

BOARD OF COUNTY COMMISSIONERS FOR
ADAMS COUNTY, STATE OF COLORADO

RESOLUTION APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE WHITE
CLIFFS PIPELINE, LLC AND ADAMS COUNTY

Resolution 2014-132

WHEREAS, Developer desires to construct approximately 23 miles of underground steel pipelines and appurtenances in Adams County (as more particularly described in that certain Conditional Use Permit Application per Case RCU2013-00027) to transport crude oil (“the Project”); and

WHEREAS, the Project will provide transportation of crude oil; increase efficiency of delivering products to market; and, reduce impacts to local roads by reducing truck traffic in furtherance of the goals of the Adams County Comprehensive Plan; and

WHEREAS, per Case #RCU2013-00027, the Developer submitted an application for a Conditional Use Permit (“CUP”) to Adams County in accordance with the requirements outlined in Chapter 2 of the Adams County Development Standards and Regulations (“the Regulations”) the Conditional Use Permit Checklist, and requested submittal criteria from the Adams County Areas and Activities of State Interest (“AASI”) Checklist; and

WHEREAS, it is provided by Sections 1-02-01-02-08 and 1-08 of the Regulations of the Board of County Commissioners, County of Adams, that where designated, the Developer shall have entered into a written agreement with the County addressing Developer’s and the County’s obligations with regard to the Project as a condition of approval for the CUP.

WHEREAS, the County and the Developer have planned and designed the Project so it will not prohibit future development, and so that it will not add cost to the County’s future infrastructure plans to support development.

WHEREAS, the Adams County Planning and Development Department recommends approval of the attached agreement.

NOW, THEREFORE, BE IT RESOLVED, by the Board of County Commissioners, County of Adams, State of Colorado, that the Agreement with White Cliffs Pipeline, LLC, a copy of which is attached hereto and incorporated herein by this reference, be approved.

BE IT FURTHER RESOLVED that the Chair of the Board of County Commissioners be authorized to execute this AGREEMENT on behalf of the County of Adams, State of Colorado.

Upon motion duly made and seconded the foregoing resolution was adopted by the following vote:

Henry _____ Aye
Tedesco _____ Aye
Hansen _____ Aye
Commissioners

STATE OF COLORADO)
County of Adams)

I, Karen Long, County Clerk and ex-officio Clerk of the Board of County Commissioners in and for the County and State aforesaid do hereby certify that the annexed and foregoing Order is truly copied from the Records of the Proceedings of the Board of County Commissioners for said Adams County, now in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said County, at Brighton, Colorado this 17th day of March, A.D. 2014.

County Clerk and ex-officio Clerk of the Board of County Commissioners
Karen Long:



By:



Deputy

White Cliffs Twin Pipeline Project
Case No. RCU2013-00027

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is made and entered into by and between the COUNTY OF ADAMS, a political subdivision of the State of Colorado, hereinafter called "**County**," and WHITE CLIFFS PIPELINE, LLC, 3030 Northwest Expressway, Suite 1100, Oklahoma City, OK, 73112, hereinafter called "**Developer**".

WITNESSETH:

WHEREAS, Developer desires to construct approximately 23 miles of underground steel pipelines and appurtenances in Adams County (as more particularly described in that certain Conditional Use Permit Application dated August 22, 2013 with supplemental information submitted on October 23, 2013) to transport crude oil ("**the Project**"); and

WHEREAS, the Project will provide transportation of crude oil; increase efficiency of delivering products to market; and, reduce impacts to local roads by reducing truck traffic in furtherance of the goals of the Adams County Comprehensive Plan; and

WHEREAS, on August 22, 2013 with supplemental information submitted on October 23, 2013, Developer submitted an application for a Conditional Use Permit ("**CUP**") to Adams County in accordance with the requirements outlined in Chapter 2 of the Adams County Development Standards and Regulations ("**the Regulations**") the Conditional Use Permit Checklist, and requested submittal criteria from the Adams County Areas and Activities of State Interest ("**AASI**") Checklist; and

WHEREAS, Developer has acquired all necessary right-of-way easements and temporary construction easements to utilize certain real property in the County of Adams, State of Colorado, as described in Exhibit "A" attached hereto, and by this reference made a part hereof (the "**Easements**"); and

WHEREAS, the County has designated its future road expansion plans in the Adams County Transportation Plan adopted November 2012 ("**Transportation Plan**"); and

WHEREAS, it is provided by Sections 1-02-01-02-08 and 1-08 of the Regulations that where designated, the Developer shall have entered into a written agreement with the County addressing Developer's and the County's obligations with regard to the Project as a condition of approval for the CUP.

WHEREAS, the County and the Developer have planned and designed the Project so it will not prohibit future development, and so that it will not add cost to the County's future infrastructure plans to support development.

NOW, THEREFORE, in consideration of the foregoing, the parties hereto promise, covenant, and agree as follows:

I. DEVELOPER'S OBLIGATIONS:

1. Pre-Construction Activities. Prior to site disturbance and commencing construction in the County, Developer shall:

- A. The applicant shall submit construction plans to the Adams County Transportation Department and apply for the appropriate construction permits.
 - B. In the event that any portion of the project is located within the MS4 permit boundary of unincorporated Adams County and greater than 1 acre of disturbance, a Stormwater Management Plan (SWMP) will need to be prepared according to County standards. Moreover, surety will be required for Best Management Practices (BMP) located within the MS4 boundary. Stormwater Best Management Practices will be implemented for the construction phase to capture and treat all onsite stormwater runoff, in accordance with the requirements for the SWMP.
 - C. Prepare a Traffic Control Plan for the portion of the project within Unincorporated Adams County and obtain approval of the Plan by the County. The Traffic Control Plan shall detail any impacts to the right-of-way during the construction of the Project including but not limited to lane closures, access to construction staging sites, hours of operation, etc. The traffic control plan shall be prepared in a way to minimize impacts to adjacent property owners during the construction period. The Developer must obtain written approval of the Traffic Control Plan from the Adams County Transportation Department prior to commencement of construction. The Developer shall be responsible to implement any necessary corrections to the traffic control plan.
 - D. Submit the Facilities Response Plan to the County.
 - E. Secure all applicable local, state and federal permits for the Project and submit copies of these permits to the County.
 - F. Submit copies of all executed Easements for the Project to the County.
2. Construction Activities. During construction, the Developer shall:
- A. Construct the project in accordance with the approved construction plans. The Developer shall submit a certification letter from a Professional Engineer within 45 days of construction completion certifying that the Project was constructed in accordance with the approved plans.
 - B. Manage stormwater in accordance with a SWMP (Storm Water Management Prevention Plan) prepared under the Colorado Department of Public Health and Environment (“CDPHE”) Colorado Discharge Permitting System (“CDPS”) Permit and in accordance with the Clean Water Act National Pollution Discharge Elimination System (“NPDES”) regulations and Adams County's Grading Erosion and Sediment Control standards. Stormwater Best Management Practices will be implemented for the construction phase to capture and treat all onsite stormwater runoff, in accordance with the requirements for the SWMPP.
 - C. Hours of operation shall be from dawn to dusk during construction, Monday through Saturday, except during hydrostatic testing, horizontal directional drilling (HDD), and emergency situations that would cause the Developer to be out of compliance with any applicable local, state, or federal permit. The Adams County Director of Planning and Development may extend the hours and days of operation if there has been demonstration of a sufficient need.

- D. Implement the approved Traffic Control Plan.
- E. Comply with the guidelines suggested by Colorado Parks and Wildlife to ensure there is no effect to any species of concern as referenced within the application materials of Developer's CUP Application.
- F. Comply with guidelines of Section 106 of the National Historic Preservation Act of 1966 in locations that have been identified as federally regulated within Adams County. Comply with state of Colorado Historical, Paleontological, and Archeological Resources Act of 1973 (CRS 24-80-401 to 410) on all identified state lands within Adams County. All best management practices and avoidance measures proposed within the submitted CUP on lands that are state and federally regulated by the above listed laws will be enforced.
- G. Comply with the recommendations of the Tri-County Health Department letter dated December 12, 2013.
- H. Comply with the terms of the Project's Air Pollution Emissions Notice (APEN) issued by CDPHE.
- I. All hauling/construction trucks shall cover their loads pursuant to C.R.S. 42-4-1407.
- J. The Developer will be responsible for the cleanliness and safety of all roadways adjacent to the Project in the event that there are any issues related to the Project during construction. If at any time, these roadways are found to be dangerous or not passable due to debris or mud caused by Project activities, the County shall require Developer to cease Project operations immediately and clear the roadway of any and all debris or mud. The Project shall not resume until the County, in its sole discretion deems the roadway conditions acceptable. If the Developer fails to keep the adjacent roadways clean and free from debris, the Adams County Transportation Department has the option to perform the required clean up and bill the charges directly to the Developer.

The Developer shall be responsible for repairing County infrastructure that is damaged as a result of the construction from the Project. Repairs shall occur as soon as possible, but no later than six (6) months following construction completion, unless an extension is granted by the County for extenuating circumstances. The Developer may submit evidence of the condition of the County's right-of-way at the start and completion of construction in order to discern the pre-construction condition and the post-construction condition of the roadways.

- K. All fluid spills such as hydraulic oil from maintenance of equipment shall be removed and disposed of at a facility permitted for such disposal.
- L. All complaints received by the Developer concerning off-site impacts and the resolution of those complaints, shall be conveyed to the Adams County Planning and Development Department. Off-site impacts shall be responded to and resolved immediately by the Developer. Adams County will be the final arbitrator regarding the resolution of noise complaints or any other off-site impacts. Excessive complaints that are not resolved to the satisfaction of the

County may be justification for a Show Cause Hearing before the Adams County Board of Commissioners.

M. All construction vehicles shall have a backup alarm which shall comply with OSHA requirements, 29 CFR 1926.601(b)(4) and 1926.602(a)(9) and/or other remedies (such as flagmen) to minimize noise as approved by the County.

N. If fuel will be stored on the subject properties or within the County's right-of-way, the following guidelines shall be implemented: All fuel storage at this site shall be provided with secondary containment, which complies with state law and any appropriate regulatory standards; fueling areas shall be separated from the rest of the site's surface area, and protected from storm water; and Developer shall provide a spill prevention plan and release prevention plan for fuel storage and fueling operations. Spill and drip containment pans shall be emptied frequently and all spills shall be cleaned up and disposed of immediately at a facility permitted for such disposal.

Developer shall notify the County prior to commencing any snow removal operations within the County's right-of-way. The Developer shall be responsible for any damages to the right-of-way caused by these activities and shall repair damages at their expense within 60 days of receiving notice from the County.

O. Developer shall comply with all applicable local, state and federal requirements during the course of the Project.

P. Failure to comply with the requirements set forth in this agreement may be justification for a show cause hearing where the CUP Permit may be revoked.

3. Design Requirements.

A. The Project will be designed to meet or exceed the minimum Federal Safety Standards contained in 49 CFR 195 and national engineering design codes for pipelines set forth by the American Society of Mechanical Engineers.

B. Pipeline burial depths will meet or exceed federal, state, and applicable engineering standards. The pipelines will be buried with a minimum of 36 -inches of cover where practical and in locations where such burial depth is not achievable, additional mechanical protection will be provided, such as increased pipe wall thickness, due to strategic locations such as road crossings, as approved by the County and referenced within this Agreement.

The location of the White Cliffs Twin Pipeline is very rural and County transportation and drainage projects are not anticipated in this area. If a project occurs in the area of the approved pipeline alignment, the Developer agrees to avoid any regional drainage improvements, to the extent possible. The County agrees to make all reasonable attempts to avoid the pipeline during the design and construction of future drainage facilities. In the event that a future regional drainage improvement project requires the relocation of the pipeline, the Developer agrees to relocate the pipeline at its sole expense. Adams County shall give 30 calendar days written notice if it determines that the pipeline needs to be re-located.

4. Operational Requirements.
- A. The Project will be operated to Federal Safety Standards contained in 49 CFR 195, as well as the Developer's operating standards and practices and maintenance procedures as referenced within the Developer's CUP application materials submitted to the County for the Project.
 - B. The steel pipelines will have a corrosion prevention system as detailed within the Developer's CUP application materials submitted to the County for the Project.
5. The Project will have a multi-faceted integrity management program, as required under federal pipeline safety standards (49 CFR 195 and ASME B31.4). The Project will be operated in accordance with all applicable local, state and federal codes, laws and regulations, including but not limited to the Colorado Department of Transportation ("CDOT") and the Colorado Department of Public Health and Environment ("CDPHE"), Post-Construction and Maintenance Requirements.
- A. Developer agrees to restore any disturbed County-owned lands in compliance with the requirements of applicable easement agreements, as soon as possible, but no later than December 31, 2014. In the event that reseedling is unsuccessful in the first growing season, the Developer agrees to comply with the terms of the easement agreements to restore the land during the subsequent growing season. The County may grant an extension for good cause, in writing, in the event of unforeseen circumstances.
 - B. Developer agrees to restore any disturbed private property in accordance with the applicable easement agreements, as soon as possible, but no later than December 31, 2014. In the event that reseedling is unsuccessful in the first growing season, the Developer agrees to comply with the terms of the easement agreements to restore the land during the subsequent growing season. The County may grant an extension for good cause, in writing, in the event of unforeseen circumstances.
 - C. Construction plans submitted by the Developer to the County for the Project show the pipeline located completely outside of the future right-of-way as depicted in the Adams County 2012 Transportation Plan. In the event that the pipeline is not constructed in accordance with the construction plans approved by the County and there becomes a conflict with a future roadway expansion project, as such project is contemplated under the Transportation Plan, the Developer agrees to relocate the pipeline at its own expense.
 - D. The Developer also agrees that the approval of encroachment agreement requests for parking lots and driveways on private property shall not be unreasonably or arbitrarily withheld, in accordance with the terms of the easement agreements for the Project.
 - E. Developer agrees that it shall not disrupt or damage the functionality of any existing drainage facilities.

- F. Developer agrees to submit “as built” construction drawings to the Adams County Assessor’s Office within 120 days of construction completion in accordance with the procedures established by the County.
- G. Developer agrees to submit emergency contact information, emergency response plans, and final maps of the Project, including all associated valves and pipeline components, to the local fire districts along the Project and to the Adams County Office of Emergency Management before commencing operation of the pipeline. The Developer shall comply with all other requests for information from the Adams County Office of Emergency Management in accordance with local, state, and federal law.
- H. Maintenance of the Project will follow guidelines set forth in the Developer’s operations and maintenance procedures (referenced in Section 4.C of this Agreement), which meet or exceed regulatory requirements. Maintenance activities associated with the line and permanent easement include, but are not limited to, the following:
- Implementation of a damage prevention program including observation of any construction activities by others on or near the permanent easement;
 - Implementation of a public education program;
 - Installation and maintenance of pipeline markers;
 - Inspection and maintenance of corrosion control systems;
 - Inspection of block valves;
 - Inspection of crossings by other pipelines, highways, utilities;
 - Inspection and maintenance of safety, control, mechanical, and electrical equipment;
 - Maintenance of communication equipment; and
 - Calibration of all instruments to comply with USDOT regulations.

6. Development Impact Fees. There are no development fees associated with this Project.

7. Encroachment Upon Future Right of Way.

In any segment of the Project that is parallel to an Adams County right-of-way, the pipeline shall be constructed a minimum of five (5) feet from the edge of the maximum future right-of-way width, as designated in the Adams County 2012 Transportation Plan.

As development of the Transportation Plan is implemented and if the location and existence of Developer’s permanent easement precludes such development, Developer’s overlapping easement rights shall be subordinated (subject to the then-existing rights of the parties, laws and regulations) to accommodate Adams County’s development.

8. Acceptance and Maintenance of Public Improvements. Developer is not required to make any public improvements or make any public dedications in connection with the Project.
9. Guarantee of Compliance. Developer hereby agrees that should it fail to comply with the terms of this Agreement, then the County shall be entitled to obtain from the Colorado State District Court for the Seventeenth Judicial District a mandatory injunction requiring said Developer to comply with the terms of this Agreement. Prior to the County seeking such an injunction, Developer shall be provided the opportunity to cure any default in accordance with the terms set forth herein at section III.5.
10. Financial Security. The County has determined that there is no need for a guarantee of financial security with regard to this Project.
11. Successors and Assigns. This Agreement shall be binding upon the heirs, executors, personal representatives, successors, and assigns of the Developer, and shall be deemed a covenant running with the real property described in Exhibit "A" attached hereto.

II. COUNTY'S OBLIGATIONS:

The County shall have no obligations associated with this Agreement.

III. GENERAL PROVISIONS:

1. No Third Party Beneficiaries. This Agreement is intended to describe and determine such rights and responsibilities only as between the parties hereto. It is not intended to and shall not be deemed to confer rights or responsibilities to any person or entities not named hereto.
2. Notices. Any and all notices, demands or other communications desired or required to be given under any provision of this Agreement shall be given in writing and delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid or by email addressed as follows:

To Developer:

White Cliffs Pipeline, LLC
Attention: Land and Right-of-way Department
3030 Northwest Expressway, Suite 1100
Oklahoma City, OK 73112

To Adams County:

Director, Adams County Planning and Development Department
4430 South Adams County Parkway, 1st Floor, Suite W2000A
Brighton, CO 80601
Email: amontoya@adcogov.org

With a copy to:
Adams County Attorney
4430 South Adams County Parkway
Brighton, CO 80601

3. Amendments.

Should any changes to the Conditional Use Permit be proposed before, during or after completion of the Project, the Developer shall submit the details of those changes to the Adams County Planning & Development Director for a determination as to whether those changes constitute a Major or Minor Amendment in accordance with the Regulations.

This Agreement may be modified, amended, changed or terminated in whole or in part by an agreement in writing duly authorized and executed by the parties hereto with the same formality, and subject to the same statutory and regulatory requirement, as this Agreement.

4. Controlling Law. This Agreement and its application shall be construed in accordance with the laws of the State of Colorado.

5. Default. If either party is in default under this Agreement, the non-defaulting party shall provide written notice of said default to the defaulting party to the address provided in Section 2 immediately above. The defaulting party shall have 30 days to cure the default, unless an extension is granted in writing by the non-defaulting party for good cause. The non-defaulting party may seek all remedies available pursuant to the Agreement and under the law.

6. Costs and Fees. In the event of any litigation arising out of this Agreement, the parties agree that each will pay its own costs and fees.

WHITE CLIFFS PIPELINE, LLC (Developer)

By: Peter L. Schwering

The foregoing instrument was acknowledged before me this 5 day of March, 2014, by Peter L. Schwering as Agent and Attorney-In-Fact of WHITE CLIFFS PIPELINE, LLC.

My commission expires: 03-13-2017

SUSAN K. HOGNESS
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID # 19934001604
MY COMMISSION EXPIRES MARCH 13, 2017

Address: 1900 So Sunset St. Ste 1-E
Longmont, Co 80501

Susan K. Hogness
Notary Public

APPROVED BY resolution at the meeting of _____, 2014.

DLH
3/5/14
PLG
3/5/14

ATTEST:



Keisha Huser

Clerk to the Board

BOARD OF COUNTY COMMISSIONERS
ADAMS COUNTY, COLORADO

Charles "Chaz" Tedesco

Charles "Chaz" Tedesco, Chairman

APPROVED AS TO FORM
COUNTY ATTORNEY

Ruth Huser