

Participation Agreement

between

San Juan County and

Gouldings Monument Valley Enterprises, L.C.

November __ 2020

PARTICIPATION AGREEMENT

San Juan County, a political subdivision of the State of Utah (the “**County**”), and Gouldings Monument Valley Enterprises, L.C. a Utah limited liability company (the “**Participant**”, and with the County, may be referred to herein collectively as “**Parties**” or individually as a “**Party**”), agree as follows as of November, ___ 2020 (the “**Effective Date**”):

1. Subject of the Agreement

A. Purpose of the Agreement

The purpose of this Participation Agreement (the “**Agreement**”) is (a) to implement the Water System Upgrades to the private well, pumps and infrastructure services currently being used as a Public Distribution Source of culinary water to residents of San Juan County (the “**Project**”) which the Participant has been willing to provide, free of charge to the public, but which resource is not finite nor is the maintenance thereof being paid for by the public. The Project consists of the pump, pump house, water lines, well, storage tank, buildings or structures such as utility buildings, structures, improvements and appurtenants located on, adjacent or near the Project that are reasonably related to the operations of the well water and drinking source. (collectively, the “**Project**”) located near 1000 Main Street, Monument Valley, Utah of which the County wishes to use a portion of its CARES Act Funds to reimburse the Participant for the improvements to the system and (b) to specify the terms and conditions pursuant to which the County and the Participant will cooperate in bringing about this objective, including the funds the County will provide to assist in the improvements thereof. The fulfillment of this Agreement is vital to and in the best interests of the County and the health, safety, and welfare of its residents during this pandemic, and in accord with public purposes and will provide a benefit to the County and its residents.

B. The Project Location

The Project is located within the boundaries of the Participants private property located at 1000 Main Street, Monument Valley, Utah which is a part of San Juan County.

C. Parties to the Agreement

i. County

The County is a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under Utah Code Annotated under Title 17 Counties. The address of the County for purposes of this Agreement is: 117 South main Street, PO Box 9, Monticello, Utah, 84535 and Attention: Mack McDonald.

ii. The Participant

The Participant is Gouldings Monument Valley Enterprises, L.C. a limited liability company. The address of the Participant for the purposes of this Agreement is: 1000 Main Street, Monument Valley, Utah 84536.

iii. No Additional Approvals. Upon the approval of this Agreement by the County, and the expiration of all statutory notice and contest periods, no additional legislative action is required for the County to perform its obligations hereunder.

2. Participation Amount.

County shall reimburse the Participant for Project upgrades up to but not to exceed ONE HUNDRED THOUSAND DOLLARS AND No/100 (\$100,000.00) of the CARES Act Funds that the County received in an effort to prevent or mitigate COVID-19 during the current pandemic. The participation amount is required to be spent by the U.S. Treasury Department rules governing these funds by December 30, 2020.

3. Early Termination.

- A. County may terminate this contract for any reason, which termination will be effective at midnight on the 30th day after County's notice is effective under section 8.
- B. County may terminate this contract, which termination will be effective at the time County's notice is effective under section 8, if:
 - (1) The Participant engages in or permits any unlawful or disruptive conduct or any activity not permitted by law, regulation, ordinance, this contract, and/or the policies of San Juan County; and
 - (2) The Participant fails to immediately cease such conduct or activity after notification by law enforcement, San Juan County, or otherwise.
- C. Either party may terminate this contract after a material breach of this contract by the other party, which termination will be effective after the notice is effective under section 8.

4. Warranties.

- A. The Participant warrants to San Juan County that:
 - (1) All materials and equipment furnished under this contract shall be:
 - (a) New;
 - (b) Under manufacturer's warranty;
 - (c) Of reasonable quality; and
 - (d) Free from faults and defects; and
 - (2) All services performed under this contract shall:
 - (a) Be of reasonable quality;
 - (b) Conform with reasonable professional standards; and
 - (c) Conform to codes, regulations, and laws.
 - (d) Materials, Plans, Artwork, Drawings, Brochures, Maps, and Documents produced under this contract will be provided to the County upon completion. County may use these items in future projects or opportunities as the County needs arise without written consent or authorization from any other party.
- B. Participant shall correct or replace any materials or equipment that does not satisfy subsections 5.A.(1)(a)-(d) within 30 days after County's notice is effective under section 8.
- C. Participant shall correct any services performed that do not satisfy subsections 5.A.(2)(a)-(c) within 30 days after County's notice is effective under section 8.
- D. The parties acknowledge that the warranties set forth in Title 70A, Chapter 2, Part 3, Utah Code Annotated, apply to this contract.
- E. The Participant shall assign and deliver to County all manufacturers' warranties relating to the materials and equipment furnished under this contract as soon as reasonably possible, but in no event later than 10 days after this contract terminates.

5. Insurance. The Participant shall maintain for the duration of this Participation Agreement the following types of insurance:

- A. A valid occurrence form commercial general liability insurance policy, which covers contractual liability and contractual agreements, with minimum limits as follows:
 - (1) Each occurrence - \$1,000,000.00;
 - (2) Damage to Rented Premises - \$300,000.00;
 - (3) Medical Exp. (Any one person) - \$5,000.00;
 - (4) Personal and Adv. Injury - \$2,000,000.00;
 - (5) General aggregate - \$2,000,000.00; and
 - (6) Products – Comp/Op aggregate - \$2,000,000.00;

- B. A valid automobile liability insurance policy that satisfies the minimum amounts required by Utah law; and
- C. A valid Workers Compensation and Employers' Liability insurance policy with minimum limits as required by Utah law. If any proprietor, partner, executive, officer, member, or other person is excluded from the Workers Compensation and Employers' Liability insurance policy, the Participant shall provide County with the applicable state issued waiver.

For the duration of this Agreement and for a year after the termination of this contract, County may request the Participant to provide County with certificates or other records that demonstrate that the Participant is in compliance with the insurance requirements set forth in this section (the "Certificates/Records"). If the Participant fails to have the insurances required by this contract, County may immediately terminate this contract.

- 6. **Indemnification.** With respect to any judicial, administrative, or arbitration action, suit, claim, investigation, or proceeding ("Proceeding") against County, County's officers, employees, agents, consultants, advisors, and other representatives, and each of their heirs, executors, successors, and assignees ("San Juan County Indemnitees") that arises out of this contract or the acts or omissions of Participant (each, a "Claim"), Participant shall, for the duration of this contract and for a period of six years after the termination of this contract, indemnify those San Juan County Indemnitees against any amount awarded in, or paid in settlement of any Proceeding, including interest ("Loss") and any out-of-pocket expense incurred in defending a Proceeding or in any related investigation or negotiation, including court filing fees, court costs, arbitration fees, witness fees, and attorneys' and other professionals' fees and disbursements ("Litigation Expense") (Loss and Litigation Expense means "Indemnifiable Losses") arising out of that Proceeding, except to the extent that County negligently or intentionally caused those Indemnifiable Losses.
- 7. **Notices.** All notices must be in writing and must be delivered personally, by a nationally recognized overnight courier, or by United States mail, postage prepaid and addressed to the parties at their respective addresses set forth below, and the same shall be effective upon receipt if delivered personally, on the next business day if sent by overnight courier, or three business days after deposit in the United States mail, if mailed. The initial addresses of the parties shall be:

<u>San Juan County</u>		<u>Participant</u>
San Juan County Attn: Mack McDonald PO Box 9 Monticello, UT 84535	<u>With a copy to:</u> San Juan County Attn: Attorney's Office PO Box 9 Monticello, UT 84535	Gouldings Monument Valley Enterprises L.C. 1000 Main Street Monument Valley, Utah 84536

- 8. **Independent Contractor.** The Participant shall perform this contract as an independent contractor. The Participant acknowledges that it and its representatives are not employees of County, and, thus, have no right to and shall not be provided with any County benefits.
- 9. **Conflict of Terms.** In the event of any conflict between the terms of this contract and any documents referenced in this contract or incorporated into this contract by reference, including exhibits or attachments to this contract, this contract shall control.
- 10. **Assignment Restricted.** Except with the prior written consent of the other party, each party shall not transfer, including by merger (whether that party is the surviving or disappearing entity), consolidation, dissolution, or operation of law:
 - A. Any discretion granted under this contract;
 - B. Any right to satisfy a condition under this contract;
 - C. Any remedy under this contract; or
 - D. Any obligation imposed under this contract.

Any purported transfer in violation of this section will be void.

11. **Waiver.** No waiver of satisfaction of a condition or nonperformance of an obligation under this contract will be effective unless it is in writing and signed by the party granting the waiver.
12. **Entire Contract; Amendment.** This contract, including all attachments, if any, constitutes the entire understanding between the parties with respect to the subject matter in this contract. Unless otherwise set forth in this contract, this contract supersedes all other agreements, whether written or oral, between the parties with respect to the subject matter in this contract. No amendment to this contract will be effective unless it is in writing and signed by both parties.
13. **Governing Law; Exclusive Jurisdiction.** Utah law governs any Proceeding brought by one party against the other party arising out of this contract. If either party brings any Proceedings against the other party arising out of this contract, that party may bring that Proceeding only in a state court located in San Juan County, Utah (for claims that may only be resolved through the federal courts, only in a federal court located in Salt Lake City, Utah), and each party hereby submits to the exclusive jurisdiction of such courts for purposes of any such proceeding.
14. **Severability.** The parties acknowledge that if a dispute between the parties arises out of this contract or the subject matter of this contract, the parties desire the court to interpret this contract as follows:
 - A. With respect to any provision that it holds to be unenforceable, by modifying that provision to the minimum extent necessary to make it enforceable or, if that modification is not permitted by law, by disregarding that provision; and
 - B. If an unenforceable provision is modified or disregarded in accordance with this section, by holding that the rest of the contract will remain in effect as written.
15. **Counterparts, Digital Signatures, and Electronically Transmitted Signatures.** If the parties sign this contract in counterparts, each will be deemed an original but all counterparts together will constitute one contract. If the parties digitally sign this contract or electronically transmit signatures by email, such signatures will have the same force and effect as original signatures.

Each party is signing this contract on the date below the party's signature.

<p>SAN JUAN COUNTY</p> <p>By: _____</p> <p style="text-align: center;">San Juan County Board of County Commissioners</p> <p>Date: _____</p> <p>ATTEST:</p> <p>_____ John David Nielson San Juan County Clerk/Auditor Date: _____</p>	<p>GOULDINGS MONUMENT VALLEY ENTERPRISES, L.C.</p> <p>By: _____</p> <p>Date: _____</p>
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