

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

State Project SCP-SL15-0303018
Gillette- Moorcroft (Wyodak East and West)
Campbell County

1. **Parties.** The parties to this Agreement are the Wyoming Department of Transportation “WYDOT”, whose address is 5300 Bishop Blvd., Cheyenne, Wyoming 82009, and the City of Gillette “City”, whose address is 201 East 5th Street, Gillette, WY 82717.
2. **Purpose of Agreement.** The purpose of this Agreement is to establish responsibilities between WYDOT and the City for construction and maintenance of a bike path, whereas the City shall perform maintenance for this enhancement, as provided in this Agreement.
3. **Term of Agreement and Required Approvals.** This Agreement is effective when all parties have executed it and all required approvals have been granted. The term of the Agreement is from the effective date hereof until terminated by WYDOT.
4. **Payment.** No payment shall be made to either party by the other party as a result of this Agreement.
5. **Responsibilities of City.** The services to be provided by the City are as follows:
 - a. In consideration of WYDOT’s construction of the bike path, the City agrees to indefinitely maintain the completed enhancements at no cost to WYDOT. Said maintenance of the enhancements shall include but not be limited to weed and pest control, vandalism repairs, crash damage repairs, snow removal, and necessary miscellaneous repairs or modifications to keep this area in a neat and pleasing condition.
 - b. All costs associated with the maintenance of the bike path shall be the sole responsibility of the City.
6. **Responsibilities of WYDOT.** The services to be provided by WYDOT are as follows:
 - a. In consideration of the City’s agreement to indefinitely maintain the bike path, WYDOT will construct the bike path as shown on the attached Exhibit “A” dated April 1, 2015, hereinafter made a part of this Agreement.

- b. The costs associated with constructing the bike path will be the sole responsibility of WYDOT.

7. 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 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 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. **Compliance with Laws.** The City shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Agreement.
- f. **Entirety of Agreement.** This Agreement, consisting of five pages and Exhibit "A", consisting of five pages, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.
- g. **Indemnification.** Each party to this Agreement shall assume the risk of any liability arising from its own conduct. Neither party agrees to insure, defend nor indemnify the other.
- h. **Independent Contractor.** The City shall function as an independent contractor for the purposes of this Agreement, and shall not be considered an employee of the State of Wyoming for any purpose. The City shall assume sole responsibility for any debts or liabilities that may be incurred by the City in fulfilling the terms of this Agreement, and shall be solely responsible for the payment of all federal,

state and local taxes which may accrue because of this Agreement. Nothing in this Agreement shall be interpreted as authorizing the City or its agents and/or employees to act as an agent or representative for or on behalf of the State of Wyoming or WYDOT, or to incur any obligation of any kind on the behalf of the State of Wyoming or WYDOT. The City agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to State of Wyoming employees will inure to the benefit of the City or the City's agents and/or employees as a result of this Agreement.

- 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 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. In reference to Title VI Policy, WYDOT's Civil Rights Program is responsible for initiating and monitoring Title VI activities, preparing required reports and other WYDOT responsibilities as required by 23 Code of Federal Regulation (CFR) 200 and 49 Code of Federal Regulation 21.
- 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. **Publicity.** Publicity given to the project or services provided herein, including notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the City and related to the services and work to be performed under this Agreement, shall identify WYDOT as the sponsoring agency and shall provide a copy of what was shared with WYDOT.
- n. **Severability.** Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of the Agreement shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.

- o. 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 should 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.
- p. Suspension and Debarment.** By signing this Agreement, the City certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction nor from federal financial or non-financial assistance, nor are any of the participants involved in the execution of this Agreement suspended, debarred, or voluntarily excluded by any federal department or agency in accordance with Executive Order 12549 (Debarment and Suspension) and CFR 44 Part 17, or are on the disbarred vendors list at www.sam.gov. Further, the City agrees to notify WYDOT by certified mail should it or any of its agents become debarred, suspended, or voluntarily excluded during the term of this Agreement.
- q. Termination of Contract.** This Agreement may be terminated immediately for cause if the City fails to perform in accordance with the terms of this Agreement. If at any time during the performance of this Agreement, in the opinion of WYDOT, the work is not progressing satisfactorily or within the terms of this Agreement, then at the discretion of WYDOT and after thirty (30) days written notice to the City, WYDOT may terminate this Agreement or any part of it. At this termination date, the City shall be liable to WYDOT for the entire cost of replacement services for the duration of the agreement term.
- r. 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.
- s. Waiver.** The waiver of any breach of any term or condition in this Agreement shall not be deemed a waiver of any prior or subsequent breach.
- t.** The terms of this Agreement, and any amendments thereto, shall be binding upon and inure to the parties hereto, their administrators and successors.

8. **Signatures.** In witness thereof, the parties to this Agreement, either personally or through their duly authorized representatives, have executed this Agreement on the day and date 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:

By: _____
Louise Carter-King, Mayor

Title

Date

(SEAL)

ATTEST:

WYOMING DEPARTMENT OF TRANSPORTATION:

Sandra J. Scott, Secretary
Transportation Commission of Wyoming

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

(SEAL)

Date

Approved as to form:

By: _____
Michael T. Kahler
Senior Assistant Attorney General
State of Wyoming

Date agreement prepared: 4-2-15