



FY2017
Transportation Alternatives Program
SUBRECIPIENT AGREEMENT
BETWEEN THE
WYOMING DEPARTMENT OF TRANSPORTATION
AND THE
CITY OF GILLETTE

Federal Award Information - Required by 2 CFR § 200.331

Subrecipient Name: City of Gillette	Subrecipient DUNS: 060285442
Federal Award Identification Number (FAIN): TBD	Federal Award Date: TBD
Period of Performance Start and End Date: 24 months from the Federal Award Date	Federal Award this Agreement: \$312,000.00
Total Federal Award to Subrecipient: \$312,000.00	Total Federal Award: \$390,000.00
Awarding Federal Agency: Federal Highway Administration	Federal Highway Administration: Wyoming Division Office Telephone: (307) 772-2101 Email: HDAWY@dot.gov
Pass-through Agency: Wyoming Department of Transportation (WYDOT)	WYDOT Program Mgr.: Mariah Johnson Telephone: 307-777-4862 Email: mariah.johnson@wyo.gov WYDOT Contact for Confirmation of Funds: Barbara MacKenzie Telephone: (307) 777-4039 Email: barbara.mackenzie@wyo.gov
Sponsor Contact: Josh Richardson Phone: 307-682-5317 Email: josh@gillettewy.gov	
CFDA No.: 20.205	CFDA Title: Highway Planning and Construction
Research and Development: No	Indirect Cost Rate (ICAP): N/A
Project Name: Dalbey Park to Gillette College Pathway, Phase I	Recipient County: Campbell
Agreement No.: CD 0.00 CD17409	Project No.: CD17409

- 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 "Sponsor", whose address is, 201 E. 5th Street, Gillette, Wyoming 82716.



2. **Purpose.** This is a subaward of federal financial assistance from the WYDOT to the Sponsor. The purpose of this Agreement is to set forth the respective relationships and responsibilities of the Sponsor and WYDOT in the administration of the Wyoming Transportation Alternatives Program. All work covered by this Agreement shall comply with the standards of the Americans with Disabilities Act of 1990 (ADA).
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 December 31, 2018. 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. **In consideration of the mutual covenants herein set forth, WYDOT and the Sponsor agree as to the following General Conditions:**
 - a. **Project Scope.** The Sponsor shall undertake and complete the Project as described and set forth below and in the "Project Description" section of the project Sponsor's TAP application, dated July 15, 2016, which is included as Attachment "A" and in accordance with terms and conditions of this Agreement.
 - a. **Project Description.** Transportation Alternatives Program funding to construct a boardwalk system joining the Southern Dalbey Park Pathway to the crossing under Highway 59, including lowering the crossing under the highway and constructing boardwalk across wetlands on the west side of Highway 59.
 - b. **Responsibility of Sponsor.** Sponsor shall:
 - i. Complete all administrative requirements, including having at least one LPA Certified staff member;
 - ii. Select consultants based on qualifications, utilizing WYDOT's help if needed;
 - iii. Submit Plans, Specifications and Estimates along with bid documents to WYDOT Local Government Coordinator's (LGC) Office for review and concurrence prior to project advertisement;
 - iv. Submit bid tabulations to WYDOT LGC Office for review and concurrence prior to awarding project;
 - v. Monitor project progress and submit reimbursement requests to WYDOT's LGC office at least once per quarter; and
 - vi. After final bill is paid, submit it for reimbursement to WYDOT LGC office with Completion and Acceptance Certificate



c. **Responsibility of WYDOT.** WYDOT will:

- i. Assist with consultant selection process;
- ii. Review plans and specifications for compliance prior to advertisement;
- iii. Review bid tabulations prior to project being awarded;
- iv. Provide ongoing support through construction, including possible site inspections and reimbursement processing; and
- v. Ensure project acceptance and completion and process final reimbursement

b. **Period of Performance.** The Period of Performance shall be 24 months from that date of Federal Award and shall allow 90 days for project closeout beyond completion of physical work on the project. The Sponsor shall commence and complete the project in a professional, economical and efficient manner by December 31, 2018 as indicated in Term of Agreement above. Project work shall commence upon receipt of a Notice to Proceed. Costs incurred prior to the Notice to Proceed will not be eligible for reimbursement. The Notice to Proceed shall be issued by WYDOT once the Agreement has been executed by both parties, an Authorization for Expenditure (AFE) is issued by WYDOT, all environmental work has been completed and any additional requirements of the Federal Highway Administration (FHWA) have been completed. In the event of unusual or unexpected project delay, the Sponsor may submit a request WYDOT for an extension of time to complete the project. The request shall be in writing to the WYDOT Local Government Coordination Office. Failure of the Sponsor to perform its duties within the time frame herein agreed to may constitute a termination of Agreement, at WYDOT's discretion. If the project is terminated, the Sponsor shall return any and all federal funds that have been paid to the project Sponsor.

c. **Design Review and Approval and Consultant Selection.** All project design to include engineering, architectural and landscape architectural plans, specifications and contract documents shall be prepared under the supervision of a qualified professional engineer or architect licensed to perform such work in the State of Wyoming. An appropriate level of environmental, historical and/or Sec. 4(f) review and mitigation statement shall be submitted to the WYDOT Local Government Coordinator. A Categorical Exclusion issued by the Federal Highway Administration, if applicable, is required prior to the Sponsor's construction contract award. Projects completed within existing right-of-way may be eligible for inclusion in the Programmatic Categorical Exclusion issued by WYDOT Environmental Services. The WYDOT Local Government Coordination Office shall receive a copy of such plans and project contract documents and review and approve the same prior to the Sponsor's proceeding with construction bidding, contracting or other construction authorization under this Agreement. Contract procedures shall be compliant with 23 Code of Federal Regulations (C.F.R.) 635



Subpart A. The consultant selection process shall comply with the Brooks Act, 40 United States Code (U.S.C.) 1101 *et seq.* with guidance included in WYDOT Operating Policy 40-1.

d. Federal and State Required Contract Provision. The Sponsor shall determine which of the following provisions are applicable and shall ensure compliance with all applicable provisions:

- **Environmental Documentation:** contract documents shall include the appropriate level of environmental review and analysis in accordance to 23 C.F.R. 771, to include mitigation assessment where required.
- **National Historic Preservation Act (106 process):** for projects involving historic or archaeological sites, the contract documents shall include the appropriate review and mitigation assessment.
- **Design Exceptions:** contract documents must note any design exceptions; no exceptions are available for compliance with the American with Disabilities Act (ADA).
- **Patented and Proprietary Products:** contracts requiring the use of a patented or proprietary material, specification, or process, shall be prohibited unless: the item is purchased or obtained through competitive bidding with equally suitable unpatented items, or WYDOT certifies through a public interest finding that the patented or proprietary item is: necessary for synchronization with existing facilities or a unique product for which there is no equally suitable alternative.
- **Buy America Provisions:** requires the use of American steel and iron products, when specified in accordance to 23 C.F.R. 635.410.
- **Disadvantage Business Enterprises (DBE):** DBE efforts shall be included in the project file, using the Form "E-91LPA" to document the bid solicitation, and to assure that the action taken is in compliance with this request. Written proof of compliance to this request should be available when requested.
- **Required Federal Contract Provisions:** The Form FHWA-1273 provisions apply to all work performed on the contract including work performed by subcontract. All contract documents shall include Form FHWA-1273 provisions. The Form FHWA-1273 provisions are required to be physically incorporated into each subcontract and subsequent lower tier subcontracts and shall not be incorporated by reference. The prime contractor is responsible for compliance with the Form FHWA-1273 requirements by all subcontractors and lower tier subcontractors. Failure to comply with the Required Contract Provisions may be considered as grounds for contract termination. Furthermore, failure to incorporate the Form FHWA-1273 into all subcontracts or failure to comply with the requirements of Section IV, Payment of Predetermined Minimum Wage and Section V, Statements and Payrolls, may be considered as grounds for debarment under 29 C.F.R. 5.12.



- Contractor and subcontractor Certification for Suspension and Debarment.
 - Manual of Uniform Traffic Control Devices (MUTCD): signing and pavement striping of public roads must meet MUTCD criteria. Projects which intersect with public roadways must be appropriately signed during the construction stage. Permanent safety signing should be identified on a separate plan sheet in the contract documents.
 - Labor Rates: contract documents must include provisions for the compliance with Davis-Bacon as outlined in the Form FHWA-1273.
 - Equipment/Materials/Labor Cost Determination: unless supported by appropriate cost effectiveness determination, the use of public owned equipment, material or labor will not be allowed. To be eligible, such costs must comply with effective hourly schedules and supported by a Public Interest Finding.
- e. **Prohibited Interest.** No member, officer or employee of the Sponsor during his tenure or one year thereafter shall have any interest, direct or indirect, in this Agreement or the Proceeds thereof.
- f. **Project Abandonment.** Should the Sponsor abandon the project prior to completion, or if the project is not let to construction within two years of the completion of the design due to the delay or actions by the Sponsor, the Sponsor shall reimburse WYDOT for the entire cost, including any Federal Aid portion of the work completed at the time of abandonment.
- g. **Project Administration.** The administration of this award shall be compliant with the requirements of 2 C.F.R. 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Project administration must be performed by a public employee to be in responsible charge. The Sponsor shall appoint a public employee as the project administrator who is accountable for the project. The project administrator shall have a current certification from WYDOT under the WYDOT Local Project Administration (LPA) Certification Program.

Project administration costs are eligible for reimbursement under this program on an 80/20 percent matching ratio and must remain within the total project cost. Reimbursements for the federal portion of the project (80 percent) shall be submitted on WYDOT LPA Cost Reimbursement Form, signed by the authorized Sponsor representatives and approved by the WYDOT Local Government Coordination Office.

- h. **Project Contracting and Construction.** Project work shall be performed by individuals, partnerships, corporations or other business entities who are duly qualified to do business in the State of Wyoming and who have secured all licenses and permits required by applicable state laws, county regulations, and city ordinances. Upon notification of WYDOT approval of the project design



documents, issuance of a Categorical Exclusion (if applicable), and a written Notice to Proceed, the Sponsor may proceed with open, public competitive bidding for project construction. Such project bidding shall follow accepted municipal and county bidding procedures, including public advertising and be compliant with 23 C.F.R. 635 Subpart A. Since federal funds are involved in the project, no in-State preference will apply for materials, labor, contracts or subcontracts. Bid analysis shall be performed to ensure balanced unit bidding. Once this analysis is completed, the Sponsor shall make recommendation to WYDOT of low responsible and responsive bidder for WYDOT concurrence prior to contract award. WYDOT reserves the right to review all contract bids prior to contract award. Extra work/claims must be within the scope of contract.

- i. **Project and Final Inspections.** Project inspections shall be conducted by the Sponsor or authorized representatives. WYDOT representatives may inspect the project at their discretion. The Sponsor shall notify WYDOT of final inspection and a WYDOT representative may accompany the Sponsor's representative on the final inspection. Prior to the final payment (normally the final 10 percent), the Sponsor shall notify WYDOT that the project has been completed in substantial conformance with the plans and specifications, including compliance with Wyo. Stat. § 16-6-116 [Final Settlement and Payment]. Additionally, the Sponsor shall complete WYDOT Acceptance Certificate and Final Completion Form, which shall accompany the final reimbursement payment request.
- j. **Project Funding.** Federal funding for this project will not exceed \$312,000.00. In accordance with WYDOT's policies, a program match requirement of 80 percent of federal and 20 percent local share of the project costs shall apply. Project total cost exceeding project estimate of \$390,000.00 (including local match) shall be borne by the Sponsor.

TAP is funded on a reimbursement basis. No funds will be paid by WYDOT prior to being paid first by the Sponsor. All requests for payment must be submitted to WYDOT's LGC Office on the LPA Cost Reimbursement Form that will be supplied to the Sponsor. Reimbursement requests must also include all applicable supporting documentation including: copies of invoices to be reimbursed and proof of payment by the Sponsor. The Cost Principles found in 2 C.F.R. 200 – Subpart E apply to this award. WYDOT will make payment to the Sponsor within 30 days of receipt of a complete and approved reimbursement request.

Reimbursement requests will be accepted on a monthly basis and must be submitted no less frequently than once every three months in order for the project to remain active and to avoid the risk of federal funds being rescinded. If no financial activity occurs in a given quarter, the Sponsor shall notify WYDOT's LGC Office in writing of the status and schedule of the project.



This Agreement is required to comply with the Federal Funding Accountability and Transparency Act (FFATA) of 2006. As the prime recipient of these funds, WYDOT will report the required information to the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS). The FFATA requires any person or entity receiving contract or grant funds directly from the federal government to report certain information regarding those funds through a centralized website, www.fsr.gov. The law requires that you provide your Data Universal Numbering System (DUNS) number to WYDOT. This requirement means you need to be registered with DUNS and Bradstreet. Instructions for this process can be found at www.dnb.com. Additional information regarding this Act may be found at the following sites:

<http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>

and

<http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf>.

The Sponsor may elect to use land, either wholly owned or donated, as part match for the project. The land must become part of the project, and would fulfill part/all of the match requirements of the Sponsor. If the land is to be donated, that action must take place after execution of this Agreement, must be from a private donor and must be for exclusive use of the Project noted above in Section 4a. If the Sponsor accepts the donation of land, the land value used to offset the match may not exceed the 20 percent match requirement, regardless of the appraised value of the land. The donation of land must be supported by a formal land appraisal completed by a professional land appraiser certified by the Wyoming State Appraiser Board. A copy of the executed deed with the land description must be included with the appraisal.

- k. **Project Maintenance.** Project maintenance and perpetual care shall be the responsibility of the Sponsor.
- l. **Public Interest Finding.** If the Sponsor elects to use Force Account work (materials and/or labor) as its local match or a portion of its local match, such a determination requires the Sponsor to make a finding in the public interest. Such a public interest finding must not exceed \$50,000. Requests for Force Account will be evaluated in accordance to 23 CFR 635 Subpart B. Prior to the use of Force Account work, the Sponsor must complete a Public Interest Finding on WYDOT Form LGC-PIF (included in Sponsor's Project Packet). WYDOT Form LGC-PIF must be submitted by the Sponsor for approval by the WYDOT Local Government Coordination Office.
- m. **Restrictions, Prohibitions, Controls and Labor Provisions**
 - i. **Equal Employment Opportunity.** In connection with the carrying out of the Project, the Sponsor shall not discriminate against any employee or



applicant for employment because of race, color, age, creed, sex, national origin or disability. The Sponsor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, age, national origin or disability. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

ii. Disadvantaged Business Enterprise (DBE) Requirements.

1. Policy. It is the policy of WYDOT that Disadvantaged Business Enterprises, defined as Minority Business Enterprises and Woman Business Enterprises, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Agreement.

2. DBE Obligation. The Sponsor or its contractor agrees to ensure that Disadvantaged Business Enterprises as defined in 49 C.F.R. Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this Agreement. In this regard, the Sponsor shall take all necessary and reasonable steps in accordance with 49 C.F.R. Part 26 to ensure that DBE's have the maximum opportunity to compete for and perform contracts. The Sponsor and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of WYDOT assisted Contracts.

iii. Title VI Civil Rights Act of 1964. The Sponsor shall comply and shall assure the compliance by contractors and subcontractors under this Project with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (49 U.S.C. 2000d), the Regulations of the Department of Transportation (DOT) issued there under, 49 C.F.R. Part 21, and the Assurance by the Sponsor pursuant thereto.

iv. Compliance with Elderly and Disabled Regulations. The Sponsor shall comply with applicable regulations regarding transportation for Elderly and Disabled persons, set forth in 49 C.F.R. Part 27 and the Americans with Disabilities Act of 1990.

n. **Right-of-Way and Utilities.** Prior to proceeding with project bidding, the Sponsor must submit to the WYDOT LGC a completed Right-of-Way and Utility Certificate, if applicable, indicating clearance of right-of-way and utilities for the project. Right-of-Way and Utility Clearance is the Sponsor's responsibility. All acquisition of private property and relocation of displaced individuals and businesses shall be in accordance with Wyo. Stat. § 1-26-501, *et seq.* [Wyoming Eminent Domain Act] and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, P.L. 91-646, (Uniform Act) and the regulations of 49 CFR Part 24.



5. Special Provisions

- a. **Conflict of Interest.** The Sponsor must disclose in writing any potential conflict of interest to WYDOT including financial or other personal interests.
- b. **Mandatory Disclosures.** The Sponsor must disclose, in a timely manner, in writing to WYDOT all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting this award. Failure to make required disclosures can result in remedies for noncompliance including suspension or debarment.

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 Sponsor 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 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 Sponsor shall not use this Agreement, or any portion thereof, for collateral for any financial obligation without the prior written permission of WYDOT.
- e. **Assumption of Risk.** The Sponsor shall assume the risk of any loss of state or federal funding, either administrative or program dollars, due to its failure to comply with state or federal requirements. WYDOT will notify the Sponsor of any state or federal determination of noncompliance.
- f. **Audit/Access to Records.** Sponsors that expend \$750,000 or more during their fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with 2 CFR 200 Subpart F.



The Sponsor may be subject to monitoring activities by WYDOT including on-site visits, review of supporting documents, and limited scope audits. The Sponsor 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 Sponsor shall keep audit reports and audit documents on file for three years after the project is complete.

- g. Availability of Funds.** Each payment obligation of WYDOT is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the services performed by the Sponsor, this Agreement may be terminated by WYDOT at the end of the period for which the funds are available. WYDOT will notify the Sponsor at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to WYDOT in the event this provision is exercised, and WYDOT will not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be construed to permit WYDOT to terminate this Agreement in order to acquire similar services from another party.
- h. Compliance with Law.** The Sponsor shall keep informed of and comply with all applicable, Federal, State and local laws and regulations in the performance of this Agreement.
- i. Entirety of Agreement.** This Agreement, consisting of 14 pages, Attachment “A”, consisting of 1 page, and Attachment “B”, consisting of 1 pages represent the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral.
- j. Human Trafficking.** If required by 22 U.S.C. 7104(g) and 2 CFR Part 175, this Agreement may be terminated without penalty if a private entity that receives funds under this Agreement:

 - i.** Engages in severe forms of trafficking in persons during the period of time that the award is in effect;
 - ii.** Procures a commercial sex act during the period of time that the award is in effect; or
 - iii.** Uses forced labor in the performance of the award or subawards under the award.
- k. Indemnification.** The Sponsor 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 Sponsor’s failure to perform any of Sponsor’s duties and obligations hereunder or in connection with the negligent performance of the Sponsor’s duties or



obligations, including but not limited to any claims, lawsuits, losses or liability arising out of the Sponsor's malpractice.

I. Kickbacks

- i. The Sponsor shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in the Department of Labor Regulations (29 CFR, Part 3). This Act provides that the Sponsor is prohibited from inducing by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled.
- ii. The Sponsor 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.
- iii. No staff member of the Sponsor shall engage in any contract or activity which would constitute a conflict of interest as related to this Agreement.
- iv. If the Sponsor 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.

m. Limitations on Lobbying Activities. In accordance with P.L. 101-121, payments made from a federal grant shall not be utilized by the Sponsor or its subsponsors in connection with lobbying Congressmen, or any federal agency in connection with the award of a federal grant, contract, cooperative agreement or loan. The Sponsor and its subsponsors shall submit a certification statement and disclosure form acceptable to WYDOT prior to commencement of any work.

n. Nondiscrimination. The Sponsor 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 Sponsor 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 CFR 200 and 49 CFR 21.

o. 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.

p. Prior Approval. This Agreement shall not be binding upon either party, no services shall be performed under the terms of this Agreement, and the Wyoming



State Auditor shall not draw warrants for payment on this Agreement until this Agreement has been reduced to writing, approved as to form by the Office of the Attorney General, and approved by the Governor of the State of Wyoming, or his designee, if required by Wyo. Stat. §9-2-1016(b)(iv).

- q. **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 Sponsor 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.
- r. **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.
- s. **Sovereign Immunity.** The State of Wyoming and WYDOT do not waive sovereign immunity by entering into this Agreement and the Sponsor 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.
- t. **Suspension and Debarment.** By signing this Agreement, the Sponsor 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 Sponsor 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.
- u. **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.

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7. **Signatures.** In witness whereof, 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:

Name

Title

By: _____
Louise Carter-King, Mayor

Date

(SEAL)

ATTEST:

**WYOMING DEPARTMENT OF
TRANSPORTATION:**

By: _____
Sandra J. Scott, Secretary

Transportation Commission of Wyoming

By: _____
Keith R. Fulton, P.E., Assistant Chief
Engineer

(SEAL)

Date

Approved as to form:

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

Date agreement prepared: 11/28/16



Attachment "A"

The proposed project is the 1st phase of a multi-phase trail system that will connect pathway between Dalbey Park and Gillette Community College. It aligns with the Pathway Advisory Committee's first priority and the Parks and Pathway Master Plan. The Dalbey Park to Gillette College Pathway, Phase I project has been envisioned and been a work-in-progress for the City for over 10 years. The portion being proposed is a boardwalk system joining the Southern Dalbey Park Pathway to the crossing under Highway 59. This will include lowering of the crossing under the highway and the boardwalk across wetlands on the west side of Highway 59. The pathway will allow users on the south side of the lake to get the north side more easily and safer.

The original design was created in 2009 by HDR, Inc. At that time all the environmental approvals were in place. Due to the fact that the design is basically completed, design expenses will be significantly decreased. There will need to be adjustments made to the design and the majority of the expense incurred will be for environmental concerns due to the fact that the pathway is on a floodplain.

The Southern Dalbey Park Pathway is tied to the Dalbey-Energy Park Pathway that will soon be under construction and is being funded by the Transportation Alternatives Program (TAP). This project will extend the boardwalk, which was completed about three years ago, from the fishing area that's on the south side of the Fishing Lake across wetland improvement area. This portion is important as the present configuration requires users to go up to the highway, cross over the bridge and then make a U-turn to go under the bridge. This area has safety concerns of traveling next to a high speed highway with substantial traffic including large trucks. The grades are not ADA compliant and the U-turn does not achieve any standards for bikes or ADA. Users must dismount in order to continue. If you're on the south side of the park, you have to physically walk up to Highway 59, walk across the bridge at Highway 59 and then double back and go back around and underneath the Highway 59 bridge at Donkey creek.

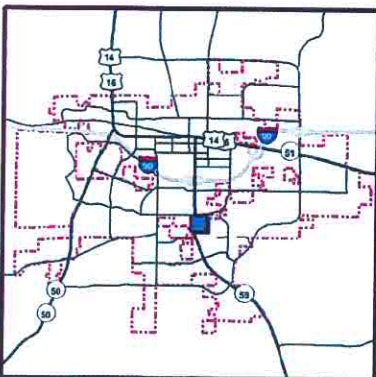
This portion would provide a crossing over wetlands and would require some environmental considerations. The boardwalk was previously approved for construction, but would need to be reapplied for since the approval was in 2009.

The second aspect of the project would be modifying the underpass. The underpass has a 5'-11" clearance which does not accommodate tall pedestrians nor most bike riders. The plan would be to lower the grade and make the clearance adequate. This change would include a flood wall to keep the pathway dry during low flows. It would also need a pump station for the higher flow events when water recedes. Lighting, paint and other aesthetic improvements would be undertaken to deter unwanted activities and adding safety for users. This again requires environmental review and approvals. Preliminary discussions with WYDOT resident engineer have taken place and WYDOT does not currently have a plan for improvements to the bridge. The last portion of the project is the boardwalk across the backwater area to the west of Highway 59. This is required to cross wetlands and water holding areas caused in part to the bridge structure of the highway. The design of this section is similar to the first sections boardwalk and therefore was included in this request. Environmental clearance is required for this portion. The end of this section will be above floodplain and at a location that will be easily extended in Phase II. Phase II of the project connects from the west side of Highway 59 to the pathway located near the College Park townhouses. Phase III would connect the College Park are with the Recreation Center. The Dalbey Park to Gillette College Pathway, Phase I is essential for our community and will create a safe, accessible connection through the park that eliminates the need for people to have to walk on Highway 59 to access either side of Donkey Creek in that area of the park.





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Legend

Existing Pathways	Proposed Pthways
Pathway	PHASE 1
Sidewalk/Bike Route	PHASE II
On Street Bike Lane	

THE INFORMATION ON THIS DRAWING WAS OBTAINED FROM RECORD AND DESIGN DRAWINGS. THE CITY OF GILLETTE MAKES NO GUARANTEE REGARDING THE ACCURACY OF THIS DRAWING OR THE INFORMATION CONTAINED THEREIN.

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Feet

**Proposed Pathway
Phase I**
 July 11, 2016

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