

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON**

RESOLUTION NO. 2015-088

Authorizing an Intergovernmental Agreement with the City of Portland for County to Reimburse City up to \$3.6 Million for City Design and Construction Services on the Sellwood Bridge Project.

The Multnomah County Board of Commissioners Finds:

- a. In August 2010, County, the Oregon Department of Transportation (ODOT) and the Federal Highway Administration (FHWA) published the Final Environmental Impact Statement (FEIS) for the Project. In September 2010, FHWA issued a Record of Decision (ROD) approving the FEIS.
- b. The City of Portland (City) and County entered into an Intergovernmental Agreement for Funding of the Project, pursuant to City Ordinance No. 184402 of February 2, 2011 and County Resolution No. 2011-012 of February 3, 2011. The parties executed an amended and restated intergovernmental agreement for funding of the Project on or about January 15, 2013. Subsequently, the parties entered into the first amendment to that amended and restated intergovernmental agreement on or about February 11, 2015. The original and the amended and restated intergovernmental agreement for funding of the Project, and any amendments thereto, will be collectively referenced as the "Funding IGA."
- c. In accordance with the Funding IGA, City's contribution to the Project is based on a percentage of actual Project costs, but is capped at a maximum of \$86 Million. City bureaus have been supporting the Project design and construction process, primarily through staff time. The Funding IGA recognizes and allows City to recover those costs incurred in support of the Project.
- d. The purpose of the IGA is to authorize County to reimburse and pay for City services and expenditures associated with the Project, as identified in the IGA. The Parties acknowledge in the IGA that County's reimbursement obligation will include those Project services performed and expenditures incurred by City to date as well as Project work still to be performed.
- e. The IGA also includes County's and Portland Water Bureau's agreement to install waterline betterments in conjunction with the Project. Those betterments, estimated at \$497,000 cannot be paid with federal funds. The IGA recognizes the separate betterment work and authorizes County to invoice City for those items.
- f. Pursuant to ORS Chapter 190, City and County are authorized to enter into this Intergovernmental Agreement. The Project is receiving funds from several sources,

including federal funds. As a result, the cost reimbursements may be subject to audits by ODOT or FHWA, as required by any federally funded project.

The Multnomah County Board of Commissioners Resolves:

1. The County Chair is authorized to enter into the IGA with the City of Portland and modify the IGA as necessary or desirable to further its intent or the intent of the Funding IGA, so long as such modifications do not result in a material increase in the obligations of Multnomah County or a material decrease in the benefits for Multnomah County.

ADOPTED this 6th day of August, 2015.



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Deborah Kafoury, Chair

REVIEWED:

JENNY M. MADKOUR, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 
Kenneth M. Elliott, Assistant County Attorney

SUBMITTED BY: Kim Peoples, Director, Department of County Services

**INTERGOVERNMENTAL AGREEMENT
BETWEEN MULTNOMAH COUNTY AND CITY OF PORTLAND
FOR SELLWOOD BRIDGE PROJECT DESIGN AND
CONSTRUCTION SERVICES**

This Intergovernmental Agreement ("Agreement") is made and entered into by and between Multnomah County ("County") and the City of Portland ("City") (jointly referred to herein as "the Parties"), effective as of the date of the last Party to sign this Agreement.

RECITALS

1. Pursuant to ORS Chapter 190, the Parties have the authority to enter into this Agreement.
2. In August 2010, County, the Oregon Department of Transportation ("ODOT") and the Federal Highway Administration ("FHWA") published the Final Environmental Impact Statement ("FEIS") for the Sellwood Bridge Project ("Project").
3. In September 2010, FHWA issued a Record of Decision ("ROD") approving the FEIS.
4. City and County entered into an Intergovernmental Agreement for Funding of the Sellwood Bridge Project, pursuant to City Ordinance No. 184402 of February 2, 2011 and County Resolution No. 2011-012 of February 3, 2011. The Parties executed an amended and restated intergovernmental agreement for funding of the Project on or about January 15, 2013. Subsequently, the Parties entered into the first amendment to that amended and restated intergovernmental agreement on or about February 11, 2015. The original and the amended and restated intergovernmental agreement for funding of the Project, and any amendments thereto, will be collectively referenced as the "Funding IGA".
5. On July 19, 2012 the Board of County Commissioners adopted the Final Design Elements and Funding Plan. The Project is that collection of elements identified in the ROD, further refined in the Final Design Elements and Funding Plan, and represented in mutually accepted Project construction documents. Final design was substantially completed in June 2014. Construction is expected to be complete in November 2016.
6. The Project is funded from multiple sources. This Agreement is not intended to supersede any terms of the Funding IGA or other funding agreements.

7. Prior to substantial completion of the Project, the Parties plan to enter into one or more maintenance and ownership agreements (as described in Article II, Section I of this Agreement) that will detail each Party's obligations with respect to maintenance of the various improvements, assets or elements of the Project.
8. The purpose of this Agreement is to authorize County to reimburse and pay for City services and expenditures associated with the Project, as those are identified in this Agreement. The Parties acknowledge that the County's reimbursement obligation would include those Project services performed and expenditures incurred by City to date as well as Project work still to be performed.

NOW, THEREFORE, the Parties hereby incorporate the above Recitals and agree as follows:

AGREEMENT

ARTICLE I – TERM

The term of this Agreement will be effective from the date of full execution through December 31, 2017, unless terminated or extended under the provisions of this Agreement. Notwithstanding the term above, County's reimbursement to City will include those services already performed in this Project prior to the effective date of this Agreement.

ARTICLE II - COUNTY OBLIGATIONS

- A. Responsibility for the Project.** Except as otherwise provided herein, County shall manage, create and update Project design and construction schedules, design, construct, acquire right-of-way, acquire necessary permits, arrange for the relocation of utilities, enter into contracts, perform public relations, perform project accounting, perform construction management, and take other such actions necessary for the prosecution of the Project. County shall designate a Sellwood Program Manager and a Construction Manager; County will provide written notice of changes to these designated persons to the City's Project Manager.
- B. Design Standards for the Project.** County shall use the 2010 City Standard Construction Specifications and standard drawings for the Project improvements that will ultimately be owned and/or maintained by City, unless approved otherwise by City. County shall use the Oregon Standard Specifications for Construction for the Project improvements that will ultimately be owned and/or maintained by County or the State of Oregon.
- C. Development of Final Plans and Specifications.** County shall work in close cooperation with City during preparation of final plans and will submit plans and specifications (hereinafter "Plans") for official City review at deliverable stages established by the Project.

City and County shall cooperate and exercise good faith efforts to provide documents, review, and comment, and resolve comments on plans and specifications so that the Project schedule is maintained. The Parties agree that should the Project schedule be revised in the future, they shall make best efforts to comply with the updated schedule milestones.

The Parties understand that City review times shall not commence until all elements appropriately included at each stage are incorporated into the submission at a level of detail that allows effective and efficient review by City. City shall use its best efforts to minimize the review times, however it is anticipated that a 21-day City review period will be needed at the 60% and 90% stages. Written responses to City comments for the 60% and 90% stages will be provided to City at or prior to issuance of the documents for the next review stage.

The review at the 100% stage is intended only to verify that the revisions identified at the 90% stage have been completed. The 100% review shall be accomplished within 14 days, unless otherwise agreed between City and County. In the event that City does not respond in a timely manner, the submitted plans and specifications shall be deemed approved as submitted. County shall submit final plans to the City Engineer either at the same time County's contractor advertises for subcontract bids or prior to the contractor advertising for subcontract bids. City required changes at the 100% stage may be incorporated by addendum into construction documents. County shall maintain records of all comments received from City reviews, including County response and action taken.

- D. Portland Water Bureau Waterline Relocations.** County shall develop waterline relocation drawings and specifications for the Portland Water Bureau's (PWB's) 36-inch, 24-inch and 16-inch water lines that are in conflict with the Project.

County shall coordinate design of waterline relocation (including locations of valves and meter vaults) with design of other project elements. County shall coordinate with PWB and develop designs to meet PWB's criteria for pipeline construction, corrosion control and operation. Water facility plans will be provided to PWB in Microstation CAD format.

- E. Relocation of Utilities.** County understands that City will use its best efforts to cause relocation of privately-owned utilities without cost to City or Project, as provided in this Agreement. However, if City is unable to do so, County, as a Project cost, shall effect relocation of existing privately-owned utility facilities as necessary to conform utilities or facilities to the plans for the Project. The cost of relocating in-kind publicly owned utilities for purposes of the Project shall be at the Project's expense. The Parties understand that relocation in-kind does not include Betterment(s), as described in this Agreement, of the existing facilities.
- F. Inspection of Relocated Utilities.** County shall allow City engineers and/or inspectors or consulting engineers/inspectors to inspect any relocation of utility conduits, lines, poles, mains, pipes, and other facilities (including stray current mitigation measures)

in order to determine whether they have been relocated or installed in accordance with the contract. County will reimburse City for the cost of City personnel to inspect relocated and installed City facilities as a Project expense.

- G. Record Drawings.** Record drawings will be produced by County and distributed to City's bureaus within 180 days after completion of the Project. Project was designed in NAVD88 coordinates and elevations. Record drawings shall clearly indicate the coordinate system used, and display on those plan sheets with new/alterd City infrastructure the proper equation to convert to City datum. Record drawings will be submitted in both electronic and hardcopy format.
- H. Real Property Acquisition/Relocation Assistance.** County shall be solely responsible for the acquisition of real property or interests therein for the Project, including property that will eventually become City right-of-way. For property that will become City right-of-way, prior to conveyance County shall obtain review and approval from the City's Bureau of Transportation (PBOT) - Right of Way Acquisition Section.
- I. Maintenance and/or Ownership Agreement.** County shall, in good faith, negotiate with City and other interested parties for one or more maintenance agreements that would define maintenance responsibilities, and where applicable clarify property ownership rights, for the Project. Other interested parties include ODOT, governmental entities in the Willamette Shore Consortium and property owners adjacent to the Project. Unless otherwise agreed, County will take the lead in drafting of these agreements (the "Maintenance Agreements").
- J. Public Art.** County shall coordinate in good faith with the Regional Arts & Cultural Council (RACC) for the implementation of public art into the Project. RACC shall receive monies from the Project for public art, 2% of the eligible Project costs (as defined by Portland City Code 5.74). Eligible Project costs are limited to those improvements funded by City monetary contributions and shall not apply to other Project funding. County shall separately comply with any public arts funding requirements it may have under its statutory or contractual arrangement with RACC.

ARTICLE III - CITY OBLIGATIONS

- A. Maintaining Project Schedule.** City agrees to use its best efforts to assist County in maintaining the Project schedule. To this end, City staff shall assist County with all permit/approval processes including, but not limited to, scheduling all hearings and briefings before City Council, commissions or other City bureaus.
- B. Appointing City Project Manager.** City shall appoint a Project Manager for the Project. Any changes to City's Project Manager shall be made in writing to County's Sellwood Program Manager.
- C. Coordination of City Issues.** City Project Manager shall coordinate comments from City bureaus and assist in resolving Project issues raised by any City bureau.

- D. Managing Services within Budget.** City Project Manager shall exercise good faith efforts to manage City services within the budget specified in this Agreement. City Project Manager shall manage the work of the various City bureaus so that required City work is completed within the budget for that work.
- E. Permits and Approvals.** City Project Manager or designee shall assist County in developing a list of the permits or approvals necessary to complete the Project construction and installation. However, nothing in this Agreement waives any Portland City Policy or prohibits City from maintaining or enforcing its current policies or agreements. City is specifically not obligating itself or any of its bureaus with respect to any discretionary or regulatory action, including but not limited to zoning, variances, dedications, vacations, regulatory plan reviews, issuance of permits, code compliance or any other governmental approvals or regulatory actions which may be required or authorized.
- F. Relocations in Right-of-Way.** City shall allow County participation in review of utility relocation plans submitted by public and private utilities for the alignment area. City shall allow County engineers or inspectors or consulting engineers or inspectors to inspect any relocation of utility conduits, lines, poles, mains, pipes, and other facilities in order to determine whether they have been relocated in accordance with the plans of the Project. City, as a Project expense unless otherwise apportioned in this Agreement, shall relocate, cause to be relocated, or assist in the relocation of all City-owned conduits, lines, poles, mains, pipes, and other facilities, whether located within the public right-of-way or not, as required by the Project. The Project plans and specifications shall include all relocations necessary for the Project. City shall endeavor to conduct this relocation work in accordance with the construction schedule for the Project. City will use its best efforts to cause the owners of privately-owned utility conduits, lines, poles, mains, pipes, and other facilities in or on City right-of-way and/or property to relocate their facilities at the expense of the privately-owned utility as necessary to conform to the Project, to the extent City has the power to do so. City shall endeavor to cause this relocation work to be accomplished in accordance with the construction schedule for the Project.
- G. Use of City Right-of-Way and City-owned Property.** City shall allow County to use City right-of-way and fee owned real property without compensation for such use, with the exception of Portland Parks and Recreation Bureau managed lands.
- H. Issuance of Construction Permit.** In accordance with the provisions of this Agreement, City shall, when appropriate and where requirements for issuance are met, issue a Construction Permit for the Project within City right-of-way, which will permit Project construction based on City approved plans and specifications.
- I. Maintenance and/or Ownership Agreement.** City shall work in good faith with County and other interested parties on maintenance and/or ownership agreements related to the Project.

ARTICLE IV - CITY SERVICES TO BE PROVIDED TO COUNTY

A. City Services - General. City bureaus with City Code authority or other responsibility over the Project shall provide to County the following services:

1. Supply copies of all available file data on all existing facilities as requested by County for the Project. City has found the completeness and accuracy of file information to be inadequate when used as the sole basis for design and construction purposes and recommends verification before incorporation into any final design. Any reliance on the data by County shall be at its own risk.
2. Review, require revisions to, and give approval to the Project plans as provided for in this Agreement and when in conformance with applicable regulatory requirements.
3. Cooperate fully with City's Project Manager, County's Sellwood Program Manager, and City and County designated representatives as reasonably necessary to assist in the timely and proper completion of the Project.
4. Identify the bureau or work unit specific point of contact who will coordinate with City Project Manager on performance of work including timely review and feedback that may be required of the bureau or the work unit under this Agreement or for the Project.

B. Noise Control. All work performed by City bureaus under this section shall comply with the terms and conditions of Noise Variance(s) obtained by County and/or County's contractor(s) for the Project.

C. Portland Bureau of Transportation ("PBOT"). PBOT will serve as the lead City bureau for the Project and will provide the services described below.

1. Engineering and Technical Services. Under the coordination of City's Project Manager, PBOT's Engineering and Technical Services shall provide services as described below:
 - (a) Act as the lead City agency in carrying out City's obligations and exercising City's rights under this Agreement, and coordinating notice, response and request to County.
 - (c) Assist in and coordinate plan reviews, including structures, curbs, sidewalks, pavements and other roadway improvements.
 - (d) Assist in resolving design and construction issues.
 - (e) Coordinate and track compliance with City right-of-way and land-use permits.
 - (f) Provide assistance in City budget development, monitoring, tracking, and billing for City bureaus, and prepare budget status reports as required.

- (g) Assist County in coordinating the relocation of all publicly owned utilities.
 - (h) Coordinate between the Project and other adjacent area neighborhood projects.
 - (i) Provide and/or coordinate City required inspection services during construction.
 - (j) Coordinate and assist in the implementation of Public Art for the Project.
2. Traffic Design Section. Under the coordination of City's Project Manager, PBOT's Traffic Design Section shall provide services as described below:
- (a) Review, require revisions to, and approve analyses for traffic control performed as part of the final design and construction.
 - (b) Review, require revisions to, and approve plans for all pavement markings, traffic signs, and other work affecting vehicular, bicycle and pedestrian traffic within City right-of-way developed as part of the final design and construction.
 - (c) Analyze the 6th and Tacoma intersection for signal warrants and provide direction regarding design.
 - (d) Assist in resolving traffic related design and anticipated construction issues.
 - (e) Participate in the development of construction phasing plans for incorporation into construction documents.
3. Bridges and Structures Section: Under the coordination of City's Project Manager, PBOT's Bridges and Structures Section shall provide services as described below:
- (a) Review and approve the design of bridge related assets that will be owned or maintained by City, as provided in the Maintenance Agreements.
 - (b) Attend occasional Project meetings.
 - (c) Participate in the development of construction phasing plans for incorporation into the construction documents.
 - (d) Perform progress reviews of plans and specifications.
4. Signals and Street Lights Division. Under the coordination of City's Project Manager, PBOT's Signals and Street Lights Division shall provide services as described below:

- (a) Review and comment on plans for all traffic signaling devices and other work affecting vehicular, bicycle and pedestrian traffic within City right-of-way.
 - (b) Review, require revisions to, and approve plans for all City street lighting facilities, as needed.
 - (c) Provide signal design and drafting of traffic signal(s) as needed, including the 6th & Tacoma signal.
 - (d) Provide shop drawing and other submittal reviews.
 - (e) Participate in the development of construction phasing plans for incorporation into construction documents.
 - (f) Perform traffic signal modifications and signal activation/deactivation as required by ODOT, County or City. Inspect new signals and provide turn-on services.
 - (g) Develop signal timing plans as needed for construction and for final operation.
5. Planning and Capital Services Division. Under the coordination of City's Project Manager, PBOT's Planning and Capital Services Division shall provide transportation planning services for the Project as needed.

D. Bureau of Environmental Services ("BES"). Under coordination with City's Project Manager, BES shall provide services as described below:

- 1. Assign a BES Project Coordinator/point of contact for all BES work required to be performed under this Agreement for the Project, including sewer relocation.
- 2. Provide guidance to ensure that the Project conforms to the requirements of City's "Stormwater Management" manual.
- 3. Review and provide comments on plans and specifications for all storm, sanitary, combined sewerage and stormwater management facilities.
- 4. Provide sewer system modeling support in final engineering design.
- 5. Provide shop drawing/submittal review and inspection services for all storm, sanitary, combined sewer and stormwater management facilities.
- 6. Provide construction phase material testing and vector control as necessary for all storm, sanitary, and combined sewer work.
- 7. Provide planting plans, plant installation and establishment services for all BES-owned and maintained stormwater management facilities.

E. Portland Water Bureau ("PWB"). Under the coordination of City's Project Manager, PWB shall provide services as described below:

1. Assign a PWB Project Coordinator/point of contact for all PWB work required to be performed under this Agreement for the Project.
2. Assist County to design water system relocations and Betterments (as defined in Section VI.A).
3. Review Project plans for all water facilities.
4. Provide shop drawing/submittal review and inspection services and engineering support services related to the water relocations, improvements, and Betterments during construction.
5. Make permanent and temporary connections to the public live water system, including but not limited to water mains, hydrants, valves, services, meter boxes, vaults, etc. except that County will make connections to the 30" cast iron and 36" steel pipelines. During street grading and paving, adjustments on valve boxes, vault access doors, manhole lids, and other appurtenances not involving direct contact with the public live water system will be done by County.
6. Use its best efforts to accomplish all work in accordance with the construction schedule for the Project.

F. Bureau of Development Services ("BDS"). Under the coordination of City's Project Manager, BDS shall provide services as described below:

1. Assign a BDS Project Coordinator/point of contact for all BDS work required to be performed under this Agreement for the Project.
2. Assign a staff to ensure timely review and response in support of meeting the Project schedules as related to land use application and permit process.
3. Assist in the identification of all Project elements located outside of City right-of-way requiring land use approval or building permit. Provide process management advice for processing of the land use approvals and/or building permits for the Project elements needing those approvals and/or permits.
4. Provide process management advice on design, environmental, historic, design reviews and other land use actions as required.
5. Perform building permit inspection and zoning code enforcement as needed.
6. Assist with assignment of addresses as necessary.

G. Bureau of Parks and Recreation (PP&R). Under the coordination of City's Project Manager, PP&R through its appropriate units including Planning & Design,

Construction Management and Urban Forestry, shall provide services as described below:

1. During Design

- (a) Assign a PP&R Project Coordinator/point of contact for all PP&R work required to be performed under this Agreement for the Project.
- (b) Review plans for park and street trees, monitor existing street tree removals, tree protection and new street tree installations.
- (c) Review plans for mitigation in parks and restoration trees and shrubs plantings.
- (d) Review plans for (PP&R maintained) landscaping installation in City right-of-way adjacent to PP&R's property.
- (e) Review and comment on plan documents for improvements affecting PP&R properties along the approved alignment including mitigation.
- (f) Review plan documents for consistency and coordination with planned and existing trail locations and connections.

2. During Construction

- (a) Coordinate with County on issuance of tree permits and the Non Park Use Permit (NPUP).
- (b) Attend regional trail planning meetings.
- (c) Provide construction inspection, technical assistance, oversight and shop drawing/submittal reviews for the mitigation and environmental restoration work, trail, trees and other improvements on PP&R properties.

3. At Project Close-out

- (a) Review as-builts, collect warranty information, assist with Project close-out.

H. Bureau of Planning and Sustainability ("BPS"). Under the coordination of City's Project Manager, BPS shall provide services as described below:

- 1. Assign a BPS Project Coordinator/point of contact for all work required to be performed by BPS under this Agreement for the Project.
- 2. Participate on a technical advisory group and/or in small meetings, as appropriate, to consult on land use policy issues related to the Project including but not limited to environmental/ greenway policy, historic resources and urban design.

3. Provide assistance to the Historic Landmarks Commission, as appropriate, for any review and documentation of the bridge before it is demolished.
4. Review issues and implications associated with the design, permitting or construction of the temporary and permanent replacement bridge that may affect community members.
5. Provide assistance as information conduits to assist with clear, timely and responsive communications with affected area residents and businesses.

I. Additional Support Services.

1. Certify final completion and acceptance of work pursuant to City permit(s).
2. Review and approve changes to the work covered under the applicable permits in accordance with this Agreement.
3. Accept the completed work from County's contractors for maintenance as required in the Maintenance Agreement(s) to be approved by County and the City, and warranty provisions of the Construction Contract(s) and applicable permits.
4. Provide necessary services to properly coordinate this Project with all design and construction work related to or required by other City projects within or near this Project's contract limits, including the Portland to Milwaukie Light Rail Project, the Springwater Gap Project, the Crystal Springs Culvert Replacement at Tacoma St. Project, and others as developed.
5. Provide County quarterly financial cost reports identifying City costs incurred under this Agreement during the quarter and for which City expects payment under this Agreement. The reports shall also reflect any payments made to City under this Agreement. Notwithstanding the above quarterly reporting requirement, the Parties acknowledge that City has performed work for the Project for which County will have a reimbursement obligation under this Agreement. As to the work already performed, City has provided reports and documents supporting City's anticipated reimbursement request and will provide supplemental information as needed related to those City expenditures.

ARTICLE V – COMPENSATION

A. Compensation.

1. City's compensation for services under this Agreement shall not exceed \$3,600,000. Services shall be provided on a reimbursable cost basis. Services provided on a fee basis (such as permits) shall not be eligible for reimbursement under this Agreement.
2. County agrees to not withhold the timely approval of additional resources without cause, subject to available budget limitations.

- B. Method of Payment and Overhead Costs.** Subject to the limitations stated in this Agreement, County agrees to pay City's actual costs for the performance of the services required herein. The actual cost shall include direct salary costs, fringe benefits, direct non-salary costs, and general overhead. County recognizes that City's overhead rates may change during the course of the Project. Any overhead rates charged to County by City must meet all requirements for federally-funded projects.
- C. Payment for Permits.** City services related to permits and land use approvals will be paid by County or its contractor through permit fees, at the time of permit application or issuance.
- D. Invoices.** City, through the Office of Management and Finance (OMF), shall to the extent possible given limitations in its financial accounting system submit to County quarterly billings. County shall pay the invoiced balance within thirty (30) days of receipt of such billings. Financial reports accompanying requests for reimbursement shall be in accordance with County requirements. County shall review records for suitability and provide assistance as necessary to assure compliance with County requirements. Notwithstanding the above quarterly invoice requirement, the Parties understand that, upon execution of this Agreement, City will submit one or more non-quarterly invoice(s) requesting reimbursement for City services already performed to date.
1. Invoices must be supported by time sheets or other supporting documentation for the relevant time period. City's Project Manager shall review the invoices and billings against the Project budget to provide real time cost tracking and budget management.
 2. Overtime premium pay (pay in excess of straight time) shall not be invoiced to County unless County's Sellwood Program Manager has specifically authorized overtime in advance of the work, or in the event of an emergency.
 3. The fringe rate applied to overtime hours must be an adjusted rate such that items are not included in both the regular hour fringe rate and the overtime fringe rate, unless such allocation is approved by County.

ARTICLE VI – OTHER WORK

- A. Betterments.** City agrees that it shall specify and provide or pay costs for any Betterments that are incorporated into the Project at the request of City. The Parties shall, through modification of this Agreement, negotiate the work scope and cost of such Betterments prior to County proceeding with the design and construction of such Betterments. Relocation in-kind does not constitute a betterment(s) of the existing facilities. As used in this Agreement, "Betterment" means replacement with a kind, size or type of infrastructure facility that differs from that existing as of the commencement of this Agreement. Where the Betterment increases the size of an existing utility being relocated by the Project, City will be responsible for the difference in cost to construct the larger size facility versus the existing size facility.

B. Incorporated Work. The Parties recognize that in some instances it may be more cost effective or result in less public impact for certain other City project work to be incorporated and be performed as part of this Project. If mutually agreeable, City and County may amend this Agreement to incorporate such other City work ("Incorporated Work"). Incorporated Work will be performed at the sole expense of City.

1. The Parties agree that the following PWB work is Incorporated Work to be designed and constructed by the Project in accordance with requirements and specifications from PWB. The PWB Incorporated Work includes a regulator vault, 16" connecting pipeline, and 30" valve with 2" bypass meter. City will reimburse the Project for the actual cost of performing the design and construction, which will not exceed the estimated cost of \$497,000 without an amendment to this Agreement.
2. Upon substantial completion and acceptance by City, County shall invoice City for the actual cost of the PWB Incorporated Work. City shall pay County within thirty (30) days of receipt of the invoice. Financial reports accompanying requests for reimbursement shall be in accordance with County requirements. City and County shall review records for suitability and provide assistance as necessary to assure compliance with their respective financial reporting requirements.
3. County shall allow City engineers and/or inspectors or consulting engineers or inspectors to inspect the PWB Incorporated Work in order to determine whether it is installed in accordance with the specifications and designs accepted by PWB. The cost for City inspection of the PWB Incorporated Work will be a City expense.

C. Changes to Project Work.

1. Because of the complexity of the work involved in the Project and the restricted amount of time available for City's review of the plans and specifications, the Parties recognize and acknowledge that there may be changes required to the Project plans and specifications during construction.
2. The Parties agree to make timely responses as appropriate and required to keep the work progressing.
3. Subject to the terms of this Agreement, County acknowledges that City, as permitting authority, can request reasonable changes to the work being performed in the public right-of-way as it considers necessary, and within the general scope and limits of the Project's street, structural, sewer, and water construction contracts. In the event that County disagrees with City's change request, the issue will be resolved through the Dispute Resolution process described in this Agreement. County assumes the risk that the work will not be accepted.
4. All changes proposed by County or others, which would impact work authorized by City Permit or this Agreement will be submitted to City Project Manager for review and approval. City Project Manager will coordinate any necessary reviews by City bureaus, citizen groups, or other interested parties, as appropriate, and

return a decision to County, within a reasonable time, as required to meet contract milestones or keep the work progressing.

5. County will handle any claims by its contractors for change orders. Changes (excepting changes for Betterments) are Project costs as identified in City Funding IGA.
6. Should changes result in added work by City, City Project Manager shall submit an estimate of added costs to County. County shall review the estimate and negotiate a modification to this Agreement for added work as mutually agreeable.

ARTICLE VII --PROJECT MANAGERS

- A. Management.** Until amended in writing, County designates Ian Cannon as its Sellwood Program Manager and Jon Henriksen as its Construction Manager. City designates Michael Magee as its Project Manager. These designees shall be responsible for coordinating all aspects of their entities' respective work scopes for the Project and all their entities' respective employees, consultants and contractors assigned to the Project. The designees shall ensure that the Project and tasks related thereto are completed expeditiously and economically, shall be the contact persons through whom County and City officially communicate, and shall have the authority to make decisions and resolve disputes relating to the Project. In the event that a disagreement or dispute occurs between these designees, it shall be resolved in accordance with Dispute Resolution below.
- B. Decision-Making.** Whenever either Party's decision, determination, approval or consent (each a "decision") is required on the subject matter in this Agreement, the Party will promptly exercise judgment and grant or deny the matter for which a decision was requested in a reasonable manner. Any consent or approval granted by a Party shall not constitute a waiver of the requirement for consent or approval in subsequent cases. No change in the rights of the Parties or the term of this Agreement shall be required as a condition to granting of approval or consent. Any denial of consent or approval under this Agreement shall not be unreasonably withheld, delayed, or conditioned.
- C. Dispute Resolution.** It is understood by both Parties that a project of this size and complexity will raise issues requiring speedy resolution. Any issues or disputes between City and County shall be referred for resolution as follows:
1. Refer the dispute to the City Project Manager and County's Construction Manager, who shall make a good faith effort to resolve it.
 2. If unresolved, refer it to PBOT Director and to County's Sellwood Bridge Program Manager.
 3. If unresolved, refer it to City's Commissioner-in-Charge of Transportation and County District 1 Commissioner for resolution.

In the event that any of the issues or disputes relating to facilities owned and maintained by a City bureau other than PBOT, the corresponding City bureau's Project Coordinator, bureau director and/or Commissioner-in-Charge of the City bureau will participate in resolving the issue.

- D. Status of City Employees.** City shall perform this Agreement as an independent contractor. City staff, even though they may be assigned full time to the Project, will not be deemed employees of County.

ARTICLE VIII - GENERAL PROVISIONS

- A. Indemnification.** Subject to the limitations of the Oregon Tort Claims Act and the Oregon Constitution, City agrees to indemnify, hold harmless and defend County, its officers, employees and agents from and against all claims, suits, actions, of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense thereof including reasonable attorney's fees, resulting from or arising out of the acts of City, its officers, employees or agents under this Agreement. Subject to the limitations of the Oregon Tort Claims Act and the Oregon Constitution, County agrees to indemnify, hold harmless and defend City, its officers, employees and agents from and against all claims, suits, actions, of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense thereof including reasonable attorney's fees, resulting from or arising out of the acts of County, its officers, employees or agents under this Agreement. City and County indemnification obligations under this Section shall survive the termination of this Agreement.
- B. Maintenance of Records.** The Parties shall maintain records to show actual time involved in accomplishment of the Project, including any Incorporated Work if applicable, and the cost incurred for the period of time specified. The Parties shall cooperate in good faith with ODOT/FHWA to provide records in a form satisfactory to ODOT/FHWA. County shall take the lead and provide assistance to City as necessary for compliance with ODOT/FHWA requirements.
- C. Audit and Inspection of Records.** Each Party shall permit the authorized representatives of the other Party to inspect and audit data and records of the Party relating to its performance under this Agreement. County shall be responsible for all auditing costs incurred by the City to conduct its audits under this Agreement.
- D. Successors; No 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. The rights and obligations of each Party under this Agreement may not be assigned in whole or in part without the prior written consent of the other Party.
- E. Choice of Law; Place of Enforcement.** This Agreement shall be governed by the laws of the State of Oregon without regard to conflicts of law provision. Venue shall be in Multnomah County, Oregon.

- F. Waivers.** No waiver by either Party of any provision of this Agreement shall be of any force or effect unless in writing. Except as otherwise provided herein, no waiver made by a Party with respect to the performance, or manner or time thereof, or obligation of the other Party or any condition inuring to its benefit under this Agreement shall be considered a waiver of any other rights of the Party making the waiver or a waiver by the other Party not joining in such waiver, and no such waiver shall be construed to be a continuing waiver.
- G. No Third Party Beneficiaries.** The Parties intend that the rights, obligations, and covenants in this Agreement shall be exclusively enforceable by the Parties. There are no third party beneficiaries to this Agreement, either express or implied.
- H. Severability/Survivability.** 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.
- I. 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.
- J. Integration, Modification, and Administrative Changes.** This Agreement includes the entire agreement between the Parties on the subject matter contained in this Agreement and supersedes any and all prior or contemporaneous written or oral understandings, representations, or communications of every kind. No course of dealing between the Parties and no usage of trade will be relevant to supplement any term used in this Agreement. This Agreement may only be modified in writing by a modification that has been signed by individuals authorized to bind each of the Parties contractually. The Parties shall not make changes to this Agreement through the issuance of permits, approvals, or other administrative requirements or processes.
- K. Compliance with Law.** The Parties recognize that funds provided by the Federal Highway Administration ("FHWA") will be used to pay for a portion of the Project. Each Party agrees to comply with all local, state, and federal laws and regulations and fully understands and agrees to comply with all applicable requirements governing the work of FHWA and contractors.

City of Portland

By: _____

Title: _____

Date: _____

Multnomah County


By: _____

Title: _____

Dated: _____

APPROVED AS TO FORM

APPROVED AS TO FORM


City Attorney
CITY ATTORNEY 7/2/15

JENNY M. MADKOUR,
MULTNOMAH COUNTY ATTORNEY

By:


Asst. County Attorney