

**PROJECT AGREEMENT**  
**GILLETTE REGIONAL EXTENSIONS – PHASE V 2020 PROJECT**  
**MSC No. \_\_\_\_\_**

1. **Parties.** The parties to this Agreement are the STATE OF WYOMING, acting by and through the WYOMING WATER DEVELOPMENT COMMISSION (COMMISSION), the agency authorized by law to enter into this Agreement, whose address is: 6920 Yellowtail Road, Cheyenne, WY 82002 and the 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 Agreement.** The purpose of this Agreement is to authorize the design, construction, and operation of the Gillette Regional Extensions – Phase V 2020 Project (PROJECT); describe the PROJECT; specify terms for funding the PROJECT; and provide for financing through the COMMISSION from the Wyoming Water Development Account. The PROJECT consists of the following components:
  - A. Design and construction of transmission pipelines; and
  - B. Appurtenances necessary to make the PROJECT function in the manner intended.

The final plans and specifications as prepared by a registered professional engineer selected by the SPONSOR (SPONSOR'S ENGINEER) will further define the PROJECT components.
  
3. **Term of Agreement.** This Agreement is effective when all parties have executed it (Effective Date). The Term of the Agreement is from the Effective Date until all provisions and conditions set forth herein have been fully satisfied.
  
4. **Special Provisions.**
  - A. A sum not to exceed THREE MILLION EIGHTY-EIGHT THOUSAND SEVEN HUNDRED DOLLARS (\$3,088,700.00) which will be a grant of not more than THREE MILLION EIGHTY-EIGHT THOUSAND SEVEN HUNDRED DOLLARS (\$3,088,700.00) or sixty-seven percent (67%) of the actual development costs, whichever is less, shall be disbursed to the SPONSOR according to the terms of this Agreement. The SPONSOR is responsible for acquiring thirty-three percent (33%) of the PROJECT funds from other sources.
  - B. Prior to the release of funds under this Agreement, the SPONSOR shall submit to the COMMISSION a copy of a resolution approved by the city or town council authorizing participation in this PROJECT and accepting the financing package.

- C. Funds disbursed under the terms of this Agreement may only be used, upon approval by the COMMISSION in its sole and absolute discretion, to defray construction costs identified in the final plans and specifications or authorized by approved change orders; to pay for design and construction engineering services authorized by the approved contract between the SPONSOR and the SPONSOR'S ENGINEER; to pay for consultants, permits, easements, or land essential to construction of the PROJECT; and to meet necessary and reasonable PROJECT expenses or costs not directly identified above which have been granted prior written approval by the COMMISSION. Requests for prior approval of necessary and reasonable PROJECT expenses must be accompanied by proposals describing the work, acquisition, or other expense, and detailed estimates of the cost.
- D. 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. Provide to the COMMISSION a summary of bids received by the SPONSOR'S ENGINEER.
  6. Communicate to the COMMISSION all information on all aspects of the PROJECT and cause the SPONSOR'S ENGINEER to 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 prior review the qualifications of the engineering or consulting firm proposed by the SPONSOR to design, inspect and monitor construction of the PROJECT. Said review 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, 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 or contractor's contract.
  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.
- E. The SPONSOR shall submit to the COMMISSION all plans, specifications, and construction budgets. The COMMISSION shall have a reasonable time from the date of receipt of said plans, specifications, and budgets to examine them and submit comments. If the COMMISSION determines that it is reasonable to expect that the proposed PROJECT cannot be constructed with the funds available, the COMMISSION shall inform the SPONSOR in writing and the SPONSOR will have a reasonable time within which to: 1) provide such information as may be required by the COMMISSION, or to make such authorized alterations to the proposed PROJECT as are agreed upon by the parties and as are necessary to provide the COMMISSION with a reasonable expectation that the PROJECT may be constructed with the funds available, or 2) terminate the PROJECT.
- F. Once the plans and specifications are in acceptable form and the COMMISSION determines it is reasonable to expect that the PROJECT as proposed may be constructed with the funds available, the COMMISSION shall notify the SPONSOR in writing, and the SPONSOR may initiate the bidding process. If the SPONSOR initiates the bidding process without prior written notification by the COMMISSION, the SPONSOR shall bear all costs resulting from said action.
- G. Prior to advertising the PROJECT for bids, the SPONSOR shall acquire or otherwise meet a series of prerequisites. The SPONSOR shall not issue its advertisement for bids unless the COMMISSION has received the submissions required under this section, 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.
- H. The SPONSOR shall not issue its advertisement for bids unless the COMMISSION has received the following:
1. An attorney's title opinion, a letter and documents from a title company or abstractor, or other proof and certification acceptable to the COMMISSION that all access, easements, and rights-of-way for the construction and long term operation and maintenance of the PROJECT have been secured and recorded; and
  2. The SPONSOR'S proposed advertisement for bids from SPONSOR'S ENGINEER, including the rules and standards to be used to establish the qualification of bidders, to determine whether submitted bids are responsive to the advertisement for bids, to determine whether bidders are qualified for the preference under Wyo. Stat. § 16-6-101, *et seq.*, and to determine the lowest responsible bid.
- I. The SPONSOR shall not issue an award of the bid or any conditional award of the bid without the review and written concurrence of the COMMISSION.

- J. The COMMISSION shall disburse funds on the basis of requests from the SPONSOR. The SPONSOR or its designated representative shall certify all requests for the disbursement of funds and provide material invoices or other acceptable evidence of mature obligations, which may include periodic construction pay estimates approved by the SPONSOR'S ENGINEER. Upon review and approval by the COMMISSION, requests will be processed and disbursements will be electronically transferred to the SPONSOR or delivered to the representative of the SPONSOR designated as being responsible for receiving disbursements from the COMMISSION. Funds released to the SPONSOR shall be received and accounted for separately from all other funds of the SPONSOR.
- K. Sixty-seven percent (67%) of each eligible billing request received by the COMMISSION authorized under the terms of this Agreement must be paid from grant funds. Payments made by the COMMISSION shall be coordinated with the SPONSOR and other funding sources so that the final grant amount provided by the COMMISSION shall not exceed sixty-seven percent (67%) of total eligible PROJECT costs. The SPONSOR is responsible for completing the PROJECT and providing any funding in excess of that available from the COMMISSION.
- L. The SPONSOR shall use funds disbursed by the COMMISSION immediately upon receipt strictly in accordance with the requests for payment submitted by the SPONSOR and approved by the COMMISSION. If at any time after execution of this Agreement and before five (5) years after the date of final payment to the SPONSOR, the COMMISSION requests an audit of funds disbursed, the SPONSOR shall submit to and cooperate with the audit conducted by duly authorized representatives of the COMMISSION.
- M. Disbursement of funds for final payment to a contractor will be made following an inspection of the completed PROJECT by the COMMISSION and upon inspection and certification of completion by the SPONSOR'S ENGINEER. Prior to final disbursement of funds, the SPONSOR shall furnish the COMMISSION proof in affidavit form that all claims, liens, or other obligations for the PROJECT have been properly paid and settled or will be paid and settled from the final disbursement. Further, the SPONSOR shall have published notice of completion and final settlement in a newspaper allowing forty (40) days for parties to present claims for payment due prior to the date of final payment, according to law.
- N. The SPONSOR shall provide the COMMISSION with a certified copy of the as-constructed PROJECT plans and a copy of the operation and maintenance manual.
- O. Representatives of the COMMISSION shall have the right of ingress and egress to enter upon the premises at any time, along established easements, for the purpose of inspection during construction of the PROJECT described in this Agreement, and during the term of the economic life of the PROJECT. The SPONSOR will



not be responsible for the **safety** of such representatives of the COMMISSION while they are on or about the premises.

- P. The SPONSOR shall complete the PROJECT and 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, 2025, and shall have settled all claims and paid all PROJECT expenses by that date. The COMMISSION shall not pay any funds to the SPONSOR after the reversion date specified, and the SPONSOR shall be solely responsible for payment of any expenses incurred or claims received after said date.
  
- Q. The grant is subject to the following conditions regarding management of the completed PROJECT, restrictions on the sale of water, and restrictions on the sale of the PROJECT:
  - 1. Without prior written approval of the COMMISSION and either the State Engineer or Board of Control, 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 as determined by the COMMISSION in its sole and absolute discretion. If such a transaction is approved, the SPONSOR shall receive thirty-three percent (33%) of the revenues generated by the lease, sale, assignment, or transfer of ownership of water from the PROJECT for purposes other than municipal and rural domestic use and the State of Wyoming shall receive sixty-seven percent (67%) of the revenues generated by the lease, sale, assignment or transfer of ownership of water from the PROJECT. If the SPONSOR has any pre-existing contracts or commitments for the sale of water which might apply to these conditions, the SPONSOR shall submit evidence of such commitments to the COMMISSION within ten (10) days of the execution of this Agreement for review and declaration of exemption.
  
  - 2. There shall be no lease, sale, assignment or transfer of ownership of the PROJECT without prior written approval of the COMMISSION. If this condition is met, the SPONSOR shall receive thirty-three percent (33%) and the State of Wyoming shall receive sixty-seven percent (67%) of the revenues generated by the lease, sale, assignment or transfer of ownership of the PROJECT. Before the SPONSOR may lease, sell, assign or transfer ownership of the PROJECT, the State of Wyoming shall be given a one (1) year first right of refusal option to purchase the SPONSOR's interest in the PROJECT for an amount equal to the principal, interest, maintenance and replacement costs incurred by the SPONSOR at the date the option is exercised.

3. The SPONSOR may purchase the position of the State of Wyoming, as described in subsections (1) and (2) of this Section, for the amount of the grant described in Section 4.A. of this Agreement plus the interest that would have accrued on the grant amount in the Water Development Account from the date the PROJECT was substantially completed as defined by the COMMISSION. The State Auditor shall determine the interest that would have accrued on the grant amount.
- R. If through any cause, either party fails to fulfill in a timely and proper manner its obligations under this Agreement, or if either party breaches any of the covenants, agreements, or stipulations of this document, the other party shall thereupon have the right to terminate this Agreement if such default or violation is not corrected within thirty (30) days after submitting written notice to the defaulting party. If the COMMISSION determines that the SPONSOR has, without good cause, abandoned completion of the PROJECT, the SPONSOR shall immediately repay the full amount of all grant funds actually expended plus interest as established by the State Auditor in an amount equal to the interest that would have accrued on the expended grant funds in the Water Development Account from the date of expenditure.
  - S. Notwithstanding the above, the SPONSOR shall not be relieved of liability to the COMMISSION for damages sustained by the COMMISSION by virtue of any breach of this Agreement by the SPONSOR, and the COMMISSION may withhold any payments to the SPONSOR for the purposes of set off until such time as the exact amount of damages due the COMMISSION from the SPONSOR is determined. In the event of default or the SPONSOR's negligent or intentional failure to complete the PROJECT, the COMMISSION shall have the right of set off against any State of Wyoming accounts or sources of funding designated for use by, or on behalf of the SPONSOR for the full amount owed to the COMMISSION pursuant to this Agreement.

## 5. 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 by all parties to this Agreement.
- B. **Applicable Law, Rules of Construction, and Venue.** The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Wyoming, without regard to conflicts of law principles. The terms "hereof," "hereunder," "herein," and words of similar import, are intended to refer to this Agreement as a whole and not to any particular provision or part. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties. The venue shall be the First Judicial District, Laramie County, Wyoming.

- C. Assignment Prohibited and Agreement Shall Not be 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 SPONSOR shall not use this Agreement, or any portion thereof, for collateral for any financial obligation without the prior written permission of the COMMISSION.
- D. Audit and Access to Records.** The COMMISSION and its representatives shall have access to any books, documents, papers, electronic data, and records of the SPONSOR which are pertinent to this Agreement.
- E. Availability of Funds.** Each payment obligation of the COMMISSION is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation and which may be limited for any reason, including, but not limited to, congressional, legislative, gubernatorial, or administrative action. If funds are not allocated and available for continued performance of the Agreement, the Agreement may be terminated by the COMMISSION at the end of the period for which the funds are available. The COMMISSION shall notify the SPONSOR at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the COMMISSION in the event this provision is exercised, and the COMMISSION shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section.
- F. Compliance with Laws.** The SPONSOR shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Agreement, including but not limited to laws and regulations governing assessment processes, public bidding, public works and contractor retainage. The SPONSOR shall comply with all resident and other preference requirements, including but not limited to those applicable to labor, materials and subcontractors.
- G. Entirety of Agreement.** This Agreement, consisting of eleven (11) pages, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.
- H. 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.



- I. **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.
- J. **Independent Contractor.** The SPONSOR shall function as an independent contractor for the purposes of this Agreement and shall not be considered an employee of the State of Wyoming for any purpose. Consistent with the express terms of this Agreement, the SPONSOR shall be free from control or direction over the details of the performance of services under this Agreement. The SPONSOR shall assume sole responsibility for any debts or liabilities that may be incurred by the SPONSOR in fulfilling the terms of this Agreement and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Agreement. Nothing in this Agreement shall be interpreted as authorizing the SPONSOR or its agents or employees to act as an agent or representative for or on behalf of the State of Wyoming or the COMMISSION or to incur any obligation of any kind on behalf of the State of Wyoming or the Commission. The SPONSOR agrees that no health or hospitalization benefits, workers' compensation, unemployment insurance or similar benefits available to State of Wyoming employees will inure to the benefit of the SPONSOR or the SPONSOR's agents or employees as a result of this Agreement.
- K. **Notices.** All notices arising out of, or from, the provisions of this Agreement shall be in writing either by regular mail or delivery in person at the addresses provided under this Agreement.
- L. **Prior Approval.** This Agreement shall not be binding upon either party, no services shall be performed, and the Wyoming State Auditor shall not draw warrants for payment, until this Agreement has been fully executed, and approved as to form by the Office of the Attorney General.
- M. **Severability.** Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of the Contract shall continue in full force and effect, and the parties may renegotiate the terms affected by the severance.
- N. **Sovereign Immunity and Limitations.** Pursuant to Wyo. Stat. § 1-39-104(a), the State of Wyoming and the COMMISSION expressly reserve sovereign immunity by entering into this Agreement and the SPONSOR expressly reserves governmental immunity. Each of them specifically retains all immunities and defenses available to them as sovereigns or governmental entities pursuant to Wyo. Stat. § 1-39-101, *et seq.*, and all other applicable law. The parties acknowledge that the State of Wyoming has sovereign immunity and only the Wyoming Legislature has the power to waive sovereign immunity. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign 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 immunity shall be construed in favor of immunity.


- O. Time is of the Essence.** Time is of the essence in all provisions of this Agreement.
- P. 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.
- Q. Titles Not Controlling.** Titles of sections and subsections are for reference only and shall not be used to construe the language in this Agreement.
- R. 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.
- S. Counterparts.** This Agreement 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 Agreement. Delivery by the SPONSOR of an originally signed counterpart of this Agreement by PDF shall be followed up immediately by delivery of the originally signed counterpart to the COMMISSION.

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6. **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.

# **WYOMING WATER DEVELOPMENT COMMISSION**

  
Chairman

3-20-20  
Date

  
Secretary

3-23-20  
Date

# **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

Feb. 11, 2020  
Date