

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
WYOMING DEPARTMENT OF TRANSPORTATION
AND THE
CITY OF GILLETTE**

State Project ARS 3838
Gillette Avenue and U.S. 14/16
Campbell County

1. **Parties.** This Memorandum of Understanding (hereinafter referred to as "MOU") is made and entered into by and between the Wyoming Department of Transportation (WYDOT), whose address is 5300 Bishop Boulevard, Cheyenne, Wyoming 82009, and the City of Gillette (City) whose address is 201 East 5th Street, Gillette, Wyoming 82717.
2. **Purpose.** The purpose of this MOU is to establish the responsibilities and funding requirements between the two parties for the above-mentioned project located at Gillette Avenue and U.S. 14/16 in the City of Gillette. This is a City of Gillette project and the City is planning to reconstruct the intersection of Gillette Avenue and U.S. 14/16 including storm sewer, water systems, traffic signals, curb and gutter and concrete pavement.
3. **Terms of MOU.** This MOU shall commence upon the day and date last signed and executed by the duly authorized representatives of the parties to this MOU, and shall remain in full force and effect until terminated. This MOU may be terminated, without cause, by either party upon 30 days written notice, which notice shall be delivered by hand or by certified mail.
4. **Payment.** The City agrees to pay the entire actual cost of this project including all indirect costs through the current Indirect Cost Allocation Plan (ICAP) rate as approved by the Federal Highway Administration (FHWA), within 30 days after billing for the intersection reconstruction, which estimated costs should not exceed \$20,000. The ICAP rate is developed by WYDOT and approved by the FHWA on an annual basis with the new rate taking effect every October 1. The current rate is 8.23 percent. The ICAP rate will be charged on total direct costs on this project. Billing will occur on a monthly basis unless otherwise agreed upon between the parties. The costs are estimates only and the City understands that the final costs may be higher or lower. If the actual costs go over by 20 percent of the total estimated costs, both parties must agree and sign an amendment for the additional costs.
5. **Responsibilities of WYDOT.** WYDOT will review and approve the plans and construction activities, as well as spell out maintenance and power supply for an overhead lighted street sign.

6. Responsibilities of the City. The various infrastructure items being replaced within WYDOT's right-of-way are:

- Storm sewer – the two existing 53" x 34" elliptical pipes will be removed and replaced by an 8' x 4' box culvert. The inlets just west of the intersection on Hwy 14/16 will be replaced (same size and location) and the 24" lateral pipes connecting these inlets to the new box culvert will be replaced with the same size pipe or larger.
- Water System – the two existing water mains (one 8" and one 12") will be replaced by two new 8" water mains. One main will be located on the west side of the new box culvert and one main will be located on the east side of the new box culvert.
- Curb and Gutter and Concrete Pavement – the City is not changing the curb lines in Hwy 14/16. The concrete pavement will be removed and replaced through the intersection. Most of the removal is necessary for the installation of the new storm sewer and water main improvements. The City is proposing colored concrete for the cross walk areas. The City's proposed pavement section for Gillette Avenue is 8" PCC over a 4" aggregate base. The City shall increase this section across the highway to match the existing pavement depth if necessary. The existing cross slopes, curb line elevations and pavement profile on Hwy 14/16 will not change.
- Traffic Signals – The City is proposing to replace WYDOT's signals with new ones. The City shall install new poles, arms, signal heads, etc. The City is not proposing to replace the controller cabinet or the components in it. The materials for the new signals will be specified to meet WYDOT's Standards. The City is proposing pedestrian "bump-outs" in Gillette Avenue; therefore the signal poles will be installed at new locations, slightly closer together in the east-west direction.
- Conduits – the existing duct bank for Century-Link will remain where it is, there are no changes planned for it. There will be no conduits installed in the highway right-of-way for City electrical or City irrigation facilities. The City shall replace conduits and wiring for WYDOT's traffic signal as necessary for its operation.
- Due to the amount of underground work and the relatively confined area, the City is requesting a closure of Hwy 14/16 – Hwy 59 for this construction to occur. The City shall detour traffic to 1st Street and they anticipate traffic diverting to 3rd and 4th Streets during this closure.

- The City shall acquire all necessary rights-of-way and provide any relocation assistance necessary to reconstruct the intersection to include storm sewer, water systems, traffic signals, curb and gutter and concrete pavement. When acquiring right-of-way and/or providing relocation assistance, the City shall meet requirements as set out in Federal and State laws and rules associated with this type of activity. This will include signed documents from any landowners donating right-of-way indicating that they were made aware of the fact they could have received compensation for the acquisition. Also, appraisals and appraisal reviews must adhere to Federal and State requirements. The City shall be responsible for acquiring rights-of-way by condemnation proceedings with the understanding any settlements reached out of court must be justified and supported. WYDOT will assist the City in condemnation proceedings by preparing exhibits and displays. Under the terms of this Agreement, if right-of-way acquisition is not required for this project, all references to such acquisition herein are considered null and void.

7. General Provisions

- a. **Amendments.** Either party may request changes in this MOU. Any changes, modifications, revisions or amendments to this MOU which are mutually agreed upon by and between the parties to this MOU shall be incorporated by written instrument, executed and signed by all parties to this MOU.
- b. **Applicable Law.** The construction, interpretation and enforcement of this MOU shall be governed by the laws of the State of Wyoming. The courts of the State of Wyoming shall have jurisdiction over any action arising out of this MOU and over the parties, and the venue shall be the First Judicial District, Laramie County, Wyoming.
- c. **Entirety of this MOU.** This MOU, consisting of four pages, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral.
- d. **Indemnification.** The City shall indemnify, defend and hold harmless the State of Wyoming, WYDOT, and their officers, agents, employees, successors and assignees from any and all claims, lawsuits, losses and liability arising out of the City's failure to perform any of City's duties and obligations hereunder or in connection with the negligent performance of the City's duties or obligations, including but not limited to any claims, lawsuits, losses or liability arising out of the City's malpractice.
- e. **Prior Approval.** This MOU shall not be binding upon either party unless this MOU has been reduced to writing before performance begins as described under the terms of this MOU, and unless this MOU is approved as to form by the Attorney General or his representative.
- f. **Severability.** Should any portion of this MOU be judicially determined to be

illegal or unenforceable, the remainder of the MOU shall continue in full force and effect, and either party may renegotiate the terms affected by the severance

g. **Sovereign Immunity.** The State of Wyoming, WYDOT and the City do not waive their sovereign immunity by entering into this MOU and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.

h. **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 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 this MOU, and shall inure solely to the benefit of the parties to this MOU. The provisions of this MOU are intended only to assist the parties in determining and performing their obligations under this MOU.

8. **Signatures.** In witness whereof, the parties to this MOU through their duly authorized representatives have executed this MOU on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this MOU as set forth herein.

The effective date of this MOU is the date of the signature last affixed to this page.

Attest:

City of Gillette, Wyoming:

Title

John Opseth, Mayor

(SEAL)

Date

Attest:

Wyoming Department of Transportation:

Sandra J. Scott, Secretary
Transportation Commission of Wyoming

Del McOmie, P.E., Chief Engineer

(SEAL)

Date

Approved as to form:

By: _____
Douglas J. Moench
Senior Assistant Attorney General
State of Wyoming

Date MOU prepared: 1-16-14