

AMENDMENT TO MEMORANDUM OF AGREEMENT
TRANSPORTATION ALTERNATIVES PROGRAM
FY25 HWY 33 PATHWAY CONSTRUCTION (ITD KEY NO. 23894)

WITNESSETH:

City of Driggs, Idaho (the “City of Driggs”) and Teton County, Idaho (“Teton County”) hereby execute this AMENDMENT TO MEMORANDUM OF AGREEMENT (“Amendment”) to be effective as of the _____ day of _____, 2025 (the “Effective Date”).

WHEREAS, the City of Driggs and Teton County (the “Parties”) previously entered into that certain MEMORANDUM OF AGREEMENT TRANSPORTATION ALTERNATIVES PROGRAM FY25 HWY 33 PATHWAY CONSTRUCTION (ITD KEY NO. 23894) (“MOA”); and

WHEREAS, after the execution of the MOA, the Parties have learned that, for a variety of reasons, it is desirable that Teton County administer the MOA rather than the City; and

WHEREAS, the Local Highway Technical Advisory Council (LHTAC), which administers TAP funding, has approved construction drawings for the County Project and City Project and recommends that the two projects be combined for bidding and construction efficiencies, with Teton County designated to administer both projects, including administration of bidding, contracting, payments, reporting and reimbursement; and

WHEREAS, the Parties each find it to be in the best interest of the community to cooperate for the purposes of implementing their respective TAP projects (as described in the MOA) together as a “Joint Project”, as authorized under Idaho Code § 67-2328(b)-(d); and

WHEREAS, Teton County is willing and able to perform all remaining required project administration duties for the Parties pursuant to Idaho Code § 67-2328(d)(1); and

WHEREAS, the Parties desire to amend the MOA, pursuant to Section III of the MOA, in accordance with this Amendment and specifically to have Teton County administer the MOA rather than the City;

NOW THEREFORE, in consideration of the mutual benefits to be derived thereby, the Parties agree as follows:

- 1. Definitions.** Capitalized terms used and not defined herein shall have the respective meanings assigned to them in the MOA.
- 2. Amendments.** As of the Effective Date, the MOA is hereby amended as follows:

2.1. Subsection I.A. of the MOA. Subsection I.A. of the MOA is hereby amended and restated in full to read as follows:

A. General Grant Administration and Compliance with Funding Rules.

Teton County will provide general administration of the Joint Project in compliance with all requirements and procedures outlined in the Transportation Alternatives Program Manual published by the Idaho Transportation Department.

2.2. Subsection I.C. of the MOA. Subsection I.C. of the MOA is hereby amended and restated in full to read as follows:

C. Construction Contract.

Upon acceptance of the lowest qualified bid, which shall be the bid that offers the lowest sum of City Construction Cost plus County Construction Cost, and authorization of the separate resulting construction contract expenses by City of Driggs City Council and Teton County Board of County Commissioners, Teton County will issue a Notice of Award to the firm having submitted the lowest qualified bid, and will execute a construction contract for the Joint Project.

2.3. Subsection I.D. of the MOA. Subsection I.D. of the MOA is hereby amended and restated in full to read as follows:

D. Construction Engineering & Inspection Contract.

City of Driggs Public Works Director and Teton County Public Works Directors will coordinate with LHTAC on the selection of a contractor to perform construction engineering and inspection (CEI) services on the Joint Project. Upon written approval of the CEI services contract by LHTAC, City of Driggs City Council, and Teton County Board of County Commissioners, Teton County will execute the CEI contract.

The CEI contract expense will be shared by City of Driggs and Teton County in the same ratio as in the accepted construction bid schedule. The CEI contract expenses will be eligible for TAP funding reimbursement at 92.66%, up to the total federal award amount.

2.4. Subsection I.E. of the MOA. Subsection I.E. of the MOA is hereby amended and restated in full to read as follows:

E. Contractor Payments and Invoicing for City Share.

Teton County shall submit each construction or CEI Services payment application, showing the amount due for the County City Project (“City Share”), to the Teton County Public Works Director for review.

Upon receiving approval signatures from both the City of Driggs Public Works Director and Teton County Public Works Director for a payment application, Teton County will process the application for payment and pay 100% of the approved amount due.

Teton County will invoice the City of Driggs for 7.34% of the City Share of each approved pay application, which the City of Driggs agrees to pay.

Teton County will track TAP funding balances by City Project and County Project and if any such balance reaches \$0 for either Party, then said Party will be responsible for paying 100% of their share of the Joint Project costs and have no further obligation to pay more for the Joint Project. The Parties will then determine how and what extent to continue with the Joint Project.

2.5. Subsection I.F. of the MOA. Subsection I.F. of the MOA is hereby amended and restated in full to read as follows:

F. Change Orders.

City of Driggs and Teton County shall each have complete and individual control over approval of any construction contract change orders within their respective project boundaries, which will be defined on the construction drawings. All change orders must be approved in writing. If a change order is approved by either the City of Driggs or Teton County in such Party's project area, Teton County will execute the construction contract change order. If a proposed change affects both City Project and County Project, a change order will be executed only upon approval by both the City of Driggs and Teton County, with the changes to the City Construction Cost and County Construction Cost being clearly separated based on the project boundaries.

2.6. Subsection I.H. of the MOA. Subsection I.H. of the MOA is hereby amended and restated in full to read as follows:

H. Reimbursement, Reporting and Closeout.

Teton County] will submit one or more reimbursement requests to LHTAC requesting reimbursement of 92.66% of payments made on the construction and CEI services contracts, up to the maximum amount of awarded federal funding. Teton County will retain 100% of reimbursement payments. Teton County will conduct regular assessments with the selected contractor about what materials have been purchased in furtherance of the joint project, how and where those materials are stored, and their intended purpose. Teton County shall report findings or concerns to the City of Driggs.

Upon completion of the Joint Project, Teton County will prepare and submit the required project reporting to close out the Joint Project with respect to the TAP

funding, ensuring all requirements have been met. Teton County will maintain all records for the Joint Project for at least three years from the date of final acceptance.

City of Driggs and Teton County will be responsible for maintaining their respective project improvements to the satisfaction of the State, as noted in the executed State-Local Agreement.

- 2.7. Section V. of the MOA.** Section V. of the MOA is hereby amended and restated in full to read as follows:

V. TERMINATION

Either party may terminate this Agreement upon 30 days of written notice to the other Party. Upon such termination, either party may elect to continue with the project within their own project boundaries, as established in this agreement. Teton County agrees to fully cooperate with any post-termination request from the City of Driggs for information pertaining to the joint project and managed by Teton County as administrator of the joint project.

In the event of a material breach of this Agreement, the non-breaching Party shall send written notice to the breaching party of the violation. The breaching party shall have fourteen (14) calendar days from the date the notice was sent to remedy the breach. In the event the breaching Party does not remedy the breach in the given time, this Agreement shall immediately terminate. If an action is brought in a court of competent jurisdiction to enforce any provision of this Agreement or to recover damages from breach, the prevailing party will be entitled to its reasonable attorney's fees.

- 3. Further Acts.** Teton County and the City of Driggs further agree to taken any further, reasonable action necessary to carry out the purposes of this Amendment and to create and empower Teton County to be the administrator of the project described herein and in the MOA.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the Effective Date.

BOARD OF COUNTY COMMISSIONERS, TETON COUNTY IDAHO

_____ Attested: _____
Board Chair

By _____

THE CITY OF DRIGGS, IDAHO

Mayor

Attested: _____
City Clerk