

**INTERGOVERNMENTAL AGREEMENT
BETWEEN MULTNOMAH COUNTY AND THE CITY OF PORTLAND
FOR IMPACTS FROM PUBLIC WORKS IMPROVEMENTS
RELATED TO THE BROADWAY CORRIDOR DEVELOPMENT PROJECT
TO THE BROADWAY BRIDGE WEST APPROACH**

County Agreement No. _____
City Agreement No. _____

This INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered into by and between Multnomah County, a political subdivision of the State of Oregon, hereinafter referred to as the “County”, and the City of Portland, a municipal corporation of the State of Oregon, hereinafter referred to as the “City”. The County and the City may each be referred to as “Party” or collectively referred to as the “Parties”.

AUTHORITY TO ENTER INTO THIS AGREEMENT:

Pursuant to ORS Chapter 190 and the Parties’ respective local charters, the Parties have authority to enter into intergovernmental agreements and represent that they have passed any necessary ordinances to enter into this Agreement.

THE PARTIES AGREE AS FOLLOWS:

I. BACKGROUND

- A. The County is charged with operating and maintaining certain bridges and their approaches over the Willamette River pursuant to Oregon Revised Statutes (ORS) 382.305 and 385.310; this includes the Broadway Bridge and the Broadway Bridge West Approach.
- B. The City is undertaking the project entitled “NW Johnson St and NW Kearney St: NW 9th Ave to NW Broadway” (the “Project”), Portland Bureau of Transportation (PBOT) Project No. T00961.
- C. The Project connects to the existing NW Station Way that is located under the Broadway Bridge West Approach and will create new right-of-way as PBOT designs and constructs new roadway, sidewalk, street lighting system, storm/sanitary sewer system, accommodation for electric/gas/communication utilities, and landscaping in the former United States Postal Service (USPS) site. **Exhibit B** to this Agreement contains selected sheets from the 95% Project set relevant to the Broadway Bridge West Approach, attached and hereby incorporated by this reference.
- D. ORS 382.310 requires the County to "maintain, keep in good condition and repair and operate the bridges and their approaches". Pursuant to ORS 382.310, County must have immediate right of access to the areas upon, across, above, and under the bridges and their approaches at all times.
- E. The Parties agree and stipulate that the successful design and construction of the Project are in the public's best interest. The Parties further agree that it is also in the public's best interest that the Parties should work cooperatively to oversee and coordinate the Project work around the

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Broadway Bridge West Approach. The Parties are committed to ensuring that the following standards are met: (1) the County is able to exercise its statutory authority and obligation to maintain, keep in good condition, and repair, and operate the bridges and their approaches, and (2) the City is able to complete the Project.

- F. The Parties agree that the Project shall have a "cost neutral" impact on the County as it relates to the Broadway Bridge West Approach. Moreover, the Parties recognize the benefits of the City's work in creating new right-of-way and expanding the street network. However, in consideration of factors including, but not limited to: (i) County's services performed, but not reimbursed, relating to PBOT's preliminary design of the Project; and (ii) the increasing risk to the structure from two new intersections between supporting columns, the City and County agree to compensation provisions to address these concerns, as further described in this Agreement, in the Subsection entitled "Compensation".

II. PURPOSE OF THE AGREEMENT

The purpose of this Agreement is 1) to set forth common understanding of scope and obligations between City and County where the Project design may affect the Broadway Bridge West Approach, 2) enable the County to inspect the resulting construction impacts to the Broadway Bridge West Approach, and 3) compensate the County for staff and resources used for the Project. The Broadway Bridge West Approach area is shown in **Exhibit C**.

III. AGREEMENT TERMS

A. GENERAL TERMS AND CONDITIONS

1. The portions of the Project covered by this Agreement shall consist of two phases: The "Design Phase" ("DP") and the "Construction Phase." ("CP"). This Agreement shall cover both phases.
2. The DP of this Agreement addresses and controls the obligations and responsibilities of the Parties during the design, evaluation of options, preliminary work, and any investigation for the Project affecting the Broadway Bridge West Approach.
3. The CP of this Agreement addresses and controls the obligations and responsibilities of the Parties during the construction, installation, and final condition of the Project on the Broadway Bridge West Approach structure, foundations, appurtenances, and overall stability and condition. City shall provide at least 14 days advance written notice of when the CP is to begin.
4. If the Project is not completed by the City (or its successor) for any reason, the City shall be responsible for ensuring that the Broadway Bridge, the Broadway Bridge West Approach, and all other approaches are returned to the County in as good or better condition as it was found by the City.
5. All correspondence shall be via electronic mail, electronic documents, and phone calls. Any notice shall be sent via electronic mail or electronic document.

B. THE PROJECT DESIGN PHASE

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1. Responsibilities of City During DP

- a. The City will serve as the lead agency for the design of the Project.
- b. The City or its Consultant(s) shall contact the County for relevant information on the Broadway Bridge West Approach, and include the County in Project submittal reviews for work related to the Broadway Bridge West Approach.
- c. The City will review any County comments and concerns and will cooperate with the County to ensure that the comments and concerns are reasonably addressed and such necessary changes are incorporated into the Project's design.
- d. If deemed necessary and triggered by the City's construction, the City shall design a deflection and settlement monitoring system for the Broadway Bridge West Approach to be used during construction. The system shall include a reporting schedule to the County.

2. Responsibilities of the County During DP

- a. The County shall coordinate with the City and its Consultant, and provide any available information relating to the Broadway Bridge West Approach.
- b. The County shall provide appropriate staff to attend any meetings and review any documents that the City provides pursuant to Section III(B)(2)(b).
- c. The County shall have fourteen (14) calendar days from the date of actual receipt of Project submittals to review and provide comment. The County's review and comments under this Agreement shall pertain to protecting the Broadway Bridge West Approach structure and its stability, and preserving the County's continued ability to access, maintain, inspect, and repair the Broadway Bridge West Approach. The County's approval of any submittals shall not be unreasonably withheld.
- d. The County shall review any alternative City proposals for a deflection and settlement monitoring system under Section III(B)(2)(d) and any approval of such system shall not be unreasonably withheld.

C. THE PROJECT CONSTRUCTION PHASE

1. Responsibilities of City During Construction Phase

- a. The City shall administer construction of the Project for the duration of the Project.
- b. The City, either itself or through its contractor, shall apply for and obtain a Multnomah County Right-of-Way Permit for construction and traffic control for any work that impacts the Broadway Bridge West Approach.

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- c. The City shall report results from the deflection and settlement monitoring system described in II.B.1.c in accordance with the reporting schedule.
- d. The City shall provide the County with copies of all quality assurance and quality control documentation for any product permanently incorporated into a County-owned and/or maintained structure or property prior to incorporation. Construction document coordination is to occur via e-Builder, an internet-based project management system used by the City. The City shall ensure that the County is notified through e-Builder when the City's contractor uploads any submittals. If use of e-Builder is stopped, the City will ensure that communication and coordination with the County continue.
- e. The City shall provide reasonable opportunities to the County to inspect and approve or reject any work and materials incorporated into or immediately adjacent to the Broadway Bridge West Approach. The City shall not permit its contractor to proceed with any work to be performed on County-operated and maintained bridges and structures in the Project area unless and until the County has issued written approvals of the work and materials as provided in Section III(C)(2)(d).
- f. Upon completion of the Project, the City will provide the County with a fully corrected set of "as-built" drawings detailing all changes to the original plans for structures or properties owned and/or maintained and operated by the County.
- g. Warranty. The City shall require its contractor(s) to warrant any work and materials according to the Project's Specifications. During the warranty periods provided therein, the City shall cause its contractor(s) to repair or replace or to pay the cost to repair or replace any defective materials, components, or assemblies and repair any defective workmanship relating to the Broadway Bridge West Approach. At the end of the warranty period for each material, component or assembly, ownership and responsibility for maintenance of that item will pass to the County unless otherwise agreed. The terms of this subsection shall extend beyond the CP as provided in this subsection.
- h. Contractor's Insurance. Prior to beginning any work under this Agreement, the City shall confirm in writing to the County that the general contractor has obtained a commercial insurance policy that provides: (i) for a combined single limit of not less than \$2,000,000 per each incident or occurrence and with an annual aggregate limit of not less than \$5,000,000; (ii) for extended reporting period coverage for claims made within two years after the work or associated work authorized under this Agreement is completed; and (iii) for the County, its officers, employees, and agents to be named as additional insureds for all work or associated work, being authorized under this Permit. If the City receives a written 30-day notice from the Contractor or its insurer(s), as noted under Section 170.70 of the City's Standard Construction Specifications, the City shall forward a copy of this notice to the County's designated representative within two (2) business days. Subsequently, the City shall confirm for the County, in writing, of any replacement insurance provided during the 30-day notice period or inform the County that the contractor is in default.

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- i. Contractor's Indemnity. Prior to beginning work, the City shall confirm in writing to the County that its Contractor has agreed to defend, indemnify, and hold harmless the County, its officers, employees, and agents upon the same terms and conditions as this Agreement imposes on the City under the Subsection of this Agreement entitled "City Indemnity Obligations", excepting therefrom any limitation invoked on behalf of the City under the Oregon Tort Claims Act, under ORS 30.260 through 30.300.
- j. Emergency Contact. The City shall provide the name and telephone contact number for its inspector(s) and a 24-hour emergency telephone number(s) for their contractor(s) prior to beginning work under this Agreement.
- k. Utility Notification Required. Oregon law requires any party doing work in the public right-of-way to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. The telephone number for the Oregon Utility Notification Center is (503) 232-1987 or (877) 668-4001.
- l. Stop Work. The County reserves the right to require the City to stop work on the elements of the Project related to the County's assets. If, in County's reasonable determination, said work fails to comply with the terms of this Agreement as it relates to the County's statutory authority and obligation to maintain, keep in good condition and repair, and operate the bridges and their approaches. Before any revocation of this Agreement under this Section, County and City shall endeavor to reach mutual agreement as to remedies. Where mutual agreement is not reached, the dispute shall be resolved through Dispute Resolution pursuant to the Subsection entitled "Dispute Resolution" in this Agreement.
- m. Post Construction Conditions. The City shall restore any portion of the Broadway Bridge West Approach impacted by this Project to an equal or better condition than existed prior to the CP of the work subject to this Agreement. The City shall be responsible for quality control of all demolition, alteration, or new construction made to the Broadway Bridge West Approach. As directed by the County, the City shall correct all construction work that does not conform to the Project's Plans and Specifications.
- n. Regulatory Compliance. The City shall comply with all federal, state, and local laws, regulations, rules, and ordinances pertaining to all the work subject to this Agreement, including, but not limited to, obtaining all necessary and required permits, reviews, and approvals of any local, State, or Federal agency prior to beginning the work subject to this Agreement, and in compliance with all applicable OSHA rules and regulations.
- o. County Maintenance. During the CP, the City shall allow the County to enter the Project area for maintenance activities related to the Broadway Bridge West Approach. In the event of an emergency, County personnel shall be granted immediate access to the Broadway Bridge West Approach within the Project area.
- p. Should disputes between the City and its contractor(s) or any other persons arise over the intent of the Plans and Specifications for any Project-related work that is to be done on the Broadway Bridge or Broadway Bridge approach, or other structure where the County owns or is responsible for the operation and maintenance, prior to any such

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work proceeding, the City shall allow the County to participate in negotiations and shall seek the County's agreement to the solution to the dispute, which shall not unreasonably be withheld. Any agreement shall be memorialized in writing and shall be based, at a minimum, in meeting the requirements of the applicable editions of AASHTO guidelines for bridges, the applicable County requirements, and the applicable City of Portland Standard Construction Specifications.

2. Responsibilities of the County During Construction Phase

- a. The County shall timely review and expedite approval of the Multnomah County Right-of-Way Permit for construction and traffic control for any Project work within fourteen (14) calendar days from receipt of all required items. The County shall ensure that such permit includes any insurance or indemnity requirements of the City's contractor for work related to this Agreement.
- b. The County shall timely review the reports of the deflection and settlement monitoring system described in II.B.1.c within fourteen (14) calendar days from the date of receipt, and immediately notify the City if there are any concerns.
- c. The County shall review and approve or comment on the City's contractor's submittals within fourteen (14) calendar days from the date of receipt (assumed to be when the contractor uploads such submittals within e-Builder and a notice is sent to County, but may be via email communication from the City if e-Builder is not used) and shall coordinate with the City to ensure that Submittal responses are returned to the City's contractor within that time. Any rejection will be based on upholding the County's responsibility for the Broadway Bridge structures and approaches, and will then be coordinated with the City to a shared resolution. County's review of the contractor's submittals should comply with the City's Standard Construction Specifications.
- d. The County shall review and approve, within fourteen (14) calendar days from the date of actual receipt of the Plans, Specifications, or any amendments or revisions proposed thereto, said plans and specifications. The County's review and comment under this Agreement shall address the suitability and acceptability of the proposed materials and assemblies to be permanently or temporarily incorporated into or attached to the Broadway Bridge West Approach, and ensure the protection and stability of the structure foundations, such approvals not to be unreasonably withheld
- e. The County shall timely review and accept the as-built plans delivered by the City and timely notify the City of any issues related thereto.
- f. The County shall timely notify the City of any warranty claims that the County might have related to the Project, such that the City may make such claims to its contractor within the respective warranty period. At the end of any warranty period, the County shall accept ownership and responsibility for the maintenance of that item unless otherwise agreed to by the Parties or a later discovery of a latent defect.
- g. The County shall notify the City within seven (7) days of receipt of any of the City's contractor's insurance documentation if such documentation does not comply with this

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Agreement. Should the County have a claim against the City for which the contractor's insurance would provide coverage, the County shall cooperate with the City to provide all necessary information and documents to the contractor's insurer.

- h. If the County should have claims against the City that are covered by the City's contractor's indemnity obligations, the County shall cooperate with the City as it seeks indemnity for such claims.
- i. The County shall coordinate with the City's construction manager for the Project, particularly if the County believes that there are any emergencies related to the Project.
- j. Should the County demand that the City stop work and it be determined that the County's request to stop work was in error, the County agrees to indemnify City from any delay claims asserted by the City's contractor in conjunction with the stopped work.
- k. The County shall act in good faith and shall timely inspect any portion of the Broadway Bridge West Approach impacted by this Project to ensure the condition of such work meets or exceeds the prior conditions and conforms to the Project's Plans and Specifications.
- l. Regulatory Compliance. The County shall comply with all federal, state, and local laws, regulations, rules, and ordinances pertaining to all the work subject to this Agreement, including, but not limited to, obtaining all necessary and required permits, reviews, and approvals of any local, State, or Federal agency prior to beginning the work subject to this Agreement, and in compliance with all applicable OSHA rules and regulations.
- m. County Maintenance. The County shall provide reasonable notice and make reasonable efforts to minimize negative impacts of any required maintenance activities on the Project.
- n. Should disputes between the City and its contractor(s) or any other persons arise over the intent of the Plans and Specifications for any Project-related work that is to be done on any bridge, approach, or other structure where the County owns or is responsible for the operation and maintenance, prior to any such work proceeding, the County shall participate with the City in good-faith negotiations and provide input to the City regarding a solution to the dispute in confidence. The County shall not unreasonably withhold agreement to an appropriate resolution of the dispute and shall not interfere with the City's relationship with its contractors.

D. COMPENSATION

- 1. The City will administer all Project funding and reimburse the County for time worked on Project and authorized expenses within thirty (30) days of receipt of County invoices. The amount of reimbursement shall be the actual cost to the County for work and expenses done to oversee, verify, review documents and submittals, and inspect all work performed by the City or the City's contractors on any of the County-owned or maintained real property, bridges, structures, or other facilities subject to this Agreement. Such compensation shall not exceed \$100,000 in labor and expenses without the prior consent of

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the City. This estimate is based on an assumed schedule of: Preconstruction phase with Design phase completion in January 2024, and Construction phase estimated for August 2024-Dec. 2025. An additional \$20,000 in reimbursable compensation can be authorized by mutual agreement of the Parties via a written amendment.

2. The County will submit invoices to the City's Project Manager once a month, pursuant to the County's standard billing practices, for actual work performed and authorized expenses incurred to the end of the CP. Invoices will show the hours and dates worked, billing rates, including overhead, and a summary of the nature of the work performed. Expenses shall be fully itemized.

E. MAINTENANCE RESPONSIBILITIES

1. Upon completion of the Project, the City will retain ownership and responsibility of the right-of-way underneath the Broadway Bridge West Approach and any new street lighting for NW Union Way, NW Johnson St, and NW Kearney St attached to the bridge structure.
2. County will retain ownership and responsibility for the Broadway Bridge and Broadway Bridge West Approach structure in accordance with ORS 382.305-310, and ORS 382.340. As authorized by ORS 382.310(2)(b), this includes a Setback Requirement defined in the Multnomah County Road Rules, Section 25.200: "...development of structures, fixtures, or appurtenances around, over, above, below or adjacent to the Willamette River Bridges or their approaches are not allowed within ten feet from the outer edge of the bridge structure (the "Bridge Site") or within 10 horizontal feet from the public right of way in order to preserve the County's ability to operate and maintain the Willamette River Bridges and their approaches."
3. At the time of this Agreement, maintenance activities are planned for the Broadway Bridge that may impact nearby City ROW and this Project. The County will coordinate with the City on the following planned projects:
 - a. Broadway Bridge West Approach Electrical Service Project – The County is currently coordinating with PBOT, PGE, and Prosper Portland regarding power conduits attached to the Broadway Bridge West Approach structure. This is mainly concentrated at the north end adjacent to the railroad tracks and is not anticipated to conflict with the Project's area or schedule.
 - b. Broadway Bridge West Approach Painting Project – The County plans to repaint the superstructure steel in a future project. This may require road closures below.
 - c. Broadway Bridge Lift Span Deck Replacement – The County will be replacing the lift span deck and various mechanical/electrical components, planned for 2024. This will require an extended Broadway Bridge closure for vehicles and streetcar, but is not anticipated to conflict with the Project's area or schedule.
 - d. The County contemplates other Capital Improvement Projects to maintain and improve the condition of the Broadway Bridge and its approaches. These projects may affect the City's right-of-way. The County shall cooperate with the City to implement any

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restrictions that the County, in its reasonable discretion, determines are necessary to construct these future Capital Improvement Projects, including temporary suspension of traffic if necessary to undertake the Capital Improvement Projects. The County shall notify the City of the planned date for these future Capital Improvement Projects at least six (6) months prior to expected date of suspension of traffic.

- d. Unanticipated projects not identified above may also arise in the event of an emergency or emergency repairs or maintenance of the Broadway Bridge and its approaches.

F. OTHER/MISCELLANEOUS TERMS AND CONDITIONS

1. RELATIONSHIP OF THE PARTIES. Each of the Parties to this Agreement shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee, or contractors of one Party shall be deemed to be employee, agent or contractor of the other Party for any purpose. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship or principal and agent, partnership, joint venture of any similar relationship, and each Party specifically disclaims any such relationship.
2. TERM. The effective date is the last date at which every Party has signed this Agreement. Unless otherwise lawfully terminated by the Parties or otherwise stated in the Agreement, this Agreement expires upon the completion and acceptance of the Project and fulfillment of all terms of the Agreement.
3. 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: Jon Henrichsen
Multnomah County Bridge Section
1403 SE Water Ave
Portland, OR 97214-3333
(503) 988 7126 (desk) (503) 481 1662 (cell)
Email: jon.p.henrichsen@multco.us

City: Bryan Poole
Portland Bureau of Transportation
1120 SW 5th Avenue, Suite 1400
Portland OR 97211
(503) 823-1173
Email:
bryan.poole@portlandoregon.gov

4. INDEMNIFICATION

By entering into this Agreement, and subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, as applicable to a "local public body" as defined therein, the Parties agree that to the extent permitted by law, each Party will indemnify, defend, and save the other Party harmless, including any of the Party's departments, bureaus, agencies, officers, employees, elected officials or agents, from and against all loss, expense, damage, or claim of any nature whatsoever which is caused by any activity, condition or event arising out of the negligent performance or nonperformance by the indemnifying Party of any of the provisions of this Agreement. By entering into this Agreement, each Party indemnifies the other against all liability, losses and damages of any nature for or on account of any injuries or death of persons or damages to or destruction of property arising out of or in any way connected with the performance or

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nonperformance of this Agreement, except such injury or damage as shall have been caused or contributed to by the negligence of that other Party. The damages which are the subject of this indemnity shall include but not be limited to the damages incurred by any Party, its departments, agencies, officers, employees, elected officials or agents. The indemnity obligations under this clause shall survive the termination or expiration of this Agreement. In the event of an action, the damages which are subject of this indemnity shall include costs, expenses of litigation, and reasonable attorneys' fees.

5. **INSURANCE.** Each Party shall be responsible for providing workers' compensation insurance as required by law. Neither Party shall be required to provide or show proof of any other insurance coverage except where otherwise required within this Agreement.
6. **ADHERENCE TO LAW.** Each Party shall comply with all federal, state, and local laws and ordinances applicable to this Agreement.
7. **NON-DISCRIMINATION.** Each Party shall comply with all requirements of federal and state civil rights and rehabilitation statutes and local non-discrimination ordinances.
8. **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.
9. **SUCCESSORS AND ASSIGNMENT.** The benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the Parties. Neither Party will subcontract or assign any part of this Agreement without the written consent of the other Party.
10. **ENTIRE AGREEMENT, WAIVER AND AMENDMENT.** The 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, 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 and Provision of this Agreement shall not constitute a waiver by either Party of that or any other provision.
11. **EARLY TERMINATION**
 - a. The Parties may mutually agree in writing to terminate this Agreement upon terms and conditions that they will proscribe at such time.
 - b. A Party may terminate this Agreement for failure of the other Party to comply with the terms and conditions of this Agreement. Termination under this Subsection shall be available only upon the exercise and exhaustion of compliance with the Subsection entitled "Dispute Resolution", and the issuance of written 30 day notice from the Party seeking termination to the other Party.

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12. DISPUTE RESOLUTION

- a. 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 entitled "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.
 - b. In the event either Party believes a Dispute exists, it shall give notice to the other Party 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.
 - c. If the Parties are unable to resolve their Dispute in accordance with the approach described in this Subsection, 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.
 - d. 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 subsection 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.
 - e. This Agreement shall be governed by the laws of the State of Oregon. Venue shall be in Multnomah County, Oregon.
 - f. 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.
13. 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.

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14. SEVERABILITY. If any clause, sentence, or portion of the terms and conditions of this Agreement becomes illegal, null, or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law. All provisions concerning indemnity survive the termination of this Agreement for any cause.

15. Confidential Information.

- a. Definition. "Confidential Information" means any information that is disclosed in written, graphic or machine-recognizable form and is marked or labeled at the time of disclosure as being Confidential or its equivalent, or, if the information is in verbal or visual form, it is identified as Confidential or proprietary at the time of disclosure, or a reasonable time thereafter. Information shall always be considered Confidential Information, whether or not it is marked or identified as such, if it is described by one or more of the following categories: (1) non-public financial, statistical, personnel, human resources data or Personally Identifiable Information as described in the Oregon Consumer Information Protection Act; (2) business plans, negotiations, or strategies; (3) unannounced pending or future products, services, designs, projects or internal public relations information; (4) trade secrets, as such term is defined by Oregon Public Records Laws and the Uniform Trade Secrets Act; (5) information which is exempt from disclosure per Oregon Public Records Law; (6) attorney/client privileged communications; (7) information which is exempt per federal laws (including but not limited to copyright, HIPPA); and (8) information relating to or embodied by designs, plans, configurations, specifications, programs, or systems including without limitation, data and information systems, any software code and related materials and processes. Confidential Information does not include any information that: is or becomes publicly known through no wrongful or negligent act of the receiving Party; is already lawfully known to the receiving Party without restriction when it is disclosed; is, or subsequently becomes, rightfully and without breach of this Agreement or any other agreement between the Parties or of any applicable protective or similar order, in the receiving Party's possession without any obligation restricting disclosure; is independently developed by the receiving Party, as shown by reasonable written documentation, without breach of this Agreement; or is explicitly approved for release by written authorization of the disclosing Party.
- b. Confidentiality Obligations. Each receiving Party shall treat as confidential any Confidential Information that has been made known or available to that Party or that the Party has received, learned, heard or observed; or to which the Party has had access. Each receiving Party shall use Confidential Information exclusively for the benefit of the disclosing Party in the performance of this Agreement. Except as may be expressly authorized in writing by the disclosing Party, in no event shall the receiving Party publish, use, discuss or cause or permit to be disclosed to any other person such Confidential Information. The receiving Party shall (1) limit disclosure of the Confidential Information to those directors, officers, employees, subcontractors and agents of the receiving Party who need to know the Confidential Information in connection with the Agreement and who have agreed in writing to confidentiality obligations at least as strict as those contained in this Agreement, (2) exercise reasonable care to protect the confidentiality of the Confidential Information, at least to the same degree of care as the receiving Party employs with respect to protecting its

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own proprietary and confidential information, and (3) return immediately to the disclosing Party, or permanently destroy upon the disclosing Party's request, all materials containing Confidential Information, in whatever form, that are in the receiving Party's possession or custody or under its control, except as otherwise required by law, including for compliance with public record and archiving requirements.

- c. Scope. These terms shall apply to all Confidential Information previously received, learned, observed, known by or made available by either Party to the other in connection with this Agreement. The confidentiality obligations under this Agreement shall survive for five (5) years following termination or expiration of this Agreement.
 - d. The provisions of this Section will not restrict a Party from disclosing the disclosing Party's Confidential Information to the extent required by any law, regulation, or court order, including Oregon public records law (ORS 192.311 to 192.478). A Party required to make a disclosure required by law will use reasonable efforts to give the disclosing Party reasonable advance notice (except where prohibited by law) of such required disclosure so that the disclosing Party may seek to prevent or limit such disclosure
 - e. Equitable Relief. The Parties acknowledge that unauthorized disclosure of Confidential Information will result in irreparable harm to the disclosing Party. The Parties agree that, notwithstanding any other section of this Agreement, in the event of a breach or a threatened breach of Agreement terms related to Confidential Information, the non-breaching Party shall be entitled to seek equitable relief to protect its interests, including but not limited to injunctive relief. Nothing stated herein shall be construed to limit any other remedies available to the Parties.
16. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument. Faxed, copied, digitally produced and scanned signatures are acceptable as original signatures.

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APPROVALS:

MULTNOMAH COUNTY, OREGON

CITY OF PORTLAND

Jessica Vega Pederson
County Chair
Date: _____

[Mingus Mapps]
PBOT Commissioner-in-Charge
Date: _____

Margi Bradway
Department of Community Services Director or Designee
Date: _____

Reviewed:

JENNY M. MADKOUR, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY

Approved as to Form:

Courtney Lords
Senior Assistant County Attorney
Date: _____

[NAME]
Deputy City Attorney
Date: _____