

# **MEMORANDUM OF UNDERSTANDING REGARDING POWER POLES IN IRON MOUNTAIN ROAD**

## **Laramie County Wyoming/High West Energy**

THIS Memorandum of Understanding (hereinafter "MOU") is made and entered into by and between the Board of County Commissioners of the County of Laramie, State of Wyoming, 310 West 19<sup>th</sup> Street, Cheyenne Wyoming, 82001 (hereinafter referred to as "COUNTY") and High West Energy, Inc. 6270 County Road 212, Pine Bluffs, WY 82082 (hereinafter referred to as "HIGH WEST"). The parties agree as follows:

### **I. PURPOSE**

The purpose of this MOU is to bring closure to and resolution of issues created by the presence of power poles located in the right-of-way of Iron Mountain road, in Laramie County Wyoming. The parties are presently at odds as to the legality of the presence of those power poles and this MOU serves to memorialize an agreement between the parties and resolution without litigating their respective positions. As more fully set forth below, HIGH WEST agrees to remove a certain number of power poles from the right-of-way of Iron Mountain road in Laramie County, and COUNTY agrees to perform certain construction tasks enhancing and/or creating access ways from County Road 212 to HIGH WEST property in Pine Bluffs and waiving easement fees for HIGH WEST in regard to crossing certain County property.

### **II. TERM**

This MOU shall commence from the date the last signature is affixed hereto, and shall remain in full force and effect until its purpose is accomplished.

### **III. RESPONSIBILITIES OF HIGH WEST**

HIGH WEST agrees to remove and/or relocate power poles currently present in the right-of-way of Iron Mountain Road, along the north edge of sections 2 and 3, T14N, R66W. Said removal/relocation shall be accomplished by moving the poles from the current dedicated right of way to the adjacent property on the same side of the road.

#### IV. RESPONSIBILITIES OF COUNTY

COUNTY agrees to (i) enhance the front entryway to the HIGH WEST property in Pine Bluffs by replacing the existing culvert(s) crossing County Road 212 with larger culvert(s) capable of handling an increased flow of water; (ii) construct a new access from the southwest corner of the HIGH WEST property in Pine Bluffs to County Road 212; and (iii) understanding that HIGH WEST is currently requesting an easement across the Laramie County, "Archer" property, County agrees to waive any fees normally associated with such an easement, though all regularly requested terms and conditions of such an easement would be imposed. County agrees that Construction on both access areas in items (i) and (ii) above will be completed by December 31, 2019.

#### V. GENERAL PROVISIONS

1. Entire Agreement: This MOU, consisting of, \_\_\_\_ ( ) pages, represent(s) the entire and integrated agreement between the parties and supersede(s) all prior negotiations, representations and agreements, in regard to the subject of the presence of power poles in the Iron Mountain right-of-way whether written or oral.

2. Assignment: Neither this MOU, nor any rights or obligations hereunder shall be assigned or delegated by a party without the prior written consent of the other party.

3. Modification: This MOU shall be modified only by a written agreement, duly executed by all parties hereto.

5. Invalidity: If any provision of this MOU is held invalid or unenforceable by any court of competent jurisdiction, or if the parties are advised of any such actual or potential invalidity or unenforceability, such holding or advice shall not invalidate or render unenforceable any other provision hereof. It is the express intent of the parties that the provisions of this MOU are fully severable.

5. Applicable Law and Venue: The parties mutually understand and agree this Agreement shall be governed by and interpreted pursuant to the laws of the State of Wyoming, without regard to its conflict of laws principles. If any dispute arises between the parties from or concerning this Agreement or the subject matter hereof, any suit or proceeding at law or in equity shall be brought in the District Court of the State of Wyoming, First Judicial District, sitting at Cheyenne,

Wyoming. This provision is not intended nor shall it be construed to waive COUNTY's governmental immunity as provided in this Agreement.

6. Discrimination: All parties agree they will not discriminate against any person who performs work under the terms and conditions of this Agreement because of race, color, gender, creed, handicapping condition, or national origin.

7. ADA Compliance: All parties agree they will not discriminate against a qualified individual with disability, pursuant to a law as set forth in the Americans With Disabilities Act, P.L. 101-336, 42 U.S.C. ' 12101, *et seq.*, and/or any properly promulgated rules and regulations relating thereto.

8. Governmental/Sovereign Immunity: COUNTY does not waive its Governmental/Sovereign Immunity, as provided by any applicable law including W.S. ' 1-39-101 *et seq.*, by entering into this MOU. Further, COUNTY fully retains all immunities and defenses provided by law with regard to any action, except in any action brought by HIGH WEST to enforce this agreement, wherein the COUNTY agrees to waive its immunity solely for such an action.

9. Indemnification: Each party to this MOU shall be responsible for any liability arising from its own conduct. Neither party agrees to insure, defend or indemnify the other.

10. Third Parties: The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this MOU shall not be construed so as to create such status. The rights, duties and obligations contained in this MOU shall operate only between the parties to the MOU, and shall inure solely to the benefit of the parties to this MOU.

Q. Force Majeure: Neither party shall be liable to perform under this MOU if such failure arises out of causes beyond control, and without the fault or the negligence of said party. Such causes may include, but are not restricted to, Act of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. In every case, however, a failure to perform must be beyond the control and without the fault or the negligence of said party.

S. Notices: All notices required and permitted under this MOU shall be deemed to have been given, if and when deposited in the U.S. Mail, properly stamped and addressed to the party for whom intended at such parties' address

listed herein, or when personally delivered personally to such party. A party may change its address for notice hereunder by giving written notice to the other party.

T. Compliance with Laws: The parties agree that in carrying out the purposes of this MOU they shall comply with all applicable laws, regulations and ordinances, whether Federal, State or Local.

LARAMIE COUNTY, WYOMING

By: H. W. Buck Holmes Date 12/27/18  
Chairman, Laramie County Commissioners

ATTEST:

By: Debra K. Vee Date 12-27-2018  
Laramie County Clerk

HIGH WEST ENERGY

By: Brian Heath Date 12-21-18

This Agreement is effective the date of the last signature affixed to this page.

REVIEWED AND APPROVED AS TO FORM ONLY:

By: [Signature] Date 12/27/18  
Laramie County Attorney's Office

By: [Signature] Date 12/27/18  
Ron Lopez: Counsel for High West Energy