

City of Gillette

Proposed Changes to the “*Second Amended and Restated Generation Dispatch and Energy Management Agreement*” between Black Hills Power, Inc. and the City of Gillette, Wyoming.

Recommended by City Attorney Reyes, May 11, 2020

Revise this Section to read:

8.14 Governing Law. 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 Gillette does not waive governmental immunity by entering into this Agreement and specifically retains governmental immunity and all defenses available to it pursuant to Wyo. Stat. §§ 1-39-101-120 and all other applicable law.

Add the following sections:

8.16 Governmental Immunity. The Gillette does not waive governmental immunity by entering into this Agreement and specifically retains all immunities and defenses available to it pursuant to Wyo. Stat. §§ 1-39-101-120 and all other applicable law. Designations of venue, choice of law, enforcement actions, dispute resolution 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.

8.17 Availability of Funds. Each payment obligation of the Gillette is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the services performed by BHP, the Agreement may be terminated by the Gillette at the end of the period for which the funds are available. The Gillette shall notify BHP 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 Gillette in the event this provision is exercised, and the Gillette shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be construed to permit the Gillette to terminate this Agreement to acquire similar services from another party.

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