

ANNEXATION AGREEMENT AND PETITION
NON-CONTIGUOUS PROPERTY

THIS ANNEXATION AGREEMENT, made this 3rd day of April, 2014, by D & T Properties, LLC, a Wyoming Limited Liability Company, Box 2589 Gillette Wyoming, 82717 hereinafter referred to as LANDOWNER, and the City of Gillette, Wyoming, a municipal corporation and City of the First Class, hereinafter referred to as CITY.

WHEREAS, the LANDOWNER is the record owner of a certain tract of land, described as follows:

A tract of land located in a part of the *SW/4NW1/4* of Section 12, Township 49 North, Range 72 West of the 6th Principal Meridian, Campbell County Wyoming, said tract known as Parcel A as shown on the Survey Plat recorded March 9, 1982 in Book 3 of Plats, page 189 of the records of Campbell County, Wyoming, and being more particularly described as follows:

Commencing at the 1/4 corner between Sections 11 and 12, T.49N., R.72W., said corner being marked by a 3 inch Brass Cap;

thence N.00°16'43"W., 308.57 feet along the West line of Section 12, and along the East R.O.W. line of a road to a #5 Rebar with Yellow Plastic Cap marked L.S. 538, said cap being the TRUE POINT OF BEGINNING;

thence continuing N.00°16'43"W., 703.80 feet along said West section line and said East R.O.W. line of road to the South R.O.W. line of State highway No. 59 and a #5 Rebar with Yellow Plastic Cap marked L.S. 538, said cap being S.00°16'43"E 1728.99 feet from the section corner common to Section 2, 1, 11 and 12;

thence S.53°51'12"E., 216.44 feet along said South R.O.W. line of State Highway 59 to the P.C. of a curve to the right, tangent to a line bearing S.48°44'54"E., said P.C. marked by a 3 inch Bras Disc set in concrete;

thence continuing along the South R.O.W. line of State Highway No. 59 363.66 feet along said cure having a Radius of 3734.72 feet through a central angle of 5°34'44" to a #5 Rebar with Yellow Plastic Cap marked L.S. 538;

thence S.46°49'50"W., along a line radial to the curve 50.00 feet to a #5 Rebar with Yellow Plastic Cap marked L.S. 538;

thence S.00°16'43"E., 287.28 feet to a #5 Rebar with Yellow Plastic Cap marked L.S. 538;

thence S.89°43'17"W., 397.60 feet to a #5 Rebar with Yellow Plastic Cap marked L.S. 538 to the true point of beginning.

This tract of land, or any smaller part or parcel, which may be conveyed as a separate tract, whether or not subdivided, shall hereinafter be referred to as the LAND.

WHEREAS, the LAND is not currently contiguous to the CITY but is within the natural growth area of the CITY; and

WHEREAS, the LANDOWNER desires to receive certain CITY services in exchange for a commitment to annex, at the direction of the CITY.

NOW, THEREFORE, the parties above named have decided to set forth all of their agreements concerning the annexation of the property as follows:

1. The parties acknowledge that the LAND is not currently contiguous to the City limits of the CITY but is within the natural growth area of the CITY. After becoming contiguous, the LANDOWNER agrees and covenants for himself and his heirs, assigns and successors in interest to take all remaining actions, at any time and at the sole discretion of the CITY, to comply with State annexation law and to complete the annexation of the LAND into the CITY. The LANDOWNER, or any successor in interest, shall incorporate this requirement to annex into the CITY, upon becoming contiguous to the CITY limits, on each and every deed for any parcel of land existing or created within the LAND. The LANDOWNER shall adhere to the City Land Use Plan, appropriate restrictions pertaining thereto, and the Major Street Plan. All lands existent at the time of this AGREEMENT, if subdivided and approved by Campbell County, along with any agreements, covenants, restrictions or zones, shall be submitted to the City Council for approval prior to the recording of the subdivision plat or a sale of any parcel. A commitment or restriction shall be included in every deed or land sale contract executed by the LANDOWNER, whether or not presently platted or subdivided, subsequent to the date of approval of this AGREEMENT, noting that the parcel "shall annex to the CITY without protest, at the discretion and direction of the Gillette City Council". The commitment to annex shall be recorded as part of each deed and is a covenant running with the property known as the LAND, enforceable by the CITY.

2. This AGREEMENT does not relieve the LANDOWNER, or any successor in interest, from any requirements of the City of Gillette Subdivision Regulations, when the LAND is further subdivided, and that the subdivision shall be in accordance with all relevant CITY ordinances and other regulations in effect at this time.

3. The LANDOWNER shall construct any and all new buildings or structures on the property in complete conformity with the current Building Codes and all other codes, as adopted by the City of Gillette, and the LANDOWNER shall certify such compliance to the Building Inspection Division of the City of Gillette.

4. Upon annexation to the CITY, the CITY shall provide municipal services on the same level as provided to other areas of the CITY, according to State statutes and local ordinances.

5. The parties acknowledge that all CITY utilities and services are required to service lands annexed to the CITY. The improvements required, pursuant to City ordinances are as follows:

- a) Site Improvements - The paving of existing parking and loading areas within the LAND will not be required, however, following annexation, any future expansion of a use will require the installation

of an all-weather surface of asphalt or concrete in support of that expansion. All costs associated with such upgrades shall be borne solely by the affected property owners.

6. The parties further agree as follows:

a) Water Service.

i. The CITY will not provide domestic water service to the LAND at this time. The LANDOWNER may continue the use of the existing water system until such time as the system fails. The LAND will be required to connect to the City water system when the existing water system fails. All costs associated with making the water system connection is the responsibility of the LANDOWNER and shall be made in accordance with applicable City regulations governing connection of property to the City water system. The LANDOWNER may obtain water service for fire protection only at this time, and full water service for domestic and business use after the Madison Pipeline is operational. The CITY may install a meter at its sole cost to monitor fire protection usage.

ii. The LANDOWNER will be responsible for establishing a billing account with the CITY and payment of each monthly water billing.

iii. The LANDOWNER shall be responsible for the payment of one (1) Plant Investment Fee-Water as established by City ordinance , at the prevailing rate at the time of connection for domestic service along with a Secondary Pro-rata Fee.. The Secondary Pro-rata fee is the pro-rata share of the Local Contribution paid for a Wyoming Business Council grant for the construction of the specific segment of the water system to which they will connect, according to the terms of an agreement dated January 27, 2012 between the City of Gillette and Liebherr Mining Equipment Newport News Company. Provided however that the Secondary Pro-rata Fee shall not be charged if LANDOWNER presents to the CITY a signed written waiver thereof from Liebherr Mining Equipment Newport News Company.

iv. The LANDOWNER agrees to provide, at their sole expense, a water distribution system, and a service line to serve the LAND, along with a curb stop and meter located and installed in compliance with CITY specifications.

v. The CITY agrees to provide water to the LAND at the prevailing user rate for the class of service when water is received, according to the prevailing City ordinance in effect at that time, which is subject to change.

vi. The LANDOWNER will obtain any necessary plumbing, building, zoning, or other permits as required by Campbell County. When service connection to the main is made, the LANDOWNER will have the connection permitted and inspected by the CITY.

vii. The LANDOWNER acknowledges the need for the CITY to have access to any metering equipment located on the property and further agrees to allow access to such equipment.

viii. No private well may be connected to the public potable water system and the LANDOWNER acknowledges that the CITY water shall be the primary water service for the LAND for fire protection only prior to the Madison Pipeline being operational, and the primary domestic and business water service for the LAND after the Madison Pipeline is operational.

b) Sewer.

i. Pursuant to the LANDOWNER'S desire to obtain sewer service to the LAND the CITY agrees to provide access to its wastewater treatment facility at the user rates as specified by City Ordinance.

ii. The LANDOWNER is requesting one (1) service connection to connect the LAND to the CITY sewer system. The LANDOWNER will be responsible for establishing a billing account with the CITY and payment of each monthly sewer billing.

iii. All costs of making the sewer service connection, including the construction, installation and extension of required mains and related appurtenances between the LAND and the point of service determined by the CITY, are the responsibility of the LANDOWNER.

iv. The CITY has no responsibility to maintain any service line. The LANDOWNER agrees to install the sewer service line to CITY specifications. When annexation occurs, the City will maintain that portion of the service lines that are within the right of way.

v. The LANDOWNER agrees to connect all buildings requiring sanitary sewer service to the CITY's system and remove or render inoperable all privies, vaults, septic tanks, etc. presently serving those buildings.

vi. The LANDOWNER agrees to pay the CITY a Sewer Plant Investment Fee, which shall be calculated on the basis of a 1" water meter required to serve the LAND as established by City ordinance. The LANDOWNER agrees to pay the CITY a secondary Sewer Plant Investment Fee in the amount of \$1,893.48 to cover the CITY's cost of the sewer trunk and collector mains constructed to serve the drainage basin that includes the South Douglas Highway Water and Sewer District. The secondary Sewer Plant Investment Fee is calculated according to the terms of the *Sewer Utility Service Agreement*, between The CITY and the South Douglas Highway Water and Sewer District (SDHW&SD) approved by the Gillette City Council June 16, 2003.

vii. The LANDOWNER will obtain a plumbing permit from the County when sewer service is desired. The CITY shall be notified at the time a service connection is requested to be activated. The

LANDOWNER will also obtain any additional plumbing, building or zoning permits and inspections required by Campbell County.

viii. No service connections may be made for service outside of the LAND or for more service connections than specified in paragraphs (b) and (k) above without prior approval of the City Council.

- c) Any further division or splitting of the LAND will require that a subdivision plat be filed under applicable Subdivision Regulations of Campbell County and the City of Gillette. In the event that any future division of the LAND occurs and such division is not added to or consolidated with other land already subject to an Annexation Agreement, then all separate land parcels shall be required to establish separate water and sanitary sewer connections for each lot created and the LANDOWNER shall be required to pay all additional Plant Investment Fees for those connections. Council permission must be obtained prior to any additional connections and separate Agreements executed.
- d) Until annexation, all new buildings and structures will require a building permit, inspections and approval from the County. Until annexation, all uses of buildings or structures on the property connected to City services shall be in conformance with the County zoning codes.
- e) The CITY makes no commitment regarding the zoning classification that would be adopted for the LAND at the time of annexation, however it is acknowledged that the current County zoning classification for the property is C-1 Commercial District. The current use of the land is consistent with the City's C-1 Commercial District. Final determination of a zoning district designation at the time of annexation would be governed by compatibility of existing land use as well as the adopted comprehensive plan for the area.
- f) After annexation, the LAND will be served by the CITY electrical system, at such time as arrangements for the changeover have been made with Powder River Energy Corporation.

7. Upon contiguity, the LANDOWNER hereby petitions the Gillette City Council to accept this AGREEMENT as a petition to annex all of the LAND previously described above into the City limits of the City of Gillette. LANDOWNER is the owner of all LAND described above. LANDOWNER and CITY agree that this petition may be filed with the City Clerk at any time after the area becomes contiguous to the City of Gillette, and at the sole discretion of the CITY.

8. LANDOWNER agrees to sign any other petition or petitions or to take any other action whatsoever to comply with State annexation law as they may be required by the CITY to facilitate the annexation. LANDOWNER further waives any irregularities in the annexation process and specifically waives his right to protest the said annexation. LANDOWNER agrees to provide an Annexation plat, prepared by a Wyoming registered land surveyor, at its sole cost and expense. If applicable, the parties acknowledge that the CITY may choose not to complete

the annexation of LANDOWNER'S land until more adjacent property can be annexed simultaneously. The LANDOWNER specifically agrees and acknowledges that the timing of the annexation is within the sole discretion of the CITY. The CITY may initiate the annexation of the LAND described above at any time and without notice to LANDOWNER.

9. This AGREEMENT, and every part thereof, shall constitute a covenant running with the LAND described above and may be enforced by the CITY by an action at law or equity.

10. This AGREEMENT shall inure to the benefit of, and be binding upon the parties hereto, their respective heirs, successors in interest and assigns. This AGREEMENT shall bind each and every successor in interest to the LAND or any portion or parcel thereof.

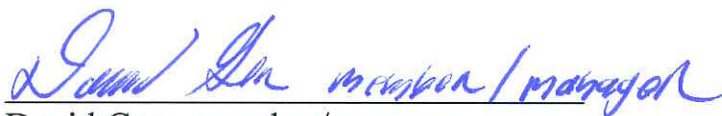
11. This AGREEMENT shall be governed by the laws of the State of Wyoming. The District Court of the Sixth Judicial District in Campbell County, Wyoming, shall have venue and jurisdiction exclusively for any action in law or equity which may be instituted to enforce the terms of this AGREEMENT.

12. If any legal action is instituted to enforce any of the terms of this AGREEMENT, the unsuccessful party shall pay the successful party's reasonable attorneys' fees and all costs of the action including court costs, expert witness fees and all other actual expenses incurred in the prosecution of the action.

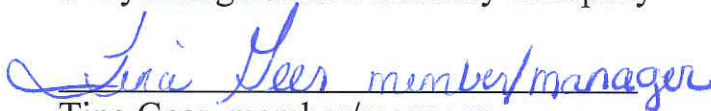
13. If any section, subsection, sentence, clause, phrase or portion of this AGREEMENT is for any reason held invalid or unconstitutional by any Court or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portions hereof, which shall remain in full force and effect.

DATED this _____ day of _____, 2014.

LANDOWNER:



David Geer, member/manager
D & T Properties, LLC
a Wyoming Limited Liability Company



Tina Geer, member/manager
D & T Properties, LLC
a Wyoming Limited Liability Company

CITY OF GILLETTE:

John Opseth, Mayor
City of Gillette, Wyoming

ATTEST:

STATE OF WYOMING)
)ss.
County of Campbell)

Notary Public
My Commission Expires:

The foregoing instrument was acknowledged before me by David Geer and Tina Geer, who are the member/managers of D & T Properties, LLC, a Wyoming Limited Liability Company this 3rd day of April, 2014.




Notary Public
My Commission Expires: Aug. 8, 2016