

**INTERGOVERNMENTAL AGREEMENT
FOR FUNDING OF NEW SELLWOOD BRIDGE**

This Agreement is between the City of Portland (“City”) and Multnomah County (“County”) hereinafter referred to as the “Agreement.” The County and the City may be collectively referred to as the “Parties.”

I. RECITALS

- A. Securing funding for replacement of the Sellwood Bridge is a high priority for the City and the County.
- B. HB 2001, “*Jobs and Transportation Act of 2009*” provided increased revenues to the City and the County for transportation infrastructure.
- C. The City desires to allocate certain funds from HB 2001 for the design and construction of a new Sellwood Bridge.
- D. The City and the County want to ensure that the Sellwood Bridge is a vital, well integrated part of our community’s transportation system and ensures high quality access to pedestrians, bicycles, buses, streetcars, and motor vehicles.

II. AGREEMENT

- A. The City and County agree that the funds received by City under HB 2001 shall be allocated as follows: Commencing in fiscal year 2014, and continuing each year until the City has met its maximum contribution under this Agreement, the County shall withhold from the City’s share of HB2001 revenues the amount required to repay the principle and interest on a bond not to exceed \$100,000,000 issued exclusively for the Sellwood Bridge replacement project. The maximum amount to be withheld from the City’s share of HB 2001 revenues in any fiscal year shall not exceed \$8 million. The exact amount of this withholding will be set when the bonds are issued and the repayment schedule is determined. The withholdings will be in equal increments per fiscal quarter until the bonds are paid.
- B. Notwithstanding any other circumstance, the City and County agree the City’s maximum contribution, including financing costs, shall be the lesser of \$160,000,000 (\$100,000,000 in capital contribution, plus \$60,000,000 in financing costs), or thirty percent (30%) of total project cost.
- C. The County shall not issue bonds until there are written funding commitments from the State of Oregon, Clackamas County, and Multnomah County approved by the City. If any of the funding jurisdictions fail to contribute their pledged amounts to this project, the City reserves the right to terminate this Agreement. In the event the County does not issue bonds, County shall reimburse to the City any and all funds it has received from the City under this Agreement.

- D. The City and County agree the project must be designed and built in the most cost-effective manner. To achieve maximum cost effectiveness, the project shall be independently reviewed immediately for potential cost savings, with an initial focus on the west side interchange. The City, at its own expense, has hired transportation firm KPFF to complete this review. The City and County agree KPFF's work shall be reviewed by project funding partners, including City of Portland, Multnomah County, Clackamas County, and Oregon Department of Transportation, in consultation with TriMet and the federal congressional delegation, to achieve maximum cost-effectiveness.
- E. The City and County agree the project, including accommodation of streetcar, is projected to cost \$330,000,000. If cost savings are identified through independent review the City and County agree that the first \$40,000,000 in project cost savings shall accrue equally to the City of Portland and the Project. All cost savings beyond \$40,000,000 shall be distributed to project funding partners in a proportionate manner based on each funding partner's percentage contribution.
- F. The County shall design and construct the new Sellwood Bridge to accommodate streetcar. Streetcar accommodation means (a) tracks in place on the deck of the bridge from the east impact panel where the bridge meets Tacoma Street, continuing across the entire bridge and terminating at the Highway 43/Sellwood Bridge interchange, and (b) all infrastructure necessary to support streetcar tracks. It does not include overhead wires.
- G. The County shall design and construct the new Sellwood Bridge with 12-foot sidewalks and 6.5-foot bike lanes on each side, as described in the FEIS and shall ensure that the bridge is constructed in a manner that is structurally able to support its use by Tri-Met busses.
- H. If the County changes the design of the new Sellwood Bridge so that the conditions enumerated in paragraphs D, F, and G above are not met, the City may at its sole discretion terminate this Agreement. Prior to any termination of this agreement, the City and County will work in good faith to reach agreement over project elements or scope.
- I. The County will not materially alter the design of the new Sellwood Bridge without the prior written consent of the City which shall not be unreasonably withheld. If the parties cannot agree whether changes proposed by the County materially alter the bridge design, the dispute shall be resolved in accordance with the dispute resolution provisions in paragraph H below.
- J. Upon completion of the project and after all costs associated with the project have been paid, County shall provide an accounting to the City for all funds received from the City and shall reimburse the City all funds received from the City under this agreement which have not been used exclusively for the design and construction of the new Sellwood Bridge or committed to retirement of bonds issued for such purpose.

III. GENERAL TERMS AND CONDITIONS

A. TERM

The effective date is the last date at which every party has signed this Agreement. The Agreement shall terminate upon repayment of the bonds and completion of the accounting provided in Section **II.J**, unless otherwise terminated as provided herein.

B. NOTICES AND COMMUNICATIONS

All communications between the parties regarding this Agreement shall be directed to the party's respective contact persons as indicated below:

County – Jeff Cogen
Multnomah County Chair
501 SE Hawthorne Blvd.
Portland, OR 97214
(503) 988-3308
mult.chair@co.multnomah.or.us

City – Sam Adams
Mayor City of Portland
1221 SW 4th Avenue, Suite 340
Portland, OR 97204
(503) 823-4120
Sam.Adams@portlandoregon.gov

With a copy to:

Multnomah County Counsel
501 SE Hawthorne Blvd, Suite 500
Portland, OR 97214
P: 503-988-3138
F: 503-988-3377

Office of the Portland City Attorney
1221 SW 4th Ave., Rm 430
Portland, OR 97204
P: 503.823.4047
F: 503.823.3089

Official communications regarding this Agreement shall be by e-mail or in writing to the above-named persons or their designees. Designated representatives may be changed only upon written notice to the other party.

C. ADHERENCE TO LAW

Each party shall comply with all federal, state and local laws and ordinances applicable to this agreement.

D. NON-DISCRIMINATION

Each party shall comply with all requirements of federal and state civil rights and rehabilitation statutes and local non-discrimination ordinances.

E. ACCESS TO RECORDS

Each party shall have access to the books, documents, and other records of the other which are related to this agreement for the purpose of examination, copying, and audit, unless otherwise limited by law.

F. ENTIRE AGREEMENT, WAIVER AND AMENDMENT

This Agreement constitutes the entire Agreement between the parties. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification, amendment or change of terms of this Agreement shall bind either party unless in writing and signed by all parties and unless all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by either party of that or any other provision.

G. EARLY TERMINATION

1. The Parties may mutually agree in writing to terminate this Agreement upon terms and conditions that they will proscribe at such time.
2. If the County changes the design of the new Sellwood Bridge so that the conditions enumerated in paragraphs II.D, II.F, or II.G are not met, the City may at its sole discretion terminate this Agreement. Prior to any termination of this agreement, the City and County will work in good faith to reach agreement over project elements or scope.
3. If any of the funding partners fail to contribute their pledged amounts to this project, the City reserves the right to terminate this Agreement.
4. A Party may terminate this Agreement for failure of the other Party to comply with the terms and conditions of this Agreement.

H. DISPUTE RESOLUTION

1. To the extent permitted by law, with respect to any disagreement between the Parties, any dispute, or any instance where mutual agreement is not reached (a “Dispute”), shall be resolved through dispute resolution pursuant to this Section H (“Dispute Resolution”). Dispute Resolution does not apply where a decision or approval is subject to the Party’s sole discretion, however to the extent that such a decision is subject to a Party’s “reasonable discretion,” the reasonableness of the decision shall be subject to Dispute Resolution.
2. In the event either Party believes a Dispute exists, it shall give notice to the other specifying in reasonable detail the nature of such Dispute. The Parties shall seek in good faith to negotiate a settlement of the Dispute, including, without limitation, by agreeing to reasonable requests of the other to hold a meeting to discuss such Dispute

3. If the Parties are unable to resolve their Dispute in accordance with Section 1, it is agreed that such dispute will be submitted to a mediator prior to any litigation, and the parties hereby expressly agree that no claim or Dispute arising under the terms of this Agreement shall be resolved other than first through good faith negotiation, then through mediation and, only in the event said mediation efforts fail, through litigation. Any litigation involving or relating to the terms of this Agreement or the Exhibits attached hereto shall be tried to the court without a jury, and each party shall be responsible for payment of its own costs and expense, including without limitation, attorney fees.
4. The parties shall exercise good faith efforts to select a mediator who shall be compensated equally by both parties. Mediation will be conducted in Portland, Oregon, unless both parties agree in writing otherwise. Both parties agree to exercise good faith efforts to resolve disputes covered by this Article through this mediation process. If a party requests mediation and the other party fails to respond within ten (10) days, or if the parties fail to agree on a mediator within ten (10) days, a mediator shall be appointed by the presiding judge of the Multnomah County Circuit Court upon the request of either party. The parties shall have any rights at law or in equity with respect to any dispute not covered by this Article.
5. Unless otherwise agreed in writing, during the period that any mediation or litigation is pending under this Agreement, the Parties shall continue to comply with all terms and provisions of this Agreement, which are not subject to the Dispute.

I. VENUE AND CHOICE OF LAW

This Agreement shall be governed by the laws of the State of Oregon. Venue shall be in Multnomah County, Oregon.

J. INTERPRETATION OF AGREEMENT

This Agreement shall not be construed for or against any party by reason of the authorship or alleged authorship of any provision. The Section headings contained in this Agreement are for ease of reference only and shall not be used in constructing or interpreting this Agreement.

K. CAPTIONS

The titles to the sections of this Agreement are descriptive only and are not intended to change or influence the meaning of any section or to be part of this Agreement.

L. NONWAIVER

Failure by a Party to promptly enforce any regulation, remedy, or right of any kind under this Agreement shall not constitute a waiver of the same and such right or

remedy may be asserted at any time after the Party becomes entitled to the benefit thereof notwithstanding delay in enforcement.

APPROVALS:

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Agreement as of the day and year first written above.

MULTNOMAH COUNTY, OREGON

CITY OF PORTLAND

By _____
Jeff Cogen
Chair
Date: _____

By _____
Sam Adams
Mayor
Date: _____

Reviewed:
CHIP LAZENBY, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY

Approved as to form:

By _____
Multnomah County Counsel

City Attorney