

## AMENDMENT EIGHT TO PROJECT AGREEMENT GILLETTE MADISON PIPELINE PROJECT

1. **Parties.** This Amendment is made and entered into by and between the State of Wyoming, acting by and through the WYOMING WATER DEVELOPMENT COMMISSION (COMMISSION), whose address is: 6920 Yellowtail Road, Cheyenne, WY 82002 and CITY OF GILLETTE, Campbell County, Wyoming, a duly organized municipality existing under the laws of that state (SPONSOR), whose address is: CITY OF GILLETTE, 201 East 5<sup>th</sup> Street, Gillette, WY 82716.
2. **Purpose of Amendment.** This Amendment shall constitute the eighth amendment to the Project Agreement between the COMMISSION and the SPONSOR. The purpose of this Amendment is to effectuate 2020 Wyo. Sess. Laws, modifying the PROJECT by extending the reversion date of unexpended PROJECT funds.

The original Project Agreement, dated September 3, 2009, was to implement the provisions of 2009 Wyo. Sess. Laws, Ch. 103, authorizing the design, groundwater exploration and drilling, permit procurement, PROJECT land procurement, construction engineering and construction of municipal wells, transmission pipeline, and pump stations.

Amendment One, dated July 29, 2010, was to implement the provisions of 2010 Wyo. Sess. Laws, Ch. 115, modifying the PROJECT by increasing the amount of the appropriation, providing for an appropriation, and changing the conditions for disbursing funds.

Amendment Two, dated August 18, 2011, was to implement the provisions of 2011 Wyo. Sess. Laws, Ch. 61, modifying the PROJECT by increasing the amount of the appropriation, providing for an appropriation, and changing the conditions for disbursing funds.

Amendment Three, dated August 22, 2012, was to implement the provisions of 2011 Wyo. Sess. Laws, Ch. 61 and 2012 Wyo. Sess. Laws, Chs. 26 and 27, modifying the PROJECT by increasing the amount of the appropriation, providing for an appropriation, and changing the conditions for disbursing funds.

Amendment Four, dated September 17, 2013, was to implement the provisions of 2013 Wyo. Sess. Laws, Ch. 156, modifying the PROJECT by increasing the amount of the appropriation, providing for an appropriation, and changing the conditions for disbursing funds.

Amendment Five, dated April 7, 2015, was to implement the provisions of 2014 Wyo. Sess. Laws, Ch. 26, modifying the PROJECT by increasing the amount of the appropriation, providing for an appropriation, and changing the conditions for disbursing funds.

Amendment Six, dated June 4, 2015, was to implement the provisions of 2015 Wyo. Sess. Laws. Ch. 142, redirecting unobligated or unexpended Abandoned Mine Lands funding to the PROJECT, increasing the amount of the appropriation, providing for an appropriation, changing the conditions for disbursing funds, and extending the reversion date of unexpended PROJECT funds.

Amendment Seven, dated July 1, 2017, was to extend the reversion date of unexpended PROJECT funds.

3. **Term of the Amendment.** This Amendment shall commence upon the date the last required signature is affixed hereto (Effective Date), and shall remain in full force and effect through the term of this Project Agreement, as amended, unless terminated at an earlier date pursuant to the provisions of the Project Agreement, or pursuant to federal or state statute, rule or regulation.

4. **Amendments.**

- A. **Advertising Prerequisites.** The list of prerequisites as described in Section 4.J. of the original Project Agreement is hereby amended to read as follows:

“4.J. Prior to advertising the PROJECT, the SPONSOR shall acquire or otherwise meet a series of prerequisites, which may include but not necessarily be limited to:

- (1) Right-of-way and option agreements;
- (2) Easements on public lands, if required;
- (3) Environmental assessments;
- (4) Section 401, Clean Water Act, Certification;
- (5) Section 404, Clean Water Act, Permit;
- (6) DEQ Permit to Construct;
- (7) Compliance with Governor’s Executive Order 2019-3 Greater Sage Grouse Core Area Protection Strategy;
- (8) Final Plans and Specifications approval by State Engineer;
- (9) Incidental work required to prepare the PROJECT for construction; and

- (10) Approval by the COMMISSION of final plans, specifications, and construction budgets, which shall include revisions, deletions, or mitigation resulting from meeting items (1) through (9) above.”

**B. Engineering Contract Changes.** The list of conditions as described in Section 4.Q. of the original Project Agreement is hereby amended to read as follows:

“4.Q. As conditions for disbursing funds to the SPONSOR, the SPONSOR shall, in addition to any conditions identified above:

- (1) Provide to the COMMISSION for prior examination of, and concurrence with, all contracts to be executed by the SPONSOR for all work contemplated by this Agreement and any changes or work orders for items not covered in the contract documents. The SPONSOR shall not execute any agreements or incur any project costs until this Agreement is fully executed and returned to the COMMISSION.
- (2) Provide to the COMMISSION for examination and concurrence with all plans and specifications prepared and any bids received prior to bidding and project award.
- (3) Cause the SPONSOR’S ENGINEER to hold progress review meetings at the ten percent (10%), fifty percent (50%), and ninety percent (90%) levels of completion of the PROJECT plans.
- (4) Comply with all applicable State statutes regarding contractor retainage accounts.
- (5) Cause the SPONSOR’S ENGINEER to provide to the COMMISSION a summary of bids received.
- (6) Communicate to the COMMISSION all information on all aspects of the PROJECT and require that the SPONSOR’S ENGINEER submit or make available for inspection, such reports on the progress of the work and on the results of tests of materials and workmanship requested by the COMMISSION.
- (7) Provide to the COMMISSION for review the qualifications of the engineering or consulting firm proposed by the SPONSOR to design, inspect and monitor construction of the PROJECT. Said examination shall include, but not be limited to, supervisory position assignments. The

COMMISSION may review any changes to engineering or consulting firm personnel assigned to the PROJECT.

- (8) Prior to incurring any cost increases to the PROJECT, the SPONSOR shall submit all proposed cost increases to the COMMISSION for review and written concurrence. The SPONSOR shall execute an amendment or change order for all changes to the engineer's or contractor's contracts.
- (9) Do not proceed from the fifty percent (50%) design to the ninety percent (90%) design until all easements are executed unless written approval is provided by the COMMISSION. If the SPONSOR moves past the fifty percent (50%) design without COMMISSION concurrence, and design changes are required, the SPONSOR shall be responsible for all costs associated with the re-design efforts. Provide copies of all executed easement agreements to the COMMISSION."

- C. **Reversion of Unexpended Funds.** The reversion date for unexpended funds as set forth in Section 4.U. of the original Project Agreement is hereby amended to read as follows:

"4.U. The SPONSOR agrees that it will complete the PROJECT and that it shall be responsible for operation and maintenance of the PROJECT in accordance with accepted engineering practices. The SPONSOR shall be responsible for all costs, including labor, for all operation, maintenance and repairs. In addition, the SPONSOR shall complete the PROJECT no later than the reversion date of July 1, 2022 and shall have settled all claims and paid all PROJECT expenses by that date. No funds will be paid by the COMMISSION after the reversion date specified and the SPONSOR shall be solely responsible for payment of any expenses incurred or claims received after said date."

## 5. **Special Provisions.**

- A. **Same Terms and Conditions.** With the exception of items explicitly delineated in this Amendment, all terms and conditions of the original Project Agreement between the COMMISSION and the SPONSOR, including but not limited to sovereign immunity, shall remain unchanged and in full force and effect.
- B. **Counterparts.** This Amendment may be executed in counterparts. Each counterpart, when executed and delivered, shall be deemed an original and all counterparts together shall constitute one and the same Amendment. Delivery by the SPONSOR of an originally signed counterpart of this Amendment by PDF shall

be followed up immediately by delivery of the originally signed counterpart to the COMMISSION.

- C. **Return of Executed Amendment to Commission.** The SPONSOR shall not execute any agreements or incur any project costs that are covered under this Amendment until this Amendment is fully executed and returned to the COMMISSION.

6. **General Provisions.**

- A. **Entirety of Agreement.** The original Project Agreement, consisting of nine (9) pages; Amendment One, consisting of three (3) pages; Amendment Two, consisting of three (3) pages; Amendment Three, consisting of four (4) pages; Amendment Four, consisting of four (4) pages; Amendment Five, consisting of five (5) pages; Amendment Six, consisting of five (5) pages; Amendment Seven, consisting of three (3) pages; and this Amendment Eight, consisting of six (6) pages, represent the entire and integrated agreement between the parties and supersede all prior and contemporaneous negotiations, representations and agreements, whether written or oral.

**THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK**

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

The Effective Date of this Amendment is the date of the signature last affixed to this page.

# **WYOMING WATER DEVELOPMENT COMMISSION**

Chairman



Date

3-20-20

Secretary



Date

3-23-20

## **CITY OF GILLETTE**

Louise Carter-King, Mayor

Date

Cindy Staskiewicz, City Clerk

Date

## **ATTORNEY GENERAL'S OFFICE: APPROVAL AS TO FORM**

Tyler M. Renner, Assistant Attorney General

Date

 #200588

Mar. 18, 2020