



For Recording Stamp Only

**AMENDMENT TO INTERGOVERNMENTAL COOPERATIVE AGREEMENT  
ESTABLISHING THE BEND METROPOLITAN PLANNING ORGANIZATION**

That certain agreement, INTERGOVERNMENTAL COOPERATIVE AGREEMENT ESTABLISHING THE BEND METROPOLITAN PLANNING ORGANIZATION made and entered into as of December 16, 2002 by and between the City of Bend ("City"), Deschutes County ("County"), and the State of Oregon, acting by and through its Department of Transportation ("ODOT"), is hereby amended, effective upon signing by all parties.

The above listed agreement is amended, and replaced in its entirety with the following:

1. Introduction

Based on the results of the US 2000 Census, the Bend Urbanized Area has exceeded 50,000 in population. Federal regulations (23CFR part 450) requires that an MPO be designated for the area to conduct a continuing, cooperative and comprehensive transportation planning process that results in plans and programs that consider all transportation modes and supports metropolitan community development and social goals. 23CFR part 450 also allows ODOT to be a voting member of any policy boards created under the rules of 23CFR part 450. The plans and programs shall lead to the development and operation of an integrated, intermodal transportation system that facilitates the efficient, economic movement of people and freight.

ORS 190.110 and 283.110, allow state agencies to enter into cooperative agreements with units of local government or other state agencies for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.

ORS 190.010 allows units of local government to join together to form intergovernmental entities, and enter into cooperative agreements for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.

Pursuant to these statutes and regulations, an intergovernmental entity is hereby created by City and County by way of this agreement, to be called the Bend

Metropolitan Planning Organization (“BMPO”) located at 710 NW Wall Street, Bend, Oregon 97701. This agreement shall be governed and construed in accordance with the laws of the State of Oregon.

## 2. Purpose

2.1 The purpose of the BMPO is to carry out planning, coordination and integration of activities necessary to maintain a comprehensive, cooperative, and continuing multi-agency transportation planning program; and further, as specified by the Policy Board of the BMPO, carry out other related specific tasks including implementation thereof.

2.2 The BMPO will establish a setting in which to undertake effective decision-making processes regarding transportation in the metropolitan area of Bend; evaluate transportation alternatives that are realistic and scaled to address the needs of the metropolitan area; develop and maintain a long range transportation plan for the metropolitan area which covers a 20 year planning horizon; and develop a Transportation Improvement Program (“TIP”) to establish how transportation funding will be used for regional transportation purposes to address the modernization, operation and maintenance of transportation facilities and services needs within the BMPO

2.3 The BMPO shall promote public participation in the decision making process through public meetings. The BMPO shall exercise leadership and initiative in planning and assisting development of efficient, integrated transportation system facilities and services in the Bend metropolitan area.

2.4 The area within the BMPO includes the urban area as defined by the 2000 U.S. census plus all area within the Urban Growth Boundary (UGB) and other additional areas that may be annexed to accommodate expected growth and anticipated development for the next twenty years. The areas included outside of the Urban Growth Boundary can be described as Deschutes River Woods to the South, the Woodside Ranch area, and areas East and North of the UGB as indicated in Appendix A (map). Based upon the 2000 census count, this area qualifies as a U.S. Census designated Urban Area.

## 3. Governing Body of BMPO

3.1 The BMPO Policy Board shall be the governing body of BMPO and shall consist of representatives appointed by each governing body of each party to this Intergovernmental Agreement as required by 23USC135

3.2 The Policy Board shall adopt bylaws to govern the Policy Board membership, terms of office, and other operating details of the BMPO.

3.2.1 The adopted bylaws shall be attached to this Agreement. Prior to any amendment or repeal of the bylaws, the Policy Board shall give

a 30 day written notice to all parties to this Agreement with a copy of the draft amendments.

- 3.2.2 If any party to this Agreement objects in writing to the proposed amendments within the 30 day notice period, the amendments will not become effective. Rather, the Policy Board will consider the objections and propose revised bylaw amendments utilizing the procedure outlined in Paragraph 3.2.1.
- 3.2.3 If no party to this Agreement objects to the proposed bylaw amendments pursuant to Paragraph 3.2.2, the Policy Board may adopt the amended bylaws by a unanimous vote.
- 3.2.4 Amended bylaws will be attached to this Agreement for reference.

#### 4. Powers and Responsibilities of BMPO

- 4.1 The BMPO Policy Board is responsible for all actions, agreements, and functions to be carried out by the Bend Metropolitan Planning Organization. To this end, the BMPO may:
  - 4.1.1 Serve in a review capacity to insure that all federal and state assisted development projects are consistent with integrated regional transportation plans and programs;
  - 4.1.2 Accept contributions and grants-in-aid;
  - 4.1.3 Contract with the Federal Government for planning assistance and other transportation-related planning projects, products, and services;
  - 4.1.4 Contract for the provision and receipt of planning or associated products or services;
  - 4.1.5 Administer grants, Planning Funds (Federal Highway Administration "FHWA" funds) and Federal Transit Administration "FTA" funds;
  - 4.1.6 Own property, facilities and equipment;
  - 4.1.7 Incur debt, subject to Oregon Constitution Article II, Sections 9 and 10;
  - 4.1.8 Issue bonds;
  - 4.1.9 Maintain financial records, supporting documentation for financial records and records relating to procurement and management of contracts for implementation of its work plan shall be kept in compliance with applicable state and federal requirements;

- 4.1.10 Take such other and further actions as are reasonably necessary to carry out its responsibilities.
  - 4.2 The BMPO is responsible for development of the following essential products:
    - 4.2.1 Regional Transportation Plan;
    - 4.2.2 Unified Planning Work Program (“UPWP”) and Annual Budget;
    - 4.2.3 Transportation Improvement Program (“TIP”) the program that establishes a blueprint for the use of transportation resources to meet the capital and operating needs of the BMPO;
    - 4.2.4 Annual audit of BMPO activities; and
    - 4.2.5 Other products deemed essential may be authorized by the Policy Board as specified in the UPWP.
- 5. BMPO Finances
  - 5.1 The fiscal year for the BMPO shall commence on July 1 of each year. BMPO shall comply with ORS 294.900-294.930
  - 5.2 The BMPO shall have the power to receive funds from any public or private source including, but not limited to, the federal, state and local governments, voluntary associations, non-profit corporations, firms, partnerships, or person or any combination thereof, bequests, donations, devices, grants and gifts of all kinds of property.
  - 5.3 The BMPO Policy Board Chair shall call for an annual audit of the financial affairs of the BMPO to be made by a certified public accountant selected by the members of the BMPO Policy Board at the end of each federal fiscal year. The audit is a public record, and shall be made available to all BMPO Parties.
- 6. BMPO Staff
  - 6.1 The BMPO will remain a separate entity from the City and County, and any Party, with a separate budget, its own governing board and separate operating principles as outlined in this IGA.
  - 6.2 The BMPO may contract for support staff or hire staff as necessary, including legal counsel. The BMPO staff consists of a Manager and supporting staff personnel. The Manager of the BMPO shall report directly to and take direction from the BMPO Policy Board. Supporting staff personnel shall report directly to and take direction from the Manager.

- 6.3 The BMPO Policy Board will be responsible for maintaining an agreement with a local entity for staffing of the MPO. The agreement must include a description of how autonomy will be retained, including descriptions of where the agency will be housed, who will staff the agency, and whether there will be any overlap with Parties regarding employee responsibilities.
- 6.4 BMPO member units may donate personnel to serve as staff to the BMPO, subject to the provisions of Section 8.

7. No Joint and Several Liability

- 7.1 Parties are *not* jointly and severally liable with other parties for any tort (as defined by ORS 30.260(8)) committed by an elected or appointed official, employee or agent of such party acting in connection with this agreement, nor in connection with the BMPO.
- 7.2 Nothing in this agreement shall be construed to increase tort liability that Party would otherwise have under Oregon Law.
- 7.3 Obligations of BMPO arising from contract or quasi contract shall be the obligations of BMPO alone, and parties are *not* jointly and severally liable for such obligations, unless one or more of the parties agree, in writing, to individually guarantee performance of a specific obligation.

8. Employment Liabilities.

Each Party shall be responsible for any and all claims arising from its respective employer/employee relationships with respect to any donated employee of the Party during any time that the employee of the Party is working on BMPO matters. For the purpose of this agreement, elected and appointed public officials are included in the employer/employee relationship. Examples of the employer/employee relationship include selection, termination, discipline, benefits and equal employment opportunity issues. Each Party shall provide its own Workers' Compensation coverage as provided by law with respect to any employee of the Party during any time that the employee of the Party is working on BMPO matters.

9. Effectiveness, Duration, Termination and Withdrawal

- 9.1 This agreement and the formation of BMPO shall be effective upon signature of this agreement by the City and County, and upon approval of the agreement by the Oregon Transportation Commission for ODOT, and upon designation of the BMPO by the Governor of Oregon.
- 9.2 This agreement shall be perpetual unless terminated by agreement of all Parties hereto.

On November 14, 2002, the Oregon Transportation Commission approved this agreement. At that time, the Commission authorized the Deputy Director, Transportation Development Division to execute this agreement.

**IN WITNESS WHEREOF**, the Parties hereto have set their hands and affixed their seals as of the day and year hereinafter written.

Dated: 11/10/09

**CITY OF BEND**

By: Kathie Eckman

Title: Kathie Eckman, Mayor

Dated this 28th of October, 2009

**BOARD OF COUNTY COMMISSIONERS**

Tammy Baney

TAMMY BANEY, CHAIR

Dennis R. Luke

DENNIS R. LUKE, VICE-CHAIR

Alan Unger

ALAN UNGER, COMMISSIONER

ATTEST:

Bonnie Baker

Recording Secretary

**For Recommended Approval:**

By: Robert Bryant 11-20-09

Title: Robert Bryant, ODOT Region 4

**STATE OF OREGON,**

**By and through its Department of Transportation**

Jurich Bohard 12/2/09

Title: Deputy Director, Transportation Development

**Approved for ODOT for Legal Sufficiency**

By: John K. Wanner

Assistant Attorney General