

**AGREEMENT FOR EXTRAORDINARY SNOW REMOVAL AND
EXTRAORDINARY MAINTENANCE
F. E. WARREN AIR FORCE BASE**

FOR SEPTEMBER 1, 2018 THROUGH SEPTEMBER 30, 2023

THIS AGREEMENT is made and entered into by and between Laramie County of the State of Wyoming (herein referred to as the "County") and the United States Department of Transportation, Federal Highway Administration (FHWA). The parties agree as follows:

RECITALS

WHEREAS, pursuant to the provisions of Section 210 of Title 23, United States Code, and authority delegated by the Secretary of Transportation, FHWA is authorized to provide for the maintenance of defense access roads;

WHEREAS, the Military Surface Deployment and distribution Command (SDDC) acting pursuant to authority delegated by the Secretary of Defense, has certified that it is important to the national defense to provide for Extraordinary Snow Removal (ESR) and Extraordinary Maintenance (EM) under the conditions herein set forth on the defense access roads, hereinafter described, and has requested that FHWA take appropriate action to provide for such extraordinary snow removal out of funds transferred to FHWA by the Department of the Air force; and

WHEREAS, the County is willing to cooperate in the interest of national defense by performing the extraordinary snow removal and extraordinary maintenance work, herein described, under conditions that will result in neither a profit nor loss to the County.

NOW, THEREFORE, the parties hereby agree as follows:

GENERAL:

The term "Defense Access Roads", i.e., Transporter Erector (TE) routes only, means those public roads designated as Defense Access Roads serving the Air Force Base Minuteman and Peacekeeper missile sites which consists of roads for all flights from "A" through "T" in Wyoming designated in color on the maps attached to this agreement, and made a part hereof.

Snow removal on county roads is normally the responsibility of local county agencies and under normal conditions the missile wing has the flexibility to reschedule its activities allowing these agencies time to provide snow removal service according to their regular schedules and priorities. In some instances, the Air Force may need a road open prior to the County's scheduled snow removal, and in other instances the County may not normally plow roads where remote sites are located if other means of access is available to local inhabitants. Therefore, the ESR program has been established.

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The ESR program is essential to insure the security of the facilities, prevent extensive equipment damage, and to protect the health and safety of Air Force personnel. The ESR program is only for roads not on the State maintained highway system unless otherwise determined by emergencies, severity of storms, or other conditions. In the event of extreme winter weather the Air Force personnel must evaluate options available such as rescheduling, use of special vehicles and/or ESR to meet mission needs in a timely manner. Depending on circumstances, ESR may not be the most timely or economical method.

Maintenance on county roads is normally the responsibility of local county agencies. Extraordinary Maintenance is repair work determined necessary and requested by the Air Force, or the Federal Highway Administration on behalf of the Air Force, that is over and above maintenance required to accommodate ordinary county traffic. The County will, upon notification by an authorized agent of the USAF, or FHWA on behalf of the USAF, repair the defense access roads' defects to current standards as rapidly as appropriate. Extraordinary Maintenance includes such items as gravel resurfacing, major culvert/bridge repairs, subgrade stabilization or repair, etc. Prior concurrence of FHWA, after authorization of the annual apportionment, is required for all major work, with the exception of gravel resurfacing.

The term of this agreement shall run continuously from September 1, 2018, through and including September 30, 2023.

ESR and EM will not be requested for routine maintenance normally performed by the local agencies.

ESR may be requested to insure snow removal on a 24-hour notice after termination of snowfall for crew changeover at Launch Control Facilities (LCF's) and priority maintenance at LF's and LCF's (when helicopter support is not available). These requests are to insure health and safety for Air Force personnel and to insure adequate and safe operations of the weapon system. These requests would be made only after prolonged snow conditions or extensive drifting conditions.

When ESR is requested, the County will schedule the snow removal for efficient use of resources and to accomplish the removal within the agreed time frames, unless the Air Force establishes a priority for snow removal to particular sites.

The County agrees to perform the designated snow removal as herein described on the defense access roads designated in this agreement, when notified by an agent representing F. E. Warren Air Force Base, Cheyenne, Wyoming. The County shall, at all times during the term of this agreement, keep FHWA supplied with telephone numbers which can be used on a 24-hour basis for requesting ESR service. The County will be supplied with telephone numbers for Air Force Base Administration and FHWA. Written notice of these numbers will be revised as necessary. Special attention is directed at the

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need for positive communication during holiday periods. As soon as possible after the access road to a site has been cleared, the Air Force snow desk in Cheyenne, Wyoming is to be notified by telephone.

EQUIPMENT AND MATERIALS:

The County will receive a lump sum of \$50,000 for startup mobilization and snow removal without Air Force notification on the missile site entrance roads as a part of routine snow plowing on the adjacent county road. The lump sum will become available and may be billed by the County upon execution of this agreement and annually with each amendment of the basic agreement.

In addition to the mobilization fee, the County will be reimbursed the hourly rate for those classes of equipment listed at the Federal Emergency Management Agency's (FEMA) website. The current website is <https://www.fema.gov/schedule-equipment-rates>. Rates for equipment not listed will be furnished by FEMA upon request.

Equipment operational charges will be billed for actual hours utilized on ESR and EM. Reimbursement will be based on the current FEMA equipment rates at the start of ESR season as of October 1st. The FEMA rates are stated to account and compensate for ownership and operation of equipment, including depreciation, overhead, all maintenance, field repairs, fuel, lubricants, tires, OSHA equipment and other costs incidental to operation. Standby equipment costs are not eligible. No adjustment will be made for fuel price escalation or de-escalation.

The County is responsible to account for the county employees and equipment size and attachments actually used on ESR calls for the Air Force and shall submit that data with the request for reimbursement.

Any materials needed for EM work will be paid for on a force account basis, with the cost not to exceed the actual cost of the materials to the County.

Sand used by sanders will be invoiced for actual cost and FHWA will reimburse the County for the cost of sand applied in the ESR program.

LABOR AND ADMINISTRATION:

FHWA agrees to reimburse the County for the cost of direct ESR and EM labor, including overtime and those fringe benefits normally paid by the County such as contribution to retirement systems, insurance programs, leave, etc.

Additionally, FHWA agrees to pay the Laramie County Road or Public Works Departments a lump sum of \$5,000 for labor management.

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OUTSIDE EQUIPMENT RENTAL:

When considered necessary by the County, equipment may be rented from outside agencies/companies to perform the work provided for, herein, if approval is obtained from FHWA. The County will be reimbursed for the actual documented costs of operation and rental of this equipment.

PAYMENT OF OPERATIONAL COSTS:

The County shall periodically submit a billing and certified settlement of the operational costs which it has incurred for ESR and EM. Records of the costs shall be recorded and maintained by the County. Such records will be forwarded to FHWA when seeking reimbursement. Detailed records of the costs associated with ESR and EM claims shall be retained on file by the County for a minimum of 3 years after the date of final payment for each contract period and made available for review or audit by FHWA upon request. Any exceptions to this basic record retention requirement shall be in accordance with 49 CFR §18.

In regard to EM work, when county road standards are not being used, engineering services may be required. The engineering services required and payment therefore will be formulated by a separate agreement as needed.

Charges will be based on actual hours incurred on ESR and/or EM.

The County shall not enter into any subcontracts for any of the work contemplated under this agreement without the prior written authorization of FHWA; any such authorization(s) shall be attached to the original of this agreement.

The County shall comply with Title VI of the Civil Rights Act of 1965, as amended by 49 CFR §18.

Each billing for ESR will include the following information:

- Time and date the Warren AFB agent requested ESR and the agent's name
- Time and date work began on each road segment
- Time and date road cleared
- Time and date the Warren AFB agent was notified by the County that the road is clear
- Hours of operation for each piece of equipment
- An accurate description of each piece of equipment
- Name, date, and number of hours worked for each worker and whether straight time or overtime
- Hourly reimbursement rate

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Each billing for EM will include the following information:

- Date and hours of operation for each piece of equipment
- An accurate description of each piece of equipment
- Name, date, and number of hours worked for each worker and whether straight time or overtime
- Hourly reimbursement rate
- Quantity and cost of all materials used, including basis of cost of materials
- Billings are to be submitted to:

**Federal Highway Administration
2617 E. Lincolnway, Suite. D
Cheyenne, WY 82001-5671**

This agreement will become effective on September 1, 2018, and shall run continuously through September 30, 2023, unless extended by the parties. Extensions of this agreement, including any necessary adjustments or additional provisions, will cover the period from September 1st through August 31st of the following year after execution or amendment of the agreement extension.

The Agreement, nor any rights or obligations hereunder shall be assigned or delegated by a party without prior written consent of the other party.

This Agreement shall be modified only by a written agreement, duly executed by all parties hereto. If any provision of the Agreement is held invalid or unenforceable by any court of competent jurisdiction, or if the COUNTY is advised of any such actual or potential invalidity or unenforceability, such holding or advice shall not invalidate or render unenforceable any other provision hereof. It is the express intent of the parties that the provisions of the Agreement are fully severable. Neither party shall be liable to perform under the Agreement if such failure arises out of causes beyond control, and without the fault or the negligence of said party. Such causes may include, but are not restricted to, Act of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. In every case, however, a failure to perform must be beyond the control and without the fault or the negligence of said party.

This Agreement may be terminated without cause, by either party, upon thirty (30) days written notice by certified mail, but shall not be terminated prior to May 31, 2019, or May 31st of the year following execution or amendment to the agreement without notification of substantial breach.

The laws of the State of Wyoming shall be applied in the interpretation, execution, and enforcement of this agreement.

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The parties may request changes in the services to be performed hereunder. Such changes, which are mutually agreed upon by and between both parties, shall be incorporated by written amendment to this agreement.

All parties agree they will not discriminate against any person who performs work under the terms and conditions of this Agreement because of race, color, gender, creed, handicapping conditions, or national origin. All parties agree they will not discriminate against a qualified individual with a disability, pursuant to law as set forth in the Americans with Disabilities Act, P.L. 101-336, 42 U.S.C. §12101 et seq., and/or any properly promulgated rules and regulations relating thereto, and each party further agrees to indemnify, release, save and hold harmless the other and their officers, agents, and employees from any causes of action or claims or demands arising out of the failure of that party in performing the Agreement to comply with the requirements, responsibilities and/or duties as such are set forth in the Americans with Disability Act and/or properly promulgated rules and regulations related thereto.

The County and FHWA do not waive their Governmental/Sovereign Immunity, as provided by an applicable law including Wyo. Stat. 1-39-101 et seq., by entering into the Agreement. Further, the County and FHWA fully retain all immunities and defenses provided by law and regard to any action, whether in tort, contract or any other theory of law, based on the Agreement.

The parties hereto release the other parties and their officers, agents, and employees from any cause of action arising out of the negligent performance by the other parties. Each party to this Agreement shall be responsible for any liability arising from its own conduct. Neither party agrees to insure, defend, or indemnify the other.

Private individuals using their own equipment under contract to Federal, State, or Local Governments are required to pay wheel tax fees, must display Wyoming registration, and must be qualified with the Wyoming Department of Transportation, Regulatory Section.

All notices required and permitted under the Agreement shall be deemed to have been given, if and when deposited in the U.S. Mail, properly stamped and addressed to the party for who intended at such parties' address listed herein or when personally delivered to such party. A party may change its address for notice hereunder by giving written notice to the other party.

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 the Agreement, and shall insure solely to the benefit of the parties to the Agreement.

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This agreement represents the entire and integrated Agreement between the parties and
supersedes all prior negotiations, representations, and agreements whether written or oral.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, as dated below:

APPROVED:

LARAMIE COUNTY, WYOMING

BY: _____

DATE: _____

TITLE: _____

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

BY: Mark E Bauschle

DATE: 2/13/2018

TITLE: Pavement and Structures Engineer

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

