

Approved as to  
form only:

Stephanie Boster

Date: 10-26-22

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

Project ARSCT B231A01  
Various Streets in the City  
of Cheyenne  
Epoxy Striping  
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 City of Cheyenne (City), whose address is 2101 O'Neil Avenue, Cheyenne, WY 82001.
2. **Purpose of Contract.** The purpose of this Agreement is to set forth the terms and conditions by which the City and WYDOT will perform the epoxy striping of various roadways in the City of Cheyenne, as described in Exhibit A, Summary of Project Costs, which is attached to and incorporated into this Agreement by this reference. The location of the project is Dell Range Boulevard from College Drive to Yellowstone Road, Yellowstone Road from Central Avenue to New Bedford Drive, and 19th Street from Hugur Avenue through Logan Avenue. This project is associated with the WYDOT main project B231027.
3. **Term of Contract.** This Agreement is effective when all parties have executed it (Effective Date). The term of the Agreement is from the Effective Date through the completion of the project. All services shall be completed during this term. However, the Parties agree that maintenance requirements described in Section 5 Subsection G are indefinite.
4. **Payment.**
  - A. The City agrees to pay WYDOT the entire actual cost of this project, including all 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 billing. Estimated costs are set forth on the Exhibit A. 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 A.
  - B. The costs shown on the Exhibit A are estimates only and the City understands that the final costs may be higher or lower. If the actual costs go over by twenty percent

(20%) of the total estimated costs, both parties must agree and sign an amendment for the additional costs.

- C. WYDOT will bill the City on a monthly basis unless otherwise agreed upon between the parties.

**5. Responsibilities of City.**

- A. Pay WYDOT in accordance with Section 4 above.
- B. The City shall, at no cost to WYDOT, designate a qualified project representative capable of making timely decisions and authorized to sign documents concerning the construction of the project. The City will identify the project representative in a letter to WYDOT.
- C. WYDOT will give the City the opportunity to review and comment on the estimates prior to the advertisement of bids.
- D. WYDOT shall ask the City 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 amend estimated costs to match the actual bid amount.
- E. Upon completion and acceptance of this project, the City shall maintain, at its sole expense, all features constructed under this Agreement. Maintenance shall include all repairs necessary to keep the improvement in its functional constructed condition.
- F. Upon completion and acceptance of the project by WYDOT and the City, the City 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 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.

**6. Responsibilities of WYDOT.**

- A. WYDOT will conduct preliminary survey work, engineering investigations, National Environmental Policy Act (NEPA) Compliance and right-of-way studies and shall develop final design plans and estimates.
- B. WYDOT will perform construction engineering for this project in accordance with project plans and specifications.

- C. WYDOT will advertise this project and award a bid to the lowest qualified bidder in accordance with WYDOT policies.

7. **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 City 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 City which are pertinent to this Agreement.
- E. **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 City shall cooperate fully with other contractors and WYDOT in all such cases.
- F. **Compliance with Laws.** The City shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Agreement.
- G. **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 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 the 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.

- H. Entirety of Agreement.** This Agreement, consisting of seven (7) pages, and Exhibit A, City of Cheyenne 2023 Epoxy Cost Estimate, 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.
- I. 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 Contractor's profession.
- J. 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.
- K. 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.
- L. 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.
- M. 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 behalf of the State of Wyoming or WYDOT. The City 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 City or the City's agents or employees as a result of this Agreement.

- N. 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.
- 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. 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 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 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.
- Q. 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).
- R. Insurance Requirements.** The City 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.
- S. 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 City, shall identify WYDOT as the sponsoring agency and shall not be released without prior written approval from WYDOT.
- 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 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.
- 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 WYDOT upon thirty (30) days written notice. This Agreement may be terminated by 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.
- BB. 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 City 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.

**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.

**CITY:  
CITY OF CHEYENNE**

**ATTEST:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**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 # 228753  
Date agreement prepared: 10/18/2022



## City of Cheyenne 2023 Epoxy Cost Estimate

	All Values in LF					Bike lane
	4" White Solid	4" White Skip*	4" Yellow Solid	4" Yellow Skip*	8" White Solid	4" White Solid
Dell Range	134	9,635	37,975	4,590	9,077	
Yellowstone	1,450	4,335	15,400	2,550	2,254	25,517
19th		54			172	
<b>Total*</b>	<b>1,584</b>	<b>3,506</b>	<b>53,375</b>	<b>1,785</b>	<b>11,503</b>	<b>25,517</b>

\*Total for "skip" QTY = Sum of column divided by 4 (10 FT line with 30 FT skip assumed)

4" Yellow Total	55,160	LF
4" White Total	30,607	LF
<b>4" Total</b>	<b>85,767</b>	<b>LF</b>
<b>8" Total</b>	<b>11,503</b>	<b>LF</b>

### Estimated Construction Costs

Force Account Work					\$ 1,000.00
Mobilization					\$ 25,000.00
Temporary Traffic Control					\$ 25,000.00
4" Unit Price	0.5	\$/FT	85,767	LF	\$ 42,884.00
8" Unit Price	0.95	\$/FT	11,503	LF	\$ 10,928.00
<b>Total</b>					<b>\$ 104,812.00</b>
Preliminary Engineering		10 %			\$ 10,481.20
Construction Engineering		10 %			\$ 10,481.20
<b>Total Direct Costs</b>					<b>\$ 125,775.00</b>
Indirect Cost Allocation Plan (ICAP)		11 %			\$ 13,836.00
<b>Total Direct Costs + Indirect Costs</b>					<b>\$ 139,611.00</b>

NOTE: All costs shown are rounded up to the nearest even dollar.

The above figures are for estimating purposes only and are subject to revision through the life of this project.