

**AGREEMENT BETWEEN SOUTH DOUGLAS HIGHWAY WATER AND
SEWER DISTRICT AND THE CITY OF GILLETTE, CAMPBELL COUNTY,
WYOMING FOR THE CITY OF GILLETTE TO PROVIDE SANITARY SEWER
LOCATE SERVICES IN STROUP MOBILE HOME PARK**

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 (“District” or “party”), and City of Gillette, Campbell County, Wyoming, (“City” or “party”) whose address is 201 East 5th Street, Gillette, WY 82716 and, collectively, “the Parties”.
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.

The Purpose of this Agreement is to define roles, responsibilities and compensation for services performed by the City to locate underground sewer mains, owned by the District, in Stroup Mobile Home Park (“Locate”), described in Exhibit A, which is attached and made a part of this Agreement.

3. **Term of Contract and Required Approvals.** This Agreement is effective when the Parties have executed it and all required approvals have been granted.
4. **Payment.** The District agrees to pay the City a minimum of eighty-five dollars (\$85.00) for each Locate performed during regular business hours, Monday through Friday, 7:00 am to 4:00 pm, not including legal or City Holidays. The District agrees to pay the City a minimum of one hundred twenty dollars (\$120.00) for each Locate performed outside of regular business hours. The Locate cost is based on the following charges: thirty-two dollars and fifty cents (\$32.50) an hour for the City operator during regular business hours or fifty dollars (\$50.00) an hour outside regular business hours; plus, ten dollars (\$10.00) an hour for the City truck and necessary supplies. The Parties agree the City will bill a minimum of two hours for each Locate. The City will invoice the District monthly and include the “One Call of Wyoming” locate ticket. Payment shall be made within thirty (30) days of submission of invoice.

5. **Responsibilities of the District.**

- A. District agrees to provide record drawings to the City of sanitary sewer facilities to be located. The District shall submit a shape file or other digital map to “One Call of Wyoming” describing the Locate area.
- B. District shall contact “One Call of Wyoming” and remove themselves as the primary contact in the Locate area. The District shall coordinate with the City to advise “One Call of Wyoming” of the notification change from the District to the City for the Locate area.

6. **Responsibilities of City.**

- A. The City agrees to perform underground locate services for Sanitary Sewer Mains owned by the District within the Stroup Mobile Home Park as identified within Exhibit A in accordance with the Wyoming Underground Facilities Notification Act, WYO. STAT. 37-12-301 *et. seq.*
- B. The City agrees to locate on an individual basis for requests submitted through the “One Call of Wyoming” Locate Program.
<http://www.onecallofwyoming.com/>

7. **General Provisions**

- A. **Amendments.** Any changes, modifications, revisions, or amendments to this Agreement which are mutually agreed upon by the Parties 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 neither waives 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 District 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 District which are pertinent to this Agreement.
- E. **Compliance with Laws.** The District 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 –Sanitary Sewer Mains to be Located by the City, consisting of fourteen (14) pages, represent 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 neither Party waives governmental immunity by entering into this Agreement and specifically retain immunity and all defenses available pursuant to WYO. STAT. §§ 1-39-101-121 and all other applicable law.
- H. **Indemnification.** Each Party to this Agreement shall assume the risk of any liability arising from its own conduct. Neither Party agrees to insure, defend or indemnify the other.
- 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 of the Parties may renegotiate the terms affected by the severance.

- K. **Governmental Immunity.** The Parties do not waive governmental immunity by entering into this Agreement and specifically retain 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. 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 respective 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 of the failure to object to any breach of any term or condition in this Agreement shall not be deemed a waiver of any prior or subsequent breach.
- O. **Right to Terminate.** Either party shall have the right to terminate this Agreement by providing written notice to the other party at least 180 days prior to actual termination.

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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

DISTRICT



South Douglas Highway Water and Sewer District

8/15/18
Date

(S E A L)
ATTEST:

Karlene Abelseth, City Clerk