

**AGREEMENT TO GRANT RIGHT OF WAY WATER TRANSMISSION PIPELINE
EASEMENT BETWEEN THE CITY OF LARAMIE
AND CB PROPERTIES, LLC**

1. **Parties.** This Agreement is entered into as of this ____ day of _____, 2017, by and between the **City of Laramie, Wyoming, a municipal corporation** (hereinafter referred to as “Grantee”), whose address is 406 Iverson Avenue, P.O. Box C, Laramie, Wyoming, 82073, and **CB Properties, LLC** (hereinafter collectively referred to as “Grantors”) whose address is P.O. Box 1691, Laramie, Wyoming 82073-1691.

2. **Purpose.** Grantee has requested that Grantor grant to Grantee a right of way easement for the purposes of laying, constructing, operating, inspecting, maintaining, repairing, replacing, substituting, relocating and removing a water transmission pipeline for the transportation of water as described in this Agreement.

3. **Description of Land.** The water transmission pipeline is to be located on a route to be selected by Grantee, on, in, over and through the land described on Exhibit A and Exhibit B attached hereto and made a part hereof in Albany County, State of Wyoming.

4. **Term.** The rights granted in this agreement shall be possessed and enjoyed by Grantee, its successors and assigns, so long as the water pipeline and appurtenances constructed pursuant to this agreement shall be maintained and operated by Grantee, its successors or assigns.

5. **Payment.** Grantee agrees to pay Grantor an amount up to 75% of the Assessed Valuation of the underlying land equal to the sum of \$6,992.95 (Six Thousand Nine Hundred Ninety-Two and 95/100 Dollars). This amount shall be paid prior to the start of the construction of the water transmission pipeline.

6. **Responsibilities of Grantors.**

A. **Grant of Right of Way Easement.** Grantors hereby grant to Grantee, to the extent Grantors have the right to do so, right-of-way (hereinafter referred to as “Easement”) to locate, re-locate, survey a route, construct, entrench, repair, maintain, replace, protect, inspect and operate a single underground water transmission pipeline with appurtenances including but not limited to valves, metering equipment, erosion control equipment, electrical cable, cathodic equipment, and communication cable (hereinafter referred collectively as “Facilities”) under and through the hereinafter described land, along the line shown on Exhibits A and B attached hereto and made a part hereof.

B. **Grant of Temporary Construction Easement.** Grantors hereby grants to Grantee, to the extent Grantors have the right to do so, a temporary construction easement (hereinafter referred to as “Temporary Construction Easement”) to survey a route, construct, entrench, repair, maintain, replace, and inspect a single underground water transmission pipeline with Facilities along the line shown on Exhibits A and B, for a time period not to exceed three

(3) years from the execution date of this agreement or until the completion of the construction of the pipeline, whichever shall first occur.

Grantee may extend the boundaries of the pipeline easement by an additional seventy feet along and adjacent to said easement right-of-way, as shown on Exhibits A and B, as may be reasonably necessary in connection with construction, maintenance, repair, removal or replacement of the facilities. However, after the completion of the pipeline construction or at the end of three (3) years from the execution date of this agreement, whichever shall first occur, Grantee shall have no further right to the temporary easement and Grantee's rights shall be limited solely to a permanent right-of-way thirty (30) feet in width and all pipelines constructed pursuant to this instrument shall be confined to the right-of-way.

C. Right of Access. The permanent Easement and Temporary Construction Easement shall carry with it the right of Grantee and its employees and agents at all times to have free and unimpaired ingress, egress, regress and access over, across and through said pipeline right-of-way, using reasonable route as Grantor may designate or approve for the purpose of locating, constructing, operating, inspecting, repairing, protecting and maintaining the facilities and the removal or replacement of same at will, either in whole or in part, and the replacement of said pipeline with either like or different size pipe.

D. Nonexclusivity. Grantee's use of the Easement hereunder shall be nonexclusive and Grantor, his agents, designees, permittees, and assignees shall have the right to use and enjoy the land covered by the Easement at any time during the term of this Agreement for any purpose and the right to grant other easements and rights-of-way across the land covered by the Easement, so long as such use or other easements and rights-of-way do not materially interfere with Grantee's use and enjoyment of the rights granted herein. Grantor shall not build, construct, or permit to be built or constructed, any structure or obstruction, or impound water or any substance, or change the grade on or over the easement, except that with prior notice to Grantee, Grantor shall be permitted to construct fences, roads, water lines and distribution systems, power transmission lines, communication lines and wind generation facilities across the Easement. Grantee shall not interfere with the other activities of the Grantor, his agent's designees, permittees or assignees on the Easement.

7. Responsibilities of Grantee.

A. Restrictions on Easement. Grantee's rights hereunder are expressly subject to the following:

(i.) All reservations, limitations and conditions of any underlying patents covering the Easement or any portion thereof, and the rights of any party pursuant thereto;

(ii.) All grants, conditions, limitations and reservations, if any, of record, or arising by operation of law, and the rights of any party pursuant thereto;

(iii.) All easements or rights-or-way over or across the Easement or any portion thereof;

(iv.) The rights of any party under any oil, gas, mineral or other agreements, or surface owners' agreement or agreements, if any, covering all or any portion of the Easement provided the exercise of those rights do not interfere with the use and enjoyment of the terms of this easement;

(v.) The right of the surface owner to participate in the development of the mineral estate by all means now known or hereafter developed; and

(vi.) The rights of any party under any underlying deed constituting the record chain of title unto Grantor.

B. Assignment. Grantee shall have the right to assign all or any portion of the rights herein granted. However, such assignment shall not relieve Grantee of its obligations hereunder. Grantee and any subsequent assignees shall notify Grantor of any assignments within thirty (30) days of such action.

C. Burial of Water pipeline. Grantee shall bury the water pipeline installed by Grantee to the depth required by federal, state and local regulation.

D. Range improvements. Range improvements, such as fencing, gates, etc., if any, within the Easement, shall not be disturbed and all gates shall be left open or closed, as found. Where disturbance is necessary, Grantee shall restore such improvements to the original or better condition. Where locked gates are present, Grantee shall maintain its own locks and shall restrict access to Grantee's employees and/or agents.

E. Restoration of Surface. Grantee shall affect a minimum of vegetative or soil disturbance, consistent with practical operations, and will smooth and maintain all disturbed areas to conform as nearly as practical to the adjacent terrain, and provide and maintain adequate water drainage to minimize erosion. After the initial construction of the pipeline covered by this Agreement is completed, or upon completion of any subsequent maintenance or replacement of the facilities causing vegetative or soil disturbance, all disturbed areas shall be restored and reseeded by Grantee no later than one growing season after the construction, maintenance or replacement has been completed. Such restoration and reseeded shall be completed by Grantee using Grantor's specifications then in effect. All seed mixes shall be approved by the Grantor. Grantee further shall control any unwanted noxious weed infestations caused by installation or operation of the pipeline on or adjacent to the Easement on a timely basis. Furthermore, PFE Road shall be returned to its current condition, or better, including 6" of road base, a proper crown, and roadside ditches.

F. Repair and Restoration of Water Systems. Grantee agrees to replace or rebuild to the satisfaction of grantor or grantor's representative any and all damaged parts of any drainage or irrigation system that may be damaged by the construction of any pipeline pursuant to this instrument. Grantee shall maintain adequate water breaks on all slopes, if any.

G. Water Rights. Grantee shall not have the right to use, and shall not take and use, any water stored on or flowing through the Easement or originating from water wells on the Easement during the entire life of this Agreement without the written consent of Grantor, which may be withheld in his sole and absolute discretion.

H. Abandonment. It is expressly made a condition of the Easement that if Grantee, its successors or assigns, shall abandon the Easement or any portion of said Easement for the stated purposes of the Easement, then and in the event, all the rights herein granted shall cease and terminate with respect to the Easement so abandoned, and the title to said Easement shall be freed from the burden of said Easement; and it is further agreed that nonuse of the Easement or any portion thereof for the purposes of said Easement for the period of four (4) consecutive years along with an intent to abandon shall constitute an abandonment unless such nonuse is caused by market conditions or circumstances beyond the reasonable control of Grantee. In the event of an abandonment of the Easement, Grantee shall deliver to Grantor a recordable instrument evidencing that the title to the Easement so abandoned is free and clear of the burden of said Easement and free and clear of liens, encumbrances, clouds upon or defects in the title to said Easement created or permitted to be created by Grantee.

I. Taxes. Grantor shall pay all county taxes assessed against the Easement based upon the present valuation thereof. Grantee shall pay all county taxes, if any, assessed against the Easement because of additional value placed thereon for tax assessment purposes by reason of improvements placed upon the Easement by Grantee, and Grantee shall within thirty (30) days after written notice from Grantor, reimburse Grantor for Grantee's share thereof.

J. Damages.

(i.) All operations hereunder shall be conducted by Grantee in a fair and reasonable manner, and all necessary precautions shall be taken to avoid damage to gates, bridges, culverts, cattle guards, fences, dikes and other stock watering facilities. All damage to the above-named facilities shall be reported to Grantor within twenty-four (24) hours and shall be repaired by Grantee immediately, to the original condition or better than existing prior to such operations. Any public hazard, such as a damaged bridge or culvert, caused by Grantee's use of the Easement, shall be marked or barricaded and proper steps taken for the repair thereof by Grantee.

(ii.) Grantee shall give Grantor prompt notice of any of the following occurrences arising with regard to the Land or Grantee's activities thereon;

(1.) Any spill, release, or other occurrence that constitute a violation of the provisions of any applicable laws, rules or regulations; and

(2.) Any notices, claims or allegations of environmental violations or contamination received from any federal, state or local governmental agency or authority or the filing or commencement of any judicial or administrative proceeding by any such agency.

8. 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/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 Second Judicial District, Albany County, Wyoming.

C. Compliance with Law. Grantee shall comply with all present and future federal, state and local laws, rules, regulations, orders and other requirements applicable to Grantee's operations under this Agreement, including without limitation, laws, rules, regulations, orders and other requirements relating to the public or employee health and safety, pollution or protection of the environment, and any permits, approvals or judicial or administrative orders issued thereunder. The terms of this Easement may be modified from time to time with additional consideration to comply with any future modification to federal, state and local laws, rules, regulations, orders or other requirements;

D. Entirety of Easement. This Agreement represents the entire and integrated Agreement between the parties and supercedes all prior negotiations, representations, and agreements, whether written or oral.

E. 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.

F. Termination. Grantee agrees that this Agreement is specifically enforceable, and in the event of Grantee's default with respect to any of the covenants and agreements hereunder on its part to be kept and performed, Grantee shall pay to Grantor all costs and expenses of enforcing this Agreement, or in pursuing any remedy provided hereunder or by the statutes of the State of Wyoming, whether such remedy is pursued by filing suit or otherwise, including reasonable attorney's fees. On the termination of the rights granted in this agreement, grantee shall execute and deliver to grantor, within thirty (30) days after service of a written demand, a good and sufficient quitclaim deed to all rights granted in this agreement. Should Grantee fail or refuse to deliver the deed to Grantor, a written notice by Grantor reciting the failure or refusal of grantee to execute and deliver the deed, and terminating this grant, shall, after sixty (60) days from the date of recording of the notice, be conclusive evidence against Grantee, and all persons claiming under Grantee, of the termination of this grant.

G. Notices. Any notice to be given to Grantor or Grantee hereunder shall be in writing and shall be delivered personally, sent by overnight courier, sent by facsimile, or mailed in the United States Mail, certified mail, return receipt requested, to the addresses of the Grantor and Grantee above set forth in the first paragraph of this Agreement.

H. No Representations or Warranties. Grantor makes no warranty, express, implied or statutory with respect to the lands described above, the easement or the ownership thereof.

I. Assumption of Risk/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 including but not limited to any personal injury to individual or any damage to property of individuals or City.

J. Sovereign Immunity. Grantee does 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 state law.

K. 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. 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.

L. Binding on Successors. Subject to the requirements of Paragraph 7(B) above, the terms, conditions and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

M. Time is of the Essence. Time is of the essence in all provisions of the Agreement.

N. Titles Not Controlling. Titles of paragraphs are for reference only, and shall not be used to construe the language in this Agreement.

O. 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.

P. Recordation. The City will hold the executed Easement in escrow until such time as a contract for construction of said pipeline has been awarded.

IN WITNESS WHEREOF, the Laramie City Council has caused this Agreement to be signed and executed in its behalf by its Mayor, and duly attested by its City Clerk, and Grantor has signed and executed this Agreement, the day and year first written above.

GRANTEE:

CITY OF LARAMIE, WYOMING:

By: _____
Andrea Summerville, Mayor and President of the
City Council

Attest: _____
Angie Johnson
City Clerk

STATE OF WYOMING)
) ss.
COUNTY OF ALBANY)

The foregoing instrument was acknowledged before me by Andrea Summerville,
this ____ day of _____, 2017. Witness my hand and official seal.

Notary Public

My commission expires:

STATE OF WYOMING)
) ss.
COUNTY OF ALBANY)

The foregoing instrument was acknowledged before me by Angie Johnson
this ____ day of _____, 2017. Witness my hand and official seal.

Notary Public

My commission expires:

GRANTOR:

GRANTOR:

David R. Coffey

ACKNOWLEDGEMENTS

STATE OF WYOMING)
) ss.
COUNTY OF ALBANY)

The foregoing instrument was acknowledged before me by Name and Name, Grantors,
this ____ day of _____, 2017. Witness my hand and official seal.

Notary Public

My commission expires: