enforceable as to Salida in accordance with its terms.

9.2.2 **Authorized signatory.** The person executing this Agreement on behalf of Salida is duly authorized and empowered to execute this Agreement on behalf of Salida.

9.2.3 **No conflict.** Neither the execution of this Agreement nor the consummation of the transaction contemplated by this Agreement will constitute a breach under any contract, agreement, or obligation to which Salida is a party or by which Salida is bound or affected.

Section 10 – General Provisions

10.1 **Waiver of Defects.** In executing this Agreement, the Developer waives all objections it may have to any defects in the form or execution of this Agreement concerning the power of Salida to impose conditions on the Developer as set forth herein. The Developer further waives all objections it may have to the procedure, substance, and form of any Ordinances or resolutions authorizing or adopting this Agreement.

10.2 **Final Agreement.** This Agreement supersedes and controls all prior written and oral agreements and representations of the Parties with respect to the subject hereof, and is the total integrated agreement between the Parties with respect to that subject.

10.3 **Modifications.** This Agreement may be modified only by a subsequent written agreement executed by both Parties.

10.4 **Voluntary Agreement.** The Developer agrees to comply with all of the terms and conditions of this Agreement on a voluntary and contractual basis.

10.5 **Survival.** Salida's and the Developer's representations, covenants, warranties, and obligations set forth herein, except as they may be fully performed before or on the Effective Date, will survive the Effective Date and are enforceable at law or in equity.

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

Notice to Salida:

City of Salida

Attn: City Administrator and City Attorney
 448 East First Street
 Salida, CO 81201

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

Notice to the Developer: Tailwind Group LLC
 7625 Hwy 50,
 Salida, CO 81201

- 10.7 **Severability.** The terms of this Agreement are severable. If a court of competent jurisdiction finds any provision hereof to be invalid or unenforceable, the remaining terms and conditions of the Agreement will remain in full force and effect.
- 10.8 **Recording.** Salida shall record this Agreement with the Clerk and Recorder of Chaffee County, Colorado, at the Developer's expense.
- 10.9 **No Third-Party Beneficiaries.** Nothing in this Agreement, express or implied, confers or is intended to confer any rights or remedies whatsoever upon any person or entity other than Salida and the Developer.
- 10.10 **No Waiver of Immunity.** Nothing in this Agreement, express or implied, waives or is intended to waive Salida's immunity under Colorado State law, including without limitation the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 through -120.
- 10.11 **Joint Drafting.** The Parties acknowledge that this Agreement represents the negotiated terms, conditions, and covenants of the Parties, and that the Party responsible for drafting any such term, condition, or covenant is not to be prejudiced by any presumption, canon of construction, implication, or rule requiring construction or interpretation against the Party drafting the same.
- 10.12 **Subject to Annual Appropriation.** Any financial obligation of Salida arising under this Agreement and payable after the current fiscal year is contingent upon funds for that purpose being annually appropriated, budgeted, and otherwise made available by the City Council in its discretion.
- 10.13 **Exhibits.** All schedules, exhibits, and addenda attached to this Agreement and referred to herein are to be deemed to be incorporated into this Agreement and made a part hereof for all purposes.
- 10.14 **Counterparts.** This Agreement may be executed in multiple counterparts, all of which taken together constitute one and the same document.

**SEWER LINE EXTENSION AND CONNECTION AGREEMENT PRE-1375 ERU'S
(Poncha Meadows-Filing No. 2)**

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

Section 1 - Recitals

- 1.1 The Developer contends that it is the fee title owner of certain lands known as the "Poncha Meadows-Filing No. 2" and more particularly described on attached **Exhibit A** (the "Property").
- 1.2 The Property is located within the current corporate boundaries of the Town of Poncha Springs ("Poncha Springs" or "Town") and within Salida's Wastewater Service Plan Area as defined in Section 13-2-20 of the Salida Municipal Code.
- 1.3 This Agreement pertains to the Property, as described on attached **Exhibit A**.
- 1.4 Salida provides sewer service in Poncha Springs pursuant to and in accordance with the terms and conditions of two intergovernmental agreements between Salida and Poncha Springs: the Intergovernmental Agreement for Transfer of Sewer System dated April 6, 2010 ("System IGA") as amended in February 2025, and the Intergovernmental Agreement for Provision of Sewer Services dated April 6, 2010 ("Service IGA").
- 1.5 In accordance with the Poncha Springs Land Use Code, the Developer has submitted a plat to the Town of Poncha Springs for the Poncha Meadows -Filing No. 2 and has obtained final plat approval of the subdivision by the Town Board, on November 28, 2022.
- 1.6 Under the System IGA, Salida operates, maintains, and expands its sewer system to accommodate and not inhibit planned growth and development within Poncha Springs's planning and zoning jurisdiction.
- 1.7 Under the Service IGA, Poncha Springs shall not record any final plat for any development within Poncha Springs until the Town has received written confirmation from Salida that the developer has executed a line extension agreement or line connection agreement with Salida or has otherwise applied for and been granted service per the Salida Municipal Code.
- 1.8 The Property currently is not serviced by a Salida sewer line, and the Developer wishes to perform all excavations, construction, installations, connections and other work necessary to establish a connection to a Salida sewer main ("Sewer Line Extension"), as shown on the Sewer Plans attached as **Exhibit B**.
- 1.9 The Developer and Salida wish to enter into this Agreement in satisfaction of the requirement for an executed extension or line connection agreement under the Service IGA,

and to provide for Salida's provision of sewer service to Poncha Meadows – Filing No. 2.

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

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

Section 2 – Definitions

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

- 2.1 “Agreement” means this Sewer Line Extension and Connection Agreement. The Recitals in Section 1 above are fully incorporated into this Agreement and made a part hereof by this reference.
- 2.2 “Appurtenant Sewer Service Lines” means all service lines and laterals necessary to deliver wastewater from the Property into the Sewer Main(s).
- 2.3 “City” means the City of Salida, a Colorado statutory city.
- 2.4 “City Administrator” means the City Administrator of the City of Salida, Colorado, and the City Administrator's designee.
- 2.5 “City Council” means the City Council of the City of Salida, Colorado.
- 2.6 “Developer” means Full Views Matter, LLC, and its successor(s).
- 2.7 “Development” means all work on the Property required to accomplish construction and installation of the Public Improvements. When the context so dictates, the verb “Develop” may be used in place of the noun “Development.”
- 2.8 “Effective Date” means the date on which City Council approved the execution of this Agreement. On the Effective Date, this Agreement will become binding upon and enforceable by Salida and the Developer.
- 2.9 “Extension Taps” means sewer taps for which Salida will provide service through the Sewer Line Extension.
- 2.10 “Performance Guarantee” means the bond or letter of credit of \$768,017.50 posted by the Developer in accordance with the terms of its Subdivision Improvements Agreement with Poncha Springs dated January 31, 2025
- 2.11 “Property” means the land that is known as the “Poncha Meadows – Filing No. 2” and described in attached **Exhibit A**.

- 2.12 “Public Improvements” means those Required Improvements constructed and installed by the Developer and dedicated to Salida in accordance with this Agreement, including without limitation wastewater collection mains and laterals and sewer manholes. The Required Improvements that are also Public Improvements are identified on the Bid Tab attached as **Exhibit C**.
- 2.13 “Reimbursable Costs and Fees” means all fees and costs incurred by Salida in connection with Salida’s processing and review of the Public Improvements, and Salida’s drafting, review, and execution of this Agreement.
- 2.14 “Required Improvements” means the public and other improvements that the Developer is required to make to the Property to connect, consistent and in compliance with the final plat approval and with the construction plans and drawings submitted to Salida and Poncha Springs for review and approval.
- 2.15 “Salida Municipal Code” means the City of Salida Municipal Code, as amended.
- 2.16 “Service IGA” means the Intergovernmental Agreement for Provision of Sewer Services made by and between the City of Salida and the Town of Poncha Springs on April 6, 2010.
- 2.17 “Sewer Line Extension” means 3,876 linear feet of 8-inch PVC sewer main and 117 linear feet of 4-inch PVC sewer service to be constructed and installed by the Developer as shown on **Exhibit B**, to allow the Developer to connect to a sewer main with sufficient capacity to enable Salida to provide sewer service to the Extension Taps.
- 2.18 “System IGA” means the Intergovernmental Agreement for Transfer of Sewer System made by and between the City of Salida and the Town of Poncha Springs on April 6, 2010, as amended in February 2025 by the First Amendment to the IGA for Transfer of Sewer System.
- 2.19 “Town” means the Town of Poncha Springs.
- 2.20 “Warranty Period” means a period of one year from the date that the Salida Public Works Director or City Engineer, in accordance with the terms and conditions of paragraph 5.10 below, approves the Public Improvements and certifies their compliance with approved specifications.

Section 3 – Purpose of Agreement and Binding Effect

- 3.1 Contractual Relationship. The purpose of this Agreement is to establish a contractual relationship between Salida and the Developer with respect to extension of sewer service to the Property. The terms, conditions, and obligations described herein are contractual obligations of the Parties, and the Developer waives any objection to the enforcement of the terms of this Agreement as contractual obligations.

- 3.2 Binding Agreement and Covenant Running with the Land. This Agreement benefits and is binding upon Salida, the Developer, and the Developer's successor(s). The Developer's obligations under this Agreement constitute a covenant running with the Property.
- 3.3 Reservation. Notwithstanding anything to the contrary herein, and to the extent that Salida becomes aware of new information with respect to the Property or the Sewer Line Connection following execution of this Agreement, Salida reserves the right to require new terms or conditions for the Required Improvements or new obligations for the Developer with respect to such improvements.

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

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

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

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

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

- 5.1 Other Applicable Laws and Regulations. All terms and conditions imposed by this Agreement are in addition to and not in place of any and all requirements of the System IGA, the Service IGA, the Salida Municipal Code, and all other applicable laws and regulations, including without limitation all Town Ordinances and regulations, all State statutes and regulations, and all Federal laws and regulations.
- 5.2 Submittals to and Approvals by City Administrator. Unless this Agreement specifically provides to the contrary, all submittals to Salida in connection with this Agreement must be made to the City Administrator. In addition, unless this Agreement specifically provides to the contrary, the City Administrator and/or City Council must provide all approvals required of the City in connection with this Agreement.
- 5.3 Limitations on Wastewater Delivered Through Sewer Line Connection. The Developer acknowledges and agrees that Salida's obligation to provide sewer service to the Property is contingent upon the Developer's construction and installation, and Salida's written approval pursuant to paragraph 5.10 below, of the Public Improvements for each phase associated with the Sewer Line Extension.
- 5.3.1 Until and through December 31, 2029, this Agreement is revocable by Salida if Developer cannot provide proof of funds and/or financing for final plat subdivision infrastructure within twelve (12) months of the Effective Date of this Agreement.
- 5.4 Required Improvements and Performance Guarantee. Attached **Exhibit C** provides a detailed list of the Required Improvements for which the Developer is responsible under the Town's final plat approval of the Property, along with the reasonably estimated costs of those Required Improvements, including both labor and materials. Under the Developer's Subdivision Improvement Agreement for the Property, a copy of which agreement is attached as **Exhibit D**, the Developer will furnish a Performance Guarantee, pursuant to Salida Municipal Code section 16-2-60(a), (in the form of **Exhibit E**) in the amount of 768,017.50 which represents an amount equal to one hundred twenty-five percent (125%) of the estimated cost of said improvements to ensure timely completion of the Required Improvements.
- 5.4.1 In accordance with paragraph 1.c of the Service IGA, the Town made Salida a third-party beneficiary of the Performance Guarantee associated with sewer service installation sections of the Developer's Subdivision Improvements Agreement for

the Property.

- 5.4.2 Also in accordance with paragraph 1.c of the Service IGA, the Developer agrees that Salida is a third-party beneficiary of the Developer's Subdivision Improvements Agreement for the Property, that any default by the Developer hereunder will be deemed a default under the Subdivision Improvements Agreement, and that the Performance Guarantee (or rights to and in the same), to the extent of any estimated costs of the Public Improvements, may be made available to Salida in sufficient amounts in the event of default to provide for the completion of the Public Improvements.
- 5.4.3 In accordance with paragraph 1.d of the Service IGA, Salida agrees to perform all necessary inspections and, when appropriate, to provide required written confirmations in a timely fashion and within the time limitations, if any, imposed on Poncha Springs for inspecting the Required Improvements.
- 5.5 Prior Approval of Plans for Sewer Line Connection. Before the Developer commences construction or installation of the Public Improvements, the Salida Public Works Director or City Engineer must review and approve the drawings and plans for such improvements and proposed phasing, which drawings and plans must be stamped by the engineer retained by the Developer.
- 5.6 Construction Standards. The Developer shall ensure that all construction is performed in accordance with this Agreement, industry standards, and Salida's rules, regulations, requirements, and criteria governing such construction.
- 5.7 Conveyance of Public Improvements. Within twenty-eight (28) days of Salida's final acceptance of the Public Improvements in accordance with paragraph 5.11 below, the Developer, at no cost to Salida, shall do the following:
- 5.7.1 Execute and deliver to Salida a good and sufficient bill of sale describing all of the Public Improvements constructed, connected, and installed by the Developer pursuant to this Agreement, together with all personal property relating to the Public Improvements ("Bill of Sale"). In the Bill of Sale, the Developer shall warrant the conveyance of the Public Improvements as free from any claim, demand, security interest, lien, or encumbrance whatsoever. Consistent with Section 16-2-60(j) of the Salida Municipal Code, acceptance of the Bill of Sale must be authorized by City Council.
- 5.7.2 Execute and deliver to Salida a good and sufficient General Warranty Deed conveying to Salida, free and clear of liens and encumbrances, all easements necessary for the operation and maintenance of the Public Improvements to the extent the Public Improvements are not constructed within dedicated easements or rights-of-way as shown on the [REDACTED] subdivision plat recorded at

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

- 5.7.3 Deliver to Salida all engineering designs, current surveys, current field surveys, and as-built drawings and operation manuals for the Public Improvements, or make reasonable provision for the same to be delivered to Salida. The legal description of all utility service lines must be prepared by a registered land surveyor at the Developer's sole expense.
- 5.8 Warranty. The Developer shall warrant the Public Improvements in accordance with Salida Municipal Code section 16-2-60(f) for the Warranty Period, which is one year from the date that the Salida Public Works Director or City Engineer, in accordance with paragraph 5.10 below, approves the Public Improvements and certifies their compliance with approved specifications. The Developer shall provide a one-year Warranty Bond or furnish a letter of credit, for the Public Improvements, including without limitation the Sewer Line Extension and all Appurtenant Sewer Service Lines. In the Warranty Bond or letter of credit, the Developer shall list Salida as the benefitted owner of the Public Improvements.
- 5.8.1 Specifically, but not by way of limitation, the Developer shall warrant the following:
- (1) That the title conveyed shall be good and its transfer rightful; and
 - (2) Any and all facilities conveyed shall be free from any security interest or other lien or encumbrance; and
 - (3) Any and all facilities so conveyed shall be free of any and all defects in materials or workmanship.
- 5.8.2 In the event of any defect in workmanship or quality during the Warranty Period, the Developer shall correct the defect in workmanship or material.
- 5.8.3 In the event that any corrective work is performed by the Developer during the Warranty Period, the warranty on said corrected work will be extended for one year from the date on which it is completed.
- 5.8.4 Should the Developer default in its obligation to correct any defect in workmanship or material during the Warranty Period, the City will be entitled to draw on the Warranty Bond or letter of credit and/or to pursue any other remedy described in Section 7 below.
- 5.8.5 In addition to warranting the Public Improvements as described herein, the Developer shall perform routine maintenance on the Public Improvements for the duration of the Warranty Period.
- 5.8.6 Pursuant to Salida Municipal Code section 16-2-60(n), the performance guarantee issued pursuant to this Agreement shall be fully released and discharged upon

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

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

regulations, orders, or requirements, including without limitation the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act), the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response Compensation and Liability Act.

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

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

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

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

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

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

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

Section 6 – Development Schedule

- 6.1 **Development Schedule.** Attached **Exhibit G** provides the schedule according to which Development will occur, including construction and installation of the Public Improvements.
- 6.2 **Development Phases.** Each phase of Development must be planned so that the Developer's failure to proceed to a subsequent stage will not have an adverse impact on Salida's wastewater treatment system, process, or facilities.
- 6.3 **Deadline for Completion and Approval of Sewer Line Extension.** The Developer shall construct and install the Sewer Line Extension, and shall obtain Salida's written approval of the Sewer Line Extension in accordance with paragraph 5.10 above, no later than October 1, 2027. The Developer acknowledges and agrees that this deadline is applicable regardless of the number of units constructed within the Property as of June 1, 2027.

Section 7 – Default by Developer and Salida's Remedies

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

- 7.4 Waiver. Any waiver by Salida of one or more terms of this Agreement will not constitute, and is not to be construed as constituting, a waiver of other terms. A waiver of any provision of this Agreement in any one instance will not constitute, and is not to be construed as constituting, a waiver of such provision in other instances.
- 7.5 Cumulative Remedies. Each remedy provided for in this Agreement is cumulative and is in addition to every other remedy provided for in this Agreement or otherwise existing at law or in equity.

Section 8 – Indemnification and Release

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

8.2 Indemnification.

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

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

Section 9 – Representations and Warranties

- 9.1 Developer's Representations and Warranties. The Developer represents and warrants to Salida that the following are true and correct as of the date of the Developer's execution of this Agreement and will be true and correct as of the Effective Date:
- 9.1.1 Authority. This Agreement has been duly authorized and executed by the Developer as a legal, valid, and binding obligation of the Developer, and is enforceable as to the Developer in accordance with its terms.
- 9.1.2 Authorized signatory. The person executing this Agreement on behalf of the Developer is duly authorized and empowered to execute and deliver this Agreement on behalf of the Developer.
- 9.1.3 No litigation or adverse condition. To the best of the Developer's knowledge, there is no pending or threatened litigation, administrative proceeding, or other claim pending or threatened against the Developer that, if decided or determined adversely, would have a material adverse effect on the ability of the Developer to meet its obligations under this Agreement; nor is there any fact or condition of the Property known to the Developer that may have a material adverse effect on the Developer's ability to Develop the Property as contemplated under the approved final plat.
- 9.1.4 Compliance with environmental laws and regulations. To the best of the Developer's knowledge, the Public Improvements and associated easements to be conveyed to Salida hereunder are in compliance with all Federal and State environmental protection and anti-pollution laws, rules, regulations, orders, or requirements, including without limitation the Clean Water Act, the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response Compensation and Liability Act.
- 9.1.5 No conflict. Neither the execution of this Agreement nor the consummation of the transaction contemplated by this Agreement will constitute a breach under any contract, agreement, or obligation to which the Developer is a party or by which the Developer is bound or affected.

9.2 Salida's Representations and Warranties. Salida represents and warrants to the Developer that the following are true and correct as of the date of Salida's execution of this Agreement and will be true and correct as of the Effective Date:

9.2.1 Authority. Upon execution, this Agreement will have been duly authorized by City Council as a legal, valid, and binding obligation of Salida, and is enforceable as to Salida in accordance with its terms.

9.2.2 Authorized signatory. The person executing this Agreement on behalf of Salida is duly authorized and empowered to execute this Agreement on behalf of Salida.

9.2.3 No conflict. Neither the execution of this Agreement nor the consummation of the transaction contemplated by this Agreement will constitute a breach under any contract, agreement, or obligation to which Salida is a party or by which Salida is bound or affected.

Section 10 – General Provisions

10.1 Waiver of Defects. In executing this Agreement, the Developer waives all objections it may have to any defects in the form or execution of this Agreement concerning the power of Salida to impose conditions on the Developer as set forth herein. The Developer further waives all objections it may have to the procedure, substance, and form of any Ordinances or resolutions authorizing or adopting this Agreement.

10.2 Final Agreement. This Agreement supersedes and controls all prior written and oral agreements and representations of the Parties with respect to the subject hereof, and is the total integrated agreement between the Parties with respect to that subject.

10.3 Modifications. This Agreement may be modified only by a subsequent written agreement executed by both Parties.

10.4 Voluntary Agreement. The Developer agrees to comply with all of the terms and conditions of this Agreement on a voluntary and contractual basis.

10.5 Survival. Salida's and the Developer's representations, covenants, warranties, and obligations set forth herein, except as they may be fully performed before or on the Effective Date, will survive the Effective Date and are enforceable at law or in equity.

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

Notice to Salida:

City of Salida

Attn: City Administrator and City Attorney
 448 East First Street
 Salida, CO 81201

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

Notice to the Developer: Full Views Matter, LLC
 770 Crescent Ln
 Lakewood, CO 80214

- 10.7 Severability. The terms of this Agreement are severable. If a court of competent jurisdiction finds any provision hereof to be invalid or unenforceable, the remaining terms and conditions of the Agreement will remain in full force and effect.
- 10.8 Recording. Salida shall record this Agreement with the Clerk and Recorder of Chaffee County, Colorado, at the Developer's expense.
- 10.9 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, confers or is intended to confer any rights or remedies whatsoever upon any person or entity other than Salida and the Developer.
- 10.10 No Waiver of Immunity. Nothing in this Agreement, express or implied, waives or is intended to waive Salida's immunity under Colorado State law, including without limitation the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 through -120.
- 10.11 Joint Drafting. The Parties acknowledge that this Agreement represents the negotiated terms, conditions, and covenants of the Parties, and that the Party responsible for drafting any such term, condition, or covenant is not to be prejudiced by any presumption, canon of construction, implication, or rule requiring construction or interpretation against the Party drafting the same.
- 10.12 Subject to Annual Appropriation. Any financial obligation of Salida arising under this Agreement and payable after the current fiscal year is contingent upon funds for that purpose being annually appropriated, budgeted, and otherwise made available by the City Council in its discretion.
- 10.13 Exhibits. All schedules, exhibits, and addenda attached to this Agreement and referred to herein are to be deemed to be incorporated into this Agreement and made a part hereof for all purposes.
- 10.14 Counterparts. This Agreement may be executed in multiple counterparts, all of which taken together constitute one and the same document.

At the time of the audit, the company was in the process of reorganizing its structure and the financial statements were not audited. The company is currently in the process of reorganizing its structure and the financial statements were not audited.



CITY COUNCIL ACTION FORM

DEPARTMENT City Attorney	PRESENTED BY Nina P. Williams - City Attorney	DATE February 4, 2025
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AGENDA ITEM

Resolution 2025-05, Approving First Amendment to Intergovernmental Agreement for Transfer of Sewer System between City of Salida and Town of Poncha Springs

BACKGROUND

In 2023, the Town of Poncha Springs, along with two developers (Tailwind Group, LLC and Full Matters, LLC), brought a Lawsuit against the City of Salida, in response to the City’s responsible actions to protect the community-at-large regarding serious health and safety issues that may have otherwise resulted from overflowing sewage throughout the region.

City Council’s immediately previous action at tonight’s meeting settled such lawsuit, through the approval of the Release and Settlement Agreement with the Town of Poncha Springs and the two Developer Plaintiffs.

The City has maintained for years that a resolution of the long-time dispute between the Town and the City could not occur without an amendment to at least one of the two Sewer IGAs entered into on April 6, 2010. This was because of conflicting and unclear language within the legal documents, especially as it related to who should bear the burden of paying for capital infrastructure upgrades required by significant new development.

This First Amendment to the Intergovernmental Agreement for Transfer of Sewer System clarifies such responsibilities, and memorializes terms within the Lawsuit’s Release and Settlement Agreement.

RECOMMENDATION

Staff recommends approval of the Resolution approving the Sewer IGA Amendment with Poncha Springs to achieve Council’s goal of resolving this matter between the neighboring communities, and providing more clarity regarding the funding and financing of necessary sewer infrastructure.

MOTION

A City Councilmember should state “*I move to approve Resolution 2025-05, Approving First Amendment to Intergovernmental Agreement for Transfer of Sewer System between City of Salida and Town of Poncha Springs,*” followed by a second and a roll call vote.

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

**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**

WHEREAS, on April 6, 2010, the City of Salida (“City” or “Salida”) and the Town of Poncha Springs (“Town” or “Poncha Springs”) entered into an Intergovernmental Agreement for Transfer of Sewer System (the “Transfer Agreement”), generally providing for the City, acting through its water and wastewater enterprise, to assume full responsibility for the provision of sewer services in Poncha Springs;

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

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

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

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

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

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

WHEREAS, in satisfaction of the requirements of the Release and Settlement Agreement, the Council wishes for the City to execute the First Amendment to Intergovernmental Agreement for Transfer of Sewer System between the City of Salida

and the Town of Poncha Springs, attached hereto as "Exhibit A," and incorporated herein by reference.

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 First Amendment to Intergovernmental Agreement for Transfer of Sewer System between the City of Salida and the Town of Poncha Springs attached hereto as "Exhibit A," and incorporated herein, and authorizes the Mayor to sign said document.

RESOLVED, APPROVED AND ADOPTED this 4th day of February 2025.

CITY OF SALIDA, COLORADO

[SEAL]

By _____
Mayor Dan Shore

[ATTEST]

City Clerk/Deputy City Clerk

Exhibit A
**First Amendment to Intergovernmental Agreement
for Transfer of Sewer System**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5(g) Additional line extension and connection agreements.

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

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

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

5(h) Interceptor upgrade.

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

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

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

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

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

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

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

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

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

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

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

333 Burnett Avenue
Poncha Springs Colorado 81242

With copy to:

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

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


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

By: _____
Dan Shore, Mayor

ATTEST:

Kristi Jefferson, Town Clerk

Town of Poncha Springs, Colorado

By: 
Ben Scanga, Mayor

ATTEST:


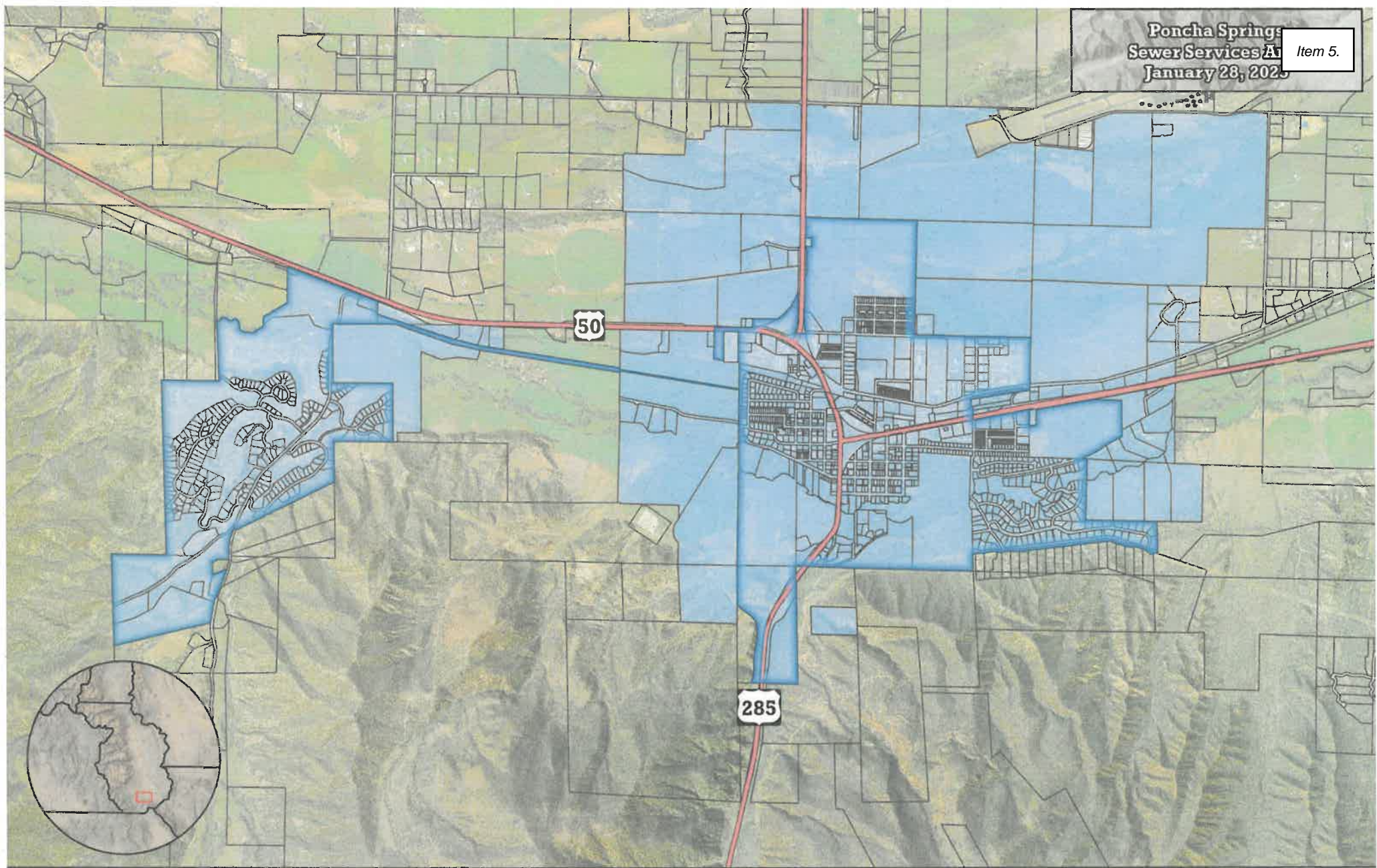
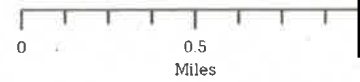

Trisha Arosemena, Town Clerk

Exhibit A
Poncha Springs Sewer Services Area
[attached]



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





CITY COUNCIL ACTION FORM

DEPARTMENT City Attorney	PRESENTED BY Nina P. Williams - City Attorney	DATE February 4, 2025
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AGENDA ITEM

Ordinance 2025-03, 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

BACKGROUND

Since 2017, the City notified - and then warned - the Town (as well as Developers Tailwind Group, LLC and Full Matters, LLC) of the City's concerns regarding pipeline capacity due to the rapid growth approved by Poncha Springs.

Engineering Providence Infrastructure Consultants established that Interceptor capacity was approaching critical flow, and that the anticipated development and current rate of growth within the Poncha Springs Service Area necessitated the need to upsize the sanitary sewer infrastructure within the next few years.

In 2022, due to these imminent capacity limitations, the City and its Public Works Department made clear that they could not responsibly approve new sewer system connections until: (1) Sewer IGAs (between the City and Town) were renegotiated; or (2) the Developer Plaintiffs provided off-site improvements to address sewer capacity.

After neither Town nor 2 developers moved forward with either option, the City Council, through Ordinance 2023-09, imposed a moratorium on sewer system connection applications for those properties benefitting from the Poncha Interceptor and affected by its noted capacity limitations.

Now that the Lawsuit brought by the Town of Poncha Springs, Tailwind Group, LLC and Full Matters, LLC against the City of Salida has been settled, and the First Amendment to Intergovernmental Agreement for Transfer of Sewer System between the City of Salida and Town of Poncha Springs has been approved, the responsibilities of all parties regarding funding and financing the necessary sewer infrastructure have been clarified, outlined and memorialized. The City and Enterprise is now able to responsibly lift the moratorium imposed by Ordinance 2023-09.

Please note that this is an emergency ordinance, which requires an affirmative vote of 3/4ths of the governing body in order to become effective immediately upon adoption. This means that **5 or more** councilmembers must vote in favor of this Ordinance for it to become effective immediately, on February 4, 2025.

RECOMMENDATION

Staff recommends approval of Ordinance 2025-03, lifting the temporary moratorium imposed by Ordinance 2023-09, now that all parties have agreed to be part of the solution to fund and finance the necessary sewer infrastructure.

MOTION

A City Councilmember should state "I move to approve Ordinance 2025-03, lifting the temporary moratorium imposed by Ordinance 2023-09, and declaring an emergency," followed by a second and a roll call vote.

**CITY OF SALIDA, COLORADO
ORDINANCE NO. 03
(Series of 2025)**

AN ORDINANCE OF THE CITY COUNCIL FOR 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 BENEFITING FROM THE PONCHA INTERCEPTOR AND AFFECTED BY ITS CAPACITY LIMITATIONS, AND DECLARING AN EMERGENCY

WHEREAS, the City of Salida, Colorado (“City” or “Salida”) 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 by and through its City Council (“Council”), possesses the authority to adopt laws and ordinances within its police power in furtherance of the public health, safety and welfare; and

WHEREAS, pursuant to such authority, the City has previously adopted certain regulations within Chapter 13 of the Salida Municipal Code (“Code”) concerning municipal utilities; and

WHEREAS, pursuant to Chapter 13, Article 1, the Water and Wastewater Enterprise of the City of Salida (“Enterprise”) was established, which is authorized to implement provisions of Chapter 13 of the Code and perform all other functions and duties as authorized by law, and which Enterprise is wholly owned by the City and operates in accordance with all applicable laws; and

WHEREAS, pursuant to Code section 13-1-30, the City Council serves as the governing board and body of the Water and Wastewater Enterprise; and

WHEREAS, since 2017, growth and development within the Town of Poncha Springs (“Town” or “Poncha Springs”) alerted the City to the need for specific planning as it related to the Poncha Springs Service Area; and

WHEREAS, for the last seven plus years, the City notified – and then warned - Poncha Springs of the City’s concerns regarding pipeline capacity due to rapid growth approved by the Town; and

WHEREAS, in 2018, these capacity concerns prompted City staff to work with Providence Infrastructure Consultants related to the Poncha Interceptor (“Interceptor”), located along US-50 near Poncha Springs Lane within the Town of Poncha Springs and terminating along US-50 near 14th Street in the City of Salida; and

WHEREAS, the engineering report created by Providence Infrastructure Consultants,

entitled “Poncha Interceptor Flow Analysis Technical Memorandum,” established that the existing Interceptor was approaching capacity and was anticipated to reach critical flow, and that the expected development and current rate of growth within the Poncha Springs Service Area necessitated the need to upsize the sanitary sewer infrastructure in the short term and before the specific threshold of units were developed; and

WHEREAS, due to these imminent capacity concerns at the Interceptor, City of Salida Public Works Director David Lady submitted agency review comment letters to the Poncha Springs Town Board for 2 land use public hearings involving significant residential development, namely the Tailwinds II Subdivision Phase 1 application from developer Tailwind Group, LLC in April 2022 and the Poncha Meadows Filing No. 2 Subdivision application from Full Matters, LLC in June 2022, stating that sewer line extension agreements prior to the issuance of sewer taps would be contingent upon either: (1) re-negotiated Intergovernmental Agreements (IGAs); or (2) the developers providing off-site improvements to address the noted sewer capacity and Interceptor limitations; and

WHEREAS, despite the foregoing, neither the Town nor the 2 developers chose to move forward with either option, and instead jointly filed a lawsuit against the City; and

WHEREAS, because of the infrastructure limitations at the Interceptor, the Enterprise lacked the capacity to serve additional development projects benefitting from the Interceptor until receiving a commitment that the necessary capital improvements would be financed and funded to provide the ability to serve such new building construction projects; and

WHEREAS, on June 6, 2023 through Ordinance 2023-09, the City and Enterprise acted within its legal the authority to enact moratoria in order to preserve the status quo, protect public health and safety, by imposing a moratorium on the acceptance, processing and approval of applications for connection to the wastewater system for properties in the Poncha Springs Service Area benefiting from the Interceptor and affected by its capacity limitations which had not been approved for connection by the Salida City Council through executed sewer line extension or connection agreements; and

WHEREAS, due to the settlement of the Lawsuit brought by the Town of Poncha Springs, Tailwind Group, LLC and Full Matters, LLC, and the approval of the First Amendment to Intergovernmental Agreement for Transfer of Sewer System between the City of Salida and Town of Poncha Springs, which clarify, outline and memorialize the responsibilities of all parties regarding the funding and financing of the necessary sewer infrastructure, the City and Enterprise is now able to responsibly lift the moratorium imposed by Ordinance 2023-09; and

WHEREAS, the Council also finds and determines that this Ordinance is necessary to the immediate preservation of the public health, safety and welfare and the financial well-being of the City and Enterprise and those whose utilities and infrastructure the City and Enterprise services, and that this ordinance should therefore become effective upon adoption, as authorized by C.R.S. § 31-16-105.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF SALIDA, COLORADO, ACTING AS THE GOVERNING BODY OF THE

WATER AND WASTEWATER ENTERPRISE OF THE CITY OF SALIDA as follows:

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

Section 2. Lifting of Moratorium. Effective immediately, upon the date of this Ordinance, the moratorium imposed by Ordinance 2023-09, on the acceptance, processing, and approval of applications for connection to the wastewater system for those properties in or around the Poncha Springs Service Area benefiting from the necessary Interceptor capital improvements and affected by its capacity limitations, is hereby lifted. Ordinance 2023-09 is hereby repealed and is no longer in effect.

Section 3. Effective Date. This Ordinance shall become effective on February 4, 2025. The moratorium imposed by Ordinance 2023-09 shall immediately be lifted as of February 4, 2025, the effective date of this Ordinance.

Section 4. Should any one or more sections or provisions of this Ordinance or of the Code provisions enacted hereby be judicially determined invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining provisions of this Ordinance or of such Code provision, the intention being that the various sections and provisions are severable.

Section 5. Emergency declaration. Pursuant to C.R.S. § 31-16-105, the City Council hereby finds, determines and declares that an emergency exists and that this ordinance is necessary for the immediate preservation of the public health, safety and welfare and the financial well-being of the City and the Enterprise and those whose utilities and infrastructure the City and Enterprise services, and therefore, this ordinance must be passed as an emergency ordinance.

INTRODUCED, READ AND PASSED, ADOPTED AND ORDERED PUBLISHED IN FULL in a newspaper of general circulation in the City of Salida by the City Council this 4th day of February, 2025.

CITY OF SALIDA

By: _____
Mayor Dan Shore

ATTEST: (SEAL)

By: _____
City Clerk Kristi Jefferson



CITY COUNCIL ACTION FORM

DEPARTMENT Finance	PRESENTED BY Aimee Tihonovich - Finance Director	DATE February 4, 2025
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AGENDA ITEM

Resolution number 2025-06: A resolution amending the 2025 fee schedule.

BACKGROUND

It is important to review the fee structure utilized for supporting the important water and wastewater systems serving the City’s citizens. Municipal Advisors Ehler’s, Inc. has worked with staff to perform a review of the City’s rates as compared to the cost of maintaining the systems in the long term and are proposing the attached fee changes. Detailed explanations of the rationale for these changes will have been presented at the work session held immediately preceding today’s regular meeting. The proposed schedule is designed to provide a revenue stream based on fair and affordable rates sufficient to support these services.

FISCAL NOTE

Adopting this fee schedule will provide a steady income stream necessary for maintaining the water and wastewater systems to include the construction of necessary capital projects. This fee schedule includes fees agreed to by Poncha Springs for the interceptor project.

RECOMMENDATION

It is recommended that the resolution be adopted.

MOTION

A City Councilmember should state “I move to _____ Resolution 2025-06 amending the 2025 fee schedule”, followed by a second and a roll call vote.

**CITY OF SALIDA, COLORADO
RESOLUTION NO. 06
(Series of 2025)**

**A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF SALIDA, COLORADO
AMENDING THE 2025 FEE SCHEDULES**

WHEREAS, the Salida Municipal Code ("Code") establishes rules and regulations for the operations of the City of Salida ("City") and provides for the establishment of fees for various City services throughout the Code; and,

WHEREAS, the City relies upon fees to provide many services to its customers and citizens; and,

WHEREAS, fees associated with the services provided by the City require adjustment from time to time to account for the increase in the costs to provide such services, as well as for the implementation of new services and regulations, or applicable amendments to the Code; and,

WHEREAS, on December 17, 2024, the City Council adopted the 2025 Fee Schedules via City Resolution No. 2024-74; and,

WHEREAS, since the previously updated Water and Wastewater fee schedule was adopted by the City Council, staff recommends further updating such fees to match the Intergovernmental Agreement with Poncha Springs and to address the fees calculated in a recently completed rate study.

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

1. The Salida City Council incorporates the foregoing recitals as its conclusions, facts, determinations and findings.
2. This resolution and accompanying amended Fee Schedule are intended to supersede all previous fee schedules regarding the 2025 Water and Wastewater fees adopted by the City Council.
3. New rates will go into effect as soon as reasonably practicable understanding that software billing changes are necessary for the monthly service fees which may prevent an immediate change for the charges for services portion of the fee schedule.

RESOLVED, APPROVED AND ADOPTED this 4th day of February, 2025.

CITY OF SALIDA, COLORADO

By _____

Mayor

[SEAL]

[ATTEST] _____

City Clerk/Deputy City Clerk

Fees and Charges for Water and Wastewater Services, Effective January 2025

Description of Fee, Rate or Charge	Code Section	Residential & Multi-Family Fees				Commercial Fees (2) (3)						
		Special Charges	Residential Single-Family (6)	Residential Multi-Family (6)	Accessory Dwelling Units	Legally-Restricted Affordable Housing	3/4" Line	1.0" Line	1.5" Line	2.0" Line	3.0" Line	4.0" Line
Water System Development & Associated Fees												
System Development Fee - Per Equivalent Residential Unit (ERU) (1)	13-3-20(c)		\$9,363	\$4,682 <i>per Unit</i>	\$3,745	\$3,745 <i>per Affordable Unit</i>	\$9,363 <i>per ERU (1)</i>	\$9,363 <i>per ERU (1)</i>	\$9,363 <i>per ERU (1)</i>	\$9,363 <i>per ERU (1)</i>	\$9,363 <i>per ERU (1)</i>	\$9,363 <i>per ERU (1)</i>
Surcharge in High Zone	13-3-20(d)		\$1,936	\$1,452	\$774	\$774	\$1,936	\$2,904	\$4,352	\$6,530	\$9,797	\$14,695
Irrigation Only (plus 50% of applicable surcharge above)	13-3-20(c)		\$4,256	\$4,256	\$0	\$4,256	\$4,256	\$7,135	\$14,158	\$26,236	\$53,371	\$108,767
Water Meter - Ultrasonic	13-02-90		\$425	\$425	\$0	\$425	\$440	\$550	\$935	\$1,210	\$2,750	\$3,740
<i>Note: Meter prices are based on supplier prices and, therefore, are subject to change outside of the City's Control</i>												
Wastewater System Development Fees												
System Development Fee - Per Equivalent Residential Unit (ERU) (1) City of Salida	13-3-20(c)		\$6,485	\$3,242 <i>per Unit</i>	\$2,594	\$2,594 <i>per Affordable Unit</i>	\$6,485 <i>per ERU (1)</i>	\$6,485 <i>per ERU (1)</i>	\$6,485 <i>per ERU (1)</i>	\$6,485 <i>per ERU (1)</i>	\$6,485 <i>per ERU (1)</i>	\$6,485 <i>per ERU (1)</i>
City of Poncha Springs			\$11,600	\$5,800 <i>per Unit</i>	\$4,640	\$4,640 <i>per Affordable Unit</i>	\$11,600 <i>per ERU (1)</i>	\$11,600 <i>per ERU (1)</i>	\$11,600 <i>per ERU (1)</i>	\$11,600 <i>per ERU (1)</i>	\$11,600 <i>per ERU (1)</i>	\$11,600 <i>per ERU (1)</i>
Monthly Water Rates and Charges for Services	13-3-30(b)		Assumes 5/8" or 3/4" meter									
Service charge - based on meter size (excludes usage) (4)			\$26	\$26	\$13	\$26	\$26	\$65	\$130	\$208	\$416	\$650
Volumetric (Usage) charge - per 1,000 gallons												
Residential & Multi-Family												
Tier 1: 0 - 4,000 gallons			\$1.73	\$1.73	\$1.73	\$1.73						
Tier 2: 4,001 - 13,333 gallons			\$2.16	\$2.16	\$2.16	\$2.16						
Tier 3: 13,334 - 32,000 gallons			\$2.70	\$2.70	\$2.70	\$2.70						
Tier 4: Over 32,000 gallons			\$3.38	\$3.38	\$3.38	\$3.38						
Commercial												
Tier 1: 0 - 9,000 gallons							\$1.73	\$1.73	\$1.73	\$1.73	\$1.73	\$1.73
Tier 2: Over 9,000 gallons							\$2.16	\$2.16	\$2.16	\$2.16	\$2.16	\$2.16
Monthly Wastewater Rates and Charges for Services	13-3-30(b)											
Service charge (excludes usage)			\$27.85	\$27.85	\$13.93	\$27.85	\$27.85	\$27.85	\$27.85	\$27.85	\$27.85	\$27.85
Volumetric (Usage) charge - per 1,000 gallons												
Residential customers (based on winter water usage)			\$3.50	\$3.50	\$3.50	\$3.50						
Commercial customers (based on actual water usage)							\$3.50	\$3.50	\$3.50	\$3.50	\$3.50	\$3.50
Sewer only customers - per equivalent living unit		\$38.35										
Other												
Permanent disconnection fo water line	13-2-210	\$50.00										
Bulk water - untreated for construction within the City of Salida (per 1,000 gallons)	13-3-30(a)	\$5.00										
Bulk water - treated (up to 1,000 gallons & each add'l 1,000 gallons)	13-3-30(a)	\$8.00										
Bulk water - set hydrant meter	13-3-30(a)	\$75.00										
Inactive account (sewer only customers) per month	13-3-30(g)	\$19.18										
Returned check charge	13-3-30(h)	\$25.00										
Final billing and new account charge	13-3-30(i)	\$62.00										
Sewer only final billing and new account charge	13-3-30(i)	\$31.00										
Temporary water disconnection fee - once annually	13-03-50	\$0.00										
Temporary water disconnection fee - mre than 1x per year	13-03-50	\$40.00										
Delinquent charge - water service	13-3-30(h)	\$3.50										
Delinquent charge - wastewater service	13-3-30(h)	\$3.50										
Late fee (SteamPlant, Public Works, Finance, Fire, Pool, Wastewater - 30		\$3.50 or 5%										
Period of time after which service is subject to termination	13-3-30(c)	45 days										
Water termination (shut-off) fee	13-3-30(d)	\$40.00										
Account reinstatement charge (waived if shut-off fee paid)	13-03-80	\$40.00										

Notes:

- (1) System Development Fees (SDF's) are based on Equivalent Residential Units (ERU's), regardless of meter size. The Multi-family and ADU rate is 50% of Residential and Commercial. Affordable Housing rate is 40%. For Commercial and Multi-Family, fees are calculated as the number of ERU's x applicable rate.
- (2) Includes mixed-use developments in a single building where 50% or more of the ground floor is used for commercial, personal
- (3) Also applies to single-ownership, single-lot rental projects of 3 or more units. The required size of the commercial meter will be determined via the size calculation sheet provided by the City of Salida and verified by the project engineer. The development must meet a minimum of 50% of the maximum allowable density for the lot, and individual units may not exceed 1,200 sf, excluding garage space. Should any individual unit within said development convert to a unique owner in the future (via condominiumization, subdivision, etc.), the applicant will be responsible for paying the difference between the paid system development fees (SDF's), as a portion of the total number of ERU's, and the ERU's for the non-rental unit applicable at the time of conversion.
- (4) Compound meters may have a different rate. Check with City for details.
- (5) City of Salida's wastewater System Development Fees will increase annually over the next five (5) years reaching the same fee level as Poncha Springs at the end of this period.
- (6) See section 13-3-10 for customer classes and definitions. Residential Single-Family applies to one or two units on a single lot. Residential Multi-Family applies to 3 or more units on a single lot.