

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

**State Project RHQ B144105
Gillette BNSF Railroad Quiet Zone Project
Campbell County, Wyoming**

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 5th Street, P.O. Box 3003, Gillette, WY 82717.
2. **Purpose.** WYDOT and the City desire to participate in the construction of a railroad quiet zone project. WYDOT has heretofore designated the location and the City have approved the location for the construction of the railroad quiet zone as shown on the attached map, dated April 1, 2014, marked Exhibit "A", and which by this reference is hereby made a part of this Agreement. Furthermore, WYDOT and the City and the traveling public shall derive a benefit and advantage by reason of having the quiet zone 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 Construction and Maintenance.**
 - a. **Responsibilities of WYDOT**
 1. WYDOT shall co-administer a railroad quiet zone project with the City, which shall solely include BNSF crossing number 064969N, at the BNSF milepost 593.48. Administration shall include project compliance per 49 CFR 222, coordination of railroad force account work, and inspection of any phases of the project.
 2. WYDOT shall coordinate all railroad force account work on behalf of all parties, including authoring and execution of railroad agreements, inspection, and applicable fiscal processing.
 3. WYDOT shall coordinate any needed correspondence including notice of intent, notice of establishment, and other related notifications to the Federal Railroad Administration, the operating railroad, and other relevant parties.

b. Responsibilities of the City

1. The City agrees to a *railroad quiet zone delegation of authority*, allowing WYDOT to coordinate relevant work with railroad companies and/or the Federal Railroad Administration for any quiet zone improvements.
2. The City agrees to acquire all necessary construction permits and permanent easements necessary to construct the railroad quiet zone shown on Exhibit "A".
3. The City, either in-house or via consultant services, shall design and construct the medians, roadway widening, turning radii, and other phases of the roadway project.
4. The City shall designate a qualified project representative, at no cost to WYDOT, capable of making timely decisions concerning the construction of the railroad quiet zone for this project.
5. Upon completion and acceptance of this project, the City shall maintain, at its sole expense, features constructed under this Agreement including any:
 - quiet zone components related to median barriers and related roadway improvements,
 - signs and markings,
 - crossing approaches,
 - any local streets or access to driveways relocated under this project.

Maintenance shall include all repairs necessary to keep the improvement in its original constructed condition.

c. Award & Concurrence.

1. The City will let and award the roadway portion of the project to the lowest responsible bidder. Mutual parties' concurrence is required, agreeing to the amended costs shown on Exhibit "B" to match the actual amount bid, as well as concurring to any proportionate changes in the match. Said concurrence letter shall become part of this Agreement.
2. WYDOT shall ensure mutual parties' concurrence for any force account work undertaken for this project.

- d. Project Acceptance.** Upon completion and acceptance of the project by WYDOT and the City, the City shall return, within 30 days of WYDOT Project Manager's request, WYDOT's Acceptance Certificate, or any other required WYDOT documents.

5. Participation of Project Costs

- a.** WYDOT shall fund fifty (50) percent of the railroad quiet zone project costs through state funds as provided through the 2011 State Legislature, Enrolled Act No. 68, Senate File 001, Section 045, Paragraph 7.
- b.** The City agrees to pay the local match equivalent to fifty (50) percent of the entire actual cost of this project within 30 days after billing, which estimated costs are more

particularly set forth on Exhibit "B", attached hereto. The City shall invoice WYDOT for 100% of costs incurred during the roadway construction phase(s) of this project; WYDOT then reimburses the City at the match rate of 50%.

- c. WYDOT shall bill the City at the match rate for all force account work phase(s) of this project.
- d. 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 twenty-five (25) percent of the total estimated costs, both parties must agree and sign an amendment for the additional costs. WYDOT's maximum obligation for improvements at the subject crossing shall be \$418,750.

6. General Provisions

- a. **Amendments.** This Agreement may not be modified or amended except pursuant to a written instrument duly executed by the parties hereto.
- 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 shall provide free access to any pertinent books, documents, and papers to WYDOT, the Federal Grantor Agency, and the Comptroller General of the United States, the United States Department of Labor, or any of their duly authorized representatives for the purposes of inspection, audit and copying. The City shall provide proper facilities for such access and inspection. The City shall keep copies of these records for at least three years after final payment and settlement.
- 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 seven (7) pages, including Exhibit "A" and Exhibit "B", represents the entire and integrated Agreement between the parties and supercedes all prior negotiations, representations and agreements, whether written or oral.

- h. 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.
- i. 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.
- j. 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.
- k. 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.
- l. 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
- m. Sovereign Immunity, Indemnity.** 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. Each party to this agreement shall assume the risk of any liability arising from its own conduct. Neither party agrees to insure, defend or indemnify the other.
- n. 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.
- o.** 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:

Title

(SEAL)

CITY OF GILLETTE, WYOMING:

By: _____
Mayor

Print Name

Date

ATTEST:

Sandra J. Scott, Secretary
Transportation Commission of Wyoming

(SEAL)

WYOMING DEPARTMENT OF TRANSPORTATION:

By: _____
Del McOmie, P.E., Chief Engineer

Date

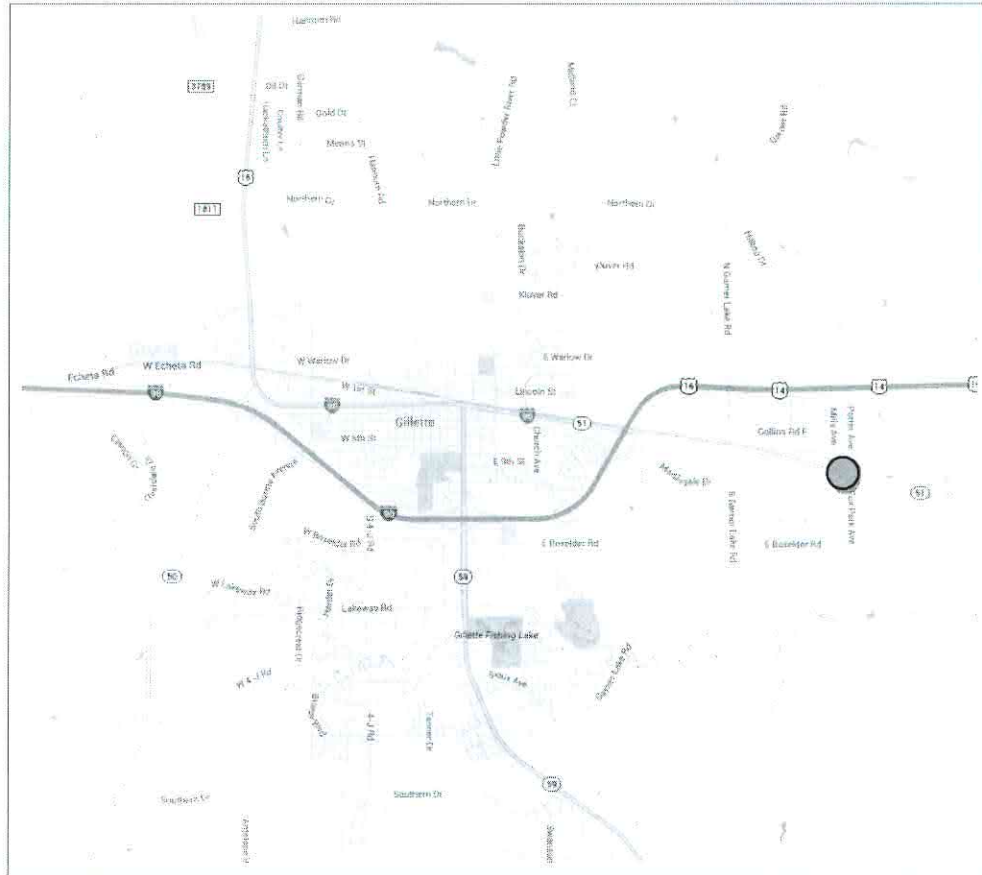
Approved as to form:

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

Date Agreement prepared: June 30, 2014

Exhibit A

Project Location



April 1, 2014

Exhibit B
Estimated Project Costs *

Item/Task	Each	Total
Roadway widening, traffic control, turning radii, drainage, curbing as applicable.	\$350,000	\$350,000
Install non-traversable medians: One (1) MINIMUM 60' median at Potter Ave. south of the BNSF crossing; One (1) MINIMUM 100' median at Potter Ave. north of the BNSF crossing	\$50,000	\$50,000
BNSF Force Account: Constant warning time upgrade, relocate insulated joints, gate relocation(s), widen concrete surfacing.	\$260,000	\$260,000
Inspection	\$5,000	\$5,000
Signs and markings other expenditures	\$5,000	\$5,000
Total		\$670,000 *

* Requires 50% local match, estimated at \$335,000