

**BI-STATE TOLLING AGREEMENT
for the
Interstate 5 Bridge**

**Washington State Transportation Commission
Oregon Transportation Commission**

THIS AGREEMENT is made and entered into between the STATE OF WASHINGTON, acting by and through its Washington State Transportation Commission, hereinafter the “WSTC,” and the STATE OF OREGON, acting by and through its Oregon Transportation Commission, hereinafter the “OTC,” as the agencies in charge of setting toll rates and policies for the toll facility, together referred to as “PARTIES,” and individually, the “PARTY.”

RECITALS

WHEREAS, the Interstate Bridge Replacement program is a bi-state, multimodal corridor improvement program on Interstate 5 that includes several improvements in addition to replacement of the Interstate 5 Bridge over the Columbia River (“I-5 Bridge”), between the Washington State Route Number 500 interchange in Clark County, Washington and the Victory Boulevard interchange in Portland, Oregon, and includes transit improvements and improvements to multiple interchanges in each state and the addition of replacement crossings, prior to the removal of the existing bridges over the Columbia River (collectively, the “IBR program”), and

WHEREAS, WSTC is authorized to enter into this AGREEMENT with the OTC for the joint setting, adjustment, and review of toll rates for the I-5 Bridge, under Revised Code of Washington (RCW) 47.56.906, and

WHEREAS the OTC is authorized to enter into this AGREEMENT with the WSTC regarding the joint setting, adjustment, and review of toll rates for the I-5 Bridge under Oregon Revised Statutes (ORS) 190.420, ORS chapter 383, and Oregon Laws 2013, chapter 4, section 8, and

WHEREAS, under RCW 47.56.902, the I-5 Bridge is designated as an “eligible toll facility” as that term is defined in RCW 47.56.810 and will be designated as a “tollway project” under ORS chapter 383, and

WHEREAS, the PARTIES anticipate that the IBR program will be financed, at least in part, by one or more borrowings pursuant to obligations issued or incurred by one or both of the states of Washington and Oregon (collectively the “States” and each individually a “State”), in accordance with that State’s laws, which will require: that the debt be repaid from toll revenues generated by the I-5 Bridge tolled facility; that the borrowing agreements and other documents relating to such borrowings for the IBR program (together the “Borrowing Agreements”) will require toll revenues to be pledged as security for such borrowings and will require tolls to be set at rates that meet requirements established in state law and in an amount sufficient to meet all covenants made to bondholders, credit providers and other lenders under the Borrowing

agreements (collectively, the “Bond Covenants”); that toll revenues are shared between the States, or a State’s trustee, in a manner and in amounts as mutually agreed to by the States that will be at least sufficient to meet the Bond Covenants under each State’s Borrowing Agreements.

WHEREAS, the Oregon and Washington State Departments of Transportation (respectively “ODOT” and “WSDOT” and each a “Department of Transportation”) entered into Interstate Agreement No. ODOT 34096/WSDOT GCB 3342 in 2020, and as amended from time to time, for the joint management of the IBR program including the shared costs of planning, allocation of responsibility for the procurement of architecture and engineering services, construction, revenue, and other consultants, and joint administration of technical services necessary for the planning, development, and securing of funding for the IBR program, and

WHEREAS, the WSDOT and ODOT entered into a Memorandum of Understanding on March 10, 2022 to establish ODOT as the provider of toll collection services on the I-5 Bridge and the States, through their Departments of Transportation or commissions, will enter into additional agreements that will establish provisions for the management, maintenance, financing and operations of the I-5 Bridge toll facility, and the utilization of Oregon’s toll collection system, and

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performances contained herein, or attached and made a part hereof, IT IS MUTUALLY AGREED AS FOLLOWS:

1. IBR BI-STATE TOLLING SUBCOMMITTEE

- 1.1 The PARTIES shall establish a Bi-State Tolling Subcommittee of each Commission to study, review and recommend toll rates and policies to their respective full Commissions for rate setting and at least annual review of toll rates and policies to ensure compliance with all legal requirements in each State and in full satisfaction of all Bond Covenants of both States.
- 1.2 The Bi-State Tolling Subcommittee shall be comprised of two members of the WSTC to be designated by the WSTC and two members of the OTC to be designated by the OTC. The Subcommittee shall meet periodically. Staff support to the Subcommittee shall be provided by Commission staff and the Washington and Oregon Departments of Transportation, in consultation with the Offices of the Washington and Oregon State Treasurers. Additional support may be provided by consultants, as necessary and appropriate.
- 1.3 The Subcommittee will serve as the mechanism to keep each respective Commission informed and abreast of the detailed toll-setting work under review and study, with the support of their respective Departments of Transportation.
- 1.4 The Subcommittee may request research and analysis by the IBR program regarding I-5 Bridge toll rates and policies in support of decision-making to occur with each State’s full Commission.

1.5 The Subcommittee will:

- Recommend toll rates and policies for consideration and approval by each State's full Commission;
- Recommend modifications to toll rates and policies whenever such additional action is required by each State's full Commission; and,
- Recommend modifications to toll rates and policies whenever such additional action is required by the terms of the Bond Covenants or the laws of either State.

1.6 In order for toll rates and policies to become effective, they must be adopted by a majority vote of each State Commission, subject to quorum requirements of each Commission.

2. TOLL RATE REQUIREMENTS

2.1 The PARTIES agree that at all times the toll rates and policies shall comply with applicable provisions of state law and the Bond Covenants of each State and shall generate toll revenues at least sufficient to provide for all costs required under state law and to satisfy fully the Bond Covenants of both States, including, by way of example and not limitation, operating and maintenance expenses, bond debt service, coverage requirements, reserve requirements, and other financial requirements.

2.2 The PARTIES agree to establish the toll rates and policies for the I-5 Bridge toll facility. The WSTC shall publish the rates and policies in the Washington Administrative Code and the OTC shall publish the toll rates and policies in the Oregon Administrative Rules.

2.3 Any changes to the toll rates or policies will be implemented in accordance with the legal requirements in each State and in satisfaction fully of all Bond Covenants of both States.

2.4 The WSTC and the OTC will receive at least annual financial reports on the I-5 Bridge toll facility, including updates of traffic, revenue and costs. Revised projections of traffic, revenue and costs will be presented as available. Reports will also present data required by any Borrowing Agreements, Bond Covenants or other financing covenants. The reports will be prepared by the state Departments of Transportation in cooperation with the Offices of the State Treasurer and will go to each Commission.

3. MODIFICATIONS

This agreement consists of the entire provisions contained herein, including any future amendments thereto. No waiver, consent, modification or change of terms of this AGREEMENT shall bind either PARTY unless in writing and signed by both PARTIES. The failure of either PARTY to enforce any provision of this AGREEMENT shall not constitute a waiver by the PARTY of that or any other provision. This AGREEMENT shall not be modified in any manner that would impair Bond Covenants or other contractual obligations to bondholders, credit providers, counterparties, or other lenders under I-5 Bridge toll revenue obligations sold and issued or incurred to finance the IBR program.

4. TERMINATION

- 4.1 This AGREEMENT may be terminated if mutually agreed to by both PARTIES, except this AGREEMENT may not be terminated if such termination would impair Bond Covenants or other contractual obligations to bondholders, credit providers, counterparties, or other lenders under I-5 Bridge toll revenue obligations sold and issued or incurred to finance the IBR program. Any termination shall be in writing and signed by both PARTIES.
- 4.2 Subject to the provisions of Subsection 4.1 above, either PARTY may terminate this AGREEMENT if a PARTY'S continued participation in the AGREEMENT, or the AGREEMENT itself, is prevented from proceeding as a result of change in state or federal law, or by reason of an injunction or restraining order of a court of competent jurisdiction, after the exhaustion of all appeals pertaining to that order. Any termination of this AGREEMENT shall not prejudice any rights of, or financial obligations incurred by the PARTIES prior to termination.
- 4.3 In the event of a termination of this AGREEMENT, the PARTIES agree to equally share in the information, data, reports or other such items developed or acquired pursuant to the terms of this AGREEMENT.

5. THIRD PARTY BENEFICIARIES

WSTC and OTC are the only parties to this AGREEMENT. Nothing in this AGREEMENT gives, is intended to give or will be construed to give or provide, any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this AGREEMENT. Pursuant to the foregoing, the Offices of the Oregon State Treasurer and the Washington State Treasurer, the Washington State Finance Committee, the Oregon Department of Transportation, and the Washington State Department of Transportation are intended third party beneficiaries to this AGREEMENT and are entitled to enforce its terms. In addition, bondholders, credit providers, counterparties or other lenders to whom toll revenues have been pledged in connection with financing of the IBR program are entitled to enforce Subsection 2.1 of this AGREEMENT.

6. ASSIGNMENT AND DELEGATION

Neither PARTY to this AGREEMENT shall transfer or assign any right or obligation hereunder without prior written consent of the other PARTY.

7. DISCLAIMER

The PARTIES acknowledge that each is subject to the public contracting, meetings, and records laws and regulations of their respective States. The PARTIES agree to conduct the procurements and meetings, retain and disclose their records related to this AGREEMENT, and perform any

activities conducted hereunder in conformance with applicable laws and regulations of both States and, if necessary, to amend this AGREEMENT as may be necessary to ensure both PARTIES are able to comply with such requirements. The PARTIES acknowledge and agree that such records may be subject to disclosure under the public records laws of each State.

8. DISPUTE RESOLUTION

8.1 In the event a dispute arises between the PARTIES under this AGREEMENT, it shall be resolved as follows, provided, however, the following process does not apply to the setting of toll rates by each Commission:

- Each Commission shall appoint one member who is not affiliated with either Commission or the Washington and Oregon Departments of Transportation to a dispute review board, and the Commissions together shall select a similarly unaffiliated third member.
- The three-member board shall conduct an informal dispute resolution hearing.
- The decision of the board will not be binding upon the PARTIES or the States, but its recommendations will be given serious consideration when resolving a dispute.

8.2 The Parties must make a good faith effort to resolve any dispute in compliance with the dispute resolution process described above as a prerequisite to the filing of any litigation concerning a dispute.

8.3 The Commissions will share equally in the expenses of the dispute review board.

9. SEVERABILITY

If for any reason a court of competent jurisdiction finds any provision of this AGREEMENT, or portion thereof, to be unenforceable, that provision of the AGREEMENT will be enforced to the maximum extent permissible so as to effect the intent of the PARTIES, and the remainder of this AGREEMENT will continue in full force and effect.

10. SURVIVAL

The rights and obligations set out in Section 4.3 and this Section 10 of this Agreement shall survive Agreement expiration or termination, as well as any provisions of this Agreement that by their context are intended to survive.

11. EXECUTION

This AGREEMENT may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all PARTIES, notwithstanding that all PARTIES are not signatories to the same counterpart. Each copy of this AGREEMENT so executed shall constitute an original.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT as of the day and year first above written.

STATE OF OREGON, by and through its
Transportation Commission

By: _____
Julie Brown, Chair

Date: January 24, 2024

APPROVED AS TO FORM:

By: Serena Hewitt
Assistant Attorney General
Oregon Department of Justice

Date: Approved by e-mail, January 25, 2024

STATE OF WASHINGTON, by and
through its Transportation Commission

By: _____
Deborah Young, Chair

Date: January 17, 2024

APPROVED AS TO FORM:

By: _____
Assistant Attorney General
WA State Office of the Attorney General

Date: _____