

**INTERGOVERNMENTAL AGREEMENT
BETWEEN MULTNOMAH COUNTY AND THE CITY OF PORTLAND FOR
COORDINATION OF ACTIVITIES RELATED TO CONSTRUCTION AND
OPERATION OF THE PORTLAND STREETCAR LOOP PROJECT**

County Agreement No.: 4600008288\
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 be collectively referred to as the "Parties."

THE PARTIES AGREE AS FOLLOWS:

I. THE PURPOSES OF THIS AGREEMENT

A. The City is lead agency for the design, installation, construction, maintenance and operation of the Portland Streetcar Loop Project ("Project"), a streetcar line from the Pearl District in Northwest Portland to the Oregon Museum of Science and Industry in Southeast Portland. A description of the Project is more particularly provided in that certain set of Plans and Specifications dated November 2009, which are hereby incorporated by this reference, as if said Plans and Specifications were set forth in their entirety; or as the Parties agree in writing to amend or revise said Plans and Specifications. The various terms and conditions of the Plans and Specifications applicable or relating in any way to County owned or operated bridges or other structures; or County owned real property; shall not be changed, altered or modified without the Parties' first obtaining the written consent of the County. The City shall assume full responsibility for maintenance, operation, control, repair, reconstruction, replacement, removal and liability for the Project during the construction and operations phases of this Agreement as further provided herein.

B. **Exhibit A** to this Agreement contains the description and map of the area affected by the Project (the "Project Area and Streetcar System"), and the Parties agree and stipulate that the City will assume full responsibility for maintenance, operation, control, repair, reconstruction, replacement, removal and liability for all those certain installations, improvements and alterations for the duration of this Agreement as further provided and explained herein. **Exhibit A** is attached and is hereby incorporated by this reference. **Exhibit A** shall not be changed, altered or modified without the Parties' first obtaining the written consent of the County.

C. The Project consists of the construction, installation and operation of the Streetcar System in the Project Area, which includes the area crossing the Broadway Bridge and its East and West approach ramps and under the east viaducts of the Morrison and Hawthorne Bridges on Martin Luther King Jr. Boulevard, requiring modifications or attachments to each structure.

D. With respect to the bridges identified in Paragraph C above, ORS 382.305 to ORS 382.330 imposes obligations on the County regarding those three bridges to “maintain, keep in good condition and repair and operate the bridges and their approaches.” To be able to comply with that statutory mandate, the County presently must have right of access to the area upon, across, above, and under the bridges and their approaches.

E. ORS 382.325 provides that the City may “lay and maintain upon the bridges and their approaches constructed by the City of Portland, all rails and tracks necessary, desirable or convenient for the operation of streetcars.”

F. The Parties agree and stipulate that the successful construction and operation of the Project is in the public’s best interest. The Parties further agree that it is also in the public’s best interest that they should work cooperatively to oversee and coordinate the work on the Project in the Project Area. 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 exercise its statutory authority to regulate traffic, lay and maintain all rails and tracks and provide for use of streetcars upon and across the bridges and their approaches.

G. The portion of the Project covered by this agreement shall consist of two phases: the “Construction Phase,” or “CP,” and the “Operation Phase,” or “OP.” This Agreement shall cover both phases.

H. The Construction Phase of this Agreement addresses and controls the obligations and responsibilities of the Parties during the construction, installation and testing of the Project on the Broadway Bridge and its approaches and as applicable underneath the Morrison and Hawthorne Bridges and their approaches. Any physical alteration undertaken by the City or its contractor(s) to any of the impacted County-owned or maintained structures shall be sufficient to have established the initiation of the Construction Phase under this Agreement.

I. The Operation Phase of this Agreement addresses and controls the obligations and responsibilities of the Parties post-construction and testing. During the OP the City will own, operate, and maintain the Project’s streetcar system over the Broadway Bridge and Broadway East Approach over the Interstate Avenue Bridge and under the Morrison and Hawthorne Bridges along SE Martin Luther King Blvd.; including the tracks, the overhead contact system (OCS), and the OCS electrical disconnects and relays up to the terminals of the Programmable Logic Controller (PLC) that operates the West leaf and East leaf of the Broadway Bridge. If, post Construction Phase, the Project is not completed or not operated by the City (or any successor) for any reason, then all obligations and responsibilities imposed herein for the Operations Phase of the Project shall still be applicable and binding on the City or its successor as if the Project was actually in full operation.

J. A significant goal associated with the Project is that it will have a “cost neutral” impact on the County, as it relates to streetcar-related activities. The County owns or leases several properties that were assessed by the Local Improvement District Assessment imposed in the

close-in eastside area to finance the construction of the Project. The County recognizes the special benefit that accrues to properties within the Local Improvement Distinct boundaries. However, in consideration of factors, including, but not limited to: (i) County's services performed, but not reimbursed, under previous IGA for the design of the Project; and (ii) the City's use of at least three of these properties to mitigate impacts caused by the Project, the City and County agree to compensation provisions to address these concerns, as further described in this IGA. The City also agrees to reimburse the County for additional operational costs caused by the Project that affect necessary maintenance and capital improvement costs during the OP, as further provided at Section III, Subsection F.

II. THE PROJECT CONSTRUCTION PHASE.

A. CLOSURE OF THE BROADWAY BRIDGE.

1. The County agrees to the City of Portland's closure of the Broadway Bridge to roadway traffic for one continuous 60-day period during the duration of the Construction Phase that this Agreement covers.
2. The County agrees to the City's closure, after appropriate public notice, of the Broadway Bridge to roadway traffic each evening beginning at 8:00 p.m. and ending no later than 5:00 a.m. during the Construction Phase of this Agreement, PROVIDED that on those evenings when the Portland Trailblazers play at the Rose Garden, westbound traffic lanes on the Broadway Bridge shall be kept open until 11:00 p.m.
3. The County agrees to the City's closure of the Broadway Bridge to roadway traffic on two weekends during the term of the Construction Phase, beginning at 8:00 p.m. on a given Friday night and ending at 5:00 a.m. on the immediately following Monday morning. The City shall notify the County at least thirty (30) days prior to the weekend closures.
4. As provided herein, the County will assist the City in seeking the cooperation of the grain terminal operation (Louis Dreyfus Corporation or successors) on the Willamette River just south of the bridge and obtaining the permission from the Coast Guard to temporarily modify the operating conditions for the Broadway Bridge affecting river traffic. The temporary conditions would be three days closed to river traffic, one day open to river traffic, and would be in effect only during the 60-day shut down "window" of the Broadway Bridge to roadway traffic as provided under Subsection A.1 herein. The City shall cause its Contractor to be responsible for all coordination with the grain terminal personnel and for preliminary discussions of the plan with the Coast Guard. Provided the City's Contractor complies with all the requirements of this Subsection II A, the County will, when requested by the City liaison in writing, submit the official request to the U.S. Coast Guard seeking the temporary modification in the same manner that the County follows in other matters presented to the Coast Guard regarding the operation of the Willamette River Bridges.

5. The City and its Contractor shall be responsible for developing and performing all required detours and traffic control plans to safely conduct any closure of the bridge to roadway traffic.

B. GRANTING OF EQUITABLE SERVITUDE INTEREST.

Upon the payment of \$310,000, the County agrees to grant the City an appropriate interest or right in certain real property, more particularly described in the Plans and Specifications, to provide the City the right, subject to the terms and conditions of an easement, to construct water treatment facilities, environmental protections, and an electrical substation and access pad in certain areas within the Morrison Bridge and Hawthorne Bridge cloverleaf ramps. Any such grant of easement by the County of a real property interest to the City will be "AS IS, WHERE IS", with no warranties or representations with respect to condition, status, use etc of said property. The Parties further stipulate and agree that the City shall bear full responsibility and assume all costs for compliance with any applicable federal, state or local laws and regulations, including but not limited to: archeological provisions, historical preservation provisions, environmental protection, and compliance or remediation provisions relating to or in anyway caused by the City's proposed occupancy, use, development or restoration of the real property.

C. RESPONSIBILITIES OF CITY DURING CONSTRUCTION PHASE.

1. As the owner of the Portland Streetcar System, the City will serve as the lead agency for the construction of the Project.
2. 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 or other structure that the County owns or is responsible for the operation and maintenance of, prior to any such work proceeding, a solution to the problem shall be arrived at only with the complete participation and agreement of the County, which agreement shall be memorialized in writing. Further, the parties stipulate and agree that any such resolution shall be based, at a minimum, in meeting the requirements of the AASHTO Standard Specifications for Highway Bridges, 17th edition (2003 w/ interims); the AASHTO Standard Specifications for Moveable Highway Bridges (through 2008 interims) and the 2007 City of Portland Standard Construction Specifications.
3. The City shall cause to be constructed, at the City's own expense, the installation of microsilica overlay concrete paving on the west approach to the Broadway Bridge, as more specifically detailed in the Loop Project Proposal Request No. 03, dated November 10, 2009.
4. The City or its Contractor(s) 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. Upon receipt of Contractor submittals, the County will have fourteen (14) calendar days

to review and approve or reject Contractor submittals. At the end of Construction, the City will provide the County with a fully corrected set of "as-built" drawings, stamped and signed by the Engineer of Record, detailing all changes to the original plans for structures or properties owned and/or maintained and operated by the County, described in Exhibit B.

5. Lead Paint Removal – The City shall require its Contractor(s) to ensure that all lead-based paint removed from the Broadway Bridge as part of the Project is handled, labeled, stored, and disposed of in accordance with the Resource Conservation and Recovery Act (RCRA) regulations found in 40 CFR 240 through 40 CFR 280. Additionally, the City shall ensure that its Contractor and all of its Contractor's subcontractors comply with all applicable EPA/DEQ regulations and all applicable OSHA regulations. The City will also take measures to insure that all documentation related to lead removal from the Broadway Bridge is delivered to the County. The County will provide the City and its Contractor with the County DEQ registration number for hazardous material transport.

6. Warranty. The City shall require its Contractor(s) to warrant the new center lock system hardware and structural attachments, new live load shoes, new centering devices, and new paint coating systems for a period of one year following the final installation of each component. Additionally, the City shall require its Contractor(s) to warrant the new sections of the fiber reinforced polymer deck to the top of the existing structural steel, including the overlay, for a period of five (5) years due to material and workmanship defects, as provided for in Section 565.60 of the Project Special Provisions. During the warranty periods provided herein, the City shall cause its Contractor(s) to pay the cost to repair or replace any defective materials, components, or assemblies and repair any defective workmanship to the satisfaction of the County. 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.

7. 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; (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 Standard Specifications (2007), 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.

8. 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 Section V.E.1 of this Agreement, excepting therefrom any limitation invoked on behalf of the City under the Oregon Tort Claims Act, under ORS 30.260 through 30.300.

9. Traffic Control. Traffic control is the responsibility of the City/Contractor and shall be performed in accordance with the Manual of Uniform Traffic Control Devices and Oregon Supplements. The City of Portland shall review and approve the traffic control plan and provide the County with a copy of that plan prior to working under this Agreement. Any aspects of the Traffic Control plan that impact the operations of the Broadway Bridge Bascule Span shall be reviewed by the County and shall be implemented on the Broadway Bridge only with the County's written consent, which shall not be unreasonably withheld.

10. Emergency Contact. The City shall provide the name and telephone contact number for its inspector and a 24-hour emergency telephone number(s) for their contractor(s) prior to beginning work under this Agreement.

11. ATTENTION: 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.

12. Stop Work. The County reserves the right to stop work performed by City or its Contractor if, in its 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 Section L of this Agreement. The City reserves the right to seek to recover costs associated with any work stoppage arising from any unreasonable work stoppage by the County.

13. Post Construction Conditions. The City shall restore or cause its Contractor to restore the Broadway Bridge Approach structure on the eastside of the Willamette River to an equal or better condition than existed prior to the construction phase of the work authorized under this Agreement. The City shall be responsible or cause its Contractor to be responsible for quality control of all demolition or new construction made to the Broadway Bridge Approach structure. As directed by the County, the City shall correct or cause its Contractor to correct all construction work that does not conform to the Plans and Specifications.

14. Regulatory Compliance. The City and County shall be in compliance with all federal, state, and local laws, regulations, rules, and ordinances, pertaining to all the work performed under 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 authorized under this Agreement, and in compliance with all applicable OSHA rules and regulations.

15. County Maintenance. During construction, the County reserves the right to enter the Agreement Area for maintenance activities. The County shall provide reasonable notice and make reasonable efforts to minimize impact of any required maintenance activities. In the event of an emergency, County personnel shall be granted immediate access to the area covered under this Agreement.

D. RESPONSIBILITIES OF COUNTY DURING CONSTRUCTION PHASE.

1. The County shall have the opportunity to inspect and approve all work and materials incorporated into the Broadway Bridge to construct the Project and the installation of the Streetcar System on the Broadway, Morrison, Hawthorne and Interstate Bridges to ensure that such work conforms to the Project's standards as described in the Project Plans and Specifications. Except as otherwise provided, work shall not proceed on the 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 sub-section C.2 herein. The working relationship of the County and City inspectors is more fully described in the Construction Loop Plan – Broadway Bridge dated April 21, 2010, which is hereby incorporated by this reference, as if said Plan was set forth in its entirety. Should there be any conflict between the Construction Loop Plan – Broadway Bridge and this Agreement, the Agreement shall prevail.

2. The County shall have fourteen (14) calendar days from the date of actual receipt of the plans, specifications, or any amendments or revisions proposed thereto to review and approve said plans and specifications. All submittals under this section are to be delivered to the County Bridge Section Offices, currently located at 1403 SE Water Avenue, Portland Oregon 97214. 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, Broadway East Approach over Interstate Avenue, the Morrison Bridge and the Hawthorne Bridge.

3. The County shall pay the City to install conduit within the streetcar track slab for the future installation of a fiber optic line by the County. The amount of compensation for this work as defined in the Project Plans and Specifications, shall not exceed \$165,000 and shall be paid to the City upon execution of this Agreement. Any additional modifications requested by the County to the work shall be paid to the City on a cost basis.

E. COMPENSATION. The City will administer all project funding and reimburse the County for time worked on this 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 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. Such compensation shall not exceed \$600,000 without the prior consent of the City.

1. The County will submit invoices to the City's Project Manager once a month pursuant to the County's standard billing practices for contractors, for actual work performed and authorized expenses incurred. 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 and will include the following:

a. County's purchase of specialized reference material or informational material required to complete the review of plans, specifications and construction-related documents, with receipts.

b. The actual, reasonable costs incurred by the County for mailing, copying or delivering documents, electronic media or similar records required for the performance of this Agreement, with receipts.

2. The County has incurred costs predating the date of execution of this Agreement in the performance of tasks to further City or its contractor's schedule, and the County shall be authorized to submit invoices immediately upon the full execution of this Agreement to for reimbursement of such costs. Any such pre-Agreement task reimbursement shall be billed and compensated as otherwise provided under this Section.

III. PROJECT OPERATION PHASE

A. Regular Meetings of the Parties.

1. The Parties shall meet at least once in September of each year to thoroughly inspect all aspects of the Streetcar System on the Broadway Bridge for proper function and to evaluate the system performance and determine if improvements, repairs or replacements are required. Additionally, the parties will discuss and resolve any issues, questions, and/or conflicts that either party presents about the operation and maintenance of the Streetcar System.

2. Subsequent to the initial period identified in A.1. above, the Parties shall meet as necessary to address operation issues.

B. Future Painting of the Broadway Bridge. The County is planning a public works project to paint the steel portion of spans 2, 3, and 7 of the Broadway Bridge above the roadway deck (including the hand rail) within 10 years. The County, after consultation with the City, in its reasonable discretion, shall decide as to the timing and the other specifics of this planned painting project. During this planned painting project, the City shall suspend operation of the streetcar over the Broadway Bridge, de-energize the entire streetcar overhead electrical system over the Broadway Bridge, and may be reasonably required by the County to remove the OCS equipment from the Broadway Bridge at the

City's expense for the period of time required to complete the painting project. If the County requires removal of the OCS equipment, County shall cooperate with the City in scheduling its timely reinstallation. The County shall notify the City of the planned date for the painting project at least six (6) months prior to the expected date of suspension of streetcar operations.

C. Future Capital Projects on the Broadway Bridge. The County contemplates other Capital Improvement Projects to maintain and improve the condition of the Broadway Bridge. These projects may impact the operation of the Streetcar System over the Broadway Bridge. The County shall cooperate with the City to implement any restrictions on Streetcar System operations over the Broadway Bridge that the County in its reasonable discretion determines are necessary to construct these future Capital Improvement Projects, including complete removal of the Streetcar System OCS from the bridge at the sole expense of the City if necessary to undertake the project and/or temporary suspension of streetcar operations over the bridge. If suspension of operations is planned, 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 streetcar operations.

D. Future Capital Projects on the Morrison or Hawthorne Bridges. The County contemplates other Capital Improvement Projects to maintain and improve the condition of the Morrison and Hawthorne Bridges. The County in its reasonable discretion shall decide as to when these projects are necessary. These projects may impact the operation of the Streetcar System under these Bridges. The City and County agree to cooperate to implement any restrictions on Streetcar System operations under these Bridges that the County reasonably determines are necessary to construct these future Capital Improvement Projects, including the temporary cessation of Streetcar System operations under either bridge.

E. Maintenance/ Repair Work.

1. Prior to the start of the operation of the Streetcar System, the City will provide the County with a schedule for regular maintenance of the Streetcar Systems for which the City is responsible. The City and County together will analyze the list of proposed regular maintenance tasks to determine how and when they can be completed so as to minimize impact to roadway traffic and river traffic.
2. The City will provide the County with a minimum of two weeks' notice for routine maintenance work that needs to be scheduled. For emergency maintenance or repair work that needs to be done during the County Bridge Section regular hours (currently 7:00 a.m. to 3:30 p.m.), the City will make arrangements for the work by contacting the County at (503) 988-3757, x221, prior to beginning repairs on any County-owned and/or maintained structures or property. If it is necessary for the work to occur during the off hours of the County Bridge Section, the City will make arrangements for the work by contacting the Hawthorne Bridge operator at (503) 988-3452.

3. The City will not undertake any maintenance, repair or any other kind of work on the Broadway Bridge or the other bridges affected under this Agreement that would under any circumstances impact the ability of the County to operate the Broadway Bridge on demand for river traffic without first seeking and receiving permission from the County.

2. For non-emergency closures of the Bridge to river traffic, the City shall give the County at least 45 days' notice to allow the County time to secure approval from the Coast Guard to restrict operations of the Broadway Bridge to river traffic.

3. For emergency closures, upon notice from the City, the County shall contact the Coast Guard and request approval for an immediate emergency deviation from normal operations of the Broadway Bridge. However, the City shall not begin any work on the Broadway Bridge that impacts the ability of the County to operate the Broadway Bridge for river traffic on demand prior to the County's receiving approval from the Coast Guard to restrict operations, regardless of the length of time necessary to receive such approval.

4. Except for circumstances in which the safety of the public or the operation of the Broadway Bridge to river traffic is compromised, the County will not undertake any work on the bridge (not including routine maintenance discussed elsewhere in this agreement) that will impact the regular operating schedule of the Streetcar System without first notifying the City maintenance manager. The 24-hour contact information for the City is Gary Cooper at 503/823-8569.

F. REIMBURSEMENT OF COST IMPACTS TO THE COUNTY.

1. **Annual Maintenance Cost Adjustment.** The additional cost incurred by the County under this Agreement in the performance of regular maintenance work on the affected bridges and structures that is caused by and directly attributed to the presence and the operation of the Streetcar System has been calculated to be \$13,000 in 2010 dollars. This additional cost, which shall be documented and known as "Annual Maintenance Cost Adjustment" or "AMCA." On or about June 30 of every year, the City shall reimburse the County for the AMCA, if any, for the previous-ending fiscal year. The AMCA shall be subject to increase by the percentage change over the previous year in the Portland Consumer Price Index published by the U.S. Bureau of Labor Statistics.

2. **Pending Maintenance Work Cost Adjustment.** In addition to the cost increase identified in Subsection F.1, the presence and operation of the Streetcar System has been calculated to cause a total of \$24,000 in 2010 dollars to be added to the total cost of two (2) pending larger maintenance work tasks on the Hawthorne and Morrison Bridges. The \$24,000 Cost Adjustment fee shall be due upon confirmation by the County that the maintenance work tasks have been approved by its Commission and the City shall pay the County within ten (10) days of the beginning of the fiscal year within which the work shall occur.

3. **Long Term Capital Improvement Work Cost Adjustment.** The County and the City recognize that County has several capital improvements in varying stages of planning that involve the affected bridges and structures under this Agreement. The Streetcar System may cause increases in the costs of these capital improvements and the Parties agree to work together cooperatively to determine both capital and operational mitigation measures. They further agree to seek regional funding to provide any additional capital resources needed.

IV. GENERAL TERMS AND CONDITIONS

A. **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.

B. **TERM.** The effective date is the last date at which every party has signed this Agreement. The Agreement shall in perpetuity unless otherwise terminated as provided herein.

C. **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 Avenue
Portland, OR 97214
(503) 988-3757 x228
jon.p.henrichsen@co.multnomah.or.us

City – Vicky L. Diede
Bureau of Transportation
1120 SW 5th Avenue, Suite 800
Portland, OR 97204
(503) 823-7137
Vicky.Diede@portlandoregon.gov

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.

D. INDEMNIFICATION.

1. City Indemnity Obligations:

a. 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 City shall indemnify, defend, and hold harmless the County from and against all liability, loss, and costs arising out of or resulting from

the acts of the City, its officers, employees, and agents in the performance of this Agreement.

b. 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 City agrees to defend, indemnify, and hold the County harmless from all claims, demands, suits, liabilities, damages, losses, costs, or expenses which arise out of or are in any way connected with the use, generation, manufacture, storage, discharge, disposal, transportation or possession of Hazardous Materials by the City, its officers, employees, or agents at any time during demolition or reconstruction on the Broadway Bridge Approach structure, and any related activities. "Hazardous Materials" means:

(1) any petroleum, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas or synthetic gas usable for fuel, or any mixture thereof, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes, wastes or substances, or any other materials or pollutants which: (a) pose a hazard to the Agreement Area or to persons on or about the Agreement Area or (b) cause the Agreement Area to be in violation of any federal, state or local law, ordinance, regulation, code, or rule relating to Hazardous Materials;

(2) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty (50) parts per million;

(3) any chemical, material or substance defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous waste," "restricted hazardous waste," "waste" or "toxic substances" or words of similar import under any applicable local, state or federal law or under the regulations adopted or publications promulgated pursuant thereto, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, et seq.; and

(4) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or may or could pose a hazard to the health and safety of the owners and/or occupants of property adjacent to or surrounding the Agreement Area.

c. The City's indemnity obligations under this Section D, shall survive the termination of this Agreement.

2. County Indemnity Obligations:

a. 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 County shall indemnify, defend, and hold harmless the City from and against all liability, loss, and costs arising out of or resulting from the acts of County, its officers, employees, and agents in the performance of this Agreement.

b. The County's indemnity obligations under this Section D, shall survive the termination of this Agreement.

E. 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.

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

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

H. 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.

I. SUBCONTRACTS AND ASSIGNMENT. Neither party will subcontract or assign any part of this agreement without the written consent of the other party.

J. 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.

K. 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. 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 Section L. "Dispute Resolution" and the issuance of written 30 day notice from the Party seeking termination to the other Party.

L. 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 L ("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. This Agreement shall be governed by the laws of the State of Oregon. Venue shall be in Multnomah County, Oregon.
- 6. 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.**

M. 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.

APPROVALS:

MULTNOMAH COUNTY

Jeff Cogen, County Chair

Date: _____

Department Director or Designee

Date: _____

Reviewed:
AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY
Approved as to Form:

Matthew O. Ryan
Assistant County Attorney

Date: _____

CITY OF PORTLAND

Sam Adams, Mayor

Date: _____

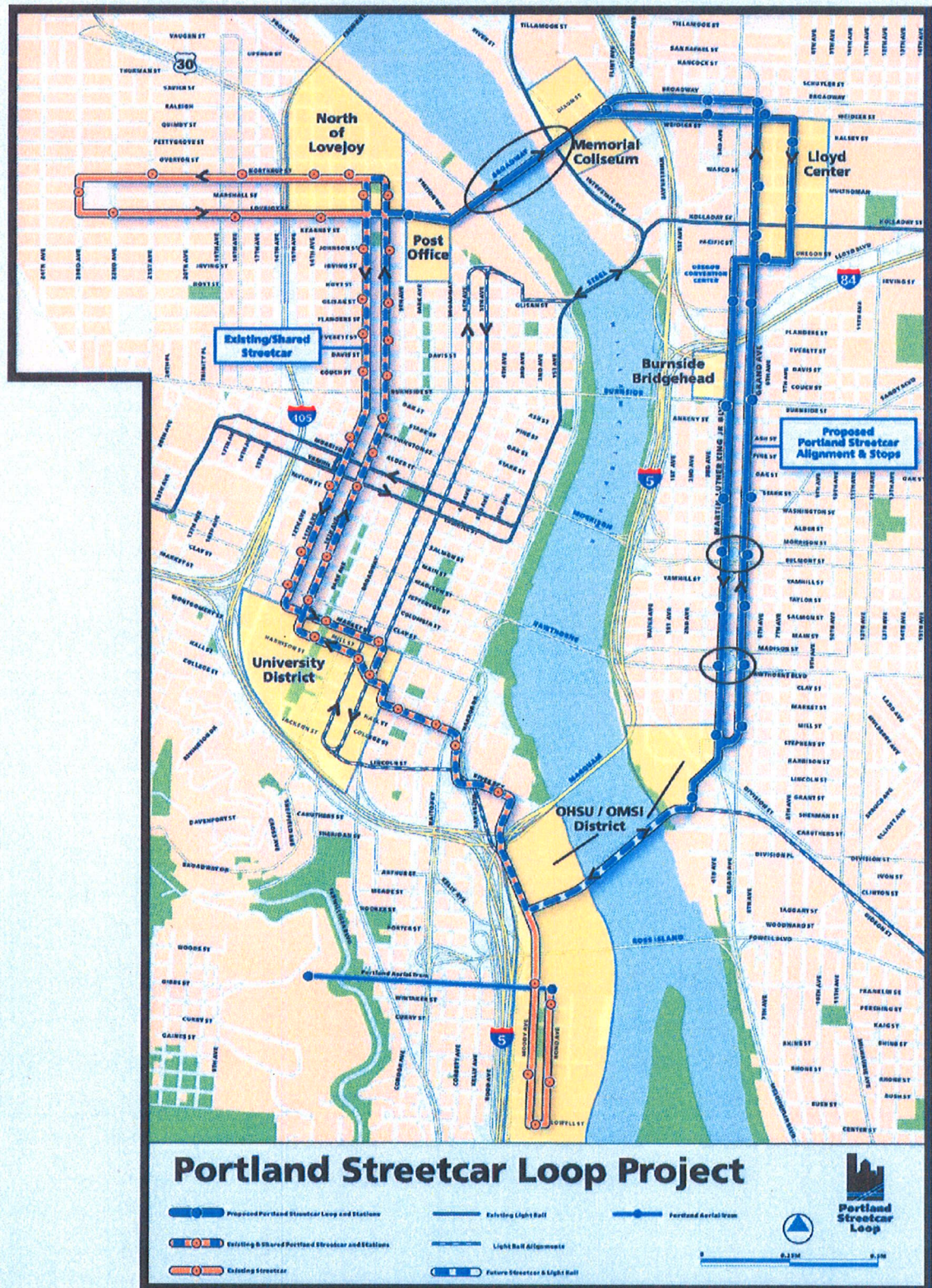
LaVonne Griffin-Valade
City Auditor

Date: _____



Mark Moline
Sr. Deputy City Attorney

Date: 5/4/10



○ **Project Area**