



Board of County Commissioners - Staff Report

**Meeting Date:** May 16, 2023  
**Submitting Dept:** Public Works

**Presenter:** Heather Overholser/Brian Schilling  
**Subject:** Consideration of Notice of Award and Contract for the Wilson to Stilson Pathway Project (BUILD Component 6)

**Statement / Purpose:** Consideration of Notice of Award and Contract for Construction of the Wilson to Stilson Pathway Project.

**Background / Description (Pros & Cons):** This project consists of the construction of approximately 7,700 linear feet of multi-use pathway, a 200 linear foot single span pedestrian bridge over Fish Creek, signage, striping, grading, and installation of a pedestrian accessible wildlife guard. The project extends primarily along the south side of WY 22 from the Town of Wilson, under WY 22 west of the HWY 390 intersection and into the Stilson Transit Center. The project includes earthwork, pavement, culvert extensions, signage installation, pathway striping, and the placement of a pedestrian bridge with concrete deck over Fish Creek.

This project is one of thirteen project components that comprise the 2020 Teton Mobility Corridor Improvements (TMCI) BUILD Grant awarded to Teton County, Wyoming. The project must conform to all applicable Federal Transit Administration (FTA) requirements and contract clauses. All necessary pathway easements and temporary construction easements have been secured for the project. In addition, a set of fence easements has been secured to relocate and place the WYDOT wildlife fence in a more desirable location on the south side of the pathway. Right-of-Way certification has been obtained for all easements. The project is a critical component to the pathways system linkage and connectivity efforts within the County.

The project was bid using the Public Purchase platform and was advertised in the *Jackson Hole News and Guide*, the *Salt Lake Tribune*, and the *Idaho Falls Register*. Three bids were received on May 5, 2023 as follows:

Avail Valley Construction, LLC:	\$4,473,777.00
Wind River Stone Scapes, Inc. & HSC, Inc. a Joint Venture:	\$5,617,680.58
Westwood Curtis Construction, Inc.:	\$3,195,645.70
Engineer’s Estimate:	\$3,417,470.64

Staff recommends awarding the contract to the responsive low bidder Westwood Curtis Construction, Inc.

The project design engineer, Jorgensen Associates, Inc., is under contract to provide construction quality assurance and administration.

**Stakeholder Analysis & Involvement:** Notice of the construction schedule will be publicized once details are established with the selected contractor. Construction is phased according to the following milestones:

- Milestone 1: Completion of the pathway from a point west of Seaton Lane and connecting to the existing pathway within the Stilson Transit Center lot;
- Milestone 2: Placement of the Fish Creek pedestrian bridge by March 10, 2024; and,
- Milestone 3 (final completion): Scheduled for May 15, 2024.

All dates are weather dependent. A \$75,000 bonus to complete Milestone 1 prior to or by October 31, 2023 is included in the contract to incentivize the completion and opening of the pathway to meet the obligations of the Memorandum of Understanding (MOU) with WYDOT and to coincide with the opening of the pathway system under WY-22 at the Wilson School Underpass and the Green Lane underpass being constructed by WYDOT.

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**Fiscal Impact:** \$3,417,470.64 as outlined in the attached contract, *which includes a force account contingency amount to account for unanticipated change orders per Teton County Procurement Policy Title 2-5-6.* There are funds budgeted in 26-4-026-904-000 for the Wilson to Stilson Pathway in FY2023 as work is anticipated to start in June. Additional funds to complete the project are proposed for FY2024, including BUILD grant reimbursement at 40%, with the remainder proposed to be paid out of the 2022 Transportation Alternatives SPET funds. Budgeted amounts will also cover Jorgensen's construction quality assurance and administration.

**Staff Impact:** County Public Works staff will coordinate closely with the contractor as needed. Jorgensen Associates, Inc. has a dedicated construction project administration team (as required per BUILD Grant obligations), which is intended to perform all administration services with county staff guidance and coordination. Due to the fast pace of this project, moderate staff time will be required during construction to assure any decisions are provided in a timely manner to maintain schedule.

**Legal Review:** Gingery

**Staff Input / Recommendation:** Staff recommends approval of the Notice of Award and Contract to Westwood Curtis Construction, Inc. for the Wilson to Stilson Pathway.

**Attachments:** Notice of Award, Contract Document (Contract attachments are available for review upon request.)

**Suggested Motion:** I move to approve the Notice of Award and Contract with Westwood Curtis Construction, Inc. for the Wilson to Stilson Pathway in the amount not-to-exceed \$3,195,645.70.

**NOTICE OF AWARD**

Date of Issuance: May 16, 2023  
Owner: Teton County, WY  
Engineer: Jorgensen Associates, Inc.  
Project/Contract: Wilson to Stilson Pathway  
Bidder: Westwood Curtis Construction, Inc.  
Bidder's Address: P.O. Box 904, 3350 S. Hwy 89, Jackson, WY 83001

Owner's Project No.: N/A  
Engineer's Project: No.: 21068

You are notified that Owner has accepted your Bid dated **May 5, 2023** for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

Construction of approximately 7,700 linear foot asphalt pathway, a 200 linear foot pedestrian bridge, grading, drainage, guardrail, and appurtenances in Teton County, Wyoming.

The Contract Price of the awarded Contract is **\$3,195,645.70**. Contract Price is subject to adjustment based on the provisions of the Contract, including but not limited to those governing changes, Unit Price Work, and Work performed on a cost-plus-fee basis, as applicable.

**Three (3)** executed counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award, or has been transmitted or made available to Bidder electronically.

Plans and specifications will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 7 days of the date of receipt of this Notice of Award:

1. Deliver to Owner **three (3)** counterparts of the Agreement, signed by Bidder (as Contractor).
2. Deliver with the signed Agreement(s) the Contract Security (such as required performance and payment bonds) and insurance documentation, as specified in the Instructions to Bidders and in the General Conditions, Articles 2 and 6.

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within 5 days after you comply with the above conditions, Owner will return to you one fully executed Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner: **Teton County, WY**  
By (signature): \_\_\_\_\_  
Name (printed): Luther Propst  
Title: Chairman, Teton County Board of County Commissioners

Attest:

By *(signature)*: \_\_\_\_\_

Name *(printed)*: Maureen E. Murphy

Title: Teton County Clerk

Copy: Engineer

# AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

This Agreement is by and between **Teton County, Wyoming** (“Owner”) and Westwood Curtis Construction, Inc. (“Contractor”). Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions. Owner and Contractor hereby agree as follows:

## ARTICLE 1—WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Project generally consists of construction of approximately 7,700 linear feet of multi-use pathway, a 200 linear foot single span pedestrian bridge over Fish Creek, signage, striping, grading, and appurtenances. The Project extends primarily along the south side of Highway 22 from the Town of Wilson, under Highway 22 west of the Highway 390 intersection and into the Stilson Transit Center within Teton County, Wyoming.

## ARTICLE 2—THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: **Wilson to Stilson Pathway.**

## ARTICLE 3—ENGINEER

3.01 The Owner has retained **Jorgensen Associates, Inc.** (“Engineer”) to act as Owner’s representative, assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract.

3.02 The part of the Project that pertains to the Work has been designed by **Jorgensen Associates, Inc.**

## ARTICLE 4—CONTRACT TIMES

4.01 *Time is of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for Final Payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Dates*

A. The Work will be substantially complete on or before **October 31, 2023** for Milestone 1 and **March 10, 2024** for Milestone 2, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before **May 15, 2024**. Substantial Completion shall include the full use of asphalt pathway east of Fish Creek for Milestone 1 and then includes the full use of the pathway and pedestrian bridge over Fish Creek for Milestone 2. Minor grading work, seeding, and asphalt tie-ins at bridge approaches, and clean up may be performed after the Milestone 2 Substantial Completion date.

4.03 *Milestones*

A. Parts of the Work must be substantially completed on or before the following Milestone(s):

1. **Milestone 1 - Asphalt pathway completed and available for use by completing all paving, signing, markings, drainage, and project plan work completed from the east side of Fish Creek to the connection with the existing pathway at the project end point in the Stilson Transit Center site. Fish Creek pedestrian bridge abutments will be completed. Milestone 1 completed by October 31, 2023.**
2. **Milestone 2 – Fish Creek Bridge installation complete and open to pedestrian and bicycle traffic. All final signing and guardrail installation will be complete, and all contract work except for final pavement placement, seeding, and associated striping at bridge approaches will be completed. Milestone 2 completed by March 10, 2024.**
3. **Milestone 3 – Milestone 3 is coincident with final completion and includes final paving, signage installation, striping, and grading and seeding associated with bridge installation impacts. To be completed with final completion by May 15, 2024.**

4.04 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
  1. *Substantial Completion:* Contractor shall pay Owner **\$1,000** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion Milestone 1 and 2 dates, until the Work is substantially complete.
  2. *Completion of Remaining Work:* After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner **\$1,000** for each day that expires after such time until the Work is completed and ready for final payment.
  3. *Milestones:* Contractor shall pay Owner **\$1,000** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for achievement of Milestones 1 and 2, until Milestones 1 and 2 are achieved, or until the time specified for Substantial Completion is reached, at which time the rate indicated in Paragraph 4.04.A.1 will apply, which matches the Milestone 2 date and rate.
  4. Liquidated damages for failing to timely attain Substantial Completion, and final completion are not additive, and will not be imposed concurrently.
- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.
- C. *Bonus:* Contractor and Owner further recognize the Owner will realize financial and other benefits if the Work associated with Milestone 1 is completed prior to the time specified for Milestone 1. Accordingly, Owner and Contractor agree that as a bonus for early completion of Milestone 1, Owner shall pay Contractor **\$3,750** for each day prior to October 31, 2023, that Milestone 1 is achieved. The maximum value of the bonus will be limited to **\$75,000**.

## ARTICLE 5—CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:
- A. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.
  - B. The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

## ARTICLE 6—PAYMENT PROCEDURES

### 6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

### 6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on the basis of Contractor's Applications for Payment once each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
  - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.
    - a. **95** percent of the value of the Work completed (with the balance being retainage).
    - b. **95** percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to **95** percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less **200 percent** of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

### 6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions and as modified in the Supplementary Conditions, Section SC-15.06.

6.04 *Consent of Surety*

- A. Owner will not make final payment, or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

6.05 *Interest*

- A. All amounts not paid when due will bear interest at the rate of 6 percent per annum.

**ARTICLE 7—CONTRACT DOCUMENTS**

7.01 *Contents*

- A. The Contract Documents consist of all of the following:
1. This Agreement.
  2. Bonds:
    - a. Performance bond (together with power of attorney).
    - b. Payment bond (together with power of attorney).
  3. General Conditions.
  4. Supplementary Conditions.
  5. Specifications and Required Federal Clauses and Certifications as listed in the table of contents of the project manual.
  6. Drawings (not attached but incorporated by reference) consisting of 31 sheets with each sheet bearing the following general title: **Wilson to Stilson Pathway**, and as listed on the attached sheet index.
  7. Addenda (numbers 1 to 3, inclusive).
  8. Exhibits to this Agreement (enumerated as follows):
    - a. Contractor's Bid (pages 1 to 6, inclusive)
    - b. Documentation submitted by Contactor as Attachments to the Bid other than Bid Security. (See Bid Form)
  9. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
    - a. Notice to Proceed.
    - b. Work Change Directives.
    - c. Change Orders.
    - d. Field Orders.
    - e. Warranty Bond, if any.
- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.



- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

## **ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS**

### **8.01 Contractor's Representations**

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
  2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
  4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
  5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
  6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
  7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
  8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
  9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

#### 8.02 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:
  1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
  4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.
- B. Contractor is required to comply with those Federally required certifications, as applicable, that are located within the Project Manual and made part of the contract documents

#### 8.03 *Standard General Conditions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on \_\_\_\_\_ (which is the Effective Date of the Contract).

Owner:

Teton County, Wyoming  
*(typed or printed name of organization)*

By: \_\_\_\_\_  
*(individual's signature)*

Date: \_\_\_\_\_  
*(date signed)*

Name: \_\_\_\_\_  
*Luther Propst*

Title: \_\_\_\_\_  
*Chairman, Teton County Board of County Commissioners*

Attest: \_\_\_\_\_  
*(individual's signature)*

Title: \_\_\_\_\_  
*(Maureen E. Murphy, Teton County Clerk*

Address for giving notices:

Teton County, Wyoming  
320 South King Street,  
Teton County, WY 83001

Designated Representative:

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Contractor:

Westwood Curtis Construction, Inc.  
*(typed or printed name of organization)*

By: \_\_\_\_\_  
*(individual's signature)*

Date: \_\_\_\_\_  
*(date signed)*

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*  
*(If [Type of Entity] is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)*

Attest: \_\_\_\_\_  
*(individual's signature)*

Title: \_\_\_\_\_  
*(typed or printed)*

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Designated Representative:

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

License No.: \_\_\_\_\_  
*(where applicable)*

State: \_\_\_\_\_