INTERGOVERNMENTAL AGREEMENT FOR DESIGN, CONSTRUCTION, AND TRANSFER OF THE GILCHRIST BRIDGE

This Intergovernmental Agreement for Design, Construction, and Transfer of Gilchrist Bridge ("Agreement") is entered into effective as of the Effective Date (as defined below) by and between the Bend Park and Recreation District ("BPRD"), an Oregon special district, and the City of Bend, an Oregon municipal corporation (the "City"), individually a "Party" and together the "Parties." This Agreement is intended to supersede and replace the original agreement between the Parties of November 11, 2023, referenced below in the Recitals, and all amendments to that 2023 agreement.

RECITALS

A. The Gilchrist Bridge (the "Bridge") is a wooden pedestrian bridge crossing the Deschutes River that connects Gilchrist Avenue to Columbia Street through Columbia Park. It is owned and maintained by the City. The Bridge is part of a Key Low Stress route in the City's Transportation System Plan, is part of the route for the Bend Bikeway Project, and connects the Deschutes River Trail and Haul Road Trail in the BPRD Comprehensive Trails Plan.

B. The Bridge was constructed prior to 1994 and does not meet modern design standards, including width, for multi-use trails.

C. On November 11, 2023, the Parties signed the original Intergovernmental Agreement for the Gilcrest Bridge Improvements to fund and pursue at least two conceptual design alternatives and cost estimates for the replacement of the Bridge (the "Original IGA"). Following execution of the Original IGA, the Parties determined that the only feasible option in the short-term is to redeck the Bridge with lighter material and a future full bridge replacement would be necessary to meet the Parties' longer-term goals.

D. On June 3, 2024, the Parties signed Amendment 1 to the Original IGA to develop at 30% design to reconstruct the bridge and generate a cost estimate so that the parties can explore funding options for Bridge reconstruction. This work has been completed, and the estimated cost to complete designs, obtain permits, and reconstruct the Bridge is identified as $1,478,350.

E. BPRD is working on a project to stabilize an eroding river access point located immediately downstream from the Bridge ("Bank Restoration Project"). The City and BPRD would like to incorporate the Gilchrest bridge reconstruction into the scope of the BPRD Bank Restoration Project in order to more efficiently use public funds, streamline the design process, and provide the community with a more complete design.

F. The Parties now desire to complete the final design and undertake the construction of the replacement Bridge (collectively, the "Project").

G. In light of the Parties' near-term plans to replace the Bridge, the City will continue to conduct minor deck repairs, as appropriate in the discretion of the City, and will not redeck or re-rail the Bridge or undertake any other major repairs or alterations.

H. Following completion of the Project, the Parties also desire to transfer ownership and maintenance obligations of the Bridge from City to BPRD.

I. The Parties enter into this Agreement to (i) outline the Parties' responsibilities, (ii) coordinate, design, permitting, bidding, construction, and funding for the Project, and (iii) facilitate the transfer of ownership of, and maintenance responsibilities for, the Bridge to BPRD.

AGREEMENT

1. Effective Date and Duration

This Agreement is effective when signed by both Parties (the "Effective Date") and will terminate automatically when all of the following have occurred: 1) completion of the Project; 2) commencement of any warranty period under the construction contract; and 3) transfer of ownership to BPRD and conveyance of all other interests required by this Agreement. This Agreement may be amended as provided in Section 2 and earlier terminated as provided in Section 12.

2. Amendment

The terms of this Agreement may not be waived, altered, modified, supplemented, amended, or extended in any manner whatsoever, except by written instrument signed by both Parties. Any such waiver, alteration, modification, supplement, amendment, or extension, if made, shall be effective only in the specific instance and for the specific purpose given.

3. Project Funding; Payment

A. The City will be responsible for all costs associated with the Project including, but not limited to, all remaining design costs, application/permitting fees, inspection charges, and construction costs up to a maximum of $1,478,350 ("Project Funds"), which is based on estimates of $295,000 for A&E/design, testing/special inspections and fees/permits ("Design and Permitting") and $1,183,350 for construction. For the avoidance of doubt, any Project Funds remaining after the Design and Permitting will be available for construction.

B. BPRD will be solely responsible for compensating any and all BPRD employees and BPRD contractors for work related to the Project and/or this Amendment.

C. The City shall make payment to BPRD as follows:

a. Within 30 days of execution of this Agreement, the City shall submit payment to BPRD for 50% of the Project Funds ($739,175), to be used for the costs of design, permitting fees, and construction.
b. Following 1.) construction bid opening, 2.) establishment of a known construction cost that the City determines, in its discretion, is reasonable and within budget, and 3.) within 30 days of BPRD providing a request to the City for payment, the City shall submit a payment to BPRD in an amount necessary to cover the construction contract amount (including any contingency) less the 50% initial payment, but in no event greater than the total amount of the Project Funds.
c. If any mutually agreed upon change order occurs, the approval of which shall not be unreasonably withheld, within 30 days of BPRD request for additional Project Funds for the amount of the change order up to the then remaining Project Funds.

D. Agreed Upon Project Funds. The Parties agree that the City has $1,478,350 to fund the Project. In the event the bid for construction comes back higher than the Project Funds then remaining, or there are change orders during construction exceeding Project Funds then available, the Parties agree to meet to identify additional funding or modify the scope to lower costs to match available funding.

E. City contributions shall not change without a signed, written amendment to this Agreement.

F. If the parties terminate this Agreement pursuant to Section 12, then BPRD will refund to the City any then remaining Project Funds held by BPRD, but in no event will BPRD be required to refund or reimburse City for any Project Funds expended or irrevocably committed prior to the effective date of the termination.

G. IF BPRD holds any remaining Project Funds after completion of construction, BPRD shall refund such Project Funds to the City.

4. BPRD Rights and Obligations

A. BPRD will fully manage the Project including, but not necessarily limited to, performing the following.

i. BPRD will hire and manage all consultants and contractors necessary to complete the Project.

ii. BRPD will prepare and file all applications for permits and approvals necessary to complete the Project including but not limited to waterways, planning, and right-of-way permits.

iii. BPRD will provide the City with a completed Bridge replacement design, alternate construction bid package, and associated cost estimate.

iv. BPRD will coordinate public outreach efforts.

v. BPRD will provide City opportunity to review and comment on each design phase (e.g. 50%, 90%, final, etc.) to ensure that designs comply with both BPRD and City standards for bridges and shared-use paths. City will not unreasonably withhold approval.

vi. The design will include anti jump deterrents and design features that prevent vehicles from accessing the bridge. The east bridge approach is a public alley.

vii. The Parties shall work in good faith together on bridge design reviews and final bridge design approval that the City approves funding and BPRD approves taking ownership and maintenance responsibilities of the bridge.

viii. BPRD will comply with the applicable provisions of ORS Chapter 279, 279A, 279B, and 279C, and any other applicable rules governing procurement of the work.

B. BPRD will maintain accounting/billing records tracking project costs and make available to City upon request.

C. BPRD will incorporate the Project into the design scope of BPRD's Bank Restoration Project in order to more efficiently use public monies, streamline the design process, and provide the community with a more complete design.

D. BPRD will incorporate the Project into the construction bid process of BPRD's Bank Restoration Project as an additive / alternate bid item.

E. BRPD will coordinate the Bridge Project and the Bank Restoration Project with other potential projects in the vicinity to minimize economic and travel impacts to the public.

F. BPRD will own all plans, designs, specifications, reports, contracts, deliverables, and data associated with Project. Notwithstanding the

foregoing, BPRD will provide copies to the City will convey BPRD's right, title, and interest in the same to the City if the Project is not completed.

G. BPRD will work collaboratively with the City to identify solutions to any problems that may arise during the course of the Project.

H. BPRD agrees that if the City wishes to retain the existing bridge, the contract will include provisions to preserve and protect the structure, excluding the abutments, and deliver the bridge to a location in Bend specified by the City.

5. City Rights and Obligations

A. City will assist BPRD as reasonably necessary to complete the Project including, but not necessarily limited to, performing the following:

i. Providing BPRD a copy of the Bridge inspection and any available Bridge design plans.

ii. Conducting engineering reviews and inspections to ensure each design phase complies with City Standards and Specifications and providing written comments within two weeks of receipt of plans for any particular design phase. BPRD shall pay for any fees associated with the project, including but not limited to permitting, engineering reviews, and inspections from Project Funds.

iii. Promptly processing all applications for permits and approvals associated with the Project for which City has jurisdiction.

iv. Promptly completing reviews, inspections, ownership transfer procedures, and Project close out procedures.

B. The City will work collaboratively with BPRD in order to determine solutions to problems that may arise during the Project.

6. Project Close-Out; Transfer of Ownership; Maintenance

A. Upon written notice from BPRD that the Project is substantially complete, the Parties will meet at the project site to review and inspect the substantially-completed Project and identify, in a mutually executed written instrument, any uncompleted work or necessary corrections.

B. Upon final completion of the Project, including resolution of any uncompleted work or necessary corrections identified by the Parties, the Parties will execute any instruments necessary to convey title and full ownership to the new Bridge from the City to BPRD including a non-

vehicular, pedestrian, and bicycle public access easement from BPRD to the City for the area between NW Allen Road and the public alley off of NW Gilcrest Ave.

C. Following the transfer of title and full ownership to BPRD, BPRD will be solely responsible for maintenance of the Bridge. The parties agree that once owned by BPRD, the Bridge will be a "District-Maintained Trail" for purposes of that certain Intergovernmental Agreement for Trail Planning & Maintenance dated August 26, 2021 between the Parties.

7. Authorized Coordinators

Each Party designates the following person as their representative for purposes of this Agreement ("Authorized Coordinator"). Either Party may change the Authorized Coordinator by written notice to the other Party.

City: Brad Tower, Project Engineer, 575 NE 15th Street, Bend, OR 97701, Phone: (541) 323-8528, btower@bendoregon.gov, or assigned designee.

BPRD: Ian Isaacson, Landscape Architect, 799 SW Columbia St., Bend, OR 97702, Phone: (541) 706-6154, ian@bendparksandrec.org, or assigned designee.

8. Notices

All notices and demands of a legal nature that either Party may be required or may desire to serve upon the other Party shall be in writing and shall be served upon the other Party be personal service, email followed by mail delivery of the original of the notice, by overnight courier with proof of receipt, or by certified mail, return receipt requested, postage prepaid, addressed to the authorized coordinator for the other Party.

9. Dispute Resolution

The authorized coordinators, in coordination with the project teams, shall attempt in good faith to resolve any dispute arising out of this Agreement. The authorized coordinators may escalate disputes that cannot be resolved following a good faith attempt to the Assistant City Engineers and BPRD Development Manager. If not resolved then shall present to the City Transportation and Mobility Department Director, and BPRD Deputy Executive Director, who shall attempt in good faith to resolve the dispute. If such parties are unable to resolve the dispute within seven (7) calendar days, the City Manager and BPRD's Executive Director will attempt to resolve the dispute in good faith. If the dispute remains unresolved following no less than fourteen (14) calendar days, the Parties may then agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation. If such dispute resolution is not successful at resolving the dispute, the Parties agree that any claim, action, suit, or proceeding between City and District arising from or relating to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Deschutes County, Oregon, or, if the claim must be brought in a federal forum,

the United States District Court for the District of Oregon. The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the state of Oregon.

10. Indemnification

Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, each Party shall defend, indemnify, and hold the other Party, and its officers, agents, employees and volunteers, harmless against all liability, claims, losses, demands, suits, fees and judgments (collectively referred to as “claims”) that may be based on, or arise out of, damage or injury (including death) to persons or property caused by or resulting from any act or omission of the Party in connection with the performance of this Agreement or by conditions created thereby or based upon violation of any statute, ordinance or regulation. This indemnification shall not apply to claims caused by the sole negligence or willful misconduct of the other Party, its officers, agents, employees and volunteers. The Parties agree that they are not agents of each other and are not entitled to indemnification and defense under ORS 30.285 and ORS 30.287. Nothing in this Section 10, or any other provision of this Agreement, is intended to limit the applicability of any immunity available to either Party under applicable laws, rules, regulations, or ordinances including, without limitation, recreational use immunity provided in ORS 105.682.

11. Insurance

The Parties shall maintain commercial general liability insurance in an amount sufficient to cover the maximum liability under the Oregon Tort Claims Act, as those limits may be increased over time, insuring against bodily injury and property damage from all activities, conditions, and operations under this Agreement. To the maximum extent possible under their respective insurance policies, the Parties agree to waive subrogation for claims arising from the obligations of this Agreement.

12. Termination

If following bid opening for construction, one or both Parties determine that the construction costs exceed the project budget, and if the Parties do not agree upon a solution following the meeting required under Section 3(D), either Party may terminate this Agreement. Even if terminated, the Parties will continue to work in good faith to pursue construction funding opportunities for future construction. This Agreement may otherwise be modified, amended, or terminated by mutual agreement.

13. Entire Agreement; Prior Agreements

This Agreement contains the entire understanding of the Parties and supersedes the Original Agreement and all prior negotiations and agreements, whether written or oral, between the Parties with respect to the subject matter of this Agreement.

14. No Third-Party Beneficiaries

No other person shall have any rights, interests or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

15. Agreement to be Bound and Authorization to Sign

Each Party, by the signature below of its authorized representative, acknowledges that it has read this Agreement, understands it and agrees to be bound by its terms and conditions. Each undersigned signer represents that it has the authority to sign on behalf of the represented entity.

16. Recitals Incorporated

All recitals and exhibits are hereby incorporated and made a part of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

By signing below, each party represents that all appropriate approvals have been obtained to enter into this Agreement.

BEND PARK AND RECREATION DISTRICT

_____
Michelle Healy, Executive Director
Date: _____

CITY OF BEND

_____
Eric King, City Manager
Date: _____

Approved as to Form

_____
City Attorney's Office