

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

Federal Project STPU-GI 2.85 5349003
Garner Lake/Boxelder Road
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, Wyoming 82716.
2. **Purpose.** The City and WYDOT desire to participate in the Surface Transportation Urban Program which is federally funded and administered by WYDOT. WYDOT has heretofore designated the location and the City has approved the location for the construction of the traffic signal in the City of Gillette as shown on the attached map 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 traffic signal 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 by certified mail.
4. **Participation of Project Costs**
 - A. The City agrees to match the project costs at the rate of 9.51 percent of the cost of survey work, preliminary engineering, right-of-way acquisition, utility adjustments, letting, construction and construction engineering as shown on Exhibit "B" and which by this reference is hereby made part of this Agreement. The City agrees to reimburse to WYDOT any funds above those authorized by WYDOT and matched by the City necessary to build this project.
 - B. It is understood by the parties that the above-mentioned percentages may vary slightly during the life of this Agreement, as dictated by the *Federal Notices on Sliding Scale Rates of Federal Aid Participation in Public Lands States*. It is further understood by the City that the estimated costs may vary as the project plans are developed and let to contract and that the City shall reimburse WYDOT for the total amount not paid with Federal funds.
 - C. The costs shown on the Exhibit "B" are estimates only and the City understands that the final costs may be higher or lower. Rates may vary for the life of this

project based on federal reviews and approval. If the actual costs go over by 20 percent of the total estimated costs, both parties must agree upon and sign an amendment for the additional costs.

- D. The City agrees to pay their portion of 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 traffic signal, 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.
- E. 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.fhrs.gov. The law requires that you provide your Data Universal Numbering System (DUNS) number to WYDOT. This requirement means you must register 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>.

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

- A. Survey work will be performed by WYDOT or their Consultant. The work of performing the survey for this project will be performed under the immediate direction, control and supervision of WYDOT in accordance with the requirements specified by WYDOT and agreed to by the City.
- B. Preliminary Engineering will be performed by WYDOT or their Consultant who will complete engineering investigations, environmental studies and develop design plans in accordance with the *AASHTO's A Policy on Geometric Design of Highway and Streets, 2011 edition*, which will be included in the final design

plans. All work covered by this Agreement shall comply with the standards of the Americans with Disabilities Act of 1990 (ADA).

C. Right-of-Way Acquisition will be performed by WYDOT or their Consultant. WYDOT will acquire all necessary rights-of-way and provide any relocation assistance necessary to construct the work shown on Exhibit "A". In accordance with Wyo. Stat. § 1-26-801(a), the City shall be responsible for acquiring rights-of-way by condemnation proceedings with the understanding any settlements reached out of court must be justified and supported. WYDOT will assist the City in condemnation proceedings by preparing exhibits and displays. At its request, the City shall be provided a copy of the right-of-way plans and cost estimates when Federal acquisition approval is requested. The City agrees to reimburse WYDOT for the total cost needed to clear the right-of-way not paid with Federal Aid funds. Under the terms of this Agreement, if right-of-way acquisition is not required for this project, all references to such acquisition herein are considered null and void.

D. Utility Adjustments will be performed by WYDOT. Arrangements will be made by separate agreement(s) with the affected utility owner(s) and are not covered by this Agreement. Utility relocation costs will be pro-rated according to the most recent State, County or Municipal policies and regulations. The City shall, by ordinance or regulation, control utility line encroachments and crossings in a manner that provides for a degree of protection to the roadway at least equal to the protection provided by the *State's Utility Accommodation Regulations*, dated April 1990 and can be found at the following link:

http://www.dot.state.wy.us/files/live/sites/wydot/files/shared/Highway_Development/Utilities/WYDOT%20Utility%20Accommodation%20Regulations_March%202016.pdf

Costs for reimbursable utility work not owned by the City are not shown and will be in addition to the identified costs. Under the terms of this Agreement, if utility adjustments are not required for this project, all references to such adjustments herein are considered null and void.

E. The letting of this project will be performed by WYDOT. The City shall be given the opportunity to approve final design plans and estimates prior to the advertisement for 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. Construction engineering for this project will be performed by and under the immediate direction, control and supervision of WYDOT or their Consultant in accordance with the plans and specifications. 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 construction of the project.

- 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.
 - H. Upon completion and acceptance of this project, the City shall maintain, at its sole expense, the roadway in compliance with all applicable Federal and State standards and regulations. Maintenance shall include all repairs necessary to keep the improvement in its functional constructed condition. The City also agrees not to permanently close or abandon the route without written consent of WYDOT.
6. **Reimbursement:** The City hereby agrees to reimburse WYDOT for its share of actual costs incurred to the project, less previous payments, within 30 days after billing. Billing will occur on a monthly basis unless otherwise agreed upon between the parties.
7. **Project Abandonment:** Should the City abandon the project at any time, or if the project is not let to construction within two years of the completion of the design or prior to the completion, due to the delay or actions by the City, the City shall reimburse WYDOT for the entire cost, including any Federal Aid portion of the work completed at the time of abandonment.
8. **Special Provisions**
- A. **Assumption of Risk.** The City shall assume the risk of any loss of state or federal funding, either administrative or program dollars, due to the City's failure to comply with state or federal requirements. WYDOT shall notify the City of any state or federal determination of noncompliance.
 - B. **Conflict of Interest.** Per 2 CFR 200.112 the City must disclose in writing any potential conflict of interest to WYDOT including financial or other personal interests.
 - C. **Environmental Policy Acts.** The City agrees all activities under this Agreement will comply with the Clean Air Act, the Clean Water Act, the National Environmental Policy Act, and other related provisions of federal environmental protection laws, rules or regulations.

D. Human Trafficking: As 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.

E. 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 agreed upon price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

The City 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 City is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public works to give up any part of the compensation to which he or she is otherwise entitled.

F. Limitations on Lobbying Activities. By signing this Agreement, the City certifies and agrees that, in accordance with P.L. 101-121, payments made from a federal grant shall not be utilized by the City or its subcontractors in connection with lobbying member(s) of Congress, or any federal agency in connection with the award of a federal grant, contract, cooperative agreement, or loan.

The City and subcontractors may also be required to submit an additional certification statement and disclosure form acceptable to WYDOT before commencement of the work.

G. Mandatory Disclosures. Per 2 CFR 200.113 the City 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.

H. Monitoring Activities. WYDOT shall have the right to monitor all activities related to this Agreement that are performed by City or its subcontractors. This shall include, but not be limited to, the right to make site inspections at any time and with reasonable notice; to bring experts and consultants on site to examine or

evaluate completed work or work in progress; to examine the books, ledgers, documents, papers, and records pertinent to this Agreement; and, to observe personnel in every phase of performance of the related work.

- 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 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.

Federal law requires the City to include all relevant special provisions of this Agreement in every subcontract awarded over ten thousand dollars (\$10,000.00) so that such provisions are binding on each subcontractor.

- J. No Finder's Fees:** No finder's fee, employment agency fee, or other such fee related to the procurement of this Agreement, shall be paid by either party.
- K. Publicity.** Any publicity given to the program or services provided herein, including, but not limited to, 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 not be released without prior written approval of WYDOT.
- L. Suspension and Debarment.** By signing this Agreement, the City certifies that neither it nor its principals/agents are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction or from receiving federal financial or nonfinancial 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), 44 CFR Part 17, or 2 CFR Part 180, or are on the debarred, or otherwise ineligible, vendors lists maintained by the federal government. Further, the City agrees to notify WYDOT by certified mail should it or any of its principals/agents become ineligible for payment, debarred, suspended, or voluntarily excluded from receiving federal funds during the term of this Agreement.
- M. Administration of Federal Funds.** The City agrees its use of the funds awarded herein is subject to the Uniform Administrative Requirements of 2 CFR Part 200, *et seq.*; any additional requirements set forth by the federal funding agency; all applicable regulations published in the Code of Federal Regulations; and other program guidance as provided to it by WYDOT.
- N. Copyright License and Patent Rights.** The City acknowledges that federal grantor, the State of Wyoming, and WYDOT reserve a royalty-free, nonexclusive, unlimited, and irrevocable license to reproduce, publish, or otherwise use, and to

authorize others to use, for federal and state government purposes: (1) the copyright in any work developed under this Agreement; and (2) any rights of copyright to which the City purchases ownership using funds awarded under this Agreement. The City must consult with WYDOT regarding any patent rights that arise from, or are purchased with, funds awarded under this Agreement.

9. **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 or 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 the WYDOT.
- D. **Audit/Access to Records.** WYDOT and its representatives shall have access to any books, documents, papers, electronic data, and records of the City which are pertinent to this Agreement.
- E. **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 and which may be limited for any reason including, but not limited to, congressional, legislative, gubernatorial, or administrative action. If funds are not allocated and available for continued performance of the Agreement, the Agreement may be terminated by WYDOT at the end of the period for which the funds are available. WYDOT shall notify the City 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 shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section.
- F. **Award of Related Agreements.** 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.

- G. 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.
- H. Compliance with Laws.** The City shall keep informed of and comply with all applicable federal, state, and local laws and regulations, and all federal grant requirements and executive orders in the performance of this Agreement.
- I. 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 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.
- J. Entirety of Agreement.** This Agreement, consisting of thirteen (13) 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. In the event of a conflict or inconsistency between the language of this Agreement and the language of any attachment or document incorporated by reference, the language of this Agreement shall control.
- K. 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.
- L. 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 the 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.
- M. 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.

- N. **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.
- O. **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.
- P. **Notices.** All notices arising out of, or from, the provisions of this Agreement shall be in writing either by regular mail or delivery in person at the addresses provided under this Agreement.
- 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, and the Wyoming State Auditor shall not draw warrants for payment, until this Agreement has been fully executed, approved as to form by the Office of the Attorney General, filed with and approved by A&I Procurement, 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 shall not commence work under this Agreement until it has obtained all the insurance required by WYDOT and the State and such insurance has been approved by WYDOT and the State. Approval of insurance by WYDOT and the State shall not relieve or decrease the liability of the City.

The City shall file a Certificate of Insurance with the WYDOT verifying each type of coverage required.

- (i) Workers' Compensation and Employer's Liability Insurance. The City shall provide WYDOT with a Certificate of Good Standing or other proof of workers' compensation coverage for all its employees who are to work on the project described in this Agreement. The City's coverage shall be under the Wyoming Department of Workforce Services' workers' compensation program if statutorily required or such other private workers' compensation insurance, as appropriate. Non-Wyoming City's insurance coverage shall also include Employer's Liability "Stop Gap" coverage, in an amount not less than five hundred thousand dollars (\$500,000.00) per employee for each accident and disease. The City shall also supply proof of workers' compensation and employers' liability insurance, if required, for each and every subcontractor prior to allowing that subcontractor on the job site.
- (ii) Commercial General Liability Insurance. The City shall provide commercial general liability insurance coverage, during the entire term of this Agreement, against claims arising out of bodily injury, death, damage to or destruction of the property of others, including loss of use thereof, and including underground collapse and explosion, and products and completed operations, in an amount not less than five hundred thousand dollars (\$500,000.00) per occurrence and one million dollars (\$1,000,000.00) general aggregate.
- (iii) Business Automobile Liability Insurance. The City shall maintain during the entire term of this Agreement automobile liability insurance in an amount not less than five hundred thousand dollars (\$500,000.00) per occurrence.
- (iv) Unemployment Insurance. The City shall be duly registered with the Department of Workforce Services and obtain such unemployment insurance coverage as required. Such coverage shall be maintained throughout the duration of this Agreement. The City shall supply WYDOT with a Certificate of Good Standing or other proof of unemployment insurance coverage for itself and each and every subcontractor prior to beginning work under this Agreement and at any time upon request of WYDOT.
- (vi) Payment of Premiums and Notice of Revocation. All policies required under this Agreement shall be in effect for the duration of this Agreement. All policies shall be primary and not contributory. The City shall pay the premiums on all insurance certificates which must include a clause stating that the insurance may not be revoked, canceled, amended, or allowed to lapse until the expiration of at least thirty (30) days advance written notice to WYDOT.

- (vii) WYDOT/State May Insure for City. In case of a breach of any provision of this Section, WYDOT or the State may, at WYDOT's or State's option, purchase and maintain, at the expense of the City, such insurance in the name of the City, or subcontractor, as WYDOT or the State may deem proper and may deduct the cost of taking out and maintaining such insurance from any sums which may be due or become due to the City under this Agreement.
- (viii) WYDOT's/State's Right to Reject. The State reserves the right to reject a certificate of insurance if the City's insurance company is widely regarded in the insurance industry as financially unstable.
- (ix) WYDOT's/State's Right to Contact Insurer. WYDOT and the State shall have the right to consult with the City's insurance agent for disclosure of relevant policy information. Relevant information includes, but is not limited to:
 - (a) Exclusions from coverage;
 - (b) Claims in progress which could significantly reduce the annual aggregate limit; and
 - (c) Any applicable deductible amounts.

If the policy is a "claims made" policy instead of an "occurrence" policy, the information provided shall include, but not necessarily be limited to, retroactive dates and extended reporting periods or tails.

- (x) Subcontractors. The insurance requirements set out above apply to all subcontractors. It is the City's responsibility to ensure that its subcontractors meet these insurance requirements. WYDOT has the right to review the insurance certificates of any and all subcontractors used by the City.

T. 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.

U. 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 sovereigns 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 in 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.

- V. **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.
- W. **Termination of Agreement.** This Agreement may be terminated, without cause, by the WYDOT upon thirty (30) days written notice. This Agreement may be terminated by the WYDOT immediately for cause if the City fails to perform in accordance with the terms of this Agreement.
- X. **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.
- Y. **Time is of the Essence.** Time is of the essence in all provisions of this Agreement.
- Z. **Titles Not Controlling.** Titles of sections and subsections are for reference only and shall not be used to construe the language in this Agreement.
- AA. **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.

"REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK"

10. **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:

CITY OF GILLETTE, WYOMING:

Signature

By: _____
Louise Carter-King, Mayor

Print Name

Date

Title

(SEAL)

ATTEST:

WYOMING DEPARTMENT OF TRANSPORTATION:

Sandra J. Scott, Secretary
Transportation Commission of Wyoming.

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

(SEAL)

Date

Approved as to form:

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

Date agreement prepared: 8-29-17

Exhibit A

Intersection of Garner Lake Road and Boxelder City of Gillette

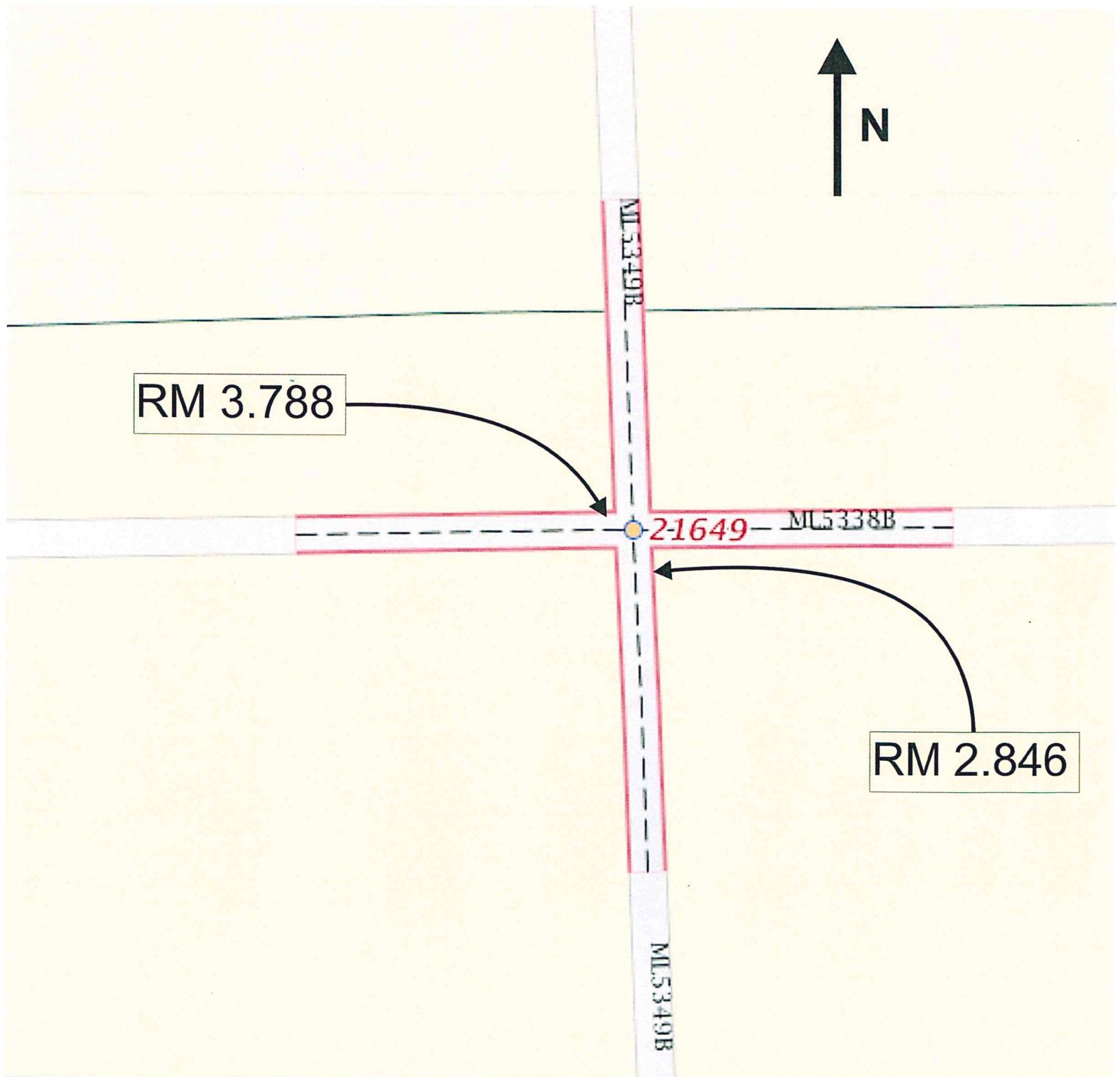


EXHIBIT "B"

Federal Project STPU-GI 2.85 5349003
Garner Lake/Boxelder Road
Campbell County

August 31, 2017

Costs were prepared by WYDOT.

<u>Item</u>		<u>Cost</u>	
Estimated Construction Costs	=	\$500,000.00	
10% Preliminary Engineering	=	50,000.00	
15% Construction Engineering	=	<u>75,000.00</u>	
Total Direct Costs	=	\$625,000.00	[1]
Indirect Cost Allocation Plan (ICAP) (625,000.00) (0.1100)	=	68,750.00	[2]
Total Project Costs = [1] + [2]	=	<u>\$693,750.00</u>	
<u>Funding Breakdown:</u>			
WYDOT's Federal Aid Match: (693,750.00) (0.9049)	=	627,774.00	[3]
City's Match Portion: (693,750.00) (0.0951)	=	<u>65,976.00</u>	[4]
Total Project Costs = [3] + [4]	=	<u>\$693,750.00</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.