



Board of County Commissioners - Staff Report

Meeting Date: April 12, 2022
Submitting Dept: Public Works

Presenter: Heather Overholser
Subject: Consideration of MOU with WYDOT for WY-22 Pathways and Crossings

Statement / Purpose: To consider a Memorandum of Understanding between WYDOT and Teton County, WY related to the Wilson to Stilson pathway and crossings of WY-22 and Fish Creek.

Background / Description (Pros & Cons): On December 6, 2021, the County Commission approved a letter of agreement in response to a proposal from WYDOT for the planning, design and construction of the Wilson to Stilson Pathway, including two grade-separated crossings of WY-22 and one bridge over Fish Creek. The Commission requested that WYDOT provide an MOU to formalize the agreement, which is being brought to the Board for consideration. Specifically, the MOU includes:

- WYDOT funding and constructing the Green Lane pathway underpass as part of the Snake River Bridge/22-390 intersection project (County is responsible for the planning, NEPA and design);
- Teton County constructing the pathway from Wilson to Stilson and a pathway bridge over Fish Creek to the south of the highway bridge, funded in part by the BUILD grant; and,
- Teton County planning, designing, and constructing (if found to be feasible) a grade-separated (tunnel or overpass) pathway crossing of WY-22 at the Wilson School, for which WYDOT has committed \$400,000 of State funding. Teton County will provide local funding to cover all remaining costs for the Wilson School grade-separated crossing.

Lastly, the MOU commits Teton County and WYDOT to a target completion date of October 31, 2023 for all project components identified in the MOU.

Stakeholder Analysis & Involvement: Teton County staff has worked in close collaboration with WYDOT, the Wilson Advocacy Group and the Downtown Wilson Multi-Modal Steering Committee on these projects.

Fiscal Impact: WYDOT will fund 100% of the costs for construction of the pathway tunnel east of Green Lane. Teton County will be responsible for funding the planning, design and construction of the Wilson to Stilson pathway, including the bridge over Fish Creek, as well as the grade-separated crossing of WY-22 at the Wilson School, with the exception of \$400,000 from WYDOT State funding.

- Wilson to Stilson Pathway and Fish Creek Bridge (BUILD project): The original budget in the BUILD Grant application was \$1,431,060. The revised construction estimate for this project is \$1,750,000. BUILD will provide \$1,045,395 in funding, leaving \$704,605 to be funded by Teton County.
- Crossing at Wilson School (Non-BUILD project): The consultant team is currently assessing the feasibility and cost of constructing a grade-separated crossing of WY-22 at the Wilson School and a cost estimate is not yet available. WYDOT will provide \$400,000 for this project from State funding.

Staff Impact: The overall BUILD grant and project components are of high focus for staff and account for a considerable amount of staff time at Public Works. Staff is closely involved in all aspects of planning for these projects and will continue to be involved through completion.

Legal Review: Moore

Staff Input / Recommendation: Staff recommends approval of the MOU with WYDOT.

Attachments: Memorandum of Understanding with WYDOT
Service • Excellence • Collaboration • Accountability • Positivity • Innovation



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Suggested Motion: I move to approve the Memorandum of Understanding with WYDOT for the Wilson to Stilson pathway and crossings of WY-22 and Fish Creek.

**MEMORANDUM OF UNDERSTANDING BETWEEN
WYOMING DEPARTMENT OF TRANSPORTATION
AND
TETON COUNTY, WYOMING**

WYDOT Project Numbers
Fish Creek Crossing: N/A
HHR Ranch Road Crossing: CN22038
Green Lane Crossing: 2000058

1. **Parties.** The parties to this Memorandum of Understanding (MOU) are the Wyoming Department of Transportation (WYDOT), whose address is 5300 Bishop Blvd., Cheyenne, Wyoming 82009, and Teton County, Wyoming (County), whose address is 200 S. Willow Street, PO Box 1727, Jackson, Wyoming 83001.

2. **Purpose.** The purpose of this MOU is to outline the roles and responsibilities of WYDOT and the County related to the Wilson to Stilson Pedestrian/Bike Pathway, a component of the County's Teton Mobility Corridor Improvement Project (TMCI) being funded in part by its Better Utilizing Investments to Leverage Development (BUILD) federal grant award, around and under WYO 22, and to outline the terms and conditions by which WYDOT will provide the County four hundred thousand dollars (\$400,000.00) toward the design and construction of the grade-separated bike/pedestrian crossing under WYO 22 near HHR Ranch Road. This MOU does not cover permitting requirements, including but not limited to WYDOT utility licensing, access application, and encroachment permits, which must be obtained through normal WYDOT processes; Federal Highway Administration (FHWA) Air Rights Agreement, National Environmental Policy Act (NEPA) requirements, environmental permitting; and other governmental agency permitting and/or agreements. No funds will be exchanged for the grade-separated bike/pedestrian crossing to be installed adjacent to the WYO 22 Fish Creek Bridge and the grade-separated bike/pedestrian crossing of WYO 22 at or near Green Lane. WYDOT will cover the construction costs for the grade-separated bike/pedestrian crossing of WYO 22 east of Green Lane, and the County will be responsible for the cost in its entirety of the pedestrian bridge over Fish Creek.

3. **Term of MOU.** This MOU shall commence upon the day and date last signed and executed by the duly authorized representatives of the parties to this MOU and shall remain in full force and effect until completion of the crossings.

4. **Payment.**
 - A. WYDOT agrees to reimburse the County up to four hundred thousand dollars (\$400,000.000) for the cost of survey work, preliminary engineering, right-of-way acquisition, utility adjustments, bid letting administration, construction and construction engineering of the grade-separated bike/pedestrian crossing of WYO 22 at or near HHR Ranch Road if it is constructed. The County acknowledges that any costs exceeding WYDOT's contribution will be the responsibility of the County.

- B.** Payment shall be made by WYDOT to Teton County on a monthly basis upon receipt of invoice. Payment shall be made within forty-five (45) days after acceptance of invoice pursuant Wyo. Stat. § 16-6-602. The County shall submit invoices in sufficient detail to ensure that payments may be made in conformance with this MOU.
- C.** No payment shall be made for work performed before the Effective Date of this MOU. Should the County fail to perform in a manner consistent with the terms and conditions set forth in this MOU, payment under this MOU may be withheld until such time as the County performs its duties and responsibilities to the satisfaction of WYDOT.

5. Responsibilities of the Parties.

- A. Fish Creek Crossing.** For the crossing over Fish Creek near the Fish Creek Bridge on WYO 22:

- (i) County Responsibilities.**

- (a)** Design, construct, and maintain a pedestrian/bike pathway crossing over Fish Creek to the south side of the WYO 22 Fish Creek Bridge (Structure No. CEA).
- (b)** This crossing is in a Federal Emergency Management Agency (FEMA) flood zone. Perform a hydraulic analysis and select a structure that meets all FEMA flood zone requirements and does not adversely impact the adjacent highway Fish Creek Bridge (Structure No. CEA).
- (c)** Allow WYDOT to review the design calculations, hydraulic analysis and plans prior to construction. Ensure the design and plans are stamped by a Professional Engineer licensed in the State of Wyoming.
- (d)** Provide all necessary funding to construct the pedestrian/bike pathway crossing of Fish Creek.
- (e)** Obtain all necessary permits and approvals and complete required utility adjustments for the crossing prior to construction.
- (f)** County will not allow use of the Wilson to Stilson Pedestrian/Bike Pathway until completion of this bridge structure.
- (g)** Indefinitely maintain the pedestrian/bike pathway and structure at no cost to WYDOT. Maintenance shall include, but not be limited

to, weed and pest control, trash removal, painting, utilities, snow removal, vandalism repairs, crash damage repairs, and necessary miscellaneous repairs or modifications to keep this area in a neat and pleasing condition.

(h) Remove the bridge if in conflict with future WYDOT proposed construction.

(ii) WYDOT Responsibilities.

(a) Allow construction and maintenance of a pedestrian/bike pathway bridge within WYDOT right-of-way on the south side of the Fish Creek Bridge (Structure No. CEA).

B. HHR Ranch Road Crossing. For the pedestrian/bike pathway crossing of WYO 22 at or near HHR Ranch Road:

(i) County Responsibilities.

(a) If mutually found to be feasible and constructible, design and fully construct a grade-separated pedestrian/bike pathway crossing of WYO 22 at or near HHR Ranch Road. Ensure the design is in accordance with the latest version of the American Association of State Highway Transportation Officials (AASHTO) Load and Resistance Factor Design (LRFD) Bridge Design Specifications. Allow WYDOT to review the design calculations and plans. Ensure the design and plans are stamped by a Professional Engineer licensed in the State of Wyoming.

(b) Provide WYDOT with final design calculations and as-constructed plans and specifications.

(c) Obtain all necessary permits and approvals and complete required utility adjustments prior to construction.

(d) Obtain associated power service necessary for pedestrian/bike pathway lighting.

(e) Acquire all necessary permanent easements. The County shall keep easements across private property in force for perpetuity.

(f) County will not allow use of the Wilson to Stilson pedestrian/bike pathway until completion of this grade-separated structure.

(g) Indefinitely maintain the pedestrian/bike pathway and structure at no cost to WYDOT. Maintenance shall include, but not be limited to, weed and pest control, trash removal, painting, utilities, snow removal, lighting, drainage, vandalism repairs, crash damage repairs, and necessary miscellaneous repairs or modifications to keep this area in a neat and pleasing condition.

(h) Invoice WYDOT in accordance with Section 4 above.

(ii) WYDOT Responsibilities.

(a) Pay the County in accordance with Section 4 above.

(b) Allow construction and maintenance of a pedestrian/bike pathway and structure within WYDOT right-of-way.

C. Green Lane Crossing. For the crossing of WYO 22 east of Green Lane:

(i) County Responsibilities.

(a) Provide WYDOT plans and specifications for the design of a grade-separated pedestrian/bike pathway crossing under WYO 22 for the WYDOT Snake River Bridge & WYO 22/390 Intersection Reconstruction Project by February 15, 2022. Ensure the design is in accordance with the latest version of the AASHTO LRFD Bridge Design Specifications. Allow WYDOT to review the design calculations and plans. Ensure the design and plans are stamped by a Professional Engineer licensed in the State of Wyoming.

(b) Provide a copy of the completed NEPA document for this work to WYDOT as soon as it becomes available, but no later than April 15, 2022.

(c) Obtain all necessary permits and approvals, including all environmental permitting outside of the WYDOT right of way, prior to September 9, 2022.

(d) Obtain associated power service necessary for tunnel lighting.

(e) Provide an authorized person to make design decisions during construction in a timely manner.

(f) Upon completion and acceptance of the project by WYDOT and the County, County shall return, within thirty (30) days of WYDOT

Resident Engineer's request, WYDOT's Acceptance Certificate, or any other required WYDOT documents.

- (g) Indefinitely maintain the pedestrian/bike pathway and structure at no cost to WYDOT. Maintenance shall include, but not be limited to, weed and pest control, trash removal, painting, utilities, snow removal, lighting, drainage, vandalism repairs, crash damage repairs, and necessary miscellaneous repairs or modifications to keep this area in a neat and pleasing condition.
- (h) County will not allow use of the Wilson to Stilson Pedestrian/Bike Pathway until completion of this box underpass structure.
- (ii) WYDOT Responsibilities.
 - (a) Incorporate construction of an underpass box structure to the planned WYDOT Snake River Bridge & WYO 22/390 Intersection Reconstruction Project (2000058) and pay for all associated structure costs.
 - (b) Require the contractor selected to perform the work to complete underpass construction no later than October 31, 2023.
 - (c) Allow maintenance of a pedestrian/bike pathway and structure within WYDOT right-of-way.

6. General Provisions.

- A. **Amendments.** Either party may request changes in this MOU. Any changes, modifications, revisions, or amendments to this MOU which are mutually agreed upon by the parties to this MOU shall be incorporated by written instrument, executed and signed by all parties to this MOU.
- B. **Applicable Law.** The construction, interpretation, and enforcement of this MOU shall be governed by the laws of the State of Wyoming. The courts of the State of Wyoming shall have jurisdiction over any action arising out of this MOU and over the parties, and the venue shall be the First Judicial District, Laramie County, Wyoming.
- C. **Assignment Prohibited and Contract 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 MOU without the prior written consent of the other party. The County shall not use this MOU, or any portion thereof, for collateral for any financial obligation without the prior written permission of WYDOT.

- D. Audit and Access to Records.** WYDOT and its representatives shall have access to any books, documents, papers, electronic data, and records of the County which are pertinent to this MOU.
- 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 MOU, the MOU may be terminated by WYDOT at the end of the period for which the funds are available. WYDOT shall notify the County at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to WYDOT in the event this provision is exercised, and WYDOT shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section.
- F. Compliance with Laws.** The County shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this MOU.
- 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 County in the performance of this MOU shall be kept confidential by the County unless written permission is granted by WYDOT for its release. If and when the County receives a request for information subject to this MOU, County shall notify WYDOT within ten (10) days of such request and shall not release such information to a third party unless directed to do so by WYDOT.
- H. Entirety of MOU.** This MOU, consisting of nine (9) pages, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral.
- I. Ethics.** County shall keep informed of and comply with the Wyoming Ethics and Disclosure Act (Wyo. Stat. § 9-13-101, et seq.) and any and all ethical standards governing County's profession.
- J. Force Majeure.** Neither party shall be liable for failure to perform under this MOU 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.

- K. Indemnification.** Each party to this MOU shall assume the risk of any liability arising from its own conduct. Neither party agrees to insure, defend, or indemnify the other.
- L. Independent Contractor.** The County shall function as an independent contractor for the purposes of this MOU and shall not be considered an employee of the State of Wyoming for any purpose. Consistent with the express terms of this MOU, the County shall be free from control or direction over the details of the performance of services under this MOU. The County shall assume sole responsibility for any debts or liabilities that may be incurred by the County in fulfilling the terms of this MOU and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this MOU. Nothing in this MOU shall be interpreted as authorizing the County or its agents or employees to act as an agent or representative for or on behalf of the State of Wyoming or WYDOT or to incur any obligation of any kind on behalf of the State of Wyoming or WYDOT. The County agrees that no health or hospitalization benefits, workers' compensation, unemployment insurance or similar benefits available to State of Wyoming employees will inure to the benefit of the County or the County's agents or employees as a result of this MOU.
- M. Nondiscrimination.** The County shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105, et seq.), the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101, et seq., and the Age Discrimination Act of 1975 and any properly promulgated rules and regulations thereto and shall not discriminate against any individual on the grounds of age, sex, color, race, religion, national origin, or disability in connection with the performance under this MOU.
- N. Notices.** All notices arising out of, or from, the provisions of this MOU shall be in writing either by regular mail or delivery in person at the addresses provided under this MOU.
- O. Prior Approval.** This MOU shall not be binding upon either party unless this MOU has been reduced to writing before performance begins as described under the terms of this MOU, and unless this MOU is approved as to form by the Attorney General or her representative.
- P. Insurance Requirements.** County is protected by the Wyoming Governmental Claims Act, Wyo. Stat. § 1-39-101, et seq., and certifies that it is a member of the Wyoming Association of Risk Management (WARM) pool or the Local Government Liability Pool (LGLP), Wyo. Stat. § 1-42-201, et seq., and shall provide a letter verifying its participation in the WARM or LGLP to WYDOT.
- Q. Severability.** Should any portion of this MOU be judicially determined to be illegal or unenforceable, the remainder of the MOU shall continue in full force and effect, and the parties may renegotiate the terms affected by the severance.

- R. Sovereign Immunity.** Pursuant to Wyo. Stat. § 1-39-104(a), the State of Wyoming and WYDOT expressly reserve sovereign immunity by entering into this MOU and the County expressly reserves governmental immunity. Each of them specifically retains all immunities and defenses available to them as sovereign or governmental entities pursuant to Wyo. Stat. § 1-39-101, et seq., and all other applicable law. The parties acknowledge that the State of Wyoming has sovereign immunity and only the Wyoming Legislature has the power to waive sovereign immunity. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this MOU 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.
- S. Termination of Contract.** This MOU may be terminated, without cause, by WYDOT upon thirty (30) days written notice. This MOU may be terminated by the WYDOT immediately for cause if the County fails to perform in accordance with the terms of this MOU.
- T. 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 MOU shall not be construed so as to create such status. The rights, duties, and obligations contained in this MOU shall operate only between the parties to this MOU and shall inure solely to the benefit of the parties to this MOU. The provisions of this MOU are intended only to assist the parties in determining and performing their obligations under this MOU.
- U. Waiver.** The waiver of any breach of any term or condition in this MOU shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.
- V. Time is of the Essence.** Time is of the essence in all provisions of this MOU.
- W. Titles Not Controlling.** Titles of sections and subsections are for reference only and shall not be used to construe the language in this MOU.
- X. Waiver.** The waiver of any breach of any term or condition in this MOU shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.
- Y. Counterparts.** This MOU 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 MOU. Delivery by the County of an originally signed counterpart of this MOU by facsimile or PDF shall be followed up immediately by delivery of the originally signed counterpart to WYDOT.

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7. **Signatures.** The parties to this MOU, through their duly authorized representatives, have executed this MOU on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this MOU as set forth herein.

The Effective Date of this MOU is the date of the signature last affixed to this page.

ATTEST:

TETON COUNTY, WYOMING

Maureen E. Murphy
Teton County Clerk

Natalia D. Macker, Chairwoman
Teton County Board of County
Commissioners

Date

(SEAL)

ATTEST:

**WYOMING DEPARTMENT
OF TRANSPORTATION**

Caitlin Casner, Secretary
Transportation Commission of Wyoming

Mark J. Gillett, P.E., Chief Engineer

Date

(SEAL)

Approved as to form:



Alysia Goldman, Assistant Attorney General

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3/28/22