

**AMENDED AND RESTATED MASTER AGREEMENT
BETWEEN THE WYOMING DEPARTMENT OF TRANSPORTATION,
AND THE CHEYENNE METROPOLITAN PLANNING ORGANIZATION**

THIS Amended and Restated Master Agreement (Agreement) is made and entered into by and between the **Wyoming Department of Transportation (WYDOT)**, whose address is 5300 Bishop Boulevard, Cheyenne, Wyoming 82009 and the **Cheyenne Metropolitan Planning Organization (Cheyenne MPO)**, whose address is 2101 O'Neil Avenue, Cheyenne, Wyoming 82001, through its participating jurisdictions consisting of the City of Cheyenne (City), whose address is: 2101 O'Neil Avenue, Cheyenne, Wyoming 82001, and Laramie County (County), whose address is 310 West 19th Street, Suite 300, Cheyenne, Wyoming 82001.

RECITALS

1. **Metropolitan Planning Organization Designation.** On October 27, 1981, the Governor of the State of Wyoming designated the MPO and identified the Cheyenne MPO Policy Committee as the body to provide for the direction of transportation planning of the MPO in accordance with federal law.
2. **Federal Transportation Planning United States Codes (23 U.S.C. §104(f), 23 U.S.C. §134, 23 CFR Part 450, and 49 U.S.C. §5303 – 5306):** Provides funding and requires designation of a metropolitan planning organization for Census Urban Areas of at least fifty thousand (50,000) population. An urban area consists of a densely settled core of census blocks that meet minimum housing unit density and/or population density requirements. This includes adjacent territory containing non-residential urban land uses. To qualify as an urban area, the territory identified according to criteria must encompass at least two thousand (2,000) housing units or have a population of at least five thousand (5,000) to carry out a transportation planning process and receive federal funding. These statutes and regulations require the State and the local governments to coordinate the planning and construction of all urban transportation facilities with a continuing, cooperative, and comprehensive transportation planning process.
3. **Legal Authority.** This Agreement is executed in accordance with relevant federal and state statutory and regulatory frameworks to ensure compliance with comprehensive transportation planning standards as follows:
 - A. **23 U.S.C. §§ 104(f) and 134:** Mandates the distribution of federal funds and the requirement for metropolitan planning organizations (MPOs) to facilitate coordinated transportation planning in urbanized areas.
 - B. **49 U.S.C. §§ 5303-5306:** Establishes the framework for metropolitan transportation planning and the requirement to develop transportation plans and programs in cooperation with state and local governments.
 - C. **23 CFR Part 450:** Details the metropolitan and statewide transportation planning regulations, outlining the planning process, public involvement requirements, and performance-based planning and programming.

- D. **2 CFR Part 200:** Provides federal guidance on cost principles, audit standards, and administrative requirements for federal awards.
- E. **Infrastructure Investment and Jobs Act (Public Law 117-58):** Updates federal planning requirements and funding structures through Fiscal Year 2026.
- F. In addition to federal statutes and regulations, this Agreement accords with Wyoming state statute, ensuring the MPO's activities are consistent with state policies. Compliance with these statutes ensures eligibility for federal funding and supports a collaborative, performance-based planning process to meet regional transportation needs.

AGREEMENT

NOW, THEREFORE, incorporating the foregoing recitals by this reference and in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the sufficiency of which is acknowledged, the parties agree as follows:

1. **Purpose of Agreement.** The purpose of this Agreement is to amend and restate in its entirety the Original Agreement among WYDOT, the Federal Highway Administration, and the Cheyenne MPO, dated January 8, 2014 (the Original Agreement), to provide the structure and process for the continuing, cooperative and comprehensive consideration, development, and implementation of transportation plans and programs for the Cheyenne Metropolitan Planning Area (MPA) of the State of Wyoming in accordance with 23 U.S.C. §134 and 49 U.S.C. §§5303 – 5306.
2. **Term of Agreement.** This Agreement is effective when all parties have executed it (Effective Date) and shall remain in full force and effect until terminated. This Agreement is intended to span the duration of the Infrastructure Investment and Jobs Act (IIJA) highway legislation through Fiscal Year 2026 and any related extensions, continuing resolutions, or modifications to this legislation.
3. **Fiscal Agent/Contracting Authority.** The Cheyenne MPO acts on behalf of the Cheyenne Urbanized Area for the distribution of federal aid planning funds as set forth and described in this Agreement. Participating jurisdictions in the MPO enter into contracts and agreements for carrying out the MPO functions and the distribution of funds. The City shall act as the Custodian of funds for and on behalf of the Cheyenne MPO; and the parties desire to appoint the City to act as its Agent for future contracts and fiscal management for and on behalf of the MPO.

The parties appoint the City to enter into contracts for and on behalf of the MPO and to further act as the MPO's Fiscal Manager under the following conditions:

- A. That any such contract to be entered into on behalf of the MPO by the City is approved in writing by a majority of the voting members of the MPO Policy Committee prior to its execution and implementation by the City.

- B. The City acts as the MPO's Fiscal Manager and Custodian of Funds, ensuring compliance with approved budgets and federal funding regulations. The City shall not unduly interfere with MPO decision-making and must execute contracts through the Unified Planning Work Program as directed by the MPO Policy Committee. The MPO retains authority over financial planning and prioritization of funds.
- C. Under this Agreement, the Cheyenne MPO is recognized as an entity of the City and operates with direct oversight from the MPO Policy Committee. The MPO benefits from the guidance of the Mayor or the Mayor's appointee while maintaining its operational autonomy. The City shall provide offices, a library, storage space, and a conference room to accommodate furniture and MPO employees. Additionally, the Cheyenne MPO is covered under the City's liability insurance through the Wyoming Association of Risk Management (WARM), ensuring comprehensive risk protection.
- D. Cheyenne MPO personnel shall follow the City's personnel policies and regulations. The selection committee for the MPO Director position, composed of representatives from the City, County, and WYDOT, shall submit its selected candidate to the MPO Policy Committee for approval. The MPO Director shall have the authority to hire MPO staff, ensuring the organization's operational needs are met. The Mayor or the Mayor's designee oversees employee evaluations, wages, benefits, and supervision; and shall take into account the MPO's priorities and input.

Upon the City entering into an approved contract, transaction, or disbursement of funds, the City shall have all lawful authority to enforce any such contract, and to further make any such authorized disbursements for and on behalf of the Cheyenne MPO.

The City accepts and agrees to act as the agent of the Cheyenne MPO for contract administration and as its Fiscal Manager. Each party reserves the right to terminate this agency appointment of the City as the contract agent and Fiscal Manager for the Cheyenne MPO upon thirty (30) days written notice to the other parties. The termination notice shall be addressed to the "Attention Mayor of the City of Cheyenne, 2101 O'Neil Avenue, Cheyenne, WY 82001", in the case of the Cheyenne MPO, said notice shall be addressed to the voting members of the MPO Policy Committee via the MPO Director.

4. **Organization and Responsibilities.**

- A. **MPA under 23 U.S.C. § 134.** The MPA specified by 23 U.S.C. § 134(e) shall be the geographical area shown on **Exhibit A**, MPO Planning Boundary, which is attached to and incorporated into this Agreement by this reference. The MPO and the Governor of Wyoming or his designee may mutually agree to change the boundaries of the MPA.

B. Cheyenne MPO Responsibilities. The Cheyenne MPO shall:

- (i) Facilitation. Facilitate the continuing, cooperative, and comprehensive multimodal transportation planning process between the affected jurisdictions and WYDOT in order to develop the required documents, including but not limited to: Metropolitan Transportation Plan (MTP), Transportation Improvement Program (TIP), the Unified Planning Work Program (UPWP), and any additional requirements created by the IJA legislation and any continuing resolutions or extensions.
- (ii) Coordination. Coordinate between WYDOT and the MPO as required by federal regulations in order to receive and expend federal funding for transportation improvements. The MPO and WYDOT shall jointly develop and implement transportation plans and programs, assuring compliance with State and federal requirements.

Be responsible for the metropolitan transportation planning process within the MPA boundaries in accordance with the UPWP approved by the MPO Policy Committee, WYDOT, the Federal Highway Administration (FHWA), and the Federal Transit Administration (FTA).

- (iii) MPO Employee Training. MPO personnel shall attend WYDOT's Local Public Agency (LPA) training produced by WYDOT's Local Government Coordination Office and have at least one (1) employee maintain certification of the training.

MPO personnel shall participate in training activities necessary to ensure compliance with administrative, financial, and legal requirements for maintaining the transportation planning process and retaining eligibility for federal and state funding for transportation planning.

MPO employee training may include conferences and webinars. Travel and training shall be documented in the MPO's UPWP and costs shall conform to Government Services Administration (GSA) guidelines for allowability. Only MPO personnel are eligible for reimbursement through this Agreement.

C. Cheyenne MPO Policy Committee.

- (i) Membership. The Cheyenne MPO Policy Committee, shall have as members:
 - (a) The District Engineer or designated representative of WYDOT,
 - (b) The Mayor or designated representative from the City, and
 - (c) One (1) County Commissioner or designated representative from the County.

- (ii) Voting. Each member above shall have one (1) vote.
- (iii) Duties. The MPO Policy Committee shall have overall responsibility for the implementation of this Agreement, coordination of the responsibilities of the MPO's Online Citizens Advisory Committee (OCAC) and Technical Committee, and the final development and adoption of the UPWP, TIP, and MTP. The MPO Policy Committee may appoint other committees as necessary.

The MPO Policy Committee shall function as the decision-making body for the federal Planning (PL) funds, Surface Transportation Block Grant Program (STBG), FTA Section 5305 Funds, Urban Systems funds and any other federal program allowed by the latest United States Department of Transportation legislation. The MPO Policy Committee shall annually set, review, and approve goals of the MPO.

D. Cheyenne MPO Technical Committee.

- (i) Membership. The committee shall be composed of, at a minimum, transportation planners, engineers, and transit providers whose appointment is approved by the MPO Policy Committee and which is further defined by the Bylaws.
- (ii) Voting. Voting membership shall be determined by the MPO Technical Committee Bylaws, but should equitably account for all governmental entities represented at the committee.
- (iii) Duties. The MPO Technical Committee shall review and evaluate all MPO plans and documents from a technical standpoint, and make recommendations to the Policy Committee based on technical sufficiency, accuracy and completeness.

The MPO Technical Committee shall function as the vetting body for all proposed urban systems projects. Projects shall be initiated, reviewed, and coordinated through this committee, including any change in project scope.

All actions of the MPO Technical Committee, including recommendations to the MPO Policy Committee, shall be by a majority vote of the total authorized number of members.

E. Online Citizens Advisory Committee.

- (i) Membership. The committee is comprised of individuals who have an interest in the overall transportation system for the Cheyenne Urban Area. Members may have a special interest in a particular mode or have a general desire to assist the MPO in achieving its goals and objectives. Members may sign up through email, website or at MPO open house project events.

Members must live within the MPO Planning Boundary to receive surveys through email to review plans, answer the survey, and comment on the specific project(s) throughout the fiscal year.

- (ii) Duties. The OCAC shall serve as liaison between the Cheyenne MPO and the residents within the MPO Planning Boundary. It shall also convey to the MPO the goals and wishes of the citizens in the Cheyenne metropolitan area regarding transportation issues.

5. Key Plans and Programs Produced by the MPO. Per 23 CFR 450 and FTA Circular 8100.1D, the MPO shall develop the Metropolitan Transportation Plan (MTP), the Transportation Improvement Program (TIP), the Unified Planning Work Program (UPWP), Annual Listing of Federally Obligated Projects (ALFOP), Public Participation Plan, Self-Certifications and Federal Certifications, the performance-based approach to metropolitan transportation planning, and any additional requirements set by current legislation or continuing resolutions. Revisions shall be undertaken in accordance with Section 6.

A. MTP. The MPO, in cooperation with WYDOT, shall develop a long-range MTP.

- (i) The MPO shall follow the most current federal planning requirements for the MTP, as prescribed in 23 CFR §450 and 23 U.S.C. § 134. The MPO shall consider core elements for the development of key transportation plans and programs, as prescribed in 23 CFR §450.
- (ii) The MTP shall be updated at least once every five (5) years as required by 23 CFR §450, but may be updated more frequently.
- (iii) The MTP shall include a description of the performance measures and performance targets used in assessing the performance of the transportation system in accordance with Section 5(G).
- (iv) The MPO Technical Committee shall review the MTP for recommendation to the MPO Policy Committee.
- (v) The MTP shall be reviewed by the MPO OCAC, who shall have the opportunity to provide comment.

B. Metropolitan Transportation Improvement Program (TIP). The MPO, in cooperation with WYDOT and public transportation operators, is responsible for developing or updating the TIP at a minimum of every four (4) years.

- (i) Development. The MPO shall follow the most current federal planning requirements for the TIP, as prescribed in 23 CFR §450.326 and 23 USC §134. The TIP shall:
 - (a) Contain projects and investment priorities consistent with the current MTP.

- (b) Provide all interested parties with a reasonable opportunity to comment on the proposed TIP.
 - (c) Once implemented, be designed to make progress toward achieving the performance targets established under Section 5(G).
 - (d) Include, to the maximum extent practicable, a description of the anticipated effect of the TIP program toward achieving the performance targets established under Section 5(G).
 - (e) Include capital and non-capital surface transportation projects within the boundaries of the MPA proposed for funding under 23 U.S.C. and 49 U.S.C. Chapter 53.
 - (f) Include all regionally significant projects requiring an action by the FHWA or FTA. For public information and conformity purposes, the TIP shall include all regionally significant projects to be funded with federal or non-federal funds.
 - (g) Include, for each project, the details outlined in 23 CFR 450.326(g) and (h).
 - (h) Contain a financial plan that demonstrates how the approved TIP can be implemented, indicates resources from public and private sources that are reasonably expected to be made available, and recommends any additional financing strategies for needed projects and programs.
 - (i) Be fiscally constrained pursuant to 23 CFR 450.324 with project costs inflated to reflect the expected year of expenditure.
- (ii) Preparation. The TIP shall be prepared in April at least once every four (4) years in cooperation with WYDOT and public transportation operators. WYDOT District 1, County and City staff shall provide lists of programmed projects along with cost estimates and funding sources for the projects to the MPO by May. Amendments to the TIP may be prepared at least annually, if necessary.
 - (iii) Review. Once the TIP is compiled, reviewed by the MPO OCAC and MPO Technical Committee, and adopted by the MPO Policy Committee, the MPO shall forward the TIP to WYDOT for the approval process by June 30. WYDOT shall incorporate the TIP into the State Transportation Improvement Plan (STIP). On completion, WYDOT will forward the STIP to FHWA and FTA for review and approval.
 - (iv) Self-Certifications and Federal Certifications. Concurrent with the submittal of the TIP to WYDOT, the MPO shall certify that the metropolitan

transportation planning process is being carried out in accordance with all applicable federal requirements outlined in 23 CFR 450.334.

- C. Annual Listing of Federally Obligated Projects (ALFOP).** In accordance with 23 CFR §450.334, within ninety (90) days after the close of the fiscal year, WYDOT and the MPO shall publish in compliance with the public participation criteria of the TIP, an ALFOP. The report will contain all projects within the MPO for which FHWA or FTA funds were obligated in the preceding fiscal year. It shall include all federally funded projects, their TIP project number and description, implementing agency, amount of federal funds requested in the TIP, any federal funding that was obligated during the preceding year, and any federal funding remaining and available for subsequent years. WYDOT shall provide the MPO with their respective information required to compile the document.
- D. Unified Planning Work Program.** The MPO is responsible for developing or adjusting the MPO in accordance with 23 CFR §450.308.

The MPO shall:

- (i) Describe the planning priorities facing the MPA, and list all proposed transportation planning and administrative activities to be completed in the upcoming fiscal year.
- (ii) Indicate which agency will perform each task, the schedule for completing the work and the anticipated results.
- (iii) Provide an estimated funding table by activity/task, including a summary of federal and matching funds. The total funding amount specified for the performance of the UPWP planning and administrative activities shall not exceed the total amount of UPWP funds.
- (iv) Incorporate the federal metropolitan planning factors and utilize all federally required Planning Emphasis Areas (PEAs) in the UPWP document.
- (v) Ensure reasonable coordination and review time by all MPO Committees with WYDOT, FHWA and FTA.
- (vi) Submit the final UPWP to WYDOT no later than fifteen (15) days prior to the end of the current fiscal year.

Development and Adoption Process.

WYDOT shall annually provide to the MPO Director in writing the amount of estimated FHWA federal PL and FTA Section 5305(d) funds and required cost share ratios, projected to be available for the following fiscal year.

The MPO staff shall prepare the UPWP in cooperation with WYDOT and the MPO Technical Committees who review and provide comment. The MPO Technical Committee provides recommendations for approval to the MPO Policy Committee.

With MPO Policy Committee approval, MPO Staff shall forward the UPWP to WYDOT for concurrence by FHWA and FTA *prior* to any work being performed.

- E. Title VI Plan.** As a recipient of federal transit funding, the MPO shall develop and update its Title VI Program Plan every three (3) years. The plan must outline how the MPO will ensure compliance with federal nondiscrimination regulations and shall include, at a minimum: a Title VI complaint process, a Limited English Proficiency (LEP) Plan, consideration of Environmental Justice principles, and other elements as specified in FTA Circular 4702.1B. The Title VI Program Plan shall be approved by the MPO Policy Committee and submitted to WYDOT for review and coordination.
- F. Transit Development Plan (TDP).** As a recipient of federal transit funding, the MPO must develop and update the TDP every five (5) years. The plan must focus on how to improve transit services within Cheyenne, including fixed route, micro-transit, and the American with Disabilities Act of 1990 (ADA) paratransit services. The plan should reflect community needs and priorities, recognize funding limitations as well as identify potential new funding sources, emphasize efficient use of available resources, and incorporate new concepts for transit service delivery.
- G. Performance-Based Planning.**

 - (i) The MPO is required to establish performance targets in accordance with 23 U.S.C. § 150(b) that address the USDOT's established performance measures in the areas of safety, infrastructure condition, system reliability, freight movement and economic vitality, environmental sustainability, and reduced project delivery delays.
 - (ii) A target setting agreement between WYDOT and the Cheyenne MPO, first developed in May 2018, is required to be updated every four (4) years or as needed per federal requirements.
 - (iii) The MPO must establish its performance targets no later than one hundred eighty (180) days after WYDOT, in coordination with any public transportation operator receiving federal funds, establishes its own targets.
 - (iv) Selection of performance targets by the MPO shall be coordinated with WYDOT and public transportation operators to ensure consistency, to the maximum extent practicable.
 - (v) If the MPO chooses their own targets, they shall prepare system performance reports, as required by 23 U.S.C. § 134, evaluating the condition and

performance of the transportation system with respect to the performance targets.

- (vi) If the MPO accepts WYDOT's targets, they are required to integrate, directly or by reference, the goals, objectives, performance measures, and targets established by WYDOT and any public transportation operators receiving federal funds into the metropolitan planning process.

H. Public Participation Plan. The MPO shall develop, update, and utilize a documented participation plan, as prescribed in 23 CFR 450.316. The Plan shall provide reasonable opportunity for involvement by all interested parties in carrying out the MPO transportation planning and programming process. The MPO shall also provide reasonable opportunities for preliminary review and comment prior to key decision points.

6. Changes/Amendments to Key Plans and Programs. All changes to key plans and programs shall follow WYDOT, FHWA, FTA and MPO regulations and policies regarding each individual plan, including those for public participation.

A. Major Amendment or Revision. All major amendments shall be reviewed by the MPO OCAC and MPO Technical Committees before being recommended for approval to the MPO Policy Committee.

- (i) MTP. The MPO Policy Committee shall approve any major amendments to the MTP following MPO Technical Committee review.
- (ii) TIP. The MPO Policy Committee shall approve major amendments to the TIP. Revisions are only needed for federally funded or regionally significant projects that require federal approval or authorization action prior to the next scheduled STIP/TIP update. Major amendments include:
 - (a) addition of a new project
 - (b) removal of a project within the first four (4) years of the TIP; and
 - (c) major changes to one (1) or more projects using the following guidelines:
 - (I) Percent of change to a project's total cost of more than thirty percent (30%);
 - (II) Change in funding across mode (highway to transit or vice versa);
 - (III) Major changes in project scope (additional lanes, substantial design modifications, changes affecting non-motorized users, etc.);
 - (IV) Changes in project location limits greater than a quarter (¼) mile (net);
 - (V) Changes affecting funding sources; and
 - (VI) Changes impacting air quality conformity.

- (iii) UPWP. The MPO Policy Committee shall approve any of the following changes to the UPWP following MPO Technical Committee review:
 - (a) significant changes to the UPWP budget;
 - (b) significant scope changes to any UPWP line; or
 - (c) cumulative adjustments that exceed twenty percent (20%) of the original approved program budget, or individual changes of fifty thousand dollars (\$50,000.00) or more for a particular task budget.

B. Other Amendment or Revision

- (i) TIP. The MPO Policy Committee may approve of minor amendments to the TIP either at the regular meeting or virtually if necessary. Notification of such amendments will be provided as information to WYDOT and FHWA. All parties shall be notified within ten (10) calendar days of these changes, including:
 - (a) any change to project year of obligation;
 - (b) project name or description changes;
 - (c) minor cost increase (below thirty percent (30%) as described under major amendments);
 - (d) any change in functional classification affecting a programmed project; and
 - (e) redistribution of identified sources.
- (ii) UPWP. The MPO Policy Committee, WYDOT, FHWA and FTA shall be notified as soon as possible of these changes. Cumulative minor amendments to any contracted project within the UPWP shall not exceed twenty percent (20%) of the original approved program budget, or individual changes of fifty thousand dollars (\$50,000.00) or more for a particular task budget

7. Federal Planning Funding.

In accordance with 23 CFR Ch 1 Part 420.109, WYDOT shall administer FHWA PL funds and FTA 5305 funds either directly or via the Consolidated Planning Grant (CPG) for MTP purposes within the State of Wyoming. The percent split shall be determined by the MPO Fund Distribution Agreement, which shall be documented in a Memorandum of Understanding between WYDOT and the fund recipients. The PL funding amount is adjusted annually based on WYDOT's federal funding allocation and obligation limitation. PL funding as part of the CPG shall carry a match requirement determined by current legislation.

Per 23 CFR Ch 1. §420.109(d) and (e), should the full allocation of PL not be needed by the MPO, or the MPO is not able to provide required cost share for the total PL funding, WYDOT, after consultation with the affected MPO, may redistribute those funds to the other MPO or priority for statewide planning activities in the MPO area and then to small urban areas and then to WYDOT outside of the MPO urban areas.

8. **Division of Cost and Payment.**

- A. **Reimbursement.** The Cheyenne UPWP will follow the federal fiscal year of October 1 to September 30. The maximum amount of CPG funds available each year for reimbursement to the MPO shall not exceed the budget approved in the UPWP or as amended. The Cheyenne MPO shall exercise due diligence in the submission of invoices prior to their submission. WYDOT will make reimbursement within thirty (30) days.
- B. **Non-Billable Activities.** The MPO shall charge non-billable activity directly to the City or County. In accordance with 2 CFR 200, activities which should not be charged to metropolitan planning funds include, but are not limited to:
- (i) Studies primarily involving routes functionally classified as local roads. In compliance with 49 U.S.C. § 5303(f) for the development of metropolitan plans; in identifying transportation facilities that should function as an integrated metropolitan planning system the metropolitan plan must emphasize those facilities that serve important national, regional and metropolitan transportation functions. 23 U.S.C. § 134(g) requires emphasis to be primarily on facilities that serve important national and regional transportation functions. Therefore, any project or study primarily focusing on roadways functionally classified as local can only be addressed using PL funds when the local roadway data or study sustains the regional transportation planning process. Local roadway data collection efforts or studies shall be identified as such will be reviewed for eligibility at the time the UPWP is submitted.
 - (ii) Roadway maintenance or operation activities such as replacement of wayfinding signage, striping, signal poles, luminaires, etc. may not be charged to metropolitan planning funds. Field condition inventories of such activities may be charged if such data is being collected on a metropolitan area-wide basis for direct development of the MTP and improvement program or if it is necessary for actual implementation of a Safety Management System consistent with the provisions in 23 CFR 500.
 - (iii) Annexation-related activities shall not be charged to metropolitan planning funds except as those activities are directly related to transportation.
 - (iv) Parks and Recreation-related activities shall not be charged to metropolitan planning funds except as those activities are directly related to transportation.
 - (v) Zoning, Unified Development Code or development review-related activities shall not be charged to metropolitan planning funds except as those activities directly related to transportation.

The Cheyenne MPO shall charge separately and keep separate accounting for all City and County business activities including labor not directly related to the function of the MPO. Such activities shall be considered non-reimbursable. Should any portion of the monthly invoice be deemed non-billable, WYDOT will return the invoice promptly for adjustment by the MPO.

9. Consultant Contracts.

- A. Process.** UPWP line items often necessitate hiring a Consultant. The MPO shall coordinate with the MPO Technical Committee and WYDOT to review the proposed Scope of Work. The Request for Qualifications (RFQ) or Request for Proposal (RFP), final fee proposal, project budget and project management plan should include review from the proposed Selection Committee. WYDOT shall serve on the Selection Committee for all federally funded projects.

Consultant selections shall be in accordance with the Brooks Act (40 USC §1101 *et seq.*), and fee proposals shall use WYDOT audited or reviewed rates for labor and reimbursable items and be incorporated into the City's contract as an attachment.

An RFP solicitation, if required, for all projects utilizing federal pass-through funds from WYDOT, shall include the following phrase:

“This project uses federal pass-through funding from WYDOT. If a firm has current approved billing rates or an overhead audit with WYDOT, or another state department of transportation, those rates will need to be used. This requirement also applies to any proposed subconsultants.”

City Consultant and Subconsultant contracts using federal pass-through funding shall include federal contract clauses, as updated by the Wyoming Attorney General.

WYDOT Planning must concur with a Consultant selection before a Notice to Proceed is given.

- B. Consultant Invoices.** All Consultant and Subconsultant invoices must adhere to the federal allowability standards set forth in 2 CFR §200. Invoices must be billed in accordance with the rates set in the Consultant's project-specific contract with the Cheyenne MPO. WYDOT shall not reimburse non-contract rates, finance charges, late charges or work performed prior to Notice to Proceed.
- C. Work Products (Draft and Final documents).** WYDOT, Community Involvement Forum, and MPO Technical Committee shall have adequate opportunity to review work products prior to recommending approval to the MPO Policy Committee.

10. **Audit Procedures.** The MPO shall maintain complete records of all manpower, materials and out-of-pocket expenses, and shall perform all record keeping in accordance with the following procedures:
- A. **Federal requirements.** In addition to the requirements stated in this section, 23 CFR 420, 2 CFR 200, and 2 CFR 1201 shall be used as guidelines. With respect to contract cost principles and procedures, 48 CFR §31 will also be used as a guideline.
 - B. **Payroll.** If requested, the MPO shall furnish WYDOT copies of all certified payroll which shall include the hourly rate for each employee working on the project during the reporting period.
 - C. **Time Sheets.** In accordance with 29 CFR 5.5(a)(3)(ii), individual time sheets will be maintained reflecting the daily total amount of hours worked and amount of time spent on each task within the program. It is imperative that the hours be traceable to the task. If requested, the MPO shall furnish copies of all applicable time sheets to WYDOT.
 - D. **Materials and Out-of-Pocket Expenses.** Copies of invoices and receipts shall support costs of purchased materials for the MPO.
 - E. **Record System.** The record system shall be such that costs can be easily traceable from billings through the ledgers to the source document. Each expenditure must be identified using the task within the current approved UPWP.
 - F. **Cost Overruns.** When expenditures are anticipated to overrun in one UPWP work element, the procedure for budget changes as outlined in Section 6 must be followed.
 - G. **Project Specific Audits.** Individual consultant contracts or professional services agreements may require an audit. Contracts must be awarded in conformity with applicable Federal and WYDOT contracting procedures. This requirement is in addition to any agency-wide audit conducted pursuant to 49 CFR §18 and 19.
 - H. **MPO Program Audit.** The MPO Program shall be audited as needed by WYDOT Internal Review auditors to ensure sound operating practices. The MPO and/or its MPO Policy Committee agencies, as well as Consultants under this Agreement shall maintain all records and accounts relating to its costs and expenditures for the work during any fiscal year for a minimum of three (3) years following receipt of the final payment, and shall make them available for audit by representatives of WYDOT, FHWA and FTA if requested.
 - I. **Review.** Any review that does not meet federal requirements shall be resolved between the MPO and WYDOT. The financial records relating to a UPWP year may be closed out once FHWA accepts the audit, and final payment adjustments have been made.

11. **Inspection of Work.** WYDOT, FHWA and FTA, shall at all times be accorded review and inspection of the work and shall at all reasonable times have access to the premises, to all data, notes, records, correspondence, and instruction memoranda or description that pertain to the work involved in the UPWP.
12. **UPWP Reporting Requirements.** The MPO shall report regularly upon the status of planning and progress made on projects in the UPWP. Events that have significant impact on the UPWP shall be reported as soon as they become known. The types of events or conditions that require reporting include problems, delays or adverse conditions that materially affect the ability to attain program objectives. This disclosure shall be accompanied by a statement of the action taken or contemplated, and any state or federal assistance required resolving the situation.

Copies of all planning study reports from the UPWPs shall be provided to the MPO Technical and Policy Committees for their records. Reporting procedures shall include, but are not limited to:

- A. **Quarterly Reports.** A quarterly report shall be submitted to WYDOT no later than sixty (60) days following the end of each UPWP fiscal quarter to comply with federal reporting requirements under 2 CFR Part 200, as supplemented by 23 CFR 420.113. WYDOT will review and either approve the report or request modifications within thirty (30) days of receipt. If modifications are requested, the MPO shall submit a revised report to WYDOT within thirty (30) days of the request. Upon WYDOT's approval, the report will be forwarded to FHWA to fulfill the requirements of 23 CFR 420.117.

The report shall contain:

- (i) A financial statement shall include task and program summary of the CPG and local funds/in-kind expended to date and remaining.
 - (ii) Narrative progress report shall include:
 - (a) A description of work accomplished during the quarter, including the percentage completed for each task;
 - (b) Significant events (i.e. travel, training, conferences); and
 - (c) Milestones reached in sufficient detail to justify the quarterly expenditures and ability to meet set schedule.
- B. **Annual Performance Report.** The annual report for the UPWP fiscal year shall summarize the pertinent development, activities, and accomplishments of the tasks outlined within the UPWP of the previous fiscal year. The annual report will be submitted within ninety (90) days of the end of the fiscal year. The report shall contain, at a minimum:
 - (i) A complete comparison of actual performance with established goals;

- (ii) Progress in meeting schedules;
- (iii) Status of expenditures comparing budgeted (approved) amounts with actual costs incurred;
- (iv) Identification of overruns and underruns; and
- (v) Approved UPWP revisions and other pertinent supporting data.

For each task, the percentage complete shall be given as well as the estimated completion date. Explanatory information shall be provided if the actual completion date or expenditure significantly differs from those contained in the UPWP.

13. **Planning Reports.**

The draft report shall be submitted for review to the OCAC, MPO Technical Committee, and MPO Policy Committee.

Publication of reports or plans by any party to the Agreement shall give credit to other parties, FTA and FHWA. However, if any party, does not wish to subscribe to the findings or conclusion of the study, the following statement shall be added:

“The opinions, findings, and conclusions expressed in the publication are those of the authors and not necessarily those of WYDOT, FHWA, or the FTA”.

Final plans and projects shall be reviewed by the OCAC and MPO Technical Committees for recommendation to the MPO Policy Committee. Once adopted, the following agencies shall receive a final report (electronic or hard copy):

- City of Cheyenne
- Laramie County
- WYDOT Planning
- WYDOT District Engineer
- FHWA

14. **Urban Systems Funding.** The Urban System Program is authorized by the Wyoming Transportation Commission. The Surface Transportation Program Urban (STP-U) fund is a transportation planning and project development cooperative program using federal funds administered and held in trust by WYDOT and funded at the discretion of the Transportation Commission of Wyoming. WYDOT distributes these funds for preliminary engineering as well as construction of Urban System projects. The MPO Technical and Policy Committee functions as the Urban Systems Advisory Committee for the distribution of these funds.

- A. Urban System Program funds are distributed by formula and allocated to urban areas participating in the program using the following ratio as determined by the

most recent federal decennial census or most current Census Urban Area Data for State of Wyoming population projects.

$$\frac{\text{Corporate boundary population}}{\text{Total corporate population of all urban areas in Wyoming}}$$

- B.** A maximum of two (2) years of Urban Program funding may be borrowed against future allocations to complete an active Urban Program project. Borrowing against future allocations is at the discretion of WYDOT's Chief Engineer. Factors to be considered may include:
- (i) Relative need for the project in the urban area;
 - (ii) Whether the funds need to be borrowed beyond the horizon of the current highway bill;
 - (iii) The combined current status of funds in the Urban Program;
 - (iv) Whether other applicable sources of funding are available to complete the Urban Program project;
 - (v) Anticipated impact of decennial census or most current Census Urban Area Data; and
 - (vi) Inflation's effect on construction costs.

Approximately one million one hundred twenty-two thousand five hundred dollars (**\$1,122,500.00**) is allocated to the Cheyenne Urban Systems Program under this Agreement. This amount will be adjusted at the time of the decennial census and/or most current Census Urban Area Data if the Wyoming Transportation Commission adjusts the total allocation.

The maximum federal participation for the urban systems funds is ninety and forty-nine hundredths percent (**90.49%**). The City and/or County agree to reimburse a combined minimum of nine and fifty-one hundredths percent (**9.51%**) local share of the total cost of any Urban Systems projects. The local share shall be paid by the appropriate local governing agency for all project activities charged to the Urban Systems Program, within the MPO Urban Boundary, shown in **Exhibit A**. The total project reimbursement dollar amount under this Agreement by the City and County shall be set by individual Urban Systems project agreements.

- C.** The City and County shall:
- (i) Jointly participate, through the MPO Technical and Policy Committees in WYDOT's Urban Systems Program in accordance with WYDOT Operating Policy 2-4, as may be amended from time to time, which is incorporated into this Agreement by this reference.
 - (ii) Reimburse WYDOT in accordance with Section 14(B) above.
 - (iii) Be responsible for any costs beyond the maximum amount of funding set forth in Section 14(B) above.

- (iv) Ensure that the Federal and General Provisions contained in this Agreement also apply to any consultants and subconsultants hired by the City or County under this Agreement.

D. WYDOT shall:

- (i) Provide planning, organization, and construction assistance for urban transportation system improvements intended to benefit the traveling public.
- (ii) Set aside annual STP-U funds and track relative expenditures in accordance with Section 14(B) above.
- (iii) Program the funding for Urban Systems.

15. Special Provisions.

Clarification of Funds: This section applies to MPO PL Funds and STP-U Funds, ensuring transparency in the administration of federal funding.

- A. Administration of Federal Funds.** The Cheyenne MPO 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.
- B. Applicability of Appendix II to 2 CFR Part 200.** This Agreement has been funded, in whole or in part, with an Award of Federal funds and is bound by the federal contract provisions required by the Uniform Guidance Appendix II of 2 CFR Part 200 (the Federal Contract Provisions), incorporated herein by this reference. In the event of a conflict between the Special Provisions section of this Agreement, or any attachments or exhibits incorporated herein, and the Federal Contract Provisions, the Federal Contract Provisions shall control. Failure to comply with the Federal Contract Provisions shall constitute an event of default under this Agreement. If such a default remains uncured five (5) calendar days following the termination of a thirty (30) day prior written notice period, WYDOT may terminate this Agreement. This remedy will be in addition to any other remedy available to the State of Wyoming and WYDOT under this Agreement, at law or in equity.
- C. Assumption of Risk.** The Cheyenne MPO shall assume the risk of any loss of state or federal funding, either administrative or program dollars, due to the Cheyenne MPO's failure to comply with state or federal requirements. WYDOT shall notify the Cheyenne MPO of any state or federal determination of noncompliance.
- D. Conflict of Interest.** Per 2 CFR 200.112, the Cheyenne MPO must disclose in writing any potential conflict of interest to WYDOT including financial or other personal interests.

- E. Copyright License and Patent Rights.** The Cheyenne MPO 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 Cheyenne MPO purchases ownership using funds awarded under this Agreement. The Cheyenne MPO must consult with WYDOT regarding any patent rights that arise from, or are purchased with, funds awarded under this Agreement.
- F. Determination of Allowable Costs.** The Cheyenne MPO shall assure, prior to submittal of periodic progress payments, that all costs are in accordance with federal cost principals as provided in 48 CFR 31. Failure by the Cheyenne MPO to carry out these requirements may be material breach of this Agreement.
- G. Disadvantaged Business Enterprise Assurance.** The Cheyenne MPO or its Consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Cheyenne MPO shall carry out applicable requirements of 49 CFR 26 in all consultant contract documents.
- Failure by the Cheyenne MPO to carry out these requirements may be a material breach of this Agreement.
- H. Environmental Policy Acts.** The Cheyenne MPO 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.
- I. Federal Audit Requirements.** The Cheyenne MPO agrees that if it expends an aggregate amount in excess of the amount set forth in 2 CFR Part 200, Subpart F in federal awards during its fiscal year, it must undergo an organization-wide financial and compliance single audit. The Cheyenne MPO agrees to comply with the audit requirements of the U.S. General Accounting Office Government Auditing Standards and Audit Requirements of 2 CFR Part 200, Subpart F. If findings are made which cover any part of this Agreement, the Cheyenne MPO shall provide one (1) copy of the audit report to WYDOT and require the release of the audit report by its auditor be held until adjusting entries are disclosed and made to WYDOT's records.
- J. 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.

- K. Kickbacks.** The Cheyenne MPO 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 Cheyenne MPO 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.
- L. Limitations on Lobbying Activities.** By signing this Agreement, the Cheyenne MPO certifies and agrees that, in accordance with P.L. 101-121, payments made from a federal grant shall not be utilized by the Cheyenne MPO 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.
- M. Mandatory Disclosures.** Per 2 CFR 200.113, the Cheyenne MPO 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.
- N. Monitoring Activities.** WYDOT shall have the right to monitor all activities related to this Agreement that are performed by Cheyenne MPO 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.
- O. Nondiscrimination.** The Cheyenne MPO shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105, *et seq.*), the 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.
- P. Non-Supplanting Certification.** The Cheyenne MPO hereby affirms that federal grant funds shall be used to supplement existing funds, and shall not replace (supplant) funds that have been appropriated for the same purpose. The Cheyenne MPO should be able to document that any reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds under this Agreement.
- Q. 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.
- R. Program Income.** The Cheyenne MPO shall not deposit grant funds in an interest bearing account without prior approval of WYDOT. Any income attributable to the

grant funds distributed under this Agreement must be used to increase the scope of the program or returned 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 Cheyenne MPO and related to the services and work to be performed under this Agreement, shall identify WYDOT and the FHWA as the sponsoring agencies and shall not be released without prior written approval of WYDOT.
- T. Suspension and Debarment.** By signing this Agreement, the Cheyenne MPO 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), or 2 CFR Part 180, or are on the debarred, or otherwise ineligible, vendors lists maintained by the federal government. Further, the Cheyenne MPO 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.

16. 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 Cheyenne MPO 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 Cheyenne MPO which are pertinent to this Agreement. The Cheyenne MPO shall immediately, upon receiving written instruction from WYDOT, provide to any independent auditor or accountant all books, documents, papers, electronic data, and records of the Cheyenne MPO which are pertinent to this Agreement. The

Cheyenne MPO shall cooperate fully with any such independent auditor or accountant during the entire course of any audit authorized by WYDOT.

- 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 Cheyenne MPO 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 Cheyenne MPO shall cooperate fully with other contractors and WYDOT in all such cases.
- G. Compliance with Laws.** The Cheyenne MPO 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.** 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 Cheyenne MPO in the performance of this Agreement shall be kept confidential by the Cheyenne MPO unless written permission is granted by WYDOT for its release. If and when the Cheyenne MPO receives a request for information subject to this Agreement, the Cheyenne MPO 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 twenty-seven (27) pages; **Exhibit A**, Map of MPO Planning Area, consisting of one (1) page; and WYDOT Operating Policy 2-4, and the Federal Contract Provisions, 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 Cheyenne MPO 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 Cheyenne MPO'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.

- 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 Cheyenne MPO 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 Cheyenne MPO shall be free from control or direction over the details of the performance of services under this Agreement. The Cheyenne MPO shall assume sole responsibility for any debts or liabilities that may be incurred by the Cheyenne MPO 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 Cheyenne MPO 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 Cheyenne MPO 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 Cheyenne MPO or the Cheyenne MPO'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. 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 Cheyenne MPO in the performance of this Agreement. Upon termination of services, for any reason, the Cheyenne MPO agrees to return all such original and derivative information and documents to the 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. Patent or Copyright Protection.** The Cheyenne MPO 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 Cheyenne MPO or its subcontractors will violate any such restriction. The Cheyenne MPO shall defend and indemnify WYDOT for any infringement or

alleged infringement of such patent, trademark, copyright, license, or other restrictions.

- 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. § 9-2-3204(b)(iv).
- S. Insurance Requirements.** The Cheyenne MPO 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.
- 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 Cheyenne MPO 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.
- V. Taxes.** The Cheyenne MPO 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 Cheyenne MPO 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 Cheyenne MPO 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.
- 17. Award Name, Federal Agency, and Assistance Listing Identification.** The Award Name for all federal funding under this Agreement shall be the "Cheyenne MPO Consolidated Planning Grant". All work under this Master Agreement shall be administered by the following federal grantors and cataloged by the following Assistance Listing numbers:
- A.** Federal Highway Administration, Assistance Listing number 20.205
 - B.** Federal Transit Administration, Assistance Listing number 20.509

THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK.

18. **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.

**WYOMING DEPARTMENT
OF TRANSPORTATION:**

Keith Fulton, P.E., Chief Engineer

ATTEST:

Caitlin Casner, Secretary
Wyoming Transportation Commission

ATTORNEY GENERAL'S OFFICE: APPROVAL AS TO FORM:

Tyler M. Renner, Supervising Attorney General

Date

CITY OF CHEYENNE, WYOMING

ATTESTED BY:

Patrick Collins, Mayor

Kylie Soden, Cheyenne City Clerk

Date

**LARAMIE COUNTY BOARD
OF COMMISSIONERS**

ATTESTED BY:

Gunnar Malm, Chairman

Debra Lee, Laramie County Clerk

Date

APPROVED AS TO FORM:

Laramie County Attorney

Date

Exhibit A, MPO Planning Area

