COOPERATIVE AGREEMENT BETWEEN THE WYOMING DEPARTMENT OF TRANSPORTATION AND THE BOARD OF LARAMIE COUNTY COMMISSIONERS

Federal Project STP-BROS CN02110 Bridge Over Union Pacific Railroad Structure No. DLM County Road 210-2 Laramie County

- 1. Parties. The parties to this Cooperative Agreement (Agreement) are the Wyoming Department of Transportation (WYDOT), whose address is 5300 Bishop Blvd., Cheyenne, Wyoming 82009, and the Board of Laramie County Commissioners (County) whose address is 310 West 19th Street, Cheyenne, WY 82001.
- 2. Purpose of Contract. The purpose of this agreement is to outline the terms and conditions by which the County and WYDOT will remove Structure No. DLM over the Union Pacific Railroad, at RM 8.21, in Laramie County, as shown on Exhibit A, Location Map, which is attached to and incorporated into this Agreement by this reference. This project will be completed as part of the federally funded and WYDOT-administered Bridge Replacement Off-System Program.
- 3. <u>Term of Contract</u>. This Agreement is effective when all parties have executed it (Effective Date). The term of the Agreement is from Effective Date through completion of the Project. All services shall be completed during this term. However, the Parties agree that maintenance requirements described in Section 6 Subsection E are indefinite.

4. Participation of Project Costs.

- A. The County agrees to match the project costs at the rate of nine and fifty-one hundredths percent (9.51%) of the cost of survey work, preliminary engineering, right-of-way acquisition, utility adjustments, letting, construction and construction engineering as shown on Exhibit B, Summary of Project Costs, which is attached to and incorporated into this Agreement by this reference. The County agrees to reimburse to WYDOT any funds above those authorized by WYDOT and matched by the County 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 County that the estimated costs may vary as the project plans are developed and let to contract and that the County shall reimburse WYDOT for the total amount not paid with federal funds.

- C. The costs shown on the Exhibit B are estimates only. The County 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 the total estimated costs by twenty percent (20%), both parties must agree upon and sign an amendment for the additional costs.
- D. The County 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 forty-five (45) days after submission of invoice pursuant to Wyo. Stat. § 16-6-602. 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 eleven percent (11%) is effective until September 30, 2024, 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 Exhibit B. WYDOT will bill the County 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.fsrs.gov. The law requires the County provide its Unique Entity Identifier (UEI) created in SAM.gov to WYDOT.

 $\frac{http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf}{and}\\ \frac{http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf}{and}.$

- **Reimbursement**. The County hereby agrees to reimburse WYDOT for its share of actual costs incurred to the project, less previous payments, within forty-five (45) days after billing.
- **Responsibilities of County.** The County agrees to:
 - A. Reimburse WYDOT in accordance with Sections 4 and 5 above.
 - B. In accordance with Wyo. Stat. § 1-26-801(a), the County 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 County in condemnation proceedings by preparing exhibits and displays. At its request, the County shall be provided a copy of the right-of-way plans and cost estimates when federal acquisition approval is requested. The County 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 is considered null and void.

- C. The County 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.
- D. Upon completion and acceptance of the project by WYDOT and the County, the County shall return, within thirty (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 County. The County 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 County. 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.
- E. Upon completion and acceptance of this project, the County shall maintain, at its sole expense, all features 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.

7. Responsibilities of WYDOT. WYDOT agrees to:

- A. Survey work for this project will be performed under the immediate direction, control and supervision of WYDOT or its consultant in accordance with the requirements specified by WYDOT and agreed to by the County.
- B. WYDOT will perform Preliminary Engineering to include engineering investigations, environmental studies, developing design plans, writing specifications and compiling final cost estimates in accordance with the current edition of the American Association of State Highway and Transportation Officials (AASHTO) Load and Resistance Factor Design (LRFD) Bridge Design Specifications, 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. Except as provided in Section 6 above, acquire all necessary rights-of-way and provide any relocation assistance necessary for this project.

D. WYDOT will perform utility adjustments. If any adjustments are needed, 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 existing property rights. Costs for reimbursable utility work not owned by the County 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.

The County 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 the most recent County policies and regulations.

- E. WYDOT will perform the letting of this project. The County shall be given the opportunity to approve final design plans and estimates prior to the advertisement for bids by WYDOT. Likewise, the County 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 County agrees to amend costs shown on Exhibit B to match the actual amount bid, as well as make proportionate changes in the match and overmatch amounts.
- F. Construction engineering for this project will be performed by and under the immediate direction, control and supervision of WYDOT in accordance with the plans and specifications.

8. Special Provisions.

- A. Project Abandonment. Should the County abandon the project at any time, or if the project is not let to construction within two (2) years of the completion of the design or prior to the completion, due to the delay or actions by the County, the County shall reimburse WYDOT for the entire cost, including any federal aid portion of the work completed at the time of abandonment.
- **B.** Assumption of Risk. The County shall assume the risk of any loss of state or federal funding, either administrative or program dollars, due to the County's failure to comply with state or federal requirements. WYDOT shall notify the County of any state or federal determination of noncompliance.
- C. Environmental Policy Acts. The County 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 County 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 County 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 County 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 County 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 County certifies and agrees that, in accordance with P.L. 101-121, payments made from a federal grant shall not be utilized by the County 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 County and subcontractors may also be required to submit an additional certification statement and disclosure form acceptable to WYDOT before commencement of the work.
- G. Monitoring Activities. WYDOT shall have the right to monitor all activities related to this Agreement that are performed by the County 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 Agreement related work.
- H. Nondiscrimination. The County 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 County 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.
- I. 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.
- 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 County 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.
- K. Suspension and Debarment. By signing this Agreement, the County 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 County 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.
- L. Administration of Federal Funds. The County agrees its use of the funds awarded herein is subject to the Uniform Administrative Requirements of 2 C.F.R. 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.
- M. Copyright License and Patent Rights. The County 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 County purchases ownership using funds awarded under this Agreement. The County 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 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 Prohibited and Agreement Shall Not be 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 County shall not use this Agreement, or any portion thereof, for collateral for any financial obligation without the prior written permission of WYDOT.
- **D.** Audit and Access to Records. WYDOT and its representatives shall have access to any books, documents, papers, electronic data, and records of the County 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 County 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 agreements for work related to this Agreement or may award agreements to other contractors for work related to this Agreement. The County shall cooperate fully with other contractors and WYDOT in all such cases.
- G. Compliance with Laws. The County 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. Except when disclosure is required by the Wyoming Public Records Act or court order, all documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the County in the performance of this Agreement shall be kept confidential by the County unless written permission is granted by WYDOT for its release. If and when County receives a request for information subject to this Agreement, County 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 twelve (12) pages; Exhibit A, Location Map, consisting of one (1) page; and Exhibit B, Summary of Project Costs, consisting of one (1) page, represent the entire and integrated Agreement between the parties and supersede 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.
- J. Ethics. The County 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 Contractor'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 County 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 County shall be free from control or direction over the details of the performance of services under this Agreement. The County shall assume sole responsibility for any debts or liabilities that may be incurred by the County 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 County 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 behalf of the State of Wyoming or WYDOT. The County agrees that no health or hospitalization benefits, workers' compensation, unemployment insurance or similar benefits available to State of Wyoming employees will inure to the benefit of the County or the County's agents or employees as a result of this Agreement.

- O. 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.
- P. Nondiscrimination. The County 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.
- Q. Ownership and Return of Documents and Information. WYDOT is the official custodian and owns all documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the County in the performance of this Agreement. Upon termination of services, for any reason, the County agrees to return all such original and derivative information and 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.
- R. Patent or Copyright Protection. The County recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license, or other similar restrictions, and warrants that no work performed by the County or its subcontractors will violate any such restriction. The County shall defend and indemnify WYDOT for any infringement or alleged infringement of such patent, trademark, copyright, license, or other restrictions.
- S. 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. § 9-2-3204(b)(iv).

- T. Insurance Requirements. The County is protected by the Wyoming Governmental Claims Act, Wyo. Stat. § 1-39-101, et seq., and certifies that it is a member of the Wyoming Association of Risk Management (WARM) pool or the Local Government Liability Pool (LGLP), Wyo. Stat. § 1-42-201, et seq., and shall provide a letter verifying its participation in the WARM or LGLP to 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 County expressly reserves 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. 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 County 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 County 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.
- CC. Counterparts. This Agreement may be executed in counterparts. Each counterpart, when executed and delivered, shall be deemed an original and all counterparts together shall constitute one and the same Agreement. Delivery by the County of an originally signed counterpart of this Agreement by facsimile or PDF shall be followed up immediately by delivery of the originally signed counterpart to WYDOT.

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10. <u>Signatures</u>. 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:	COUNTY: BOARD OF LARAMIE COUNTY COMMISSIONERS		
Signature	Troy Thompson, Chairman		
Print Name	Print Name		
Title	Date		
(SEAL)			
ATTEST:	WYDOT: WYOMING DEPARTMENT OF TRANSPORTATION		
Caitlin Casner, Secretary Transportation Commission of Wyoming	Mark J. Gillett, P.E., Chief Engineer		
	Date		
Approved as to form Alysia Goldman, Assistant Attorney General	RECEIVED AND APPROVED AS TO FORM ONLY BY THE LARAMIE COUNTY ATTORNEY 222352 5 19 27		

Structure DLM

250

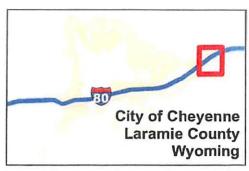
Federal Project STP-BROS CN02110 Bridge Over Union Pacific Railroad Structure No. DLM Pershing Blvd (County Road 210-2) Mile Marker 8.2

750

1,000 Feet

500





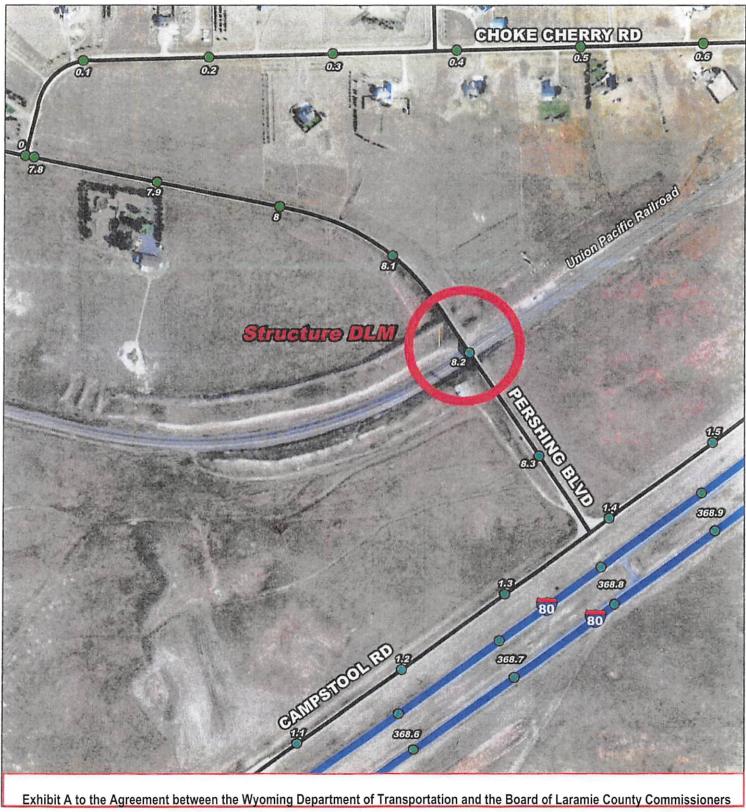


EXHIBIT B

Summary of Project Costs

Federal Project STP-BROS CN02110 Bridge Over Union Pacific Railroad Structure No. DLM County Road 210-2 Laramie County

March 30, 2022

Costs were prepared by WYDOT.

Estimated Project Costs:

<u>Item</u>		Cost
Estimated Construction Costs	=	\$ 90,000.00
Preliminary Engineering	=	\$ 175,000.00
Construction Engineering	=	\$ 25,000.00
Total Direct Costs	=	\$ 290,000.00
Indirect Cost Allocation Plan (ICAP)	=	\$ 31,900.00
Total Project Costs	=	\$ 321,900.00
Funding Breakdown:		
WYDOT's federal aid match (90.49%)	=	\$ 291,287.00
County match portion (9.51%)	=	\$ 30,613.00

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.