

**MEMORANDUM OF UNDERSTANDING BETWEEN  
CAMPBELL COUNTY, WYOMING AND  
THE CITY OF GILLETTE, WYOMING REGARDING ADULT SOFTBALL FIELDS**

1. **Parties.** This Memorandum of Understanding (“MOU”) is made and entered into by and between Campbell County, Wyoming (“County”), through its Department of Parks and Recreation (collectively, “Department”), whose address is 500 South Gillette Ave., Gillette, WY 82716, and the City of Gillette, Wyoming, (“City”) whose address is 201 East 5th Street, Gillette, WY 82716.
2. **Purpose.** The purpose of this MOU is to delineate the terms for the City to pay the consultant and the Department to reimburse the City for costs, fees, and expenses associated with hiring a consultant to study the need and develop a location for future adult softball fields at the Energy Capital Sports Complex (“ECSC”).
3. **Term of MOU.** This MOU is effective when all parties have executed it and all required approvals have been granted. The term of this MOU is from the Effective Date of this agreement through June 30, 2025.
4. **Department Payment Obligation.** The Department agrees to reimburse the City for fifty percent (50%) of all costs, fees, and expenses incurred for the completion of this study in an amount not to exceed four thousand dollars (\$4,000.00) to the city as reimbursement. Payment shall be made upon submission of invoice pursuant to WYO. STAT. § 16-6-602. No payment shall be made for work performed before the date upon which the last required signature is affixed to this MOU.
5. **Responsibilities of Department.**
  - A. The Department agrees to pay the City for the above services. The Department shall pay the City any amounts due within forty-five (45) days of receipt of an invoice from the City.
  - B. The Department agrees to review consultant work products and provide input during the course of the study.
6. **Responsibilities of the City.**
  - A. The City agrees to retain a consultant to identify a location for adult softball fields at ECSC. The City will have sole discretion in the selection of a consultant for this purpose.
  - B. The City will pay the consultant for services performed.
  - C. The City will invoice the Department for fifty percent (50%) of the total costs, fees, and expenses incurred to complete this study.
  - D. The City will keep the Department informed of the consultant's work progress so that the Department may fulfill its responsibilities under Section 5(B). In addition,

the City agrees to provide a copy of the final consultant work product and study to the Department upon completion.

7. **General Provisions.**

- A. **Amendments.** This MOU shall not be amended, altered, changed, modified, supplemented, or rescinded in any manner except by a written instrument executed by all parties.
- B. **Applicable Law.** The construction, interpretation, and enforcement of this MOU shall be governed by the laws of the State of Wyoming. The courts of the State of Wyoming shall have jurisdiction over any action arising out of this MOU and over the parties, and the venue shall be the Sixth Judicial District, Campbell County, Wyoming.
- C. **Availability of Funds.** Each payment obligation of the City and Department are 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 City and Department, the MOU may be terminated by the City and/or Department at the end of the period for which the funds are available. The party shall notify the other party at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the City or Department in the event this provision is exercised, and the City and Department shall 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 the City to terminate this MOU to acquire similar services from another party.
- D. **Entirety of Agreement.** This MOU, consisting of five (5) pages represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.
- E. **Governmental Immunity.** The City and Department do not waive governmental immunity by entering into this MOU and the parties specifically retain all immunities and defenses available to it pursuant to W.S. 1-39-101 through 120 and all other applicable law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of governmental immunity. The parties agree that any ambiguity in this MOU shall not be strictly construed, either against or for either party, except that any ambiguity as to governmental immunity shall be construed in favor of governmental immunity.
- F. **Indemnification.** Neither party is obligated to indemnify the other party under this MOU.
- G. **Independent Contractor.** Nothing in this MOU shall be interpreted as authorizing either party or its agents and/or employees to act as an agent or representative for or on behalf of the other party or to incur any obligation of any kind on the behalf of the other party.

- H. **Severability.** Should any portion of this MOU be judicially determined to be illegal or unenforceable, the remainder of the MOU shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.
- I. **Termination of MOU.** This MOU may be terminated, without cause, by the City and Department upon thirty (30) days written notice. This MOU may be terminated, for cause, if the City or Department fails to perform in accordance with the terms of this MOU. Under a for-cause termination, the terminating party must give seven (7) days written notice to the non-terminating party. If the non-terminating party fails to cure its breach of this MOU, then this MOU will be considered terminated. In the event that the City is the terminating party under a for cause termination, the City shall be entitled to a pro rata refund of amounts paid under this MOU.
- J. **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 MOU shall not be construed so as to create such status. The rights, duties, and obligations contained in this MOU shall operate only between the parties to this MOU and shall inure solely to the benefit of the parties to this MOU. The provisions of this MOU are intended only to assist the parties in determining and performing their obligations under this MOU.
- K. **Titles Not Controlling.** Titles of paragraphs are for reference only and shall not be used to construe the language in this MOU.
- L. **Waiver.** The waiver of any breach of any term or condition in this MOU shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.
- M. **Force Majeure.** Neither party shall be liable for failure to perform under this MOU 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, pandemics, 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. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

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8. **Signatures.** The parties to this MOU through their duly authorized representatives have executed this MOU on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this MOU as set forth herein.

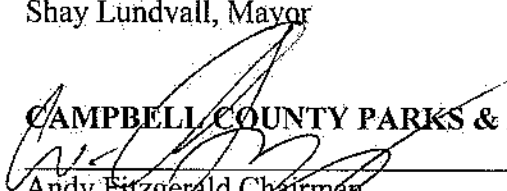
The effective date of this MOU is the date of the signature last affixed to this page.

**CITY OF GILLETTE**

\_\_\_\_\_  
Shay Lundvall, Mayor

\_\_\_\_\_  
Date

**CAMPBELL COUNTY PARKS & RECREATION**

  
\_\_\_\_\_  
Andy Fitzgerald Chairman  
Campbell County Parks & Recreation

12/18/2023  
Date

(S E A L)  
ATTEST:

\_\_\_\_\_  
Alicia Allen, City Clerk

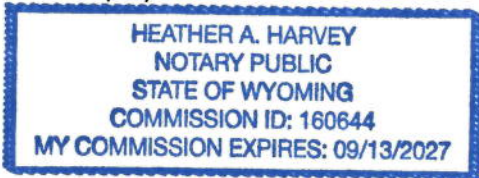
State of Wyoming

County of Campbell

This instrument entitled Memorandum of Understanding  
Campbell County + City of Gillette was acknowledged before me on  
Title of document being acknowledged

December 18, 2023 by Andy Fitzgerald  
Date Name of Person

(Seal)



Heather A. Harvey  
Signature of Notarial Officer

Notary Public  
Title (e.g. Notary Public) OR Rank (Rank if officer in active military)

My commission expires: 9/13/2027