

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

Federal Project N852003  
Cheyenne-Torrington  
(Gun Barrel South)  
Laramie 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 Board of Laramie County Commissioners (County) whose address is 309 West 20<sup>th</sup> Street, Cheyenne Wyoming 82001.
2. **Purpose.** The purpose of this Agreement is to set forth the terms and conditions in which the County and WYDOT desire to obtain right-of-way drainage easement acquisition for the replacement of culverts under County Road 139 (Station 1346+50) for Chivington Draw. Chivington Draw flows under County Road 139 through 4 – 36 inch CMP culverts that are 67 feet in length, aligned at a 0 degree skew. Approximately 100 feet downstream, under US 85, is a 66 inch CMP culvert that is 64 feet long. To reduce overtopping of the roadways, the pipe culverts will be replaced with triple barrel 9 foot by 4 foot concrete box culverts. The box culverts necessitate the need for drainage easements on adjacent landowners. WYDOT has heretofore designated the location and the County has approved the location for the construction of the box culverts, as shown on the attached location map marked Exhibit "A", and which by this reference is hereby made a part of this Agreement. WYDOT, the County and the traveling public shall derive a benefit and advantage by reason of having the box culvert 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 by certified mail.
4. **General Conditions of Right-of-Way Acquisition**
  - A. WYDOT will acquire the easement in the name of the County. If necessary, the County shall be responsible for acquiring rights-of-way by condemnation proceedings. WYDOT will assist the County in condemnation proceedings by preparing exhibits and displays, and by providing the deposit required by Wyo. Stat. § 1-26-513.

- B. WYDOT will make the necessary surveys and construct the new box culverts for this project. The work of making the surveys, determining needed rights-of-way and constructing the roadway shall be performed under the immediate directions, control and supervision of WYDOT in accordance with the plans and specifications prepared by WYDOT. All work covered by this Agreement shall meet American Disability Act (ADA) standards.
- C. The County shall maintain the completed triple barrel 9 foot by 4 foot box culvert under County Road 139 at its own expense. Maintenance shall include all repairs necessary to keep the improvement in its functional constructed condition.

5. **Special Provisions**

- A. **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.
- B. **Conflict of Interest.** Per 2 CFR 200.112 the County must disclose in writing any potential conflict of interest to WYDOT including financial or other personal interests.
- 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. Mandatory Disclosures.** Per 2 CFR 200.113 the County 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 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 the related work.

- I. 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.

- 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 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.

- L. 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.
- M. Administration of Federal Funds.** The County 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 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.

## **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 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 Contracts.** WYDOT may award supplemental or successor contracts for work related to this Agreement or may award contracts 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, and all federal grant requirements and executive orders 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 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, the 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 nine (9) pages; and Exhibit "A", location map, consisting of one (1) page 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.

- 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 the County'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 the behalf of the State of Wyoming or WYDOT. The County 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 County or the County's agents or employees as a result of this Agreement.
- O. **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.

- 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 and Information.** WYDOT 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. Upon WYDOT's verified receipt of such information, the County 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 County 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. 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.
- T. 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 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. 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.

- U. **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.
- V. **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.
- W. **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.
- X. **Time is of the Essence.** Time is of the essence in all provisions of this Agreement.
- Y. **Titles Not Controlling.** Titles of sections and subsections are for reference only and shall not be used to construe the language in this Agreement.
- Z. **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.
- AA. **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. The County's failure to deliver, either personally or via US Mail, postage prepaid, the originally signed counterpart to WYDOT within five (5) business days shall be considered a material breach and may result in immediate termination of this Agreement by WYDOT.

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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:**

**BOARD OF LARAMIE  
COUNTY COMMISSIONERS:**

\_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Chair

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

(SEAL)

**ATTEST:**

**WYOMING DEPARTMENT OF TRANSPORTATION:**

\_\_\_\_\_  
Sandra J. Scott, Secretary  
Transportation Commission of Wyoming

By: \_\_\_\_\_  
Gregg C. Fredrick, P.E., Chief Engineer

(SEAL)

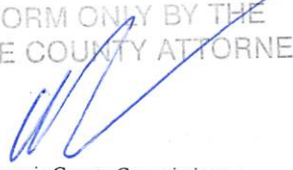
\_\_\_\_\_  
Date

Approved as to form:

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

Date agreement prepared: 12-12-17

RECEIVED AND APPROVED AS  
TO FORM ONLY BY THE  
LARAMIE COUNTY ATTORNEY



**CHEYENNE - TORRINGTON**  
**US 85**  
**GUN BARREL SOUTH**  
**LARAMIE COUNTY**

