

**COOPERATIVE AGREEMENT  
BETWEEN THE  
WYOMING DEPARTMENT OF TRANSPORTATION  
AND THE  
CITY OF GILLETTE**

State Project ARSCT 0.00 4641A01  
Gillette Streets  
Boxelder Road (Overdale Dr.-WYO 50)  
Campbell County

1. **Parties.** The parties to this Agreement are the Wyoming Department of Transportation, hereinafter referred to as "WYDOT", whose address is 5300 Bishop Blvd., Cheyenne, Wyoming 82009, and the City of Gillette, hereinafter referred to as the "City" whose address is 201 East 5<sup>th</sup> Street, Gillette, Wyoming 82717.
2. **Purpose.** The City and WYDOT desire to participate in the installation of a 12-inch water line, and fire hydrants along Boxelder Road from Overdale Drive to WYO 50 and the installation of 1000 feet of sanitary sewer east of Overdale Drive. WYDOT has heretofore designated the locations and the City has approved the locations for the construction of the water line and sanitary sewer improvements as shown on the attached map, dated November 7, 2013, marked Exhibit "A", and which by this reference is hereby made a part of this Agreement; and WYDOT, the City, and the traveling public shall derive a benefit and advantage by reason of having the water line, fire hydrants and sanitary sewer improvements constructed.
3. **Term of Agreement.** This Agreement shall commence upon the day and date last signed and executed by the duly authorized representatives of the parties to this Agreement and shall remain in full force and effect until terminated. This Agreement may be terminated, without cause, by either party upon 30 days written notice, which notice shall be delivered by hand or certified mail.
4. **Responsibilities of the Parties and General Conditions of Preliminary Engineering, Right-of-way Acquisition, Utility Adjustments, Letting, Construction Engineering, Construction and Maintenance.**
  - a. The City, or its representative, shall develop final design plans and estimates necessary to construct the water and sanitary sewer systems for this project to be included into the project plans.
  - b. WYDOT, or an engineering consultant selected by WYDOT, will acquire all necessary construction permits and permanent easements necessary to construct the water and sanitary sewer systems shown on Exhibit "A". The City shall keep easements across private property in force for perpetuity.

- c. The City shall designate a qualified project representative, at no cost to WYDOT, capable of making timely decisions concerning the construction of the water line, fire hydrants and sanitary sewer improvements for this project.
- d. WYDOT agrees to make all arrangements for the adjustment and/or relocation of utilities in conflict with this project. Arrangements will be made by separate agreement(s) with the affected utility owner(s) not covered by this Agreement. Utility relocation costs will be pro-rated according to the most recent State, County or Municipal policies and regulations.
- e. The City shall be given the opportunity to approve the estimates prior to the advertisement of bids by WYDOT. Likewise, the City shall be asked to concur in the award of this project to the lowest qualified bidder. As a result of signing the letter of concurrence, the City agrees to the amended costs shown on Exhibit "B" to match the actual amount bid, as well as make proportionate changes in the match and overmatch amounts. Said concurrence letter shall become part of this Agreement.
- f. Upon completion and acceptance of this project, the City shall maintain, at its sole expense, all features constructed under this Agreement. Maintenance shall include all repairs necessary to keep the improvements in its functional constructed condition.
- g. Upon completion and acceptance of the project by WYDOT and the City, the City shall return, within 30 days of WYDOT Resident Engineer's request, WYDOT's Acceptance Certificate, or any other required WYDOT documents. Once this Acceptance Certificate has been completed, all National Pollutant Discharge Elimination System (NPDES) General Permits related to the project will be transferred to the City. The City shall then be responsible for all storm water runoff on the project and storm water monitoring until a Notice of Termination (NOT) can be submitted for the project by the City. In the event petroleum contaminated soil or water is encountered on this project, the required work associated with mitigation of the contamination will become part of this project.

## **5. Participation of Project Costs**

- a. 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 water line, fire hydrants and sanitary sewer improvements. 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.
- b. The costs shown on the Exhibit "B" 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.



## 6. General Provisions

- a. **Amendments.** Either party may request changes in this Agreement. Any changes, modifications, revisions or amendments to this Agreement which are mutually agreed upon by and between the parties to this Agreement shall be incorporated by written instrument, executed and signed by all parties to this Agreement.
- b. **Americans with Disabilities Act.** The City shall not discriminate against a qualified individual with a disability and shall comply with the Americans with Disabilities Act, P.L. 101-336, 42 U.S.C. 12101, *et seq.*, and/or any properly promulgated rules and regulations related thereto.
- c. **Applicable Law and 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 in the First Judicial District, Laramie County, Wyoming.
- d. **Assignment/Agreement Not Used as Collateral.** Neither party shall assign nor otherwise transfer any of the rights or delegate any of the duties set forth in this Agreement without the prior written consent of the other party. The City shall not use this Agreement, or any portion thereof, for collateral for any financial obligation without the prior written permission of WYDOT.
- e. **Audit/Access to Records.** The City may be subject to monitoring activities by WYDOT including on-site visits, review of supporting documents, and limited scope audits. The City shall permit independent auditors, Federal personnel and WYDOT auditors, access to any pertinent books, documents, papers, and records necessary to perform monitoring of activities. The City shall keep audit reports and audit documents on file for three years after the project is complete.
- f. **Compliance with Law.** The City shall keep informed of and comply with all applicable, Federal, State and local laws and regulations in the performance of this Agreement.
- g. **Entirety of Agreement.** This Agreement, consisting of five pages, and Exhibit "A" and Exhibit "B" consisting of one page each, represents the entire and integrated Agreement between the parties and supercedes all prior negotiations, representations and agreements, whether written or oral.
- h. **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 the 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.
- i. **Kickbacks.** The City certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Agreement, nor were any fees,

commissions, gifts, or other considerations made contingent upon the award of this Agreement. If the City breaches or violates this warranty, WYDOT may, at its discretion, terminate this Agreement without liability to WYDOT, or deduct from the Agreement price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

- j. Nondiscrimination.** The City shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105 *et seq.*), the Americans with Disabilities Act (ADA), 42 U.S.C. 12101, *et seq.* and the Age Discrimination Act of 1975. The City shall not discriminate against any individual on the grounds of age, sex, color, race, religion, national origin or disability in connection with the performance of this Agreement.
- k. Notices.** All notices arising out of, or from, the provisions of this Agreement shall be in writing and given to the parties at the address provided under this Agreement, either delivered by hand or certified mail.
- l. Prior Approval.** This Agreement shall not be binding upon either party unless this Agreement is approved as to form by the Attorney General or his representative.
- m. Severability.** Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of this Agreement shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.
- n. Sovereign Immunity.** The State of Wyoming and WYDOT do not waive sovereign immunity by entering into this Agreement and the City does not waive governmental immunity, and each specifically retains all immunities and defenses available to them as sovereigns or governmental entities pursuant to Wyo. Stat. § 1-39-101, *et seq.*, and all other applicable law. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.
- o. 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 terms of this Agreement, and any amendments thereto, shall be binding upon and inure to the parties hereto, their administrators and successors.



7. **Signatures.** In witness whereof, the parties to this Agreement, either personally or through their duly authorized representatives, have executed this Agreement on the days and dates set out below and certify that they have read, understood, and agreed to the terms and conditions of this Agreement.

The effective date of this Agreement is the day and date last signed and executed by the duly authorized representatives of the parties to this Agreement shown below.

ATTEST:

CITY OF GILLETTE, WYOMING:

\_\_\_\_\_  
Name

By: \_\_\_\_\_  
John Opseth, Mayor

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

(SEAL)

ATTEST:

WYOMING DEPARTMENT OF TRANSPORTATION:

\_\_\_\_\_  
Sandra J. Scott, Secretary  
Transportation Commission of Wyoming

By: \_\_\_\_\_  
Del McOmie, P.E., Chief Engineer

\_\_\_\_\_  
Date

(SEAL)

Approved as to form:

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

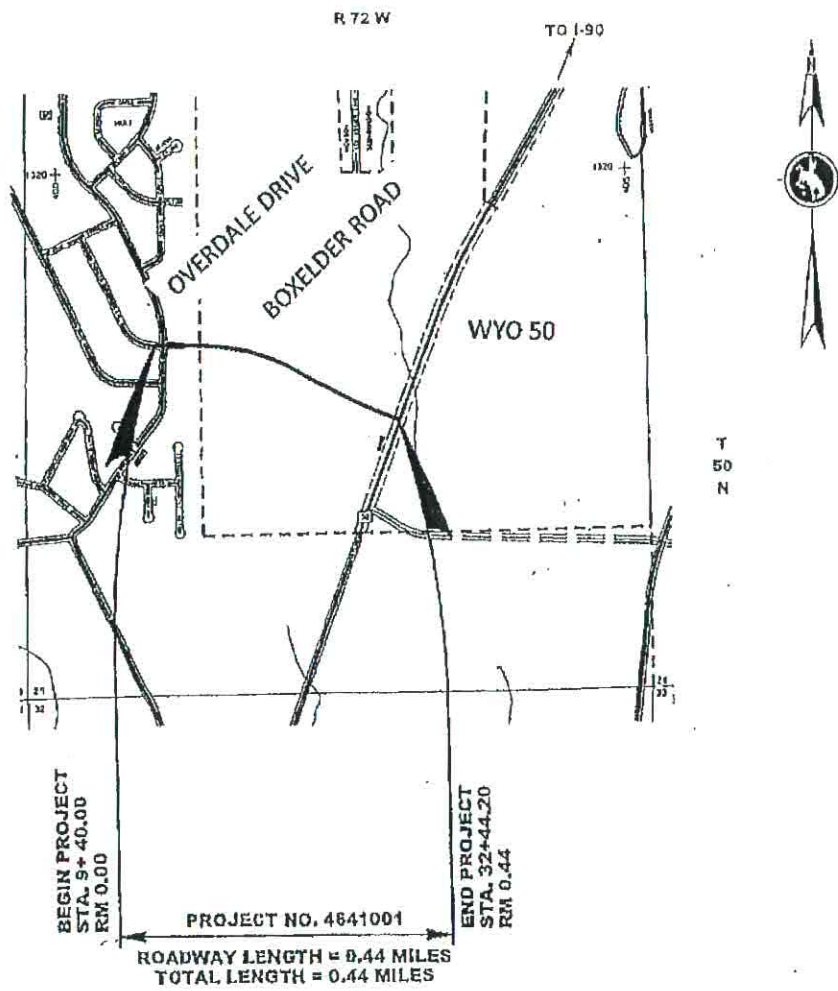
Date Agreement prepared: 2-11-14

EXHIBIT "A"

NOV. 7, 2013

GILLETTE STREETS / BOXELDER ROAD

OVERDALE DR. - WYO 50



**EXHIBIT "B"**

State Project ARSCT 0.00 4641A01  
Gillette Streets  
Boxelder Road (Overdale Dr.-WYO 50)  
Campbell County

February 11, 2014

Costs were prepared by the City.

<u>Item</u>		<u>Cost</u>	
Estimated Construction Costs	=	\$420,000.00	
10% Preliminary Engineering	=	42,000.00	
10% Construction Engineering	=	<u>42,000.00</u>	
Total Direct Costs	=	504,000.00	[1]
Indirect Cost Allocation Plan (ICAP) (504,000.00) (0.0823)	=	<u>41,479.00</u>	[2]
Total ARSCT Project Costs = [1] + [2]	=	<u>\$545,479.00</u>	

NOTE: All costs shown are rounded to the nearest even dollar.

The above figures are for estimating purposes only and are subject to revision throughout the life of this project.