

City of Gillette and [Wholesale Customer Name]

Water Service Agreement

Agreement made and entered into by and between the City of Gillette, Wyoming, a municipal corporation and City of the First Class, hereinafter CITY, of 201 East Fifth Street, Gillette, Wyoming, and Benmor Estates 15D, ^{PO Box 2544,} Street, City, ^{Gillette,} Wyoming, Zip, hereinafter WHOLESAL CUSTOMER. The WHOLESAL CUSTOMER and CITY may be referred to collectively herein as the PARTIES.

WHEREAS, the CITY and Campbell County, Wyoming have entered into a Joint Powers Agreement, hereinafter JPA, to develop a regional system for water supply.

WHEREAS, the CITY owns and operates the Gillette Water Supply System, hereinafter referred to as the PROJECT. The City will have responsibility for compliance with all federal and state regulations pertaining to the USEPA Safe Drinking Water Act (SDWA) and other qualitative or quantitative rules, the costs of which will be included in the Project.

WHEREAS, the JPA identifies a Designated Service Area, hereinafter DSA, identifying a geographic region within which service from the PROJECT shall be available to wholesale customers.

WHEREAS, the WHOLESAL CUSTOMER operates a domestic water system that serves the residents of the Benmor Estates 15D (Special district, subdivision or other regional user entity) containing 45 lots as of this date, as shown on Exhibit A..

WHEREAS, the WHOLESAL CUSTOMER'S domestic water system lies within the DSA and is voluntarily seeking connection to the PROJECT.

WHEREAS, the JPA identifies two (2) Types of Service available from the PROJECT: Type 1: Service connections to the Madison pipelines, and Type 2: Service connections to the Gillette water distribution system.

WHEREAS, the WHOLESAL CUSTOMER requests to connect to the PROJECT system using Type [1] or [2] Service.

WHEREAS, the WHOLESale CUSTOMER may choose between two (2) Levels of Service, hereinafter referred to as LOS, and the WHOLESale CUSTOMER desires the LOS identified below:

☒ LOS A: Level of Service A is for continuous, year round wholesale water service.

☐ LOS B: Level of Service B is for standby intermittent service (seasonal peak or off-peak, or emergency and/or fire flow service).

WHEREAS, the PARTIES acknowledge that the WHOLESale CUSTOMER owns a domestic water system and is responsible for operations and maintenance, repairs, upgrades, regulatory compliance, and adequate funding for all related activities on the customer side of the master meter.

WHEREAS, the PARTIES intend this agreement to formalize and fully set forth their complete understanding and agreement concerning their respective duties and obligations.

THEREFORE, the PARTIES agree to enter into this Water Service Agreement, hereinafter WSA, under the following terms and conditions:

1. Pursuant to the Type and Level of water service requested above by the WHOLESale CUSTOMER, the City agrees to provide such service subject to the terms and policies established in the current JPA. The WHOLESale CUSTOMER shall be billed in accordance with the financial policies and rates established pursuant to the JPA. A WHOLESale CUSTOMER may change their level of service by notifying the CITY, in writing of the change sought. Unless additional facilities need to be constructed, the change will be made no later than 30 days after receipt of the written notification. Only two changes in LOS may be made in any one calendar year.

2. The PARTIES agree that the WHOLESale CUSTOMER shall utilize a single master metered water service connection to provide City water. A system development charge, hereinafter SDC, shall be assessed and collected, by the City from each metered customer prior to service. The level of SDC charged will be calculated as prescribed in the JPA policy and procedures, and as shown by the current City ordinance. The SDC shall be paid by the WHOLESale

CUSTOMER for new connections to the PROJECT at the rate in effect on the date of hookup. Provided, however that the special districts, subdivisions and other regional users listed in Exhibit C to the Gillette Regional Water Supply System Joint Powers Agreement, hereinafter the Regional Participants, shall have their SDC waived. Should a larger meter be required in the future, the WHOLESale CUSTOMER shall receive a credit for the SDC it originally paid, against the amount of the SDC for the larger meter in effect at that time. Should the WHOLESale CUSTOMER request to reduce the size of the meter, no credit shall be granted.

3. The WHOLESale CUSTOMER will pay the City monthly for all the water measured through the master metered water connection with the CITY, including water used by WHOLESale CUSTOMER for maintenance purposes such as to flush their internal system. The level and structure of rates collected from all WHOLESale CUSTOMER user groups will be implemented through the City's current ordinances and will be calculated in accordance with the financial policies and rates established through the procedures specified in the JPA.

4. A meter building and master meter will be installed at the designated point of connection in compliance with all City regulations by the CITY for the Regional Participants. The CITY will own and maintain the system up to the designated point of connection. The designated point of connection shall be defined in the construction documents for the specific WHOLESale CUSTOMER.

5. The WHOLESale CUSTOMER shall submit the plans for the facilities from the PROJECT to the designated point of connection to the City for review and approval before the start of construction. Any facilities on the WHOLESale CUSTOMER side of the master meter will be reviewed and permitted by the Wyoming Department of Environmental Quality. The WHOLESale CUSTOMER shall submit a copy of the DEQ permit to construct for any project to extend or enlarge its water system in order to serve any land outside of the WHOLESale CUSTOMER's service area or to accommodate resubdivisions of existing lots, so that changes in demand can be known in advance. There shall be no lease, sale, assignment or transfer of ownership of water from the PROJECT for purposes other than municipal and rural domestic use such as through a bulk fill station for industrial use.

6. The CITY shall use the \$20,000,000 from the Special Excise Tax approved on May 3, 2011, for infrastructure required to extend and connect special districts, subdivisions and other regional users located outside the Gillette city limits to the Gillette Regional Water Supply Project as set out in the Gillette Regional Water Supply System Joint Powers Agreement dated December 21, 2010, and, to the extent necessary and allowed by law, the pledge or use to the payment of debt service and/or lease payments in connection therewith. To the extent that funds are available for this purpose the CITY shall design and cause the construction of the infrastructure to connect the Regional Participants to the PROJECT. Facilities of the WHOLESale CUSTOMER that are downstream of the master meter are "non-Project" components according to the JPA and are not eligible for State funding.

7. The WHOLESale CUSTOMER shall be responsible for water quality through their system to their customers. The WHOLESale CUSTOMER shall comply with all State, Federal and local requirements for the operation and maintenance of their private community water system. The WHOLESale CUSTOMER shall hold the City harmless from any claims for injury or damage from anyone related to the WHOLESale CUSTOMER's operation of its water system including water quality.

8. The WHOLESale CUSTOMER shall establish and maintain adequate financial reserves for the operation and maintenance of their water system. The WHOLESale CUSTOMER shall collect charges for water in an amount which is sufficient to pay for the water delivered by the CITY and pledges the revenues therefrom for the payment of City water charges which constitute a WHOLESale CUSTOMER indebtedness. In the event the WHOLESale CUSTOMER is in default under this agreement or has become insolvent, and fails to pay for water delivered by the CITY, and after 30 days written notice if the default in payment is not then corrected in full, then the PARTIES agree that the CITY may discontinue service under the provisions contained in City ordinances.

9. It is recognized by the PARTIES that emergency conservation measures may have to be implemented on a regional basis in order to meet an emergency condition or a regional water shortage. For purposes of illustration, but not limitation, the procedures to be used in the event of a weather-related regional

water shortage are described in §17-32. of the Gillette City Code, entitled *Proclamation limiting use of water*.

10. The City shall provide oral notice to the wholesale customer, and may temporarily interrupt or reduce deliveries of water to the customer, if the City determines that such interruption or reduction is necessary or reasonable in case of system emergencies or in order to install equipment, make repairs, replacements, investigation and inspections or perform other maintenance work on the Regional Water Supply System or those parts of the system supplying the wholesale customer. Except in cases of emergency, and in order that the wholesale customer operations will not be unreasonably interfered with, the City shall give the customer reasonable written notice of any such interruption or reduction, the reasons for and the probably duration of those actions. The City is committed to manage, administer, finance, and operate the Project in a business-like manner making decisions that are equitable and representative of all customers. The WHOLESale CUSTOMER shall hold the City harmless from any claims for injury or damage including but not limited to claims related to interrupted or reduces deliveries of water, from anyone related to the City's operation of the PROJECT during maintenance or emergency conditions.

11. This agreement contains the complete agreement of the parties hereto and shall supersede all other discussions, offers and agreements between the City and the WHOLESale CUSTOMER, its predecessors in interest, and the landowners within the WHOLESale CUSTOMER'S service area.

12. This agreement shall take effect upon the approval and final execution of the agreement by all the parties hereto. The terms of this agreement shall bind the parties hereto and their successors and assigns. This agreement shall not be assigned in whole or in part without the prior written approval of the CITY. Any assignment without the prior written approval of the CITY is void.

13. This agreement shall be subject to the terms of the CITY ordinances concerning the payment of utility bills, as set by City ordinances which may be changed from time to time according to the procedures specified in the most current JPA, but which change will only be effective as to WHOLESale CUSTOMER, after notice is mailed to its President or Designated Representative, listed below. This agreement shall continue for so long as WHOLESale

CUSTOMER is a customer in good standing, provided however that a WHOLESALE CUSTOMER may terminate this agreement upon 75 days written notice.

14. Any notice, which either party may or is required to give, shall be given in writing personally delivered to the other party or by mailing the same, postage prepaid, to the addresses shown below, or at such other places as may be designated by the parties from time to time in writing. Notice is effective upon mailing or receipt if hand delivered, as follows:

a. To the WHOLESALE CUSTOMER at the address first above set forth in this Agreement,

b. To the CITY, hand delivered at the address first above set forth in this Agreement, and if mailed:

The City of Gillette, Wyoming
201 East Fifth Street
PO Box 3003
Gillette, Wyoming 82717
Attention: Mayor and City Administrator

15. It is agreed that disputes between the WHOLESALE CUSTOMER and the CITY over matters related to implementing this agreement will be handled through JPA Section 5.4 (g) (g.1) as the following process:

a. General Disputes: The dispute resolution process for general disputes shall follow a three-step process.

Step 1: The first step in any dispute involves a good faith effort on the part of the WHOLESALE CUSTOMER and the CITY to resolve any disagreement by informal discussions.

Step 2: If at any time the WHOLESALE CUSTOMER or the CITY determines that such informal discussions in Step 1 will not result in a resolution, that party may request a review be initiated by the Regional Water Panel established in the JPA. The Regional Water Panel's decision will be made in writing to the Parties within 45 days.

Step 3: Either party may appeal the decision of the Regional Water Panel within 30 days from the date of the Regional Water Panel's written decision through the Wyoming legal system in a forum using a judge without a jury.

The costs incurred by each PARTY for the general dispute resolution process shall be paid individually by each respective PARTY.

b. Rate-related Disputes: The establishment of the level and structure of Rates and SDC charges for the PROJECT are set by the JPA process through actions by the City of Gillette and Campbell County and are not subject to dispute by WHOLESAL CUSTOMERS. Disputes over implementation of these rates and SDCs can be resolved through 15 (a) above, as a matter of WSA interpretation.

16. If any legal action is instituted to enforce any of the terms of this agreement, all costs of the action including court costs, expert witness fees and all other actual expenses incurred in the prosecution of the action shall be borne by each respective Party as they are incurred.

17. Notwithstanding the above, nothing in this Agreement shall be read to constitute or to require a waiver of any rights of the City under the doctrine of sovereign immunity, or a waiver of its immunity under the Wyoming Governmental Claims Act, W.S. 1-39-101 *et sec.*

City of Gillette

Dated this 16 day of October, 2014.

John Opseth, Mayor

(S E A L)

ATTEST:

Karlene Abelseth, City Clerk

STATE OF WYOMING)
) ss.
COUNTY OF CAMPBELL)

The above and foregoing instrument was acknowledged before me by John Opseth, Mayor of City of Gillette, Wyoming, and Karlene Abelseth, City Clerk of City of Gillette Wyoming, on this ____ day of _____, 2014.

Witness my hand and official seal.

My Commission Expires:

Notary Public

WHOLESALE CUSTOMER

Banner Estates LLC District,

BY Lynne Gray President or
Designated Representative

(S E A L)

ATTEST:

Brandon Likraut, Secretary/Treasurer

STATE OF WYOMING)
) ss.
COUNTY OF CAMPBELL)

The above and foregoing instrument was acknowledged before me by Lynne Gray who is the President of (WHOLESALE CUSTOMER) and who is the Brandon Likraut Secretary/Treasurer of (WHOLESALE CUSTOMER), on this 15th day of October, 2014.

Witness my hand and official seal.

My Commission Expires: 3-23-2018

Helenanne Cathey
Notary Public

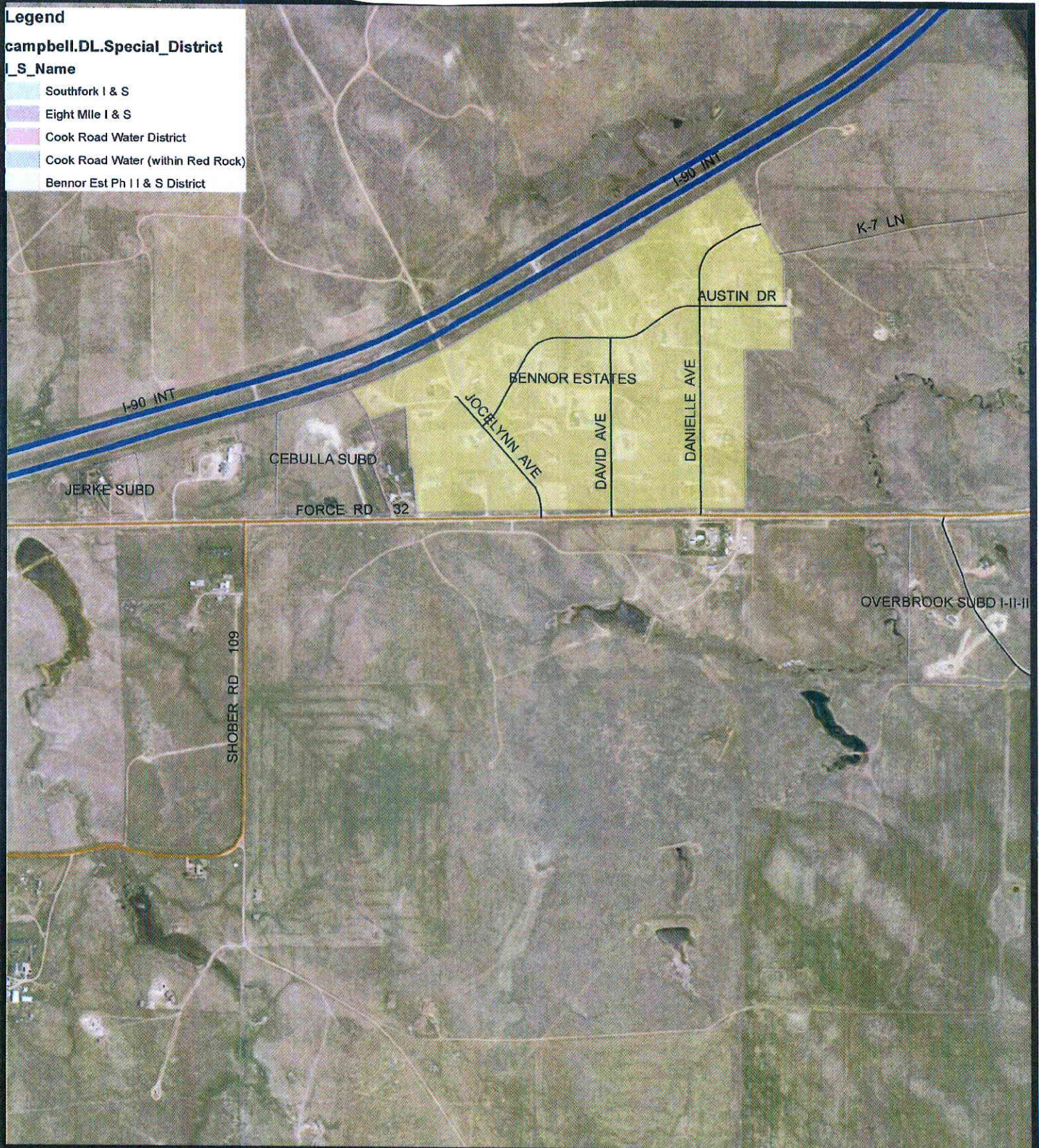


Legend

campbell.DL.Special_District

I_S_Name

- Southfork I & S
- Eight Mile I & S
- Cook Road Water District
- Cook Road Water (within Red Rock)
- Bennor Est Ph I I & S District



CAMPBELL COUNTY
DEPARTMENT OF PUBLIC WORKS
500 S. Gillette Ave. Gillette, Wyoming 82716
Phone # 307 685-8061
Fax # 307 687-6349

Bennor
User: wbb08
Date: 10/29/2014