

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

State Project ARSCT 3.01 0300A03
WYO 50 – Lakeway South Section
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, hereinafter referred to as the (City), whose address is P. O. Box 3003, Gillette, Wyoming 82717.
2. **Purpose of Agreement.** The purpose of this Agreement is to set forth the terms and conditions in which the City and WYDOT desire to participate in the construction of a 10' attached sidewalk and associated crushed base. WYDOT has heretofore designated the location and the City has approved the location for the construction of the sidewalk and associated crushed base as shown on the attached location map 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 sidewalk and associated crushed base 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 thirty (30) days written notice, which notice shall be delivered by hand or certified mail.
4. **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 thirty (30) days after billing for the sidewalk and associated crushed base, which estimated costs are more particularly set forth on the Exhibit "B", attached hereto. ICAP is a rate built into WYDOT's accounting system for overhead expenditures for administering a project. The ICAP rate is developed by WYDOT and approved by the FHWA, with the new rate taking effect immediately. The current rate of 11.00 percent is effective until September 30, 2020 at which time the rate is subject to change based on FHWA approval. The ICAP rate will be charged on total direct costs on this project, as shown on the attached Exhibit "B". 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.

5. **Responsibilities of the Parties and General Conditions of Preliminary Engineering, Right-of-way Acquisition, Utility Adjustments, Letting, Construction Engineering, Construction and Maintenance.**

- A. WYDOT, or an engineering consultant selected by WYDOT, will conduct preliminary survey work, engineering investigations, environmental and right-of-way studies and will develop final design plans and estimates necessary to construct the sidewalk and associated crushed base constructed for this project.
- B. WYDOT, or an engineering consultant selected by WYDOT, will acquire all necessary construction permits and permanent easements necessary to construct the sidewalk and associated crushed base shown on Exhibit "A".
- C. The City shall submit a letter to WYDOT designating a qualified project representative, at no cost to WYDOT, capable of making timely decisions and authorized to sign documents concerning the completion of sidewalk and associated crushed base 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. 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 improvement in its functional constructed condition.
- G. Upon completion and acceptance of the project by WYDOT and the City, the City shall return, within thirty (30) days of WYDOT Resident Engineer’s request, WYDOT’s Acceptance Certificate, or any other required WYDOT documents.

6. General Provisions

- A. Amendments.** Any changes, modifications, revisions or amendments to this Agreement which are mutually agreed upon by the parties to this Agreement shall be incorporated by written instrument, executed and signed by all parties to this Agreement.
- B. Applicable Law, Rules of Construction, and Venue.** The construction, interpretation, and enforcement of this Agreement shall be governed by the laws of the State of Wyoming, without regard to conflicts of law principles. The terms “hereof,” “hereunder,” “herein,” and words of similar import, are intended to refer to this Agreement as a whole and not to any particular provision or part. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties. The venue shall be the First Judicial District, Laramie County, Wyoming.
- C. Assignment/Agreement Not Used as Collateral.** Neither party shall assign nor otherwise transfer any of the rights or delegate any of the duties set out 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.
- D. 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.
- E. Award of Related Contacts.** WYDOT may award supplemental or successor contracts for work related to this Agreement. The City shall cooperate fully with other contractors and WYDOT in all such cases.
- F. Certificate of Good Standing.** The City shall provide to WYDOT a Certificate of Good Standing verifying compliance with all applicable unemployment insurance and workers’ compensation programs before and during performance of work under this Agreement, if applicable.
- G. 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.
- H. Confidentiality of Information.** All documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the City in the performance of this Agreement shall be kept confidential by the City unless written permission is granted by WYDOT for its release. If and when the City receives a request for information subject to this Agreement, the City

shall notify WYDOT within ten (10) days of such request and shall not release such information to a third party unless directed to do so by WYDOT.

- I. Entirety of Agreement.** This Agreement, consisting of eight pages, Exhibit “A” Location Map and Exhibit “B” Project Costs, consisting of one page each, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral.
- J. Ethics.** The City shall keep informed of and comply with the Wyoming Ethics and Disclosure Act (Wyo. Stat. § 9-13-101, *et seq.*) and any and all ethical standards governing the City’s profession.
- K. Extensions.** Nothing in this Agreement shall be interpreted or deemed to create an expectation that this Agreement will be extended beyond the term described herein. Any extension of this Agreement shall be initiated by WYDOT and shall be accomplished through a written amendment between the parties entered into before the expiration of the original Agreement or any valid amendment thereto, and shall be effective only after it is reduced to writing and executed by all parties to the Agreement.
- L. Force Majeure.** Neither party shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays.
- M. Indemnification.** 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. 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. Consistent with the express terms of this Agreement, the City shall be free from control or direction over the details of the performance of services under this Agreement. 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 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, unemployment insurance

or similar benefits available to State of Wyoming employees will inure to the benefit of the City or the City's agents or employees as a result of this Agreement.

- O. 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 and any properly promulgated rules and regulations thereto and shall not discriminate against any individual on the grounds of age, sex, color, race, religion, national origin or disability in connection with the performance under this Agreement.
- P. 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.
- Q. Ownership and Destruction of Documents/Information.** WYDOT owns all documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the City in the performance of this Agreement. Upon termination of services, for any reason, the City agrees to return all such original and derivative information/documents to WYDOT in a useable format. In the case of electronic transmission, such transmission shall be secured. The return of information by any other means shall be by a parcel service that utilizes tracking numbers. Upon WYDOT's verified receipt of such information, The City agrees to physically and electronically destroy any residual WYDOT-owned data, regardless of format, and any other storage media or areas containing such information. The City agrees to provide written notice to WYDOT confirming the destruction of any such residual WYDOT-owned data.
- R. 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 Officer 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).
- S. Proof of Insurance.** The City is protected by the Wyoming Governmental Claims Act and certifies that it is a member of the Wyoming Association of Risk Managers (WARM) pool and/or the Local Government Liability Pool (LGLP), Wyo. Stat. § 1-39-101, *et seq.* and Wyo. Stat. § 1-42-201, and shall provide a letter verifying its participation in the LGLP and/or WARM to WYDOT.
- T. Publicity.** Any publicity given to the projects, programs or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices in whatever form, prepared by or for the City, shall identify WYDOT as the sponsoring agency and shall not be released without prior written approval from WYDOT.

- U. **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 the parties may renegotiate the terms affected by the severance.
- V. **Sovereign Immunity and Limitations.** Pursuant to Wyo. Stat. § 1-39-104(a), the State of Wyoming and WYDOT expressly reserve sovereign immunity by entering into this Agreement and the City does not waive governmental immunity. Each of them specifically retains all immunities and defenses available to them as sovereign or governmental entities pursuant to Wyo. Stat. § 1-39-101, et seq., and all other applicable law. The parties acknowledge that the State of Wyoming has sovereign immunity and only the Wyoming Legislature has the power to waive sovereign immunity. The parties further acknowledge that there are constitutional and statutory limitations on the authority of the State of Wyoming and its agencies or instrumentalities to enter into certain terms and conditions supplied by the City, including, but not limited to, the following: liability for damages; choice of law; conflicts of law; venue and forum-selection clauses; defense or control of litigation or settlement; liability for acts or omissions of third parties; payment of attorneys' fees or costs; additional insured provisions; dispute resolution, including, but not limited to, arbitration; indemnification of another party; and confidentiality. Any such provisions in the Agreement or any attachments or documents incorporated by reference will not be binding on the State of Wyoming except to the extent authorized by the laws and constitution of the State of Wyoming. 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 immunity shall be construed in favor of immunity.
- W. **Taxes.** The City shall pay all taxes and other such amounts required by federal, state, and local law, including, but not limited to, federal and social security taxes, workers' compensation, unemployment insurance, and sales taxes.
- X. **Termination of Agreement.** This Agreement may be terminated, without cause, by WYDOT upon thirty (30) days written notice. This Agreement may be terminated by WYDOT immediately for cause if the City fails to perform in accordance with the terms of this Agreement.
- Y. **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.

- Z. Time is of the Essence.** Time is of the essence in all provisions of this Agreement.
- AA. Titles Not Controlling.** Titles of sections and subsections are for reference only and shall not be used to construe the language in this Agreement.
- BB. 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. Failure to object to a breach shall not constitute a waiver.

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7. **Signatures.** The parties to this Agreement, either personally or through their duly authorized representatives, have executed this Agreement on the 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 date of the signature last affixed to this page.

ATTEST:

Signature

Print Name

Title

(SEAL)

CITY OF GILLETTE, WYOMING:

By: _____
Louise Carter-King, Mayor

Date

ATTEST:

Sandra J. Scott, Secretary
Transportation Commission of Wyoming

(SEAL)

WYOMING DEPARTMENT OF TRANSPORTATION:

By: _____
Gregg C. Fredrick, P.E., Chief Engineer

Date

Approved as to form:

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

Date Agreement prepared: 6-29-17