

Oregon Transportation Commission



**Washington State
Transportation Commission**

January 11, 2013

The Honorable Judy Clibborn
House of Representatives
PO Box 40600
Olympia, WA 98504-0600

Dear Representative Clibborn:

We are pleased to submit the Columbia River Crossing (CRC) Bi-state Toll Setting Intergovernmental Agreement between the Oregon Transportation Commission (OTC) and the Washington State Transportation Commission (WSTC) in accordance with ESSB 6445, as approved by the 2012 Washington State Legislature. This agreement is an important and required step in the process of pursuing federal and state funds for the CRC project.

The development of this agreement was a true bi-state, collaborative effort of the two Transportation Commissions, with input from both State Departments of Transportation, Treasurers' Offices, legal staff and bond counsel. This coordinated and collaborative effort has yielded an agreement that will allow the two Commissions to begin the process of setting toll rates in a manner that will stand up to the rigorous requirements associated with bonding, protect the interests of the states and ultimately lead to the best deal for our citizens.

Both the Washington and Oregon Transportation Commissions have the toll-setting authority in their respective states; this agreement outlines a joint approach that will provide a frame work for shared responsibilities between Oregon and Washington as toll rates are set and adjusted in the future. A periodic toll rate review process has been discussed and will be developed that will provide opportunity for public input, meet bond covenants and ensure a consistent construction and maintenance funding source for the Columbia River Crossing project.

By design, the scope of this agreement is narrowly defined to the toll setting responsibilities that fall within the purview of the Commissions. We recognize that additional details will need to be discussed throughout the next year after the CRC traffic and revenue projections have been completed and financing plans are finalized.

Moving forward, we will continue to work with the State Departments of Transportation as we work towards ultimately determining the CRC toll rate structure and policy provisions.

The Honorable Judy Clibborn
January 11, 2013
Page 2

We will also support the Departments of Transportation and Treasurers' Offices of each state in their goal to establish bond document covenants that are substantially similar in terms of flow of revenues, reserves and rate covenants.

The Columbia River Crossing project is the most significant joint infrastructure project that our two states have embarked on in decades. The economic benefits of the project to our communities, our states, and even the nation are unparalleled. Those benefits, combined with our support for federal funding at the national level, compel our two states to move this project expeditiously forward, and we are committed to playing our part in doing so.

Sincerely,



Dan O'Neal, Chairman
Washington State Transportation Commission



Pat Egan, Chairman
Oregon Transportation Commission

INTERSTATE TOLLING AGREEMENT
for the
Columbia River Crossing Project
Washington State Transportation Commission
Oregon Transportation Commission

THIS AGREEMENT is made and entered into this 19th day of December, 2012, 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 the operators of the toll facility, together referred to as “PARTIES,” and individually, the “PARTY.”

RECITALS

WHEREAS, WSTC is authorized to enter into this AGREEMENT with the OTC for the joint setting, adjustment, and review of toll rates for the Columbia River Crossing, hereinafter referred to as the “CRC”, under Revised Code of Washington (RCW) 47.56.892, 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 CRC under Oregon Revised Statutes (ORS) 190.420 and ORS 383.005, and

WHEREAS, the CRC is a bi-state, multimodal corridor improvement program on Interstate 5, between the Washington State Route Number 500 interchange in Clark County, Washington, to the Victory Boulevard interchange in Portland, Oregon, that 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, and

WHEREAS, under RCW 47.56.890, the CRC is designated as an “eligible toll facility” as that term is defined in RCW 47.56.810 and will be designated as a “toll-way project” within the meaning of ORS 383.003(10), and

WHEREAS, the PARTIES anticipate that the CRC will be financed, at least in part, by one or more borrowings by each of the States of Washington and Oregon (collectively the “States” and individually a “State”) which will require: that the debt be repaid from toll revenues generated by the CRC tolled facility; that the loan agreements or other documents relating to such borrowings 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; that toll revenues are shared between the States, or a State’s trustee, in a manner and amount sufficient to meet certain covenants made to bond holders and other lenders in the documents for such borrowings, and that each State will adopt a separate bond resolution, declaration or other contractual commitment with its bond holders or other lenders to secure the repayment of its borrowing that is separate from the contractual commitments for financings of other toll facilities or toll-ways.

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 22946/WSDOT GCA 4723 in 2006, and as amended from time to time, for the joint management of the CRC, 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 CRC project, and

WHEREAS, the WSDOT and ODOT will enter into additional agreements that will establish provisions for the management, maintenance and operations of the CRC toll facility and the utilization of Washington State’s toll collection system,

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. CRC BI-STATE TOLLING SUBCOMMITTEE

- 1.1 The PARTIES shall appoint a Bi-State Tolling Subcommittee of each Commission to study, review and recommend toll rates and policies to their respective full Commissions.
- 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 each Commission’s state assigned legal counsel and 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 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.

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

- 1.5 In addition to recommending toll rates and policies, the purpose of the Subcommittee is to ensure that a subset of each Commission monitors the CRC operations, including but not limited to: tolling operations, traffic management, cost and revenue status, and traffic operations within the corridor in both States and on the bridge itself. The Subcommittee

will provide on-going oversight of the CRC toll facility revenue collection and operations on a regular basis, and report these findings to the full Commissions.

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 the bond covenants of each State, including, for example, 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 CRC 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.
- 2.4 The WSTC and the OTC will receive periodic financial reports on the CRC, 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 loan 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 contractual obligations to bond holders or other lenders under CRC toll revenue obligations sold and issued or incurred to finance the CRC toll facility.

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 contractual obligations to bond holders or other lenders under CRC toll revenue obligations sold and issued or incurred to finance the CRC toll facility. 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, bond holders or other lenders to whom toll revenues have been pledged to finance the CRC are entitled to enforce Subsection 4.1 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 make best efforts to conduct the procurements and meetings and retain their records related to this AGREEMENT recognizing 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.

8. DISPUTE RESOLUTION

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. An attempt at such dispute resolution in compliance with the preceding process will be a prerequisite to the filing of any litigation concerning a dispute. The Commissions will share equally in the expenses of the dispute review board.

9. SEVERABILITY

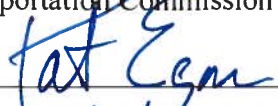
If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the remainder of this Agreement will continue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

10. 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.

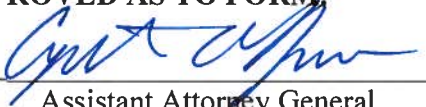
STATE OF OREGON, by and through its
Transportation Commission

By: 
Date: 12/19/12

STATE OF WASHINGTON, by and through its
Transportation Commission

By: 
Date: 7 JAN 2013

APPROVED AS TO FORM:

By: 
Assistant Attorney General
Oregon Department of Justice

Date: 12/19/12

APPROVED AS TO FORM:

By: 
Washington Assistant Attorney General

Date: 1/8/2013