

AGREEMENT TO CONVEY SEWER SYSTEM

1. **Parties.** The parties to this Agreement are the South Douglas Highway Water and Sewer District, a governmental unit of the State of Wyoming, Post Office Box 2245, Gillette, Wyoming 82717-2245 ("Grantor"), and City of Gillette, Campbell County, Wyoming, ("City") whose address is 201 East 5th Street, Gillette, WY 82716.
2. **Purpose of Contract.** The parties entered into a Sewer Utility Service Agreement ("Original Agreement"), dated June 16, 2003. The Original Agreement has been amended by the following documents:
 - a. Amendment No. 1, to Sewer Utility Service Agreement dated April 4, 2004;
 - b. Amendment No. 2, to Sewer Utility Service Agreement dated October 11, 2004;
 - c. Amendment No. 3, to Sewer Utility Service Agreement dated May 2, 2005; and
 - d. Amendment No. 4 to Service Utility Service Agreement dated May 9, 2007.

Amendment #4 to the Original Agreement contemplated conveyance of the sewer system to the City under specific conditions, specifically:

the CITY will not assume ownership of any portion of the sanitary sewer collection system constructed by the DISTRICT until the particular portion of the system is annexed or only serves annexed areas, has no liens against it and the DISTRICT requests that the CITY accept ownership.

The conditions contemplated in paragraph 9 of Amendment #4 to the Original Agreement exist and the parties agree it is proper to convey a portion of the sewer system to the City.

NOW, THEREFORE, for good and valuable consideration, the adequacy of which is hereby acknowledged, and in consideration of the foregoing and the representations made herein, Grantor conveys to the City all right, title and interest in the sewer system serving all or portions of the following subdivisions now situate in the City, more fully described in Exhibit A - Sewers To Be Conveyed To City From South Douglas Highway Water & Sewer District.

3. **Term of Contract and Required Approvals.** This Agreement is effective when all parties have executed it and all required approvals have been granted.
4. **Conveyance.** The Grantor agrees to convey all right, title and interest in the physical sewer system described in Exhibit A, to the City including but not limited to: sewer mains, manholes, related appurtenances, easements, and license agreements ("Property").

5. **Warranties and Responsibilities of Grantor.**

- A. Grantor warrants that the Property is free and clear of all encumbrances and is in good working condition.
- B. Grantor assumes all liability to third parties, risk of loss and/or damage to the Property prior to the transfer of the Property.
- C. Grantor shall obtain and execute any Permit Transfer Documents required by the Wyoming Department of Environmental Quality, Water Division.

6. **Responsibilities of City.**

- A. The City accepts the Property “as is.” The City is responsible for all maintenance, repair and replacement of the Property following the transfer of the Property by the Grantor.

7. **General Provisions**

- A. **Amendments.** Any changes, modifications, revisions, or amendments to this Agreement which are mutually agreed upon by the parties to this Agreement shall be incorporated by written instrument, executed and signed by all parties to this Agreement.
- B. **Applicable Law/Venue.** The construction, interpretation, and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties, and the venue shall be the Sixth Judicial District, Campbell County, Wyoming. The parties intend and agree that the City does not waive governmental immunity by entering into this Agreement and specifically retains immunity and all defenses available pursuant to WYO. STAT. §§ 1-39-101-121 and all other applicable law.
- C. **Assignment/Agreement Not Used as Collateral.** Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set out in this Agreement without the prior written consent of the other party. The Grantor shall not use this Agreement, or any portion thereof for collateral for any financial obligation without the prior written permission of the City.
- D. **Audit/Access to Records.** The City and any of its representatives shall have access to any books, documents, papers, and records of the Grantor which are pertinent to this Agreement.

- E. **Compliance with Laws.** The Grantor shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Agreement.
- F. **Entirety of Agreement.** This Agreement, consisting of five (5) pages, and Exhibit A -Sewers To Be Conveyed To City From South Douglas Highway Water & Sewer District, consisting of one (1) page represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.
- G. **Force Majeure.** Neither party shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party. The parties intend and agree that the City does not waive governmental immunity by entering into this Agreement and specifically retain immunity and all defenses available to it pursuant to WYO. STAT. §§ 1-39-101-121 and all other applicable law.
- H. **Indemnification.** The Grantor shall indemnify, defend, and hold harmless the City and its officers, agents, employees, successors, and assignees from any and all claims, lawsuits, losses, and liability arising out of Grantor's failure to perform any of Grantor's duties and obligations hereunder or in connection with the negligent performance of Grantor's duties or obligations, including but not limited to any claims, lawsuits, losses, or liability arising out of Grantor's actions.
- I. **Notices.** All notices arising out of, or from, the provisions of this Agreement shall be in writing and given to the parties at the address provided under this Agreement, either by regular mail, facsimile, e-mail, or delivery in person.
- J. **Severability.** Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of the Agreement shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.
- K. **Governmental Immunity.** The City does not waive governmental

immunity by entering into this Agreement and specifically retains all immunities and defenses available to it pursuant to WYO. STAT. §§ 1-39-101-121 and all other applicable law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of governmental immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to governmental immunity shall be construed in favor of governmental immunity.

- L. **Third Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties, and obligations contained in this Agreement shall operate only between the parties to this Agreement and shall inure solely to the benefit of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement.
- M. **Titles Not Controlling.** Titles of paragraphs are for reference only and shall not be used to construe the language in this Agreement.
- N. **Waiver.** The waiver of any breach of any term or condition in this Agreement shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

8. **Signatures.** The parties to this Agreement, either personally or through their duly authorized representatives, have executed this Agreement on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement.

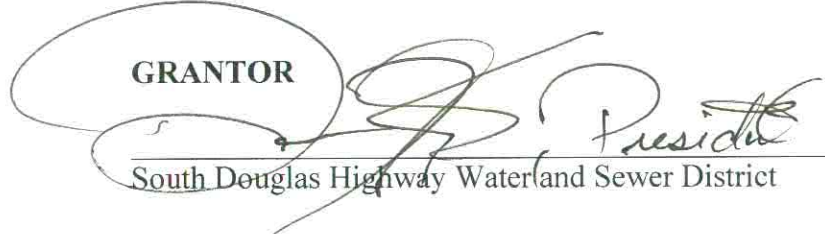
The effective date of this Agreement is the date of the signature last affixed to this page.

CITY OF GILLETTE

Louise Carter-King, Mayor

Date

GRANTOR



South Douglas Highway Water and Sewer District

3-28-18
Date

(S E A L)
ATTEST:

Karlene Abelseth, City Clerk