

**PROJECT AGREEMENT
GILLETTE MADISON PIPELINE PROJECT
MSC No. _____**

1. **Parties.** The parties to this Agreement dated SEPT. 3, 2009 ^{AKC} (the date of the signature last affixed to this Agreement) are the STATE OF WYOMING, acting by and through the WYOMING WATER DEVELOPMENT COMMISSION, the agency authorized by law to enter into this Agreement [COMMISSION], and the CITY OF GILLETTE, Campbell County, Wyoming, a duly organized municipality existing under the laws of that state [SPONSOR].

2. **Purpose of Agreement.** The purpose of this Agreement is to implement the provisions of 2009 Wyo. Sess. Laws, Ch. 103, authorizing the design, construction, and operation of the GILLETTE MADISON PIPELINE PROJECT [PROJECT]; describing the PROJECT; specifying terms for funding the PROJECT; providing for financing through the COMMISSION from the Wyoming water development account; and providing for an appropriation. The PROJECT consists of the following components:

- (a) Design, groundwater exploration and drilling, permit procurement, PROJECT land procurement, construction engineering and construction of municipal wells, transmission pipelines, pump stations; 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 and Required Approvals.** This Agreement is effective when all parties have executed it and all approvals have been granted. This Agreement shall remain in effect until all provisions and conditions set forth herein, including the SPONSOR's repayment obligation, have been fully satisfied.

4. **Special Provisions.**

A. Appropriations and Funding.

(1) The STATE OF WYOMING has appropriated from the Budget Reserve Account, to the COMMISSION, a sum not to exceed ELEVEN MILLION TWO HUNDRED TWENTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$11,222,500.00) or sixty-seven percent (67%) of the actual development costs, whichever is less, which shall be a grant to the SPONSOR for the exclusive purpose of completing the aforementioned PROJECT.

(2) The State Treasurer shall make available from the Permanent Mineral Trust Fund to the COMMISSION, a sum not to exceed FIVE MILLION FIVE HUNDRED TWENTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$5,527,500.00) or thirty-three percent (33%) of the actual development costs, whichever is less, which shall be a loan to the SPONSOR for a term of thirty (30) years from the date of COMMISSION determines PROJECT benefits accrue to the SPONSOR, at an annual rate of four percent (4%), for the exclusive purpose of completing the aforementioned project.

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 council approving participation in this PROJECT, accepting the financing package, approving the debt to be incurred, and approving the repair and maintenance account.

C. Prior to the release of any funds under this Agreement, the SPONSOR shall execute a promissory note, secured by a mortgage or security agreement and financing statement that encumbers, mortgages, warrants, grants, pledges and assigns to the COMMISSION the fee interest the SPONSOR presently holds or hereafter acquires in any facilities constructed under the terms of this Agreement or necessary for operation of the SPONSOR's water delivery system, by an assignment to the STATE OF WYOMING of all easements, rights-of-way, water rights and permits required for the construction and subsequent operation and maintenance of the SPONSOR's water delivery system and with any other appropriate security instruments required by and in form acceptable to the Wyoming Attorney General.

D. The COMMISSION understands that because of the nature of the PROJECT, funding may be required by the SPONSOR before some of the property pledged as security in the mortgage is identified, completed or acquired. Therefore, the COMMISSION has provided by this Agreement that said property may be acquired after the mortgage is executed so long as it becomes subject to the mortgage when it is acquired. The SPONSOR hereby agrees that any property identified in the mortgage shall become subject to the mortgage upon acquisition and hereby agrees to execute addenda to the mortgage, for property acquired after the mortgage described in Section 4.C. has been executed which mortgages, warrants, or grants to the COMMISSION the interest held in any after acquired property by the SPONSOR. The SPONSOR further agrees to acquire the right to use and possess all of the property identified and pledged in the mortgage and necessary for construction of any component of the PROJECT prior to advertising for bids for that component of the PROJECT. After final disbursement of PROJECT funds to the SPONSOR from the COMMISSION, the SPONSOR shall execute a final addendum, as provided or approved by the COMMISSION, to the mortgage providing an adequate legal description of all property pledged pursuant to this Agreement or the mortgage.

E. When PROJECT related benefits accrue to the SPONSOR, as determined solely by the COMMISSION, the term of the loan shall commence. The SPONSOR understands that the COMMISSION's determination of when benefits accrue may not coincide with the SPONSOR'S ENGINEER's determination of substantial completion. As soon as possible thereafter the total amount of the loan shall be determined. The first loan payment will be due on December first immediately following the one year anniversary of the date benefits accrue. All subsequent payments will also be due on December first except the final (thirtieth) payment which will be due on the thirtieth anniversary of the date benefits accrue. Interest will be charged beginning with the date benefits accrue to the SPONSOR. Therefore the first loan payment will include an interest accrual period which is greater than one year which will make this first payment larger than any of the subsequent payments.

F. The SPONSOR shall maintain the existing WATER RESERVE ACCOUNT at THREE MILLION FIVE HUNDRED THOUSAND dollars (\$3,500,000.00), for repair and maintenance of the water system. If requested by the COMMISSION, the SPONSOR will submit a copy of its annual budget to the COMMISSION for verification of the existence and amount of the required separate fund.

G. 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 shall be accompanied by proposals describing the work, acquisition, or other expense, and detailed estimates of the cost.

H. The SPONSOR shall submit to the COMMISSION the 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 it is reasonable to expect that the proposed PROJECT cannot be constructed with the funds available, the SPONSOR shall be informed in writing and the SPONSOR shall 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. If the SPONSOR elects to terminate the PROJECT, the total amount of loan funds disbursed prior to termination shall be determined and the term of the loan shall commence.

I. 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 so inform the SPONSOR in writing, and the bidding process may be initiated. If the SPONSOR initiates the bidding process without prior written notification by the COMMISSION, the SPONSOR shall bear all costs resulting from said action.

J. Prior to advertising the PROJECT it will be necessary for the SPONSOR to 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) Final Plans and Specifications approval by State Engineer;
- (8) Incidental work required to prepare the PROJECT for construction; and
- (9) Approval by the COMMISSION of final plans, specifications, and construction budgets, which shall include revisions, deletions, or mitigation resulting from meeting items (1) through (8) above.

K. Prior to advertising for bids the SPONSOR shall:

- (1) Provide the COMMISSION with 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) Provide to the COMMISSION from the SPONSOR'S ENGINEER its proposed advertisement for bids 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.

L. The SPONSOR shall not issue its advertisement for bids unless and until the COMMISSION has received the submissions required under Sections 4.J. and 4.K., above. 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.

M. Disbursement of funds shall be made on the basis of requests from the SPONSOR to the COMMISSION. Requests for the disbursement of funds shall be certified by the SPONSOR or its designated representative and accompanied by 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. Funds released to the SPONSOR shall be received and accounted for separately from all other funds of the SPONSOR.

N. Sixty-seven percent (67%) of each disbursement from the COMMISSION authorized under the terms of this Agreement shall be from grant funds and thirty-three percent (33%) shall be from loan funds. The SPONSOR is responsible to complete the PROJECT and provide any funding in excess of that available from the COMMISSION from other sources.

O. 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 one year after the date of final payment to the SPONSOR, the COMMISSION requests an audit of funds disbursed, the SPONSOR agrees to submit to and cooperate with the audit conducted by duly authorized representatives of the COMMISSION.

P. Contract specific retainages will be directed by the COMMISSION in accordance with Wyoming law. The COMMISSION at its discretion may approve reductions in the accumulated retainage as specified in individual contracts between the SPONSOR and its contractors when requested by the SPONSOR and recommended by the SPONSOR'S ENGINEER to the extent permitted by law. In any event, the balance of accumulated retainages will be released when final payment is made.

Q. As conditions for disbursing funds to the SPONSOR, the SPONSOR shall:

- (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.
- (2) Provide to the COMMISSION for examination all plans and specifications prepared and any bids received.
- (3) The SPONSOR shall require the SPONSOR'S ENGINEER to hold progress review meetings at the 10%, 50% and 90% levels of completion of the PROJECT plans.
- (4) If Wyo. Stat. 16-6-701 through 16-6-706 are applicable to the SPONSOR, the SPONSOR shall provide all prospective contractors with a package of Contractor Retainage Account forms supplied or approved by the COMMISSION as part of the bid package.
- (5) The SPONSOR'S ENGINEER shall 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. Any changes to engineering or consulting firm personnel assigned to the PROJECT are subject to review by the COMMISSION.

R. Disbursement of funds for final payment to a contractor shall 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.

S. 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.

T. 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 mortgage contemplated by this Agreement, for as long as there remains any balance thereof unpaid. The SPONSOR shall not be responsible for the safety of such representatives of the COMMISSION while they are on or about the premises.

U. 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, 2015 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.

V. The loan and grant are subject to the following conditions regarding management of the completed PROJECT, restrictions on the sale of water, restrictions on the sale of the PROJECT, and loan repayment:

(1) There shall be no lease, sale, assignment or transfer of ownership of water from the PROJECT for purposes other than the SPONSOR's municipal and rural domestic use as determined by the COMMISSION in its sole and absolute discretion without written prior approval of the COMMISSION and approval of the State Engineer or Board of Control. If such a transaction is approved, the revenues generated by the lease, sale, assignment, or transfer of ownership of water from the PROJECT shall be utilized to retire principal on the loan described in Section 4.A.(2) of this Agreement. After that loan is paid in full 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 until the loan described in Section 4.A.(2) of this Agreement is paid in full, and until prior written approval is obtained from the COMMISSION. If these conditions are 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) After the loan described in Section 4.A.(2) of this Agreement is paid in full, 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.(1) of this Agreement plus the interest that would have accrued on the grant amount in the budget reserve account from the date the PROJECT was substantially completed as defined by the COMMISSION. The interest that would have accrued on the grant amount shall be established by the State Auditor.

W. If through any cause, either party shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if either party shall violate 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 this Agreement is terminated, the principal amount of the loan is set, and repayment shall begin on the first anniversary of the date of termination or continue as scheduled if repayment has already begun. If the COMMISSION determines that the SPONSOR has, without good cause, abandoned completion of the PROJECT, the SPONSOR, in addition to being required to repay the loan, shall be obligated to 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 budget reserve account from the date of expenditure.

X. 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 Project 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 and signed by all parties to this Agreement.

B. Applicable 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 First Judicial District, Laramie County, Wyoming. The parties intend and agree that the State of Wyoming and the COMMISSION do not waive sovereign immunity by entering into this Agreement and specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyo. Stat. 1-39-104(a) and all other applicable law.

C. Audit/Access to Records. The COMMISSION and any of its representatives shall have access to any books, documents, papers, and records of the SPONSOR which are pertinent to this Agreement.

D. 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. If funds are not allocated and available for the continuance of the services performed by the SPONSOR, 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. This provision shall not be construed to permit the COMMISSION to terminate this Agreement in order to acquire similar services from another party.

E. 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.

F. Entirety of Agreement. This Agreement, consisting of nine (9) pages represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

G. Indemnification. The SPONSOR shall release, indemnify, and hold harmless the State of Wyoming, the COMMISSION, their commissioners, officers, agents, employees, successors and assignees from any cause of action, or claims, charges or costs, including attorney's fees and expert witness fees, or demands of any sort arising out of, directly or indirectly, the SPONSOR's performance or failure to perform under this Agreement.

H. Independent Contractor. The SPONSOR shall function as an independent contractor for the purposes of this Agreement. No joint venture, partnership, employer/employee or principal/agent relationship between the parties hereto is created by 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. 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 the behalf of the State of Wyoming or the COMMISSION.

I. Notice. All notices arising out of, or from, the provisions of this Agreement shall be in writing and given to the parties either by regular mail or delivery in person.

J. Prior Approval. This Agreement shall not be binding upon either party, no services shall be performed under the terms of this Agreement, and the Wyoming State Auditor shall not draw warrants for payment on this Agreement, until this Agreement has been reduced to writing, approved by the Office of the Attorney General, filed with and approved by the Department of Administration and Information.

K. 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.

L. Sovereign Immunity. The State of Wyoming and the COMMISSION do not waive sovereign immunity by entering into this Agreement and the SPONSOR does not waive governmental immunity, and each 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 state law. Designations of venue, choice of law, enforcement actions, and similar provisions should 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 sovereign immunity shall be construed in favor of sovereign immunity.

M. 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. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement. The parties to this Agreement intend and expressly agree that only parties signatory to this Agreement shall have any legal or equitable right to seek to enforce this Agreement, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this Agreement, or to bring an action for the breach of this Agreement.

N. Waiver. The waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach.

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6. **Signatures.** In witness thereof, the parties to this Agreement, through their duly authorized representatives, have executed this Agreement on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement.

WYOMING WATER DEVELOPMENT COMMISSION

William E. Bensel
William E. Bensel, Chairman

8-26-09
Date

Mitchel T. Cottenoir
Mitchel T. Cottenoir, Secretary

8/29/09
Date

ATTEST:

Joel Belmont

CITY OF GILLETTE

Duane Evenson
Duane Evenson, Mayor

8/18/09
Date

ATTEST:

Karlene Abelseth
Karlene Abelseth, Clerk

ATTORNEY GENERAL'S OFFICE APPROVAL AS TO FORM

S. Jane Caton
S. Jane Caton
Senior Assistant Attorney General

9/3/09
Date

PROMISSORY NOTE

FOR VALUE RECEIVED, as provided in Chapter No. 103 Wyoming Session Laws, 2009, and the Project Agreement dated September 3, 2009, the undersigned CITY OF GILLETTE of Campbell County, Wyoming, hereinafter referred to as the SPONSOR, promises to pay to the order of the STATE OF WYOMING, by and through the WYOMING WATER DEVELOPMENT COMMISSION, hereinafter referred to as the COMMISSION, 6920 Yellowtail Road, Cheyenne, Wyoming, the principal sum of FIVE MILLION FIVE HUNDRED TWENTY-SEVEN THOUSAND FIVE HUNDRED (\$5,527,500.00), over a term of thirty (30) years, with interest thereon at the rate of four percent (4%) per annum, as provided hereinafter.

The principal and interest shall be payable in annual installments in manner and form as follows: thirty annual payments commencing on the first day of December immediately following the first anniversary of the date on which the COMMISSION determines benefits accrue to the SPONSOR. Any loan payments required prior to final disbursement of loan funds from the COMMISSION to the SPONSOR shall be calculated by amortizing the principal balance over the remaining term of the loan at the interest rate provided herein. Upon disbursement of the final payment, the principal balance will be determined and remaining annual payments amortized over the remaining term of the loan in equal annual payments. The remaining payments will be due on or before the first day of December of each and every year with a final payment of all outstanding principal and all accrued interest due on or before the thirtieth anniversary of the date the COMMISSION determines benefits accrue to the SPONSOR, unless sooner discharged in full.

The maker hereof shall have the right and privilege of making extra payments at any time, or of paying the entire unpaid balance at any time, and in the event extra or prepayments are made, interest shall be charged thereafter only on the unpaid principal balance remaining due.

In the event that the entire unpaid balance is paid prior to maturity, no advance interest or prepayment penalty shall be assessed except for interest due and payable on the unpaid principal balance to the date of payment in full. Advance, extra or prepayments shall not reduce the annual payments as herein provided, but will operate only to discharge the loan at an earlier date.

Interest and principal not paid when due shall draw interest thereafter at the rate of ten percent (10%) per year on the delinquent interest and principal until paid.

Time is of the essence of this Promissory Note, and if the annual payment is not received by the stated date of each year, the maker hereof will be in default, and the holder may proceed against the maker and its collateral as provided by law.

The waiver by the COMMISSION of any breach, condition, or provision of this Promissory Note shall be limited to the particular instance, and shall not operate or be deemed to waive any future breach or breaches of said condition or provision. The failure of the COMMISSION to insist in any one instance, or more, upon the performance of any of the conditions or provisions of this Promissory Note, or to exercise any right or privilege herein conferred, shall not be construed as waiving any such condition, provision, right, or privilege, but the same shall continue in full force and effect.

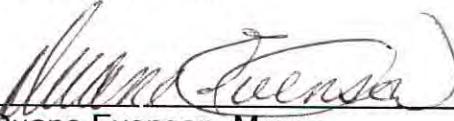
This note is secured by a mortgage bearing even date herewith.

The maker and endorsers of this note hereby accept the conditions hereof and expressly waive presentment for payment, protest and notice of protest for nonpayment hereof and all defenses on the grounds of any extension of time of payment that may be given by the holder hereof to them.

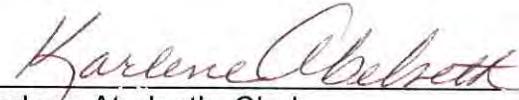
In the event of suit to enforce payment of this note or any installment, interest, or part thereof, the undersigned maker agrees to pay, in addition to the costs and disbursements provided and allowed by law, a reasonable attorney's fee.

In witness whereof, the SPONSOR has executed this note on this 18 day of August, 2009.

CITY OF GILLETTE

By: 
Duane Evenson, Mayor

Attest:


Karlene Abelseth, Clerk

ASSIGNMENT AND PLEDGE OF REVENUES

This assignment is given by the CITY OF GILLETTE of Campbell County, Wyoming, a duly organized municipality existing under the laws of that state, herein referred to as the SPONSOR, to the State of Wyoming, by and through the Wyoming Water Development Commission, 6920 Yellowtail Road, Cheyenne, Wyoming, 82002 herein referred to as the COMMISSION.

In order to secure the payment of the principal and interest of a note executed by the SPONSOR, dated 8/18/09 and all renewals and extensions of the note or any part thereof and any and all other sums, indebtedness, and liabilities now owing or to become due and owing from the SPONSOR to the COMMISSION under a project agreement executed by the COMMISSION and the SPONSOR pursuant to 2009 Wyo. Session Laws, Ch. 103.

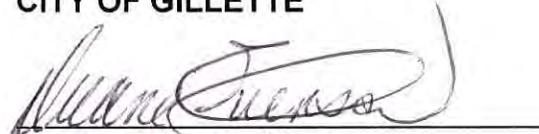
The SPONSOR pledges and assigns to the COMMISSION, its successors and assigns, revenues received or due it from charges and assessments made for its water supply services, together with all the SPONSOR's right, title, and interest, the SPONSOR now has or may hereafter acquire in and to any of those revenues, in an amount sufficient to meet the SPONSOR's obligations under the above referenced promissory note and to provide a separate fund to meet repair and maintenance costs required by the above referenced project agreement.

The SPONSOR shall keep, at its own cost and expense, proper books and records of account showing all transactions relating to the revenues that are subject to this assignment. Such books and accounts, and all correspondence and papers of the SPONSOR pertaining thereto, shall be open to inspection by the COMMISSION at all reasonable times, for the purpose of checking, examining, and verifying same or making extracts thereof.

This assignment will be in effect commencing with its execution until the above referenced promissory note executed by the SPONSOR to the COMMISSION which is secured hereby has been paid in full.

In witness whereof, the SPONSOR has executed this assignment on the 18 day of August, 2009.

CITY OF GILLETTE



Duane Evenson, Mayor

Attest:



Karlene Abelseth, Clerk

932473

RJ070109/F

MORTGAGE

THIS MORTGAGE is given this 18 day of August, 2009, by the CITY OF GILLETTE, a duly organized municipality existing under the laws of the STATE OF WYOMING, hereinafter designated as MORTGAGOR, to the STATE OF WYOMING, by and through the WYOMING WATER DEVELOPMENT COMMISSION, 6920 Yellowtail Road, Cheyenne, Wyoming, 82002 hereinafter designated as MORTGAGEE, to secure payment of the sum of FIVE MILLION FIVE HUNDRED-TWENTY SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$5,527,500.00), together with interest thereon at the rate of four percent (4%) per annum on the unpaid balance according to the terms of that certain promissory note bearing even date herewith, given by said MORTGAGOR to said MORTGAGEE, which note MORTGAGOR agrees to pay and which is hereby incorporated herein by reference and made a part hereof;

WITNESSETH: That said MORTGAGOR for and in consideration of the sum aforesaid, the receipt whereof is hereby acknowledged and confessed, does hereby mortgage, warrant, grant, pledge, assign, and convey unto the said MORTGAGEE, its successors and assigns, its interest and enforceable rights presently held or hereafter acquired in the following described property, real, personal and mixed, to wit:

1. Pipeline, wells, pipelines, valves, fittings, appurtenances and other construction financed with Project funds as described in the Project Agreement dated SEPTEMBER 3, 2009, which Agreement is hereby incorporated herein by reference and made a part hereof. Further all lands, easements, access roads, structures, rights-of-way and all appurtenances of the municipal water system, including all after-acquired property, to allow control and operation thereof. The wells and transmission pipeline constructed under the referenced Agreement is tied to the existing Madison Pumping Station, located on a parcel of land in the NE ¼ of the SW ¼ of Section 6, Township 51 North, Range 66 West of the 6th Prime Meridian, Crook County, Wyoming described as follows:

Commencing at a brass cap, marking the NW corner of the NE ¼ of the SW ¼ of said Section 6; Thence S 09° 31' 08" E, 551.16 feet to a found rebar, the point of beginning. Thence N 69° 16' 55" E, 299.27 feet to a found 5/8" rebar; Thence S 20° 45' 40" E, 154.37 feet to a found 5/8" rebar; Thence S 48° 00' 02" W, 458.07 feet to a found 5/8" rebar; Thence N 00° 57' 37" E, 345.03 feet to the point of beginning containing 1.86 acres more or less;

and to the existing Donkey Creek Pump Station, located on a parcel of land in the SW ¼ of Section 26, Township 50 North, Range 70 West of the 6th Prime Meridian, Campbell County, Wyoming described as follows:

Beginning at a point on southerly right of way boundary of Hwy No. US 14-16 marked by a 5/8" reinforcing rod from which the west ¼ corner of said Section 26 bears N 57° 53' 07" W a distance of 2,721.77 feet. Thence S 78° 17' 50" E along said right of way line a distance of 226.24 feet to a 5/8" steel reinforcing rod. Thence S 11° 42' 58" W a distance of 244.81 feet to a 5/8" steel reinforcing rod. Thence N 78° 18' 50" W a distance of 226.18 feet to a 5/8" steel reinforcing rod. Thence N 11° 42' 51" E a distance of 244.87 feet to the point of beginning containing 1.272 acres, more or less.

2. The interest MORTGAGOR currently has or hereafter acquires in the water rights recorded in the office of the Wyoming State Engineer as follows:

<u>Permit Number</u>	<u>Priority Date</u>
UW 2434	7/27/1973
UW 2433	7/27/1973
UW 2433	7/27/1973
UW 5687	1/18/1975
UW 5686	1/18/1975
UW 5686	1/18/1975
UW 5686	1/18/1975
UW 4203	2/23/1978
UW 4202	2/23/1978
UW 4202	2/23/1978
UW 4298	4/17/1978
UW 6931	4/20/1982
UW 8545	6/17/1991
UW 9918	3/1/1995
UW 9918	3/1/1995
UW 1017	2/14/1996
UW 1022	5/6/1996
UW 1022	5/6/1996
UW 1087	5/6/1996
UW 1091	11/10/1997
UW 1091	11/10/1997
UW 1724	9/29/2005
UW 1724	9/29/2005
UW 6072	1/28/1982
UW 3000	9/26/1974
UW 2511	12/12/1973
TFN UW 36/2/252W	4/27/2004
TFN UW 36/10/251W	4/27/2004
TFN UW 36/7/251W	4/27/2004
TFN UW 36/3/252W	4/27/2004
TFN UW 36/8/251W	4/27/2004
TFN UW 36/2/251W	4/27/2004
TFN UW 36/4/251W	4/27/2004
TFN UW 36/9/251W	4/27/2004
TFN UW 36/5/251W	4/27/2004
TFN UW 36/10/250W	4/27/2004
TFN UW 36/1/252W	4/27/2004
TFN UW 36/1/251W	4/27/2004
TFN UW 36/6/251W	4/27/2004
TFN UW 36/9/250W	4/27/2004
TFN UW 36/3/251W	4/27/2004 and;

3. The pledge and assignment of the MORTGAGOR of funds currently held and revenues generated by the operation of the water system, in an amount sufficient to meet loan amortization requirements, and to provide a separate fund to meet repair and maintenance costs for the Project. The MORTGAGOR'S Pledge and Assignment of Revenues is incorporated herein by reference.

4. Any and all permits required for construction of this Project and subsequent operation and maintenance of the well field and transmission pipeline system.

The conditions of this mortgage are such that if the MORTGAGOR well and truly pays the Promissory Note hereinabove referenced, according to the terms thereof, this mortgage shall be null and void, otherwise to remain in full force and effect.

MORTGAGOR shall pay all taxes, liens, judgments, assessments or insurance or any interest thereon, and in case default be made in payment of the principal, or any installment thereof, or any installment of interest as provided in said Promissory Note, then the whole sum of principal and interest shall become due and payable at the option of MORTGAGEE, and MORTGAGEE may proceed pursuant to law, to foreclose on said property, and out of the proceeds from such foreclosure, the MORTGAGEE shall retain all sums due it under said Promissory Note, together with the costs and charges of making such foreclosure, including a reasonable attorney's fee.

The provisions of this mortgage shall apply to and be binding upon the representatives, successors and assigns of the respective parties hereto.

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5000 5

STATE OF WYOMING }
County of Crook } SS

FILED FOR RECORD ON

October 14, 2009

at 1:40 o'clock P M, and
in book 489 of Page 544-547

Cornie A. Schutte, County Clerk and Recorder
Susan Ford, Deputy

RECORDED	<input checked="" type="checkbox"/>
INDEXED	<input checked="" type="checkbox"/>
ABSTRACTED	<input type="checkbox"/>

City of Gillette
Attn: Michael Cole
Box 3003
Gillette, WY 82717

\$17

**ACKNOWLEDGEMENT
OF REVIEW**

This document verifies that Mr. Steve Peterson has been assigned as the authorized representative of the City of Gillette and is responsible to execute all obligations as outlined in the Gillette Madison Pipeline Project Agreement. We acknowledge that we have reviewed the requirements of the Project Agreement with Mr. Bryan Clerkin of the Wyoming Water Development Commission (WWDC) on June 11, 2009, 2009.

Furthermore, we understand our obligation to communicate to the WWDC as frequently as necessary to appraise them of project progress, needs, problems, and meetings. We understand that no meeting time and place will be final until the WWDC is allowed to participate in that decision.

Attachment A further defines the required project responsibilities of the City of Gillette to the WWDC. By reviewing with the indicated WWDC project manager, and signing the Acknowledgement of Review, the authorized project representative for the City of Gillette acknowledges that they understand the project requirements identified in Attachment A.

June 11, 2009
Date

Sponsor's Representative


Project Manager, WWDC

ATTACHMENT A

To keep the Wyoming Water Development Commission (WWDC) apprised of the progress on the indicated project, WWDC has developed the following Sponsor requirements. These requirements are intended to keep WWDC current on the project progress and to maintain accurate and complete in house project records. The Sponsor shall provide the indicated requirements in a timely manner. All requirements should be provided by the Sponsor to WWDC upon receipt or execution of the indicated items from the Engineer and/or the Contractor.

WWDC's contractual agreement is with the Sponsor and as such, it is the Sponsor's responsibility to coordinate timely receipt of the indicated items from the Engineer and/or the Contractor. The requirements listed below represent the minimum Sponsor requirements; WWDC may request additional project information from the Sponsor, Engineer, or Contractor.

GENERAL

1. Include WWDC in scheduling all meeting dates and times dealing with the project. Prior to scheduling meetings, verify with WWDC staff wishing to attend a project meeting.
2. Submit Engineer and Contractor invoices to WWDC on a monthly basis.

DESIGN PHASE

1. Provide WWDC with a draft Owner-Engineer agreement for review; do not enter into an agreement with the Engineer until written approval is received from WWDC.
2. Do not commit to any changes in engineers contract scope or fee without prior written approval from WWDC.
3. Provide WWDC with copies of all executed engineering agreement(s).
4. Include WWDC in scheduling the 10, 50, and 90% design review meetings.
5. Provide 10, 50, and 90% contract review documents and Engineer's Opinion of Probable Cost updates two weeks prior to the scheduled review meetings.
6. Provide WWDC with a copy of the design review meeting minutes.



7. Provide WWDC with a copy of the final contract documents. The final contract documents should include and address all of the 90% review comments.
8. Provide WWDC with the Title company or Lawyer's Opinion of Title before advertising the project.
9. Wait for written authorization from WWDC before advertising for bids.

PRE-BID OPENING PHASE

1. Provide WWDC with a copy of the project bid advertisement(s), indicate publication and publish dates.
2. Provide WWDC with regular updates to the plan holder list.
3. Provide WWDC with copies of all contract document addendums and/or clarifications.
4. Provide WWDC with a copy of the pre-bid meeting minutes; including a copy of the sign-up sheet.

POST-BID OPENING PHASE

1. Provide WWDC with a copy of Bid Tab Summary and Engineer's recommendation of award letter.
2. Provide WWDC with copies of Contractor agreement(s) for review. Do not execute construction agreement(s) until receiving written approval from WWDC.
3. Do not issue Notice of Award without written recommendation from the Engineer and concurrence from WWDC.
4. Provide WWDC with copies of the executed construction agreement(s).
5. Provide WWDC with copies of the Notice of Award and Notice to Proceed.
6. Include WWDC in scheduling the pre-construction meeting.
7. Provide WWDC with a copy of pre-construction meeting minutes; including a copy of the sign-up sheet.

CONSTRUCTION PHASE

1. Provide WWDC with copies of all Contractor coordination meeting minutes.
2. Submit requests for progress payments once a month. The sponsor should not make advance payments to anyone without the review and approval of WWDC.
3. Keep WWDC informed of all construction conflicts. Copy WWDC on all correspondence between all parties dealing with project issues.
4. Provide WWDC with copies of all executed Field Orders.
5. Do not agree to Change Orders without prior approval from WWDC. Provide WWDC with originals of all Change Orders to execute.
6. Provide WWDC with copies of the Engineer's Daily Construction Reports. The Sponsor should require that the Engineer's Daily Construction Reports be submitted to the Sponsor and WWDC no later than 14 days following the Saturday ending a workweek.
7. Do not agree to changes in Contractor's construction contract time, scope, or costs without prior written approval from WWDC.
8. Do not agree to reduce or waive liquidated damages specified in the contract documents without prior written approval from WWDC.
9. Provide WWDC with a copy of the Contractor's Punch List and any subsequent updates.
10. Include WWDC in scheduling the time and date for project final walk through.
11. Prior to issuing Substantial and/or Final Completion, provide WWDC with written status report of the project including all remaining work and any outstanding issues. Do not provide Substantial Completion or Final Completion certificates to the Contractor(s) without written approval from WWDC.
12. Provide WWDC with copies of the executed Substantial and Final Completion certificates.
13. Following issuance of Substantial Completion certificate advertise project closeout in accordance with State statutes.

14. Prior to advertising, finalize the project quantities with a Change Order. Include all bid items that were under or over run and provide a brief explanation describing each of the over/under runs.
15. Provide WWDC with certified copy of project closeout advertisement, indicate publication and publish dates.
16. Provide WWDC with a copy of the executed "Contractor's Payment Affidavit" / "Affidavit on Behalf of the Contractor".
17. Provide WWDC with a copy of any Contractor's executed project Warranty.
18. Provide WWDC with a certified copy of the As-Built Drawings and the Operation and Maintenance Manual.
19. At the end of the project, submit a written statement to WWDC indicating that the project is finalized and that WWDC can closeout the project funding.



RESOLUTION NO. 2267

A RESOLUTION REQUESTING THE MAYOR TO SIGN THE WYOMING WATER DEVELOPMENT COMMISSION PROJECT AGREEMENT, ON BEHALF OF THE CITY OF GILLETTE, TO FUND THE DESIGN AND CONSTRUCTION OF GILLETTE REGIONAL WATER SUPPLY PROJECT.

WHEREAS, the City of Gillette conducted a Long Term Water Supply, Level II Study which identified an additional parallel Madison pipeline with an expanded well field, booster stations, and storage reservoirs in order to meet our long term water supply needs.

WHEREAS, the City of Gillette had, in 2008, applied for and was approved funding from the State Legislator for Phase I of the Gillette Regional Water Supply Project.

WHEREAS, through execution of the Project Agreement with the WWDC, WWDC is committing to fund 67% of the estimated \$16,750,000, or \$11,222,500 project cost, and the City of Gillette is committing to repay the 33% Permanent Mineral Trust Fund loan amount of \$5,527,500 for design and construction of the Gillette Regional Water Supply Project.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF GILLETTE that the Mayor sign the Project Agreement with the Wyoming Water Development Commission to design and perform construction of Gillette Regional Water Supply Project for the City of Gillette and anticipated users of their system.

PASSED, APPROVED AND ADOPTED THIS 17th DAY OF August 2009.



Duane Evenson, Mayor

(SEAL)
ATTEST:



Karlene Abelseth, City Clerk