



Bi-State Agreement Options Assessment

White Paper

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Bi-State Agreement Options Assessment

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Prepared by:



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ACRONYMS AND ABBREVIATIONS

ATA	Kansas City Area Transportation Authority
BA	Louisville and Southern Indiana Bridges Authority
CDOT	Connecticut Department of Transportation
CEO	Chief Executive Officer
CRC	Columbia River Crossing
DOT	Department of Transportation
DRB	Delaware River Joint Toll Bridge
EIS	Environmental Impact Statement
FHWA	Federal Highway Administration
I-5	Interstate 5
IA	Interlocal Agreement
IBR	Interstate Bridge Replacement
IFA	Indiana Finance Authority
IGA	Intergovernmental Agreement
IGFA	Intergovernmental Funding Agreement
INDOT	Indiana Department of Transportation
KCATA	Kansas City Area Transportation Authority
KPTIA	Kentucky Public Transportation Infrastructure Authority
KRS	Kentucky Revised Statutes
KYTC	Kentucky Transportation Cabinet
MOU	Memorandum of Understanding
MTA	Metropolitan Transportation Authority
NEPA	National Environmental Policy Act
O&M	Operations and Maintenance
ODOT	Oregon Department of Transportation
ORB	Louisville-Southern Indiana Ohio River Bridges
ORS	Oregon Revised Statute
OTC	Oregon Transportation Commission
P3	Public-Private Partnership
PANYNJ	Port Authority of New York and New Jersey
RCW	Revised Code of Washington
RFP	Request for Proposal

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TIP	Transportation Innovative Partnerships
TRPA	Tahoe Regional Planning Agency
WSDOT	Washington State Department of Transportation
WSTC	Washington State Transportation Commission

EXECUTIVE SUMMARY

This report was developed to identify and analyze potential bi-state agreement options for Washington and Oregon to implement for the Interstate Bridge Replacement (IBR) program. Findings related to the structure of a bi-state agreement were developed based on a review of enabling legislation in both states, prior bi-state agreements between Washington and Oregon, and national case studies.

In order to develop relevant bi-state agreement options for the IBR program, a review of enabling legislation in each state was conducted to understand each state's specific legislative environment (Section 2). This review revealed that there are specific content requirements for bi-state agreements between Washington and Oregon, summarized in Figure 1, but there remains flexibility for the IBR program to leverage existing statutes in each state and define a governance structure that suits its priorities and vision.

Prior and existing Interstate-5 (I-5) agreements between Washington and Oregon were analyzed to identify lessons learned from previous bi-state cooperation and Columbia River Crossing (CRC) activities that are relevant to current and future activities undertaken by the IBR program (Section 3). This analysis informs the criteria for the comparative analysis of potential bi-state structures for the IBR program (Section 5). The prior and existing agreements included in this review include: 2006 Intergovernmental Funding Agreement (IGFA), 2012 Interstate Tolling Agreement, various CRC-specific agreements, 1966 I-5 Maintenance Agreement, 2019 Interagency Memorandum of Understanding, and 2020 Interstate Agreement.

The 2006 IGFA was a critical step toward formalizing the bi-state efforts for the CRC. This IGFA helped the CRC obtain a Final Environmental Impact Statement (EIS)/Environmental Impact Report record of decision in December of 2011. However, there are aspects of the agreement that can be improved. The 2019 Advisory Report from the Oregon Secretary of State's Audits Division identifies three areas for improvement that could be implemented in a future agreement: enhancing stakeholder engagement, establishing a comprehensive design review process, and coordinating bi-state funding. This suggests that enacting a formalized bi-state agreement for the IBR program could allow for more cohesive planning and engagement.

A review of existing interstate agreements for comparable bridge development projects served as a foundation for identifying potential agreement structures for the IBR program (Section 4). Ten interstate agreements were analyzed for their governance structure and powers of the governing body, among other relevant characteristics.

The reviews of relevant legislation, lessons learned from past and current I-5 agreements, and national case studies described above serve as the foundation of the potential structural frameworks for the IBR program, as well as the

For the purposes of this analysis, a "compact" is defined as an agreement between two or more states that is approved by state legislatures and thus becomes part of a state's statutory laws. If warranted or desired, the compact can also receive the consent of Congress; however, congressional approval is not required to form a compact. See further discussion in Section 4.

analysis of these frameworks (Section 5). The agreement options are presented as different “categories,” where each category is associated with a different legislative/regulatory framework and key characteristics, in increasing levels of resiliency.

An overview of each category is presented below, and in more detail in Table 3.

- **Category 1a – Bilateral Agreement(s) between two lead agencies (i.e. state DOTs) with no formal executive order or state legislative approval.**
- **Category 1b – Multilateral Agreement among primary state and local stakeholder entities which may include individual state legislation/executive order (but without mirror state legislation that would be required to form a compact).**
- **Category 2a – Bilateral Agreement between two lead agencies (i.e. state DOTs), with mirror state legislation to form a compact, but without congressional consent.**
- **Category 2b – Multilateral Agreement among primary state and local stakeholder entities, with mirror state legislation to form a compact, but without congressional consent.**
- **Category 3 – Agreement (with mirror state legislation to form a compact) with congressional consent, codifying it into federal law.**

In order to evaluate each category for its suitability for the IBR program, a set of criteria was developed based on attributes that a bi-state agreement would ideally have to ensure its effectiveness. Each of these categories met certain **core criteria** identified in the report. Other criteria, referred to as **differentiating criteria**, were developed to further differentiate the strengths and weaknesses of each category. The differentiating criteria are as follows:

- **Ability to formally organize project stakeholders in the region (including regional partner agencies).**
- **Ability to define processes and procedures (between partner agencies).**
- **Resiliency of agreement in face of external pressures and/or potential changes in law.**
- **Positions IBR program to receive federal funds.**
- **Facilitates faster project approvals and delivery.**
- **Maintains Transportation expertise-driven management of the IBR program and builds on the framework in the negotiated 2020 IGA.**
- **Facilitates structuring of a public-private partnership (P3) delivery model.**
- **Flexibility to accommodate changes in scope (e.g., addition of assets).**

The results of this analysis, which are detailed in Table 4, reveal that each category presents its own strengths and weaknesses. Certain categories are more or less effective depending on the criteria. In order to identify the ideal bi-state agreement structure, weightings should be applied to the criteria based on the IBR program’s specific priorities and goals.

In lieu of specific weightings for these criteria, the following observations were identified:

- Category 1a is favored when assessed against the criteria related to facilitating faster project approvals and project delivery. Category 3 is the least favored when weighed against these same criteria.
- Categories 1a and 2a enable Transportation expertise-driven management of the IBR program and allows the states to benefit from the framework of the existing 2020 IGA.
- Other than CRC, which was Category 1a, no major transportation projects/programs have been identified for the purposes of this report that have utilized a Category 1a or Category 2a bi-state agreement.
- Categories 1b, 2b, and 3 perform well against the criteria related to the ability of the agreement to formally organize project stakeholders, which include multiple partner agencies; establish a governance structure and approvals process that enables sound decision-making; and facilitate project outcomes that have the support of key stakeholders.
- Categories 1b and 2b best position the IBR program for P3 delivery, as these options fare better in terms of enforceability, and provides for a typical structure familiar to U.S. P3 developers (i.e. a concession agreement with a state DOT).

1. INTRODUCTION

The purpose of this report is to explore potential agreement options for the Interstate Bridge Replacement (IBR) program between Oregon and Washington. The report first reviews the legislation in both states that govern the formation of bi-state agreements in order to determine mandatory characteristics of such agreements as well as constraints on agreement structures or content. This review provides parameters as to which agreement options are viable.

The report then reviews past agreement structures for efforts related to Interstate 5 (I-5) bridge replacement, such as:

- The Columbia River Crossing (CRC).
- Current agreements and additional agreements contemplated by the IBR program.
- Case studies from other similar projects in the U.S. to determine the agreement options that exist for the IBR program, taking into consideration the agreement constraints identified via the review of relevant legislation from both states.

The potential agreement options are then defined and subjected to a two-tiered analysis to determine the appropriateness of these options for the IBR program. First, the core criteria include elements that a bi-state agreement, no matter the form, must contain to serve as the basis for an effective collaboration between both states. If an agreement option does not meet any of the core criteria, it is recommended that it be removed from consideration as a viable option for the IBR program.

Agreement options that meet the core criteria are then put forward for review against a set of differentiating criteria. This dual-layer evaluation was established to help the IBR program achieve the following goals:

- Continual improvement and ensuring long-term bi-state commitment.
- Incorporate key elements of agreements for the existing I-5 bridge related to operations and maintenance (O&M).
- Build on the current IGA and other IBR agreements Incorporate best practices from other bi-state agreement examples.

The report then provides an analysis of the viable agreement options using the differentiating criteria. This analysis presents the advantages and disadvantages of the options when reviewed against the differentiating criteria.

Finally, the report provides a summary of the findings from the agreement options analysis and recommends next steps. The next steps include applying weightings to the differentiating options so that a preferred agreement option can be identified as well as conducting further legal analysis that will help refine the agreement option structure, language, and required approvals.

2. GOVERNING LEGISLATION

Sections 2.1 and 2.2 outline legislation in Washington and Oregon that enable each state to enter into a bi-state agreement, which provides a foundation for the legislative analysis in Section 2.3.

2.1 Washington Statutes

There are three primary Washington statutes that govern the state’s ability to enter into agreements with another state. These statutes include the Interlocal Cooperation Act; the Transportation Innovative Partnerships (TIP) Act; and the State Toll Bridges, Tunnels, and Ferries Act — each of which is detailed below.

Additionally, Washington regulations pertaining to the Washington State Department of Transportation (WSDOT), as codified in the Washington Administrative Code, were consulted but did not contain any details regarding the formation of a bi-state entity.

2.1.1 Interlocal Cooperation Act

The basic authorization for WSDOT to enter into an interstate agreement is conferred by Revised Code of Washington (RCW) § 39.34, the Interlocal Cooperation Act, which allows state agencies to enter into “cooperative agreements” or “joint powers agreements” with other states:

*“(1) Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state having the power or powers, privilege or authority, **and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment.** Any agency of the state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges and authority conferred by this chapter upon a public agency.”¹*

Per RCW § 39.34.030, the agreement must specify the following:

- Its duration.
- The precise organization, composition, and nature of any separate legal or administrative entity created.
- Its purpose.
- The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget.

¹ RCW § 39.34.030 “[Joint powers—Agreements for joint or cooperative action, requisites, effect on responsibilities of component agencies—Joint utilization of architectural or engineering services—Financing of joint projects.](#)”

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- The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination.
- Any other necessary and proper matters.

However, if the agreement does not establish a separate legal entity as described in the second bullet, the agreement must include a provision for appointing an administrator or joint board on which the public agencies must have representatives. It must also detail the manner of acquiring, holding, and disposing of the property involved in the joint undertaking.

Additionally, RCW § 39.34.030 enables Washington to enter into a contractual agreement with another state public agency for the joint utilization of architectural and engineering services.

Notably, any agreement formed under this specific legislation will be deemed to have status as an “interstate compact” per RCW § 39.34.040:

“In the event that an agreement entered into pursuant to this chapter is between or among one or more public agencies of this state and one or more public agencies of another state or of the United States the agreement shall have the status of an interstate compact, but in any case or controversy involving performance or interpretation thereof or liability thereunder, the public agencies party thereto shall be real parties in interest and the state may maintain an action to recoup or otherwise make itself whole for any damages or liability which it may incur by reason of being joined as a party therein.”²

However, as discussed in Section 4, there is controlling legal authority that should be considered in assessing what constitutes a compact or how a compact can be formed.

2.1.2 Transportation Innovative Partnerships Act

RCW § 47.20, the TIP Act, provides that transportation projects may be developed via a public-private partnership (P3):

“Projects eligible for development under this chapter include:

- (1) Transportation projects, whether capital or operating, where the state’s primary purpose for the project is to facilitate the safe transport of people or goods via any mode of travel. However, this does not include projects that are primarily for recreational purposes, such as parks, hiking trails, off-road vehicle trails, etc.; and*
- (2) Facilities, structures, operations, properties, vehicles, vessels, or the like that are developed concurrently with an eligible transportation project and that are capable of (a) providing revenues to support financing of an eligible transportation project, or*

² RCW § 39.34.040 “[Methods of filing agreements—Status of interstate agreements—Real party in interest—Actions.](#)”

(b) that are public projects that advance public purposes unrelated to transportation.”³

According to this statute, the IBR program would qualify as an “eligible project” as it pertains to the safe transport of people or goods, and any potential tolling facility would provide revenues to support the financing of the project itself.

This legislation further authorizes WSDOT to enter into “working agreements, coordination agreements, or similar implementation agreements, including the formation of bi-state transportation organizations, to carry out the joint implementation of a transportation project.”⁴ However, the legislation does not specify how these agreements should be structured in terms of cost sharing or governance.

The TIP Act does not state that a bi-state tolling authority needs to be created if WSDOT enters into an agreement with another state agency to jointly implement a transportation project; however, the statute does detail how proceeds from tolling in the TIP account for a project developed under this legislation are to be managed:

“(3) Moneys in the transportation innovative partnership account may only be expended upon evidence of approval by the Washington state legislature, either upon appropriation of supporting state funds or by other statutory direction.”⁵

(4) The state treasurer shall serve as a fiduciary for the purpose of carrying out this chapter and implementing all or portions of any transportation project financed under this chapter.”⁶

2.1.3 State Toll Bridges, Tunnels, and Ferries Act

With regard to tolling, Washington previously had the authority to enter into a joint tolling agreement for the CRC per RCW § 47.56.892, a section of the State Toll Bridges, Tunnels, and Ferries Act, whereby the Washington State Transportation Commission (WSTC) and the Oregon Transportation Commission (OTC) could mutually set, adjust, and review toll rates for the project area:

“For the Columbia river crossing project, the tolling authority may enter into agreements with the Oregon state transportation commission regarding the mutual or joint setting, adjustment, and review of toll rates as the tolling authority may find necessary to carry out the purposes of this section.”⁷

³ RCW § 47.29.050 “[Eligible projects.](#)”

⁴ RCW § 47.29.210 “[Government agreements.](#)”

⁵ The parties must ensure this requisite appropriation is in place prior to any disbursement of toll revenue funds.

⁶ RCW § 47.29.230 “[Transportation innovative partnership account.](#)”

⁷ RCW § 47.56.892 “[Columbia river crossing project—Agreements with the Oregon state transportation commission.](#)”

While this legislation is specific to CRC, further legal analysis is needed to confirm whether this continues to apply to the IBR program. If it does not apply, a specific IBR program amendment could be drafted based on this language.

2.2 Oregon Statutes

The Oregon Innovative Partnerships Program, the Oregon Tollway Statute, the Interstate Cooperation Statute, and the Interstate Bridges Statute govern Oregon’s ability to enter into agreements with other states. Key provisions of each statute are detailed below. The governor of Oregon is also empowered to pursue and sign interstate MOUs.

Additionally, Oregon regulations pertaining to the Oregon Department of Transportation (ODOT), as codified in the Oregon Administrative Rules, were consulted but did not contain any details regarding the formation of a bi-state entity.

2.2.1 Interstate Cooperation Statute

The Interstate Cooperation Statute (Oregon Revised Statute [ORS] § 190.420) allows public agencies in Oregon to enter into agreements with other states for joint or cooperative action. Such action must be recorded by ordinance, by resolution, or in any other lawful manner by the governing bodies of the participating public agencies.⁸ In addition, any agreement or entity created from this statute for the purposes of a tollway project is required to follow provisions under the Tollway Statute.⁹

Any agreement must include the following:

- Its duration.
- The organization, composition, and nature of any separate legal or administrative entity created to exercise the functions agreed upon.
- The purpose of the agreement.
- The method of financing the joint or cooperative undertaking.
- The methods to be employed to terminate the agreement.
- Any other necessary and proper matters.

In creating an agreement with another state, a public agency in Oregon may exclude select clauses or include certain conditions as required by other Oregon statutes, such as conditions concerning payment, salvaging, payment for medical care, and hours of labor.

⁸ ORS § 190.420 “[Authority of public agency to make agreements with public agencies in other states.](#)”

⁹ ORS § 383.003 “[Definitions for ORS § 383.003 to 383.075.](#)”

This statute may require, depending on the nature of the agreement, a public agency of another state to indemnify a public agency in Oregon against any tort claim or demand, whether groundless or otherwise, that arises out of an alleged act or omissions occurring in the performance of an action in the other state.

2.2.2 Interstate Bridges Statute

The Interstate Bridges statute (ORS § 381) lays out the legal provisions for any interstate bridge in the State of Oregon. The statute is divided into four categories based on the level of government that has jurisdiction (state versus local) and how the bridge is financed (county or city bonds). This report focuses on the subsection concerning the statutes for interstate bridges governed by state jurisdiction (ORS § 381.005-100). The key provisions are outlined below:

- Construction, acquisition, and maintenance of Columbia River bridges — ODOT may construct, reconstruct, purchase, rent, lease or otherwise acquire, improve, operate, and maintain bridges over the Columbia River. In addition, this statute allows ODOT to:¹⁰
 - Acquire real property necessary for the Interstate 5 bridge replacement project, together with approaches and connecting roads on both sides of the Columbia River.
 - Regarding the Interstate 5 bridge replacement project, the OTC by resolution may designate additional approaches, connecting roads, and related facilities within the I-5 corridor on both sides of the Columbia River as a part of the Oregon state highway system.¹¹
- Agreements for carrying out powers — ODOT may make and enter into agreements with the State of Washington and any of its municipalities, ports, political subdivisions, or agencies. This statute also includes the federal government, any municipality, agency, etc. within Oregon, and any persons, associations, or corporations, domestic or foreign.¹²
- ODOT may use monies from the State Highway Fund to pay for any parts of an interstate bridge project.¹³
- Detailed requirements of items to be included in requests for proposals (RFPs) and invitations to bid — The key provisions are contained in Appendix A: RFP Requirements for Oregon and Washington. Note that all above statutes within ORS § 381 are considered cumulative and in addition and supplemental to the authority conferred by any other law.

¹⁰ ORS § 381.005 [“Construction, acquisition and maintenance of Columbia River bridges.”](#)

¹¹ This statute was last amended in 2013, which means this statute could be referring expressly to the CRC. However, this report has not found any subsequent Oregon legislation that appears to render statutes amended in the past that refer to a bridge replacement program on I-5 inapplicable to the current project. Further legal analysis should be conducted on this issue.

¹² ORS § 381.010 [“Agreements for carrying out powers.”](#)

¹³ ORS § 381.020 [“Using funds available for bridge expenses.”](#)

2.3 Analysis and Conclusions

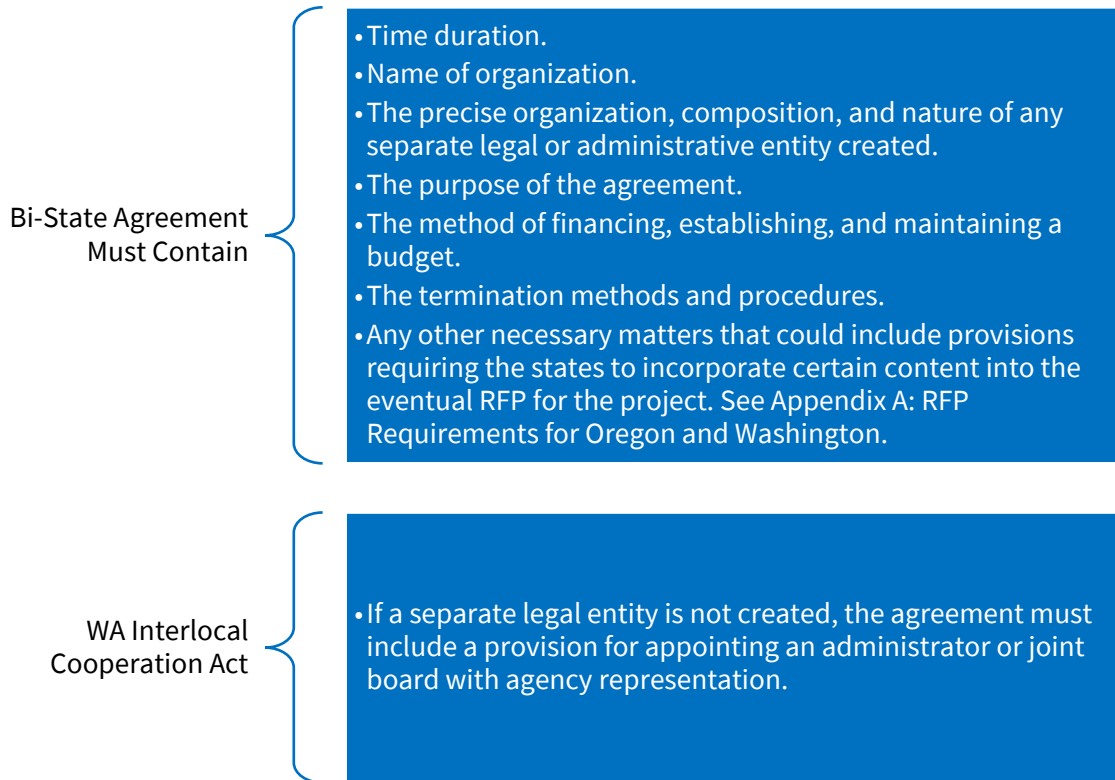
Washington's statutes enable WSDOT to enter into agreements with Oregon for the purposes of operating and maintaining the IBR program. These statutes provide details on the information such agreements must contain. These requirements do not appear to create significant obstacles for the IBR program or negatively affect the project schedule. Additionally, the statutes allow for a fair amount of flexibility when it comes to structuring an agreement, as none of the statutes dictate how an agreement should be governed or how costs should be shared.

While there is not a statute that specifically allows Washington to enter into a tolling agreement with Oregon, one that allows a tolling agreement between the two states does exist for the CRC. Further legal analysis should be conducted to determine whether this authority can be applied to the IBR program. If not, a similar statute could likely be created for the IBR program. Likewise, this report later considers the use of a tolling body that establishes and implements tolling policy, collects tolls, distributes revenues, and raises rates according to debt service coverage metrics defined upfront. Further legal analysis is also required to determine the viability of this approach.

Like Washington, while Oregon's existing statutes allow ODOT to enter into agreements with agencies of other states related to projects such as the IBR program, there are no statutes or procedures in place that address the specific types of arrangements into which the state could enter or how such arrangements should be organized. Rather, these statutes provide a list of categorical material or general content that such agreements must contain, with no procedural order provided. In the case of interstate bridges managed by the State of Oregon, existing statutes go further and define the minimum content required for associated RFPs.

In summary, the IBR program has an opportunity to leverage the existing statutes to create a new agreement between Washington and Oregon for the purposes of the project. This agreement would need to include relatively standard required content as shown in Figure 1 below. The two states are also free to determine the governance structure defined in the agreement, as the existing statutes do not specify structural requirements.

Figure 1. Summary of Required Bi-State Agreement Content



3. PRIOR AND EXISTING I-5 BRIDGE AGREEMENTS AND LESSONS LEARNED

The following sections outline I-5 agreements entered into for purposes of the CRC assumed to be no longer in effect (Section 3.1), the operations and maintenance agreement for the existing I-5 bridge (Section 3.2), and agreements already in effect that pertain to the current IBR program (Sections 3.3-3.4). An analysis of the past agreements reveals lessons learned from the CRC that are applicable and relevant to current and future activities undertaken by the IBR program. This analysis will help inform the criteria for the comparative analysis of bi-state structures in Section 5.

3.1 Prior I-5 Bridge Agreements

Project development and the environmental review process for the CRC began in 2005 and were jointly led by ODOT and WSDOT, with regional transportation authority's TriMet and C-TRAN taking the lead on the transit portion of the project. A series of agreements were made between Oregon and Washington for the purposes of the CRC development, which are outlined below.

3.1.1 2006 Intergovernmental Funding Agreement

In 2006, Oregon and Washington representatives signed the 2006 Intergovernmental Funding Agreement (IGFA), hereinafter referred to as the 2006 IGFA, which explains that both state transportation departments were to share the cost of funding the CRC equally. Additionally, expenses incurred were subject to approval by the WSDOT and ODOT project directors. Since WSDOT incurred costs related to the project prior to this agreement, a provision was included stating that ODOT would pay 100% of the costs until its expenditures were equal to WSDOT's — at which point, the cost sharing would revert to a 50/50 arrangement.

This agreement also contained terms for the parties to terminate the agreement, which could be done either mutually or, in specific cases, by a single party. For a mutual termination, both parties would have to agree in writing. The 2006 IGFA also included provisions for single-party termination if the agreement “is prevented from proceeding by reason of a preliminary, special, or permanent restraining order of a court of competent jurisdiction” by an executive order of the President of the United States or if the governing body of either state determines that it is in the best interest of the state to do so.¹⁴ In any event of a termination, both parties would still be responsible for contributing their share of the costs.

This agreement contained a non-binding dispute resolution process through which an informal dispute resolution hearing would be held and moderated by a three-person board. Of the three members, two would be appointed by each party and the third would be jointly selected.

¹⁴ Interstate Funding Agreement for the Columbia River Crossing Project, Washington State Department of Transportation and Oregon Department of Transportation, 2006.

3.1.2 2012 Interstate Tolling Agreement

On December 19, 2012, the WSTC and the OTC signed the Interstate Tolling Agreement for the CRC in order to jointly set, adjust, and review toll rates. Under this agreement, a Bi-State Tolling Subcommittee was established that was composed of members from the WSTC and OTC. This Subcommittee was responsible for recommending toll rates and policies, as well as modifications to toll rates, to the transportation commissions of both states; the Subcommittee was an advisory committee and had no decision-making power.

This agreement contained a termination clause that required both states' approval to terminate the agreement, provided that any such termination would not impair contractual obligations to bond holders.

With regard to dispute resolution, the agreement outlined the structure and procedures of a dispute review board. If any dispute were to arise, an informal dispute resolution hearing would be held. The board would be composed of three members: two to be appointed by the states' commission (one by each state) and one who would be mutually selected by both commissions. The dispute review board would be responsible for making a recommendation, and its "recommendations would be given serious consideration when resolving a dispute," but it would have no authority to make a binding decision.¹⁵

3.1.3 Summary of Additional CRC Agreements

In addition to the 2006 IGA and the 2012 Interstate Tolling Agreement, multiple agreements were executed specifically for the CRC project, focusing mainly on authorizing and funding environmental planning activities. These agreements were entered into by WSDOT with regional partners, including the Regional Transportation Council, TriMet, City of Vancouver, City of Portland, Metro, C-Tran, and three local tribes. These agreements are summarized further in Appendix B: Supplemental Information on Prior CRC Agreements.

3.2 Existing I-5 Bridge Agreement: 1966 I-5 Maintenance Agreement

In 1966, the Washington State Highway Commission and the Oregon State Highway Commission approved an operations, maintenance, and repair agreement for the "Interstate Bridges crossing the Columbia River between Washington and Oregon" (i.e., the structure over the Columbia River that exists today).¹⁶ This agreement sets forth an arrangement for ongoing maintenance of the bridge after bonds issued for construction are fully paid.

¹⁵ Interstate Tolling Agreement for the Columbia River Crossing Project, Washington State Transportation Commission and Oregon Transportation Commission, December 19, 2012.

¹⁶ 1-5 Maintenance Agreement, Washington State Highway Commission and Oregon State Highway Commission, 1966.

Under this agreement, Oregon is responsible for maintaining the southerly approach to the bridges and the roadway and drainage facilities under the south end of the bridges, while Washington is responsible for the northerly section.

Oregon is responsible for the operation, maintenance, and repair of the bridges, including “immediate and direct supervision” of such activities. As part of Oregon’s responsibility to maintain the bridges, the state highway engineer of Oregon prepares an annual report on the condition of the bridges, a detailed statement of expenditures, and a budget for maintenance and repairs for the following year.

The cost of operation, maintenance, and repair of the bridges is shared equally between the two states, with Washington reimbursing Oregon for half of the sum of such expenses. However, any expenditure “over and above the cost of normal operations, maintenance, and repair” requires Washington’s approval. A detailed plan of costs and estimates will be created by Oregon and approved by Washington. Otherwise, any costs incurred by Oregon would not be reimbursable. However, emergency repairs “threatening the integrity of the structures or hinderance or delay to highway or water traffic” are exempt from this approval.¹⁷

3.3 2019 Interagency Memorandum of Understanding

In 2017, the Washington Legislature passed Senate Bill 5806, codified in RCW § 47.01.505,¹⁸ which authorized preliminary work to develop a process for planning a new bridge (IBR). While the act invited Oregon to participate in a joint Legislative Action Committee, Oregon has yet to take the legislative action required to appoint members.

Washington also made a funding allocation to the IBR program that was matched by Oregon in early 2019. Subsequently, Washington Governor Jay Inslee and Oregon Governor Kate Brown signed a memorandum of intent to mobilize their respective states to lead a coalition of local partners in order to develop the IBR program. Following the signing of a memorandum of intent by Governor Inslee and Governor Brown on November 18, 2019, WSDOT and ODOT signed a memorandum of understanding laying out the terms of their cooperation.

This MOU references the previous work of CRC, stating that the IBR program was a product of the I-5 Partnership Strategic Plan adopted in 2002. The MOU also reiterates the project’s importance to the Pacific Northwest region. This MOU set forth Oregon and Washington’s commitment to work together with their respective statewide and regional transit agencies to manage the work, coordinate between themselves, and develop the overall IBR program.

¹⁷ In addition, two supplementary agreements between Washington and Oregon were included as addenda to the original 1966 Maintenance Agreement. The 1998 Supplement Agreement establishes a cost-sharing plan for trunnion work on the I-5 bridges, and the 1999 Supplement Agreement detailed a staged reimbursement process for maintenance work that was originally paid for by Oregon.

¹⁸ RCW § 47.01.505, “[Interstate 5 Columbia river bridge project—Joint legislative action committee.](#)”

The document identified both DOTs as lead partners and laid out how they would work with other regional transit agencies and the cities of Portland and Vancouver to build a program team to manage the IBR program. Eight provisions were identified, the most relevant of which are listed below, that outline how the parties, and specifically the program team, will manage the work, coordinate between agencies, and develop the IBR program:

- Organization of the program team and appointees.
- Public communication regarding the IBR program.
- Co-location of the program team.
- Preferred form of project delivery.
- Summary of environmental and other studies necessary for approvals and permitting processes.
- Establishment of a funding plan.

Additionally, the IBR program is actively engaging bi-state partner agencies with IGAs, similar to the CRC efforts analyzed in Appendix B: Supplemental Information on Prior CRC Agreements. These agreements will establish regional leadership throughout program development and have a direct role in future improvements as a result of their regional positions as an owner, operator, transportation policymaker, or adjacent public economic development entity within the integrated, multimodal transportation system.

3.4 2020 Interstate Agreement

WSDOT and ODOT was entered into an Interstate Agreement on March 20, 2020 (the “2020 IGA”). The 2020 IGA pertains to funding, administering, and defining responsibilities as to the initial project management, organization and staffing, and environmental analysis for preliminary engineering tasks related to the IBR program.

Program Organization

The 2020 IGA has provisions pertaining to the IBR program’s organizational structure. It states that the IBR Program is to be led by a Program Administrator who reports to the Washington and Oregon Secretaries of Transportation. Additionally, WSDOT and ODOT are responsible for appointing at least one employee (a “Designated Representative”) each to serve on a leadership team, which manages the day-to-day operations of the IBR program. It specifies that either WSDOT or ODOT will enter into a contract with a General Engineering Consultant (GEC), which will perform services until the completion of the Program or termination of the GEC contract. The GEC will report to the leadership team.

Funding

In 2019, WSDOT contributed \$35 million to the IBR program and ODOT has contributed \$9 million from a federal grant in order to fund the program office and begin environmental work, which is detailed in Exhibit A of the 2020 IGA. The parties agreed to share costs equally, but given the unequal costs

incurred prior to the effective date of the agreement, it was determined that the party who had contributed less overall would be responsible for incurring costs until contributions from both sides are equal. The parties may fund the IBR program with state, local, and/or federal funds. Funding from regional partners is permitted so long as separate written agreements are executed. Expenses are to be approved jointly by the representatives on the leadership team from WSDOT and ODOT.

Termination

The 2020 IGA may be terminated if the parties mutually agree to do so. Additionally, there are specific cases¹⁹ in which one party may seek to terminate the agreement:

1. The parties are prevented from proceeding with the Program as a result of an Executive Order of the President or the Governors of Washington or Oregon.
2. The parties fail to receive sufficient funding to perform their obligations under the agreement.
3. The agreement is prevented from proceeding by a court order.
4. Any federal or state laws prohibit the party from paying for the IBR program from a planned funding source.
5. If the party's governing body determines that termination is in the best interest of its state.²⁰

In the event of a termination of the 2020 IGA, each party is responsible for paying 50% of all costs prior to the effective date of the termination.

Dispute Resolution

The 2020 IGA specifies how disputes are to be resolved. If a dispute is not resolved within 30 business days, it may be elevated to the next level by providing written notice²¹ to the other party's Designated Representative. A meeting will then be held between the regional level of WSDOT and ODOT (the Southwest Regional Administrator and the Assistant Director for Operations, respectively). If the dispute is unable to be resolved at the regional level, it is elevated to the WSDOT Secretary of Transportation and ODOT Director of Transportation. If the dispute is not resolved, either party may bring the dispute to designated federal district courts described in the 2020 IGA.

Additional Information

The 2020 IGA also contains provisions related to audits, confidential information, and public records requests.

¹⁹ If one party seeks to terminate the 2020 IGA due to any one of these reasons, they must provide 90 calendar days' notice to the other party.

²⁰ If a party wishes to terminate under this reasoning, they must follow the dispute resolution procedures set forth in the 2020 IGA before providing the other party with notice of their termination.

²¹ This written notice must contain a description of the remaining issues to be solved, a description of the differences between the parties on the issues, a summary of the steps already taken to resolve the issues, and the resolution of any issues that were initially involved in the dispute.

3.5 Analysis and Conclusions

The 2006 IGFA was a critical step toward formalizing the bi-state efforts for the CRC. This IGA helped the CRC obtain a Final Environmental Impact Statement (EIS)/Environmental Impact Report record of decision in December of 2011. However, there are aspects of the agreement that can be improved. The 2019 Advisory Report from the Oregon Secretary of State’s Audits Division identifies issues with the 2006 IGA that are relevant to current and future efforts for the IBR program. These are as follows:²²

- **Stakeholder engagement was not sufficiently addressed** — The CRC task force’s purpose was to advise the project team in the development of the project’s vision, to help establish the purpose and need statements that would guide the project going forward, and to make recommendations. However, the task force was disbanded in the summer of 2008.
- **Design review process was not established** — As noted in the 2019 report, “Changes in bridge height requirements contributed to design challenges. In April 2010, the governors of Oregon and Washington convened an independent review panel made up of eight national experts to review key aspects of the CRC project and ensure that project assumptions and methods were reasonable. The proposed bridge type, as well as its proposed height, were notable concerns of the panel. Addressing these two issues added time and cost to the project.”²³
- **Bi-State funding coordination was not established** — The 2019 report stated that “Oregon and Washington intended to equally share the costs incurred by the CRC project team. However, in order to supplement planning costs, both states relied on federal aid funds from the Federal Highway Administration. Due to differences in how state funds were available in both states, Oregon used more than twice as much federal aid funding than Washington.”²⁴

These findings informed the criteria used to analyze the potential agreement options conducted in Section 5. The core criteria described in Section 5.1 outline the elements that any project agreement, regardless of the approval requirements, should contain. Additionally, the agreements for the CRC, summarized in Section 3.1.3 above, indicate the need for a more cohesive and comprehensive agreement for the IBR program. Each agreement for the CRC was executed for discrete tasks for individual stakeholders involved in the CRC. However, a more formalized joint agreement that includes the key stakeholders as signatories could provide for more cohesive planning and engagement throughout the IBR program’s lifetime.

The 2020 IGA provides a strong starting point for building a longer-term bi-state agreement, regardless of the ultimate approach. In particular, the cost-sharing regime and termination provisions may form a good basis for more refined and specific points of agreement on those relatively sensitive subject areas. These and other elements of the 2020 IGA could be carried forward into a subsequent,

²² Secretary of State Oregon Audits Division, [The Columbia River Crossing Project Failure Provides Valuable Lessons for Future Bi-State Infrastructure Efforts](#), 2019.

²³ Ibid, p. 7.

²⁴ Ibid, p. 9.

longer-term project agreement for the delivery, operation, and maintenance of a new IBR structure and related assets, no matter which bi-state arrangement option is pursued.

4. EXAMPLES OF EXISTING AGREEMENTS IN THE U.S.

An array of interstate arrangements exists across the U.S. today, most often referred to as IGAs, interlocal agreements (IAs), MOUs, bi-state agreements, or interstate compacts. Each arrangement varies as to whether it is more permanent or temporary in nature. Temporary arrangements are often put in place until a more formal agreement, such as a compact, is enacted; an authority is created; or Congress provides consent for a compact that then carries the weight of federal law.²⁵

The previous section explored how Washington and Oregon used a series of MOUs and IGAs as a basis of collaboration between the two states to conduct planning activities for the CRC. This section summarizes existing interstate agreements related to other comparable bridge development projects. These case studies are categorized as follows:

- Agreement (not a compact) between multiple state partner agencies with approval from state legislature and/or executive branch with a tolling entity/body.
- Agreement (compact) without congressional consent.
- Agreement (compact) with congressional consent.

Note that the use and meaning of the term “compact” can vary between states, state agencies, and other legal entities. On one hand, this term can be used in place or within IGAs, MOUs, bi-state agreements, etc. that are made only between agencies from different states, such as departments of transportation, that could include written authorization from an agency head or governor. These agreements are inherently different from official interstate compacts that are approved via nearly identical legislation in the legislatures of the member states and, if warranted or desired, consented to by Congress. For the purposes of this report, the term “compact” as used to discuss “interstate compacts” is aligned with the following definition:

“An interstate compact is an agreement between two or more states in their capacity as sovereigns. ... Most often, state legislatures enact compacts, which differentiates compacts from the myriad cooperative arrangements between state administrative officials. When a legislature enacts a compact, the compact typically becomes part of

²⁵ For the purposes of this report, the term “authority” refers to a legal administrative entity that governs, operates, and/or manages transportation assets.

that state’s statutory laws. Thus, compacts are often statutes and contracts at the same time.^{26, 27}

Table 1 provides a summary of bi-state arrangement options (each with an example case study). Each option provides different “enabling attributes.” As shown below, there is an array of bi-state agreement options available to the IBR program, which could be accomplished by following an existing model or a combination thereof.

Table 1. Summary of Existing Agreement Case Studies

Arrangement Option	Examples	Enabling Attributes
Agreement (not a compact) between multiple state partner agencies with approval from state legislature and/or executive order	<ul style="list-style-type: none"> Ohio River Bridges 	Stand-alone authority created by state legislation and executive order (Kentucky and Indiana, respectively) that formed the foundation of a bi-state development agreement between the two states. Key stakeholder agencies from each state are signatories to this agreement, which establishes the duties, responsibilities, powers, and authorities of the parties involved in delivering the project.
Agreement (compact) without congressional consent	<ul style="list-style-type: none"> Arkansas-Mississippi Great River Bridge Compact 	Created a commission to govern and manage the construction, O&M, and tolling of a bridge and associated approaches across the Mississippi River at or near Helena, Arkansas, and Friars Point, Mississippi.
Agreement (compact) with congressional consent	<ul style="list-style-type: none"> Port Authority of New York and New Jersey Kansas City Transportation District Washington Metropolitan Area Transit Authority 	Allows the: <ul style="list-style-type: none"> Creation of revenue-independent entities that manage/operate assets over state boundaries within a greater regional footprint overseen by bi-state boards and committees.

²⁶ Litwak, J.B. (2020). Interstate compact law: Cases & materials. Semaphore Press.

²⁷ Our consultation with the Council of State Governments confirmed this understanding. While we acknowledge the Washington statute (RCW § 39.34.040) says otherwise, for the purposes of this report, we are following this definition. It is also important to note that it is not necessary obtain consent from Congress to create a compact for the IBR program.

Arrangement Option	Examples	Enabling Attributes
	<ul style="list-style-type: none"> • Delaware River Joint Toll Bridge Commission • Railroad Passenger Transportation Compact • Tahoe Regional Planning Compact 	<ul style="list-style-type: none"> • Empowerment of existing agencies (e.g., eminent domain) that manage assets across state lines. • Creation of independent special-purpose district planning agencies.

4.1 Agreement (not a compact) between Multiple State Partner Agencies with Approval from State Legislature and/or Executive Branch with a Tolling Entity/Body

The following section introduces the Louisville-Southern Indiana Ohio River Bridges (ORB) Project as an example of an agreement between multiple state partner agencies with approval from state legislature and/or executive branch with a tolling entity/body. Section 4.1.2 details how this example relates to the IBR program and identifies strengths of the ORB Project that can be applied to the IBR program.

4.1.1 Ohio River Bridges

Project Definition/Type of Assets

The ORB Project was designed to increase cross-river mobility by improving safety, alleviating traffic congestion, and connecting highways. There are two portions of the ORB Project: Downtown Crossing (Abraham Lincoln Bridge, which connects downtown Louisville and Jeffersonville, Indiana, running parallel to the Kennedy Bridge) and East End Crossing (Lewis and Clark Bridge), which is located eight miles upstream and connects Prospect, Kentucky, and Utica, Indiana.

The Bi-State Development Agreement, signed by both states in late 2012 concerning the Louisville Southern Indiana Ohio River Bridges Project (Bi-State Agreement), summarizes the governing bodies, authorities, schedule, budget, financing, environmental and other federal requirements, project scope, procurement, design standards, tolling operations, and O&M, among other considerations, for the ORB Project. Elements of the Bi-State Agreement, including governance and revenues/tolling, as well descriptions of the enabling legislation, are provided below.

Established Legislation That Created the Authority

The Louisville and Southern Indiana Bridges Authority (BA) was established to allow for the collaboration of Kentucky and Indiana to develop, finance, and construct the ORB Project. The BA was initially given the primary task of developing a new financial plan for the ORB Project. Kentucky Revised Statutes (KRS) § 175B.030 and Senate Resolution 169 created and ratified the BA by the

Kentucky General Assembly. The governor of Indiana authorized the state's participation in the BA pursuant to Executive Order 09-11.

The two states entered into an MOU, signed by the states' respective governors on March 5, 2012, that defined the preferred approach of each state to deliver the ORB Project. Specifically, this document outlined the intent of the Commonwealth of Kentucky to lead the delivery of the Downtown Crossing and the State of Indiana to lead the delivery of the East End Crossing.

Further to the MOU, the "States' Parties," which include the Indiana Finance Authority (IFA), Indiana Department of Transportation (INDOT), Kentucky Public Transportation Infrastructure Authority (KPTIA), and Kentucky Transportation Cabinet (KYTC), entered into an IA that would be incorporated into the Bi-State Agreement that would provide the manner of design, procurement, construction, financing, staffing, and supplying for the ORB Project. The IA also created the Joint Board and the Tolling Body, which are the key governing bodies of the ORB Project, to ensure the execution of the IA. IFA, KPTIA, INDOT, and KYTC each have the power to enter into the IA via Indiana Code §36-1-7-1 and in KRS § 65.230 and § 65.240.

Powers of the Board/Commission

After developing the initial plan for the ORB Project, the primary function of the BA is to provide an annual report of activities to the States' Parties. The States' Parties support the BA through the Bi-State Management Team, with other assistance required for the BA to fulfill its reporting and auditing functions.

The Bi-State Management Team, composed of representatives from KYTC, INDOT, and the Federal Highway Administration (FHWA) (nonvoting, ex officio member), monitors the status and progress of the ORB Project, coordinates with FHWA as necessary, and prepares an annual report for review and comment by the BA before the BA submits the report to the Joint Board, IFA, INDOT, KYTC, and KPTIA. The Bi-State Management Team also updates the Project Management Plan and the Major Projects Financial Plan.

The Joint Board was established by the IA to represent the States' Parties to facilitate and accomplish the ORB Project. The Joint Board is composed of one representative of each of the States' Parties, including the chairman of the KPTIA, the public finance director of the State of Indiana on behalf of IFA, the secretary of KYTC, and the commissioner of INDOT. These representatives agree to obtain a resolution or other appropriate authorization of their respective organizations to approve and authorize the execution of the IA.

Revenues and Tolling

The Bi-State Agreement establishes that States' Parties agree to implement tolling on all cross-river bridge spans included in the ORB Project. Once collected into a joint account, toll revenues are allocated equally between IFA and KPTIA. However, KPTIA and IFA agree to set and maintain toll rates in each state's fiscal year such that the Kentucky revenue share is not to be less than 1.5x debt service requirements for senior lien Kentucky revenue bonds or 1.25x aggregate debt service requirements for revenue bonds, Transportation Infrastructure Finance and Innovation Act program loans, and all

other debt service and funding obligations. The Indiana revenue share is not to be less than 100% of the aggregate amount of the availability payments under a P3 arrangement and other financial obligations due and payable during the following year under a P3 agreement.

As stated above, the IA established the Tolling Body. The Tolling Body is composed of members of the Joint Board plus one additional representative of IFA and one additional representative of KPTIA. The States' Parties, acting through the Tolling Body, are responsible for the following:

- Conduct a detailed assessment of the potential economic effects of tolls on environmental justice populations, using the latest publicly available population data, traffic forecasts, and community input.
- Make the results of that study publicly available.
- Identify and evaluate a range of measures for mitigating the effects of tolling on low-income and minority populations.
- Provide an opportunity for additional public input on those potential measures.

The Tolling Body is to put together a tolling plan for mitigating the effects of tolling on environmental justice populations. This plan needs to comply with FHWA policy. This plan then forms the basis of the Tolling Policy Agreement executed by the States' Parties.

Finally, the Tolling Body makes recommendations to the States' Parties related to rulemaking procedures necessary to establish the framework for electronic tolling, tolling procedures, tolling enforcement, and any other rules or regulations necessary for the operation of a comprehensive tolling system for the project. Table 2 provides a summary of the ORB program's project agreements.

Table 2. Summary of Ohio River Bridges Project Agreements

Document	Entity Created By	Primary Function
Bi-State Development Agreement	States of Indiana and Kentucky and their respective parties	Official project agreement that outlines the governing bodies, authorities, schedule, budget, financing, environmental/other federal requirements, project scope, procurement, design standards, tolling operations, and O&M.
Bi-State Management Team	Bi-State Development Agreement	Monitored the status and progress of the ORB Project during construction, coordinates with FHWA as necessary, and prepares an annual report for review and comment by the BA. Also updated the Project Management Plan and the Major Projects Financial Plan.
Louisville and Southern Indiana Bridges Authority	Kentucky: KRS § 175B.030 and Senate Resolution 169 Kentucky Legislature Indiana: Executive Order 09-11	Allows for the collaboration of Kentucky and Indiana to develop, finance, and construct the ORB Project; provides annual report (received from the Bi-State Management Team) to the Joint Board, IFA, INDOT, KYTC, and KPTIA.
MOU Agreement	Governors of Indiana and Kentucky	Defined the preferred approach of each state to deliver the ORB Project, which consisted of the Downtown Crossing and East End Crossing. Sharing of toll revenues was split 50/50.
Interlocal Agreement	IFA, INDOT, KPTIA and KYTC	Provided the initial design, procurement, construction, financing, tolling, and O&M provisions for the ORB Project; it was incorporated into the Bi-State Development Agreement; creates the Joint Board and the Tolling Body.

Dispute Management/Role of Governors

To the extent permitted by law, the States' Parties should use best efforts to resolve any disputes between and among them. In the event there is a dispute between the States' Parties as to the delegation of powers, duties, obligations, or responsibilities between the Joint Board and the Tolling Body, such dispute is resolved between the states' governors.

4.1.2 Analysis and Conclusions

The ORB Project presents a unique situation where two states used a combination of arrangements (e.g., MOU, IA, state legislation) instead of a single interstate compact to redevelop two key bridges across the Ohio River. This flexible arrangement was appropriate in this case, given that Kentucky and Indiana took responsibility for developing one bridge each and were able to decide how their respective programs would be procured, developed, etc.

The strength of the approach using a collection of bi-state agreements, MOUs, and IAs is that, in aggregate, these agreements have formed a robust project development framework that involves multiple state agencies and internal stakeholders. The Bi-State Development Agreement is the overarching document that summarizes the entities and key participants; the powers, roles, and responsibilities of the entities/participants; and the key project development elements, such as scope, schedule, budget, financing, and environmental requirements. However, the IAs form the basis of collaboration between the two states with regard to decision-making (by the Joint Board) and tolling (Tolling Body). These elements together comprise a project-based organization that is guided by a project management plan; is equipped to address project obstacles and challenges as they arise; defines key processes and procedures related to bridge design, tolling, and O&M; and has provisions for dispute resolution and termination.

Note that the BA appears to have been established for the purposes of procuring initial funds from the states for initial business planning. While the Bi-State Agreement defines the BA as being created as a vehicle for both states to jointly exercise power, it does not appear to be an entity with separate and distinct powers, nor does it appear to have a functional role per se, as it delegates its authority to the States' Parties and is responsible only for reporting to the Joint Board.

The reports themselves are prepared by the Bi-State Management Team. Therefore, on the one hand, the establishment of an authority does not appear to be critical to the success of a bi-state arrangement. However, it is possible that the BA provided a strong foundation to the subsequent IGAs, as the authority was approved by the Kentucky General Assembly and via executive order by the governor of Indiana.

Absent a successful challenge (either in court or by the legislature), the executive order acts as law. However, it should still be noted that unlike IGAs or other forms of bi-state administrative agreements, compacts can bind a state legislature to prevent that legislature, or future legislatures, from changing the substantive law that is the subject of a non-compact agreement. This is because administrative agreements are not contracts between states in their sovereign capacity, which the IBR program should continue to take into consideration.

It is notable that ORB was able to create a robust project organization via bi-state agreements, MOUs, and IGAs that did not require a compact. Whichever agreement option(s) is selected by the IBR program, it is recommended that the agreement(s) lay out the detailed project framework, participants, scope, processes, and procedures as accomplished by the ORB Bi-State Development Agreement and the supporting sub-agreements.

4.2 Agreement (compact) without Congressional Consent

The following sections detail examples of compacts without congressional consent: Arkansas-Mississippi Great River Bridge Construction Compact, Midwest Interstate Passenger Rail Compact, and Hood River Bridge. These examples inform the analysis in Section 4.2.4.

4.2.1 Arkansas-Mississippi Great River Bridge Construction Compact

In 1950, the Arkansas-Mississippi Great River Bridge Construction Compact was created that formed a commission to plan, construct, maintain, and operate a bridge and approaches across the Mississippi River at or near Helena, Arkansas, and Friars Point, Mississippi, and to oversee all requisite operations inherent to the operation of the bridge.²⁸

Below are the primary powers and duties given to the commission:²⁹

- Plan, construct, maintain, and operate a bridge and approaches across the Mississippi River.
- Purchase, operate, and maintain and all ferries across the Mississippi River within 25 miles of the bridge site.
- Contract, purchase, acquire (by proper condemnation proceedings as necessary), and dispose of real and personal property.
- Issue bonds on the security of the revenues derived from the operation of the bridge and ferries for the payment of the cost of the bridge.
- Establish and charge tolls for transit over such bridge and ferries in accordance with the provisions of the compact.

The commission consists of 18 members — nine from Mississippi and nine from Arkansas — each selected from their respective state in the manner and for the term fixed by the legislature of their

²⁸ National Center for Interstate Compacts, "[Arkansas-Mississippi Great River Bridge Construction Compact](#)." This compact does effectively establish a Commission with representatives from each state in a manner, and for a term, defined by each state's legislature. However, there is little documentation available that provides additional insight about the Commission other than what is provided in this Section 4.2.1.

²⁹ Compact Between Arkansas and Mississippi Creating an Arkansas-Mississippi Bridge Commission, Article I. March 31, 1950.

state.³⁰ In addition, the commission elects a chairman and a vice chairman and may appoint such officers and employees as it may require for the performance of its duties and determines their qualifications and duties.³¹ Further, no action of the commission shall be binding unless at least five members from each state are present during a meeting and unless a majority of the members from each state present at such meeting shall vote in favor. Each state reserves the right to provide by law for the exercise of the veto power by the governor over any action of any commissioner appointed from their respective state.³²

The compact also empowers Mississippi and Arkansas to institute penalties for violations of any order, rule, or regulation of the commission and for the manner of enforcing same.

4.2.2 Midwest Interstate Passenger Rail Compact (Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, Wisconsin)

This compact was created to promote the development and implementation of improvements to intercity passenger rail service in the Midwest.³³ In addition, this compact seeks to:

- Coordinate interaction among Midwestern state elected officials and their designees on passenger rail issues.
- Promote development and implementation of long-range plans for high-speed rail passenger service in the Midwest and among other regions of the U.S.
- Work with the public and private sectors at the federal, state, and local levels to ensure coordination among the various entities having an interest in passenger rail service and to promote Midwestern interests regarding passenger rail.
- Support efforts of transportation agencies involved in developing and implementing passenger rail service in the Midwest.³⁴

³⁰ For transparency, the text of the compact reads, “The commission shall consist of eighteen members, nine of whom shall be qualified electors of the State of Mississippi and nine of whom shall be qualified electors of the State of Arkansas. The Arkansas members are to be chosen by the State of Arkansas, and the Mississippi members are to be chosen by the State of Mississippi, in the manner and for the term fixed by the legislature of each state, except as herein provided.”

³¹ Compact Between Arkansas and Mississippi Creating an Arkansas-Mississippi Bridge Commission, Article V. March 31, 1950.

³² Ibid.

³³ Midwest Interstate Passenger Rail Compact, [Compact Document](#).

³⁴ Ibid.

4.2.3 Hood River Bridge

Project Definition/Type of Assets

The Hood River-White Salmon Replacement Bridge Project (Replacement Bridge or Replacement Bridge Project) is a proposed project to replace the existing Hood River-White Salmon Bridge between the cities of Hood River, Oregon, and White Salmon, Washington. The existing bridge is obsolete and will not meet the long-term needs of the travel market it serves. The Replacement Bridge includes the funding, design, and procurement of a new bridge to avoid an expensive rehabilitation of the existing bridge beginning in fiscal year 2026.

Established Legislation (or Legislation Under Development) Creating the Project

The MOU between the Oregon and Washington Partners Regarding the Development of the Hood-River White Salmon Interstate Replacement Bridge sets forth the role of a Bi-State Working Group, agreed to by Oregon and Washington, to design, develop, and implement a governance structure and to seek funding for the Replacement Bridge. The Bi-State Working Group is to guide the development activities of the Replacement Bridge and to resolve issues by consensus.

The Bi-State Working Group will prepare and propose bi-state legislation, potentially in the form of an interstate compact, to establish the Bi-State Authority during the 2022 or 2023 legislative sessions. The goal is to have the Bi-State Authority operational by fiscal year 2024. Prior to proposing the Bi-State Authority to legislatures, the Bi-State Working Group will seek supporting resolutions from the governing bodies representing Oregon and Washington.³⁵

Powers of the Board/Commission

The Bi-State Authority will provide long-term governance for the Replacement Bridge Project. If the Bi-State Authority is not approved, the Bi-State Working Group will continue in its role as described in the MOU.

4.2.4 Analysis and Conclusions

The agreement approach for the Hood River Bridge project is only at the concept/strategy stage and has yet to be implemented. As such, the exact form of the eventual bi-state agreement is still to be determined.

However, it is notable that: 1) the MOU establishes a Bi-State Working Group composed of representatives from both Oregon and Washington (including local cities, the Port of Hood River, and local county commissioners), and 2) this bridge development project across the Columbia River (with a purpose, in that respect, similar to the IBR program, albeit smaller in scale) includes as the preferred

³⁵ Member entities of the Bi-State Working Group include the City of White Salmon, the City of Bingen, Port of Hood River, Hood River County, and Klickitat County.

agreement option a bi-state agreement approved by both state legislatures (i.e., a compact), accompanied by the establishment of an authority.

With regard to the Midwest Interstate Passenger Rail Compact, this agreement is not set up for the purposes of developing a specific project. However, it is notable in the context of the IBR program for its creation of a commission composed of member state officials that work cooperatively and advocate for the improvement of intercity passenger rail service in the Midwest. The commission works with federal agencies (e.g., Amtrak) and members of Congress to develop a long-term interstate plan for high-speed rail passenger service.

4.3 Agreement (compact) with Congressional Consent

This section contains six examples of compacts with congressional consent that inform the analysis and conclusions in Section 4.3.7.

4.3.1 Port Authority of New York and New Jersey

The Port Authority of New York and New Jersey (PANYNJ) is a quasi-governmental entity that was ratified by Congress and established in 1921 by the New York-New Jersey Port Authority Compact.³⁶ The PANYNJ is legally a “port district” that is governed by a 12-person Board of Commissioners are appointed by the governors of both New York and New Jersey (six each) who are subject to state Senate approval from their respective states. The governor of New Jersey appoints the chairman of the board, while the governor of New York appoints the vice chairman.

Both governors retain the right to veto the actions of the commissioners from their own state.³⁷ The executive director of the PANYNJ that manages day-to-day operations is appointed by the Board of Commissioners. The enforcement of the PANYNJ compact comes from both states passing nearly identical legislation, enabling the PANYNJ to set its own rules and regulations.³⁸

4.3.2 Kansas City Area Transportation District and Authority Compact

The Kansas City Area Transportation Authority (KCATA) is a bi-state agency created by a compact between the states of Missouri and Kansas and consented to by Congress. The compact was authorized by legislation passed in both states in 1965. The compact gives KCATA responsibility for planning, construction, owning, and operating passenger transportation systems and facilities within the seven-county Kansas City metropolitan area. The compact defines KCATA’s district as the counties of Cass, Clay, Jackson, and Platte in Missouri; and Johnson, Leavenworth, and Wyandotte in Kansas.

³⁶ Special Panel on the Future of the Port Authority, “Keeping the Region Moving,” 2014, p. 8.

³⁷ Port Authority of New York and New Jersey website, “[Governance, Ethics and Integrity](#).”

³⁸ The laws of the State of New York. Chapter 154 of the laws of 1921, “[Port of New York Authority](#).”

KCATA’s jurisdiction is limited to these seven counties.³⁹ KCATA’s budget is funded by revenue from the farebox, with the help of local, state, and federal governments.⁴⁰

KCATA is governed by a 10-member Board of Commissioners — five from Missouri and five from Kansas. Commissioners are limited to two consecutive four-year terms. Each state has its own unique appointment process. In Kansas, one commissioner representing Johnson County and another commissioner representing Leavenworth County are appointed by their respective boards of county commissioners. The other three Kansas commissioners, representing the Wyandotte County jurisdiction, are appointed by the mayor of Kansas City, Kansas, now known as the Unified Government of Wyandotte County/Kansas City, Kansas. All appointments must be approved by the city commissioners.

In Missouri, The Kansas City, Missouri, mayor appoints three of the five Missouri commissioners, including a direct appointment that must be a Kansas City, Missouri, resident. The Clay and Platte County commissioners each submit a list of three eligible candidates for the mayor’s consideration. The Jackson County executive appoints a commissioner from a community other than Kansas City that contracts with the KCATA for service. The other Missouri commissioner must reside in Cass County, be nominated by that county’s commission, and then be appointed by the governor and confirmed by the state Senate.⁴¹

Responsibility for the management, control, and operation of KCATA and its properties is vested in its Board of Commissioners. The Board of Commissioners exercises its responsibility by adopting all general policies of KCATA, including the adoption of annual capital and operating budgets, the establishment of the goals of KCATA, and the selection of a chief executive officer (CEO). The Board of Commissioners may delegate certain duties and responsibilities to the CEO for the management and operation of KCATA.⁴²

The KCATA bylaws outline the organizational structure of the agency. The agency itself consists of six divisions under the CEO: Operations, Regional Planning and Development, Regional Service Delivery, Communications, Finance, and Organizational Development. Each division is managed by a vice president.⁴³

4.3.3 Washington Metropolitan Area Transit Authority Compact

The Washington Metropolitan Area Transit Authority (Metro) was created by an interstate compact between the District of Columbia, Maryland, and Virginia in 1967 to plan, develop, build, finance, and

³⁹ Kansas City Area Transportation Authority website, “[Overview](#).”

⁴⁰ Kansas City Area Transportation Authority website, “[Funding](#).”

⁴¹ Kansas City Area Transportation Authority website, “[Board of Commissioners](#).”

⁴² Ibid.

⁴³ Kansas City Area Transportation Authority, “[Amended and Restated By-Laws](#).”

operate a balanced regional transportation system in the national capital area.⁴⁴ This compact was approved by Congress under consent legislation.

The Metro board of directors determines agency policy and provides oversight for the funding, operation, and expansion of transit facilities within the transit zone.⁴⁵ The Metro board of directors is composed of eight voting and eight alternate directors. Maryland, the District of Columbia, Virginia, and the federal government each appoint two voting and two alternate directors.⁴⁶ For Virginia, the directors are appointed by the Northern Virginia Transportation Commission; for the District of Columbia, by the Council of the District of Columbia; for Maryland, by the Washington Suburban Transit Commission; and for the federal government, by the Administrator of General Services. For Virginia and Maryland, the directors are appointed from among the members of the appointing body, except as otherwise provided herein, and serve for a term coincident with their term on the appointing body.⁴⁷ For further detail, see Appendix C: Supplemental Information on Existing Agreements.

4.3.4 The Delaware River Joint Toll Bridge Commission

The Delaware River Joint Toll Bridge (DRB) Commission is a bi-state agency that operates pursuant to a Compact between the Commonwealth of Pennsylvania and the State of New Jersey, and which was first authorized by Congress in 1935. The latest amended version of the Compact is dated March 19, 1986.⁴⁸

The DRB Commission owns, operates, and maintains 20 bridges connecting New Jersey and Pennsylvania across the Delaware River. Eight of these are toll bridges and 12 are toll-supported bridges, two of which are pedestrian-only. The DRB Commission's 140-mile jurisdiction extends from the Philadelphia-Bucks County line to the New Jersey/New York state border. There are three "exception bridges:" the Burlington-Bristol Toll Bridge, owned by the Burlington County Bridge Commission; the Delaware River Bridge linking the two state turnpikes; and the Dingman's Ferry Bridge, a privately-owned toll span between Pike County, Pennsylvania, and Sussex County, New Jersey. In addition to its 20 Delaware River crossings, the DRB Commission owns and operates an additional 34 approach structures (smaller overpass/underpass type bridges) throughout its river region. Toll revenues are the DRB Commission's sole source of revenue.⁴⁹

⁴⁴ Washington Metropolitan Area Transit Authority (Metro), "[Milestones and History](#)."

⁴⁵ The transit zone is the 1,500-square-mile area that Metro serves. This encompasses the District of Columbia; the cities of Alexandria, Falls Church, and Fairfax; the counties of Arlington, Fairfax, and Loudoun (and the political subdivisions of the Commonwealth of Virginia located within those counties); and the counties of Montgomery and Prince George's in the State of Maryland (and the political subdivisions of the State of Maryland located in said counties).

⁴⁶ Washington Metropolitan Area Transit Authority, "[Board of Directors](#)."

⁴⁷ Washington Metropolitan Area Transit Authority, "[Annotated Compact](#)," 2009, p. 2.

⁴⁸ Delaware River Joint Toll Bridge Commission, "[Compact Document](#)."

⁴⁹ Delaware River Joint Toll Bridge Commission website, "[About](#)."

A board of 10 commissioners — five from each state, all appointed by their respective governors — governs the DRB Commission and meets monthly.⁵⁰ The chairman and vice chairman of the DRB Commission are elected from different states and hold office for two years. The chairmanship and vice chairmanship are alternated between the two states.⁵¹

No action of the DRB Commission is binding unless a majority of the members of the DRB Commission from both states vote in favor. If any ex officio member of the DRB Commission from Pennsylvania is absent from a commission meeting, a deputy or other person in that department is authorized to act and vote on their behalf. Such designation is signed by the ex officio member and filed with the secretary of the DRB Commission and continues in effect until the expiration of the term of office of the commission member or until another designation is made.⁵²

Documentation regarding the powers of the chairman and executive director are not publicly available.

4.3.5 Railroad Passenger Transportation Compact (New York and Connecticut)

The purpose of the Railroad Passenger Transportation Compact between the State of New York and the State of Connecticut is to enable the preservation and improvement of essential interstate rail passenger service between New York City and points in Connecticut.⁵³ In Connecticut, this primarily refers to New Haven and Hartford. While this compact does not create an official governing authority, it does grant specific powers to existing authorities who may work individually or together that result in the improvement of passenger rail service between the two states/regions — specifically, the Metropolitan Transportation Authority (MTA) in New York and Connecticut Department of Transportation (CDOT).

The compact authorizes the MTA and CDOT to carry out the following actions, either individually or jointly:⁵⁴

- To acquire through eminent domain proceedings, or by gift, purchase, lease, or otherwise, the ownership interest in or the right to use of assets of railroad, be they real property, personal property, or a combination of the two (including rights arising out of contract, franchise, or otherwise), which are or may reasonably be expected to become necessary, convenient, or desirable for the continuation or improvement of such service.

⁵⁰ Ibid.

⁵¹ “[Article VII General Powers](#),” N.J. Stat. § 32:11E-1.

⁵² Delaware River Joint Toll Bridge Commission, “[Compact](#),” 2002, p. 2.

⁵³ National Center for Interstate Compacts, “[Railroad Passenger Transportation Compact](#).”

⁵⁴ Connecticut General Assembly, Chapter 292, “[Connecticut-New York Railroad Passenger Transportation Compact](#).”

- To repair and rehabilitate such assets, or to acquire by gift, purchase, lease or otherwise, such new or additional assets and rights as they deem necessary, convenient, or desirable for such continuation or improvement.
- To dispose of any such assets, new and additional assets, and rights — or of the right to the use of the same, by conveyance, lease, or otherwise (including, without limitation, the grant of trackage rights) when and to the extent that they are not needed for such service by the said agencies — and to abandon or discontinue portions of such service when advisable.
- To operate such service or to contract for the operation of the whole or any part of such service by others.

Both the MTA and CDOT can also either individually or jointly apply for federal, state, or local aid to supplement funds appropriated or made available to them under the laws of their respective states.⁵⁵

4.3.6 Tahoe Regional Planning Compact

Project Definition/Types of Assets

This compact was set up for the primary purpose of establishing the Tahoe Regional Planning Agency (TRPA), the first bi-state regional planning agency in the U.S.

Established Legislation That Created the Project

The California and Nevada legislatures approved a bi-state compact that created the TRPA to oversee the development at Lake Tahoe. In 1969, Congress ratified the TRPA agreement. Such ratification authorized the Secretary of Agriculture and others to cooperate with the planning agency.

The agreement divided among local governments, regional agencies, the states of California and Nevada, and the federal government the responsibilities for providing recreational and scientific opportunities; preserving scenic and natural areas; and safeguarding the public who live, work, and play in or visit the region. The more specific role of the federal government is the acquisition of recreational property and the management of resources in the region to preserve environmental and recreational values and assist the states in fulfilling their responsibilities.

The Tahoe Regional Planning Compact, revised in 1980, gave TRPA authority to adopt environmental quality standards (i.e., thresholds) and to enforce ordinances designed to achieve these thresholds. The bi-state compact also established the Tahoe Transportation District, which is a special-purpose district that owns and operates the local transit system.

Powers of the Board/Commission

The TRPA Governing Board is composed of a California and a Nevada delegation. The California delegation includes one member appointed by each of the boards of supervisors of El Dorado and

⁵⁵ Ibid.

Placer counties, one member appointed by the city council of the city of South Lake Tahoe, two members appointed by the governor of California, one member appointed by the speaker of the assembly of California, and one member appointed by the Senate Rules Committee of the State of California.

The Nevada delegation includes one member appointed by each of the boards of county commissioners of Douglas and Washoe counties; one member appointed by the board of supervisors of Carson City, Nevada; one member appointed by the governor of Nevada; one member appointed by the secretary of state of Nevada (or the secretary's designee); and one member appointed the director of the Nevada Department of Conservation and Natural Resources (or the director's designee). One member is also appointed for a one-year term by the six other members of the Nevada delegation.

Under the TRPA regulatory code, which is enforced by TRPA, no project may be developed in the region without obtaining the review and approval of the agency and no project may be approved unless it is found to comply with the regional plan and with the ordinances. For projects with significant effect on the environment, TRPA will prepare an EIS in consultation with federal, state, and local agencies with jurisdiction.

There is an advisory planning commission appointed by the agency that recommends a plan or amendment to the governing body for adoption by ordinance. The agency also engages in collaborative planning with local governmental jurisdictions located outside the region but contiguous to its boundaries. In formulating and implementing the regional plan, the agency seeks the cooperation and considers the recommendations of counties and cities and other agencies of local government; of state and federal agencies; of educational institutions and research organizations, whether public or private; and of civic groups and private persons.

4.3.7 Analysis and Conclusions

The examples in this section, like the previous section, illustrate the importance of creating governing arrangements that establish a working group, commission or board (which may or may not be part of a formal project development entity, authority, or agency) composed of multiple stakeholders from the respective states developing a given project.

Unlike IGAs or other forms of bi-state administrative agreements, compacts can bind a state legislature to prevent that legislature, or future legislatures, from changing the substantive law that is the subject of the IGA. This is because administrative agreements are not contracts between states in their sovereign capacity.⁵⁶

⁵⁶ The Iowa Supreme Court described a test for whether an agreement is a valid state contract as “whether [the administrator] has been empowered to bind his jurisdiction and whether the specific terms of his offer for an agreement are those which he had been directed or authorized to make by the empowering statute.” *Ge. Expressways v Iowa Reciprocity Bd*, 163 N.W.2d 413, 419 (Iowa 1968) (citing *Frederick L. Zimmerman & Mitchell Wendell, The Law and Use of Interstate Compacts* 8 [1961]).

Further, it is reasonable to assume that legislative approval of these agreements by all states involved, which represents the will of the electorate, will increase the likelihood that the agreements stay in place and the terms of the agreements are enforced. Thus, the likelihood of the given project's reaching completion also increases.

Taking the compact a step further to achieve congressional consent can be beneficial to a compact because such ratification means that the compact provisions cannot be superseded by contrary laws enacted by one of the states that is party to the agreement. There may be also additional advantages to compacts receiving such consent, such as the ability to more easily interact with, and receive funding from, federal agencies. For example, the fact that the Tahoe Regional Planning Compact was ratified by Congress likely increases the chances that the federal government will acquire recreational property and assist with resource management activities in the region to help the TRPA achieve its goals for region.

Similarly, compacts receiving congressional consent likely have a greater chance of achieving completion of, in the case of the IBR program, its associated transportation project due to having support from both the legislative and executive branches of the federal government. For example, the enforcement of compacts with consent would likely be easier, dispute resolution provisions would more likely be followed, and withdrawal provisions would less likely be triggered under a compact with congressional consent.

5. COMPARATIVE ANALYSIS OF POTENTIAL STRUCTURES AVAILABLE FOR THE IBR PROGRAM

As discussed in Sections 2 and 4, there are legislative avenues that permit an array of structural frameworks that can be implemented in connection with a bi-state agreement. Table 3 below provides a summary of potential agreements for the IBR program, organized into “categories” of increasing levels of obligation or commitment among the parties.

Table 3. Available Bi-State Arrangement Options

Arrangement Option	Legislative/Regulatory Framework	Key Characteristics	Examples
<p>Category 1a – Bilateral Agreement(s) between two lead agencies (i.e. state DOTs) with no formal executive order or state legislative approval.</p>	<ul style="list-style-type: none"> • Agreement(s) between two lead state government agencies (i.e., DOTs). • There would be individual IGAs or MOUs between (a) lead agencies (DOTs) and (b) project stakeholders to cover various project issues. • Does not require approvals from state legislatures or governors. 	<ul style="list-style-type: none"> • Ability to be flexible, whether long-standing agreement with enforcement powers or temporary until a more formal agreement signed. 	<ul style="list-style-type: none"> • Columbia River Crossing

Arrangement Option	Legislative/Regulatory Framework	Key Characteristics	Examples
<p>Category 1b – Multilateral Agreement among primary state and local stakeholder entities which may include individual state legislation/executive order (but without mirror state legislation⁵⁷ that would be required to form a compact).</p>	<ul style="list-style-type: none"> • Agreements usually between involved state agencies (DOTs, finance authorities, transportation commissions, infrastructure authorities, cities, ports, etc.). • Each state expressly authorizes its designated agency to create an entity with its counterpart agency in the other state via executive order (at a minimum) or via legislative approval. 	<ul style="list-style-type: none"> • Mostly project-specific agreements that focus on a single or multiple transportation assets (e.g., bridges). • Agreement includes governance structure that defines state partner agency representation, roles and responsibilities, and how decisions are made. 	<ul style="list-style-type: none"> • Ohio River Bridges
<p>Category 2a – Bilateral Agreement between two lead agencies (i.e. state DOTs), with mirror state legislation to form a compact, but <i>without</i> congressional consent.</p>	<ul style="list-style-type: none"> • Agreement between two lead government agencies (i.e. DOTs). • There would be individual IGAs or MOUs between (a) lead agencies (DOTs) and (b) project stakeholders to cover various project issues. • State legislature approval required; mirror state legislation must be passed between both states. 	<ul style="list-style-type: none"> • Considered a legally binding contract, which prevents the state legislature(s), or future legislatures, from changing the substantive law that is the subject of the agreement. 	<ul style="list-style-type: none"> • No direct example

⁵⁷ Mirror state legislation is defined as substantially identical legislation passed contemporaneously in each jurisdiction.

Arrangement Option	Legislative/Regulatory Framework	Key Characteristics	Examples
<p>Category 2b – Multilateral Agreement among primary state and local stakeholder entities, with mirror state legislation to form a compact, but <i>without</i> congressional consent.</p>	<ul style="list-style-type: none"> • Agreement between two or more state government agencies. • State legislature passes required; mirror state legislation must be passed between both states. 	<ul style="list-style-type: none"> • Considered a legally binding contract, which prevents the state legislature(s), or future legislatures, from changing the substantive law that is the subject of the agreement. 	<ul style="list-style-type: none"> • Hood River Bridge (anticipated) • Arkansas-Mississippi Great River Bridge • Midwest Interstate Passenger Rail Compact
<p>Category 3 – Agreement (with mirror state legislation to form a compact) <i>with congressional consent</i>, codifying it into federal law.</p>	<ul style="list-style-type: none"> • Agreement between two or more state agencies. • Mirror state legislation must be passed by both states. • Consent/ratification by Congress. • Enacted compact becomes federal law. 	<ul style="list-style-type: none"> • Considered a legally binding contract, which prevents the state legislature(s), or future legislatures, from changing the substantive law that is the subject of the agreement. • Compact provisions cannot be superseded by contrary laws enacted by any state that is party to the agreement. 	<ul style="list-style-type: none"> • Port Authority of New York and New Jersey • Kansas City Area Transportation District • Washington Metropolitan Area Transit Authority • Delaware River Joint Toll Bridge Commission • Railroad Passenger Transportation Compact • Tahoe Regional Planning Compact

To assist with the analysis of the options listed in Table 3 above, a set of **core criteria** has been created through which these options (or categories) can be evaluated. The criteria represent attributes of a bi-state arrangement for the IBR program that are necessary or highly advisable to successfully implement the IBR program through the development, construction, and operational phases.

In addition, a set of **differentiating criteria** has been created to further refine the evaluation. These criteria represent attributes the bi-state agreement would ideally have to ensure its effectiveness. However, these differentiating criteria are not considered critical to the success of the agreement.

Together, these criteria will help the IBR program achieve the following four goals:

- Continual improvement and ensuring long-term bi-state commitment.
- Incorporate key elements of agreements for the existing I-5 bridge related to O&M.
- Build on the current IGA and other IBR agreements.
- Incorporate best practices from other bi-state agreement examples.

Section 5.1 identifies the **core criteria** and analyzes the available structures according to these factors. Section 5.2 identifies the **differentiating criteria** and analyzes the available structures accordingly.

5.1 Core Criteria Analysis

Based on the legislative analysis in Section 2, prior experience between Washington and Oregon in Section 3, and existing bi-state examples explored in Section 4, there are certain attributes essential to a bi-state agreement related to the IBR program. For the purposes of this analysis, these attributes are considered **core criteria**. It is assumed that if any one agreement structure is not able to meet the core criteria, that agreement structure should not be considered for the IBR program.

The **core criteria** are as follows:

- **Ability to formalize a project team (between lead agencies)** — Clearly defines project team members (from lead agencies) and their respective roles and responsibilities; formalizes organizational structure; and facilitates effective operations, maintenance, and monitoring activities.
- **Ability to define processes and procedures (between lead agencies)** — Sets standards for design review and establishes performance criteria, approves funding and financing decisions, procures contractors, provides construction oversight, etc.
- **Enforceability of agreement terms** — Establishes enforcement provisions to address a party's failure to honor its obligations or a decision to withdraw from the agreement without cause during the project development and construction phases.
- **Enables the development and implementation of toll funding policies** — Establishes process to set rates, collect/distribute revenue.

- **Ability to coordinate funding** — Coordinates among local governments, the states, and the federal government to fund the project.
- **Ability to involve stakeholders throughout development and implementation** — Engages representatives from multiple stakeholder groups in a unified and cohesive way, including state/local government agencies, state/local transit authorities, and Native American tribes.
- **Facilitates effective operations, maintenance, and monitoring activities** — Incorporates and improves on O&M agreements for the existing I-5 bridge facilities.
- **Incorporates transit into the project** — Facilitates the incorporation of public transit into the project (the specific mode to be determined).

Based on an initial review of the five potential agreement options described at the beginning of this section using the core criteria listed above, all options listed in Table 3 can meet the core criteria. Thus, all four options are considered viable and are subject for review under the **differentiating criteria** described in the next section.

5.2 Differentiating Criteria Analysis

Given that the analysis in Section 5.1 indicates the core criteria of a bi-state agreement can be met by each of the identified potential agreement structures, an additional list of **differentiating criteria** has been developed in order to further assess the agreement structure options:

- **Ability to formally organize project stakeholders in the region (TriMet, C-TRAN, Oregon Metro, Southwest Washington Regional Transportation Council, City of Portland, City of Vancouver, Port of Portland, Port of Vancouver, etc.)** — Identifies project stakeholders (composed of multiple partner agencies), their individual representatives, and the respective roles and responsibilities of these representatives.
- **Ability to define processes and procedures (between partner agencies)** — Defines and implements a governance structure that formalizes how project stakeholders and other relevant participants collaborate and make decisions, particularly related to design review, performance criteria, funding and financing, procurement, construction oversight, and O&M.
- **Resiliency of agreement in face of external pressures and/or potential changes in law** — Makes each state (and the project team members and stakeholders) accountable for its project obligations not only through the agreed terms of the executed contract but through the approval, or endorsement, of the contract at higher levels of state government (legislative or executive order). In addition to enhancing state accountability, such approval limits the project's exposure to external political pressures or changes in laws that serve as the foundation of the agreement.
- **Positions IBR program to receive federal funds** — Facilitates partnerships with the federal government and helps project access federal funding streams.
- **Facilitates faster project approvals and delivery** — Ability to accelerate predevelopment agreements, permitting processes (e.g., National Environmental Policy Act [NEPA]), and procurement to reach design and construction phases sooner.

- **Maintains Transportation expertise-driven management of the IBR program and builds on the framework in the negotiated 2020 IGA** — ODOT and WSDOT would continue managing their respective sides of I-5 in addition to serving as the lead agencies and primary managing stakeholders for the IBR program, building on the framework they negotiated for the 2020 IGA.
- **Facilitates structuring of a P3 delivery model** — Structure allows for flexible bundling of IBR program through alternative delivery methods, including a P3 that would be able to transfer the design, construction, financing, operations, and maintenance to a private entity.
- **Flexibility to accommodate changes in scope (e.g., addition of assets)** — Structure is able to accommodate changes to the project’s scope of work through its delivery and implementation life cycle.

Table 4, on the following page, maps the differentiating criteria described above to each of the potential bi-state arrangement options. This table shows, based on a high-level analysis, which bi-state arrangement option best aligns with the differentiating criteria.⁵⁸

⁵⁸ The criteria are subject to further revision based on feedback from ODOT and WSDOT. The analysis is also subject to further legal analysis.

Table 4: Bi-State Arrangement Options⁵⁹ Differentiating Criteria Assessment

Differentiating Criteria	Category 1a ⁶⁰	Category 1b	Category 2a	Category 2b	Category 3
Ability to formally organize project stakeholders in the region (including regional partner agencies)	✓-	✓+	✓-	✓+	✓+
Ability to define processes and procedures (between partner agencies)	✓	✓+	✓	✓+	✓+
Resiliency of agreement in face of external pressures and/or potential changes in law	✓-	✓	✓	✓	✓+
Positions IBR program to receive federal funds	✓	✓	✓	✓	✓+
Facilitates faster project approvals and delivery	✓+	✓	✓	✓-	✓-
Maintains Transportation expertise-driven management of the IBR program and builds on the framework in the negotiated 2020 IGA	✓+	✓-	✓+	✓-	✓-
Facilitates possible structuring of a P3 delivery model ⁶¹	✓	✓	✓+	✓	✓-
Flexibility to accommodate changes in scope	✓+	✓	✓	✓-	✓-

⁵⁹ Rankings are presented in a range of check minus, check, and check plus to indicate each level’s suitability under specific criteria.

⁶⁰ This option was used for CRC.

⁶¹ To the extent the P3 delivery model is pursued.

With reference to Table 3, which describes the categories mentioned in the discussion below, and the **differentiating criteria**, key findings are as follows:

- **Ability to formally organize project stakeholders in the region (composed of relevant regional partner agencies, such as TriMet)/Ability to define processes and procedures (between partner agencies)** — The use of an MOU/IGA, or a compact, between two lead agencies (i.e., DOTs) can be structured to formalize the roles and responsibilities of the lead agencies and their representatives. However, the use of a project development agreement among multiple partner agency signatories that establishes a clear governance structure and decision-making framework could create more effective project development and delivery organization than if the agreement were between only the two lead agencies. This is because: 1) an organization in which key stakeholders have official roles (rather than serving on advisory committees) will likely enable the project to benefit from greater dedication and commitment of resources from these stakeholders, and 2) key decisions — such as those related to design, procurement methods, tolling policy, and O&M — would benefit from support from a broader base and, as a result, would not be as likely to be subjected to criticism by, and undue influence from, outside parties. Thus, Categories 1b and 2b are favored over Categories 1a and 2a with regard to this criterion. It is also assumed that Category 3 will have agreements with multiple agency signatories, so these categories are also more favorable under this criterion.
- **Resiliency of agreement in face of external pressures and/or potential changes in law** — This attribute is best supported through executed contracts and mirror state legislation where each state (not just the lead agencies) holds the other accountable, which is the case in a compact arrangement with multiple agencies serving as signatories to the agreement. Through a compact, a new governor, or future state legislature, would be unable to change the foundational laws of the IBR program. It is possible an IGA could be approved via an executive order — which, absent a successful challenge either in court or by the legislature, acts as law. A compact with congressional consent would make the agreement federal law, which means that neither state would be able to make a major change to the compact agreement without congressional approval.

Therefore, Category 1b is considered more favorable than Category 1a under this criterion, both due to the higher levels of government approval and due to multiple agencies serving as formal parties to the agreement. However, Categories 2a, 2b and 3 most closely align to this criterion, as they utilize compacts without (2a and 2b), and compacts with (3), congressional consent, respectively.
- **Positions IBR program to receive federal funds** — A compact with congressional consent is the only arrangement option that is designed to put the involved federal agencies (e.g., FHWA, FTA) on notice that the IBR program should be a priority in terms of technical assistance, permitting, and other activities in which those agencies interact with the IBR program. Congressional consent could also allow the IBR program to have greater access to federal funding sources (i.e., grants). It is noted that the IBR program intends to continue project development activities in a manner consistent with the record of decision issued for the CRC project and thus should not require significant interaction with the federal government from

an environmental approval perspective. Even with this in mind, Category 3 aligns most closely with this criterion.

- **Facilitate faster project approvals and delivery** — An accelerated project delivery schedule can potentially be achieved through a strong IGA/MOU where both state DOTs manage the IBR program without seeking mirror state legislation from state legislatures. However, as more state agencies become party to the agreement, and as approvals of the agreement are sought from the state legislature and/or federal government, the time necessary for the IBR program to gain the necessary approvals is likely to be greater. Therefore, Category 1a most closely aligns with this criterion.
- **Maintains Transportation expertise-driven management of the IBR program and builds on the framework in the negotiated 2020 IGA** — The state DOTs would continue the transportation expertise-drive management of the IBR program and their respective portions of I-5 if the DOTs are the only parties to the project agreement — structured as either an MOU/IGA or a compact. The ultimate agreement could easily build on the framework of the negotiated 2020 IGA. However, as more state agencies become party to the agreement and/or more approvals from state or federal government are required, obligations to these stakeholders will be more formalized. The increasing number of formal stakeholders will, in turn, create a less centralized management role for the state DOTs. Therefore, as the agreement under Category 1a involves only the DOTs, without state legislative approval or federal consent, this option most closely aligns with this criterion. Category 2a maintains the DOT role but with the legislative seal of approval and commitment. Categories 1b, 2b, and 3 require higher government approval and have agreements to which multiple state agencies are signatories. Therefore, these options are the least aligned with this criterion.
- **Facilitate structuring of a P3 delivery model** — The preferred delivery method for the IBR program has not yet been determined. However, in the event a P3 approach is selected, the selected agreement option should allow for this form of delivery. While market outreach is recommended to obtain feedback on potential P3 agreement options, a high-level analysis suggests that the P3 industry would favor approaches that give the IBR program the greatest chance to reach financial close (avoiding cancellation) while at the same time expediting the project delivery schedule. Therefore, while it is less likely that developers would favor the IGA-only approach for the enforceability reasons described above, developers would also be less likely to favor compacts requiring congressional consent due to the time that could be required to receive the necessary approvals. It is noted that developers in the surface transportation space are accustomed to dealing with state DOTs in terms of transportation P3s, and that with the added certainty that mirror state legislation would provide, Category 2A aligns most closely with this criterion.
- **Flexibility to accommodate changes in scope** — If the IBR program scope changes significantly over time, such as the addition or subtraction of key assets, the bi-state agreement should be flexible to accommodate these changes to the extent possible. Given the approvals required for scope changes if there are multiple parties to the agreement, or if the state or federal government approvals are needed to make changes to the agreement, Category 1a aligns most closely with this criterion.

5.3 Tolling Considerations

A goal of the IBR program is to develop robust and effective tolling policy and operations, including establishing a clear mechanism to set and adjust rates and collect/distribute revenue. As such, the use of a tolling agreement, such as the 2012 Interstate Tolling Agreement for the CRC (see Section 3.1.2), that governs how two states are to develop and agree to tolling rates and rate adjustments during a project's operational period is a viable way to achieve this goal. This CRC agreement establishes a subcommittee composed of representatives from both states that makes toll rate and policy recommendations to the respective state tolling authorities. The CRC tolling agreement also defines a dispute resolution process should the state tolling authorities not agree on rates or rate adjustments.

However, an agreement that defines the initial rates and sets the parameters for future rate increases (such as requiring revenues to meet certain debt service coverage requirements), entered into prior to the commencement of tolling operations, will likely result in rates that are less subject to change or dispute than the process outlined in the CRC tolling agreement. An example of an agreement that sets the rates and rate increase mechanism in advance of the commencement of tolling operations is the Bi-State Agreement for the ORB Project. The terms of the tolling arrangements agreed to in this agreement are detailed in Section 4.1.1. Note that P3 developers would also likely favor the use of pre-established tolling rates and automatic rate increase mechanisms as part of any project agreement.

This Bi-State Agreement for the ORB Project also establishes a tolling entity that represents the collective interests of the state tolling agencies. This entity can likely implement tolling policy, adjust rates as needed, and contract for third-party tolling operational services more efficiently than under the process set forth in the CRC tolling agreement (whereby a subcommittee is to submit recommendations to the individual state tolling agencies for approval).

Therefore, it is recommended that whichever bi-state agreement option is selected for the IBR program, this option should consider the inclusion of a tolling mechanism and operational structure that are like those set forth by the Bi-State Agreement for the ORB Project.

6. FINDINGS

The purpose of this report has been to explore potential agreement options for the IBR program between Oregon and Washington. Below are the summary conclusions based on the foregoing analysis.

The report first reviewed the legislation in both states that governs the formation of bi-state agreements in order to determine the mandatory characteristics of such agreements as well as the constraints on agreement structures or content. Based on this review, the report concludes that Washington's statutes enable WSDOT to enter into agreements with Oregon and vice versa for the purposes of operating and maintaining the IBR program. These statutes set forth the required content for such agreements. These requirements do not appear to create significant obstacles for the IBR program, nor do they appear to negatively affect the project schedule. Additionally, the statutes allow

for a fair amount of flexibility when it comes to structuring an agreement, as none of the statutes dictate how an agreement should be governed or how costs are to be shared.

Like the State of Washington, while Oregon's existing statutes allow ODOT to enter into agreements with agencies of other states related to projects such as the IBR program, there are no statutes or procedures in place that address the specific types of arrangements into which either state could enter into or how such an arrangement should be organized. Rather, these statutes provide a list of categorical material that must be addressed in any agreements, with no procedural order provided.

The report then reviewed past agreement structures for efforts related to I-5 bridge replacement projects, such as the CRC, current and additional agreements contemplated by the IBR program, and case studies from other projects and existing transportation infrastructure entities in the U.S. to determine the agreement options that exist for the IBR program, taking into consideration the agreement constraints identified via the review of relevant legislation from both states. The resulting potential agreement options are as follows:

- **Category 1a – Bilateral Agreement(s) between two lead agencies (i.e. state DOTs) with no formal executive order or state legislative approval.**
- **Category 1b – Multilateral Agreement among primary state and local stakeholder entities which may include individual state legislation/executive order (but without mirror state legislation that would be required to form a compact).**
- **Category 2a – Bilateral Agreement between two lead agencies (i.e. state DOTs), with mirror state legislation to form a compact, but without congressional consent.**
- **Category 2b – Multilateral Agreement among primary state and local stakeholder entities, with mirror state legislation to form a compact, but without congressional consent.**
- **Category 3 – Agreement (with mirror state legislation to form a compact) with congressional consent, codifying it into federal law.**

The potential agreement options were then subjected to a two-tiered analysis to determine the appropriateness of these options for the IBR program. All the agreement options met the following **core criteria**, and are therefore considered viable options for the IBR program:

- **Ability to formalize a project team (between lead agencies).**
- **Ability to define processes and procedures (between lead agencies).**
- **Enforceability of agreement terms.**
- **Enables the development and implementation of toll funding policies.**
- **Ability to coordinate funding.**
- **Ability to involve stakeholders throughout development and implementation.**
- **Facilitates effective operations, maintenance, and monitoring activities.**
- **Incorporates transit into the project.**

Next, the agreement options are subject to a set of **differentiating criteria** that represent attributes the bi-state agreement would ideally have to increase its effectiveness. The differentiating criteria are as follows:

- **Ability to formally organize project stakeholders in the region (including regional partner agencies).**
- **Ability to define processes and procedures (between partner agencies).**
- **Resiliency of agreement in face of external pressures and/or potential changes in law.**
- **Positions IBR program to receive federal funds.**
- **Facilitates faster project approvals and delivery.**
- **Maintains Transportation expertise-driven management of the IBR program and builds on the framework in the negotiated 2020 IGA.**
- **Facilitates structuring of a P3 delivery model.**
- **Flexibility to accommodate changes in scope (e.g., addition of assets).**

Based on the analysis conducted in this paper of potential agreement options vis-à-vis the core and differentiating criteria, the appropriate option depends on the weighting that is assigned to the differentiating criteria. This weighting should be conducted as a next step, as outlined in more detail below. However, the following observations are provided for consideration:

- Category 1a is favored when assessed against the criteria related to facilitating faster project approvals and project delivery; Category 3 is the least favored when weighed against these same criteria.
- Categories 1a and 2a enable Transportation expertise-driven management of the IBR program and allow the states to benefit from the framework of the existing 2020 IGA. Other than CRC, which was a Category 1a, no major transportation project/programs have been identified for the purposes of this report that have utilized a Category 1a or Category 2a bi-state agreement.
- Categories 1b, 2b, and 3 perform well against the criteria related to the ability of the agreement to formally organize project stakeholders, which includes multiple partner agencies; establish a governance structure and approvals process that enables sound decision-making; and facilitate project outcomes that have the support of key stakeholders.
- Category 2a best positions the IBR program for P3 delivery, as this option fares better in terms of enforceability, and provides for a typical structure familiar to U.S. P3 developers (i.e. a concession agreement with a state DOT).

It is recommended that whichever bi-state agreement option is selected for the IBR program, this option should consider the inclusion of a tolling mechanism and operational structure that define the initial rates and set the parameters for future rate increases (such as requiring revenues to meet certain debt service coverage requirements) prior to the commencement of tolling operations. The selected bi-state agreement option should also consider establishing a tolling entity that represents the respective state tolling authorities and is tasked with implementing tolling policy, adjusting rates as needed, and contracting for third-party tolling operational services.

Bi-State Agreement Options Assessment

In order to determine the optimal type of bi-state arrangement for the IBR program, both states should consider the following next steps to ensure that the IBR program will be successfully designed, constructed, financed, and operated:

- Assign weightings to the differentiating criteria and apply weightings to determine the preferred agreement option.
- If Categories 1b and higher are under consideration, identify the pathway the IBR program must take to obtain higher levels of state government approval, including foundational agreements required to qualify for these approvals.
- If Categories 1b, 2b, or 3 are under consideration, identify the state agencies, in addition to the state DOTs, that can and should be signatories to a bi-state agreement. In addition, establish a working group among the partner agencies that will identify roles and responsibilities for these agencies, determine the governance structure for the IBR program, and draft the appropriate bi-state agreement.
- Determine the optimal tolling governance structure and rate-setting/adjustment mechanism that should be incorporated into the bi-state agreement.
- Perform supplemental legal analysis as necessary in connection with the execution of the above action items.

Appendix A: RFP Requirements for Oregon and Washington

Per Oregon’s Interstate Bridges Statute, an RFP, or an invitation to bid issued in accordance with the provisions of this statute must contain, at a minimum:⁶²

- Compliance with Oregon procurement laws (ORS § 279A, B, and C) and other applicable laws related to environmental protection, worker health and safety, and employment of apprentices.
- State the contracting agency will give a preference to for procuring products, materials, and components that are fabricated within the boundaries of this state or the State of Washington to the maximum extent feasible and practicable and taking into consideration:
 - Applicable state and federal law.
 - Whether in fabricating the products, materials, and components, a proposer or bidder can recycle materials or use recycled materials.
 - Whether the sites at which the products, materials, or components are fabricated are in close proximity to the bridge location.
 - Whether transportation costs and other conveniences favor or disfavor using products, materials, and components manufactured in Oregon or the State of Washington.
- Requirements for request for proposals or invitation to bid. Any agreement or contract must contain the following information:⁶³
 - The site of the bridge.
 - The maximum financial obligation assumed by each contracting party.
 - The estimated cost of the structure, with the structure’s approaches and connecting roads.
 - The sources from which all the funds are to be obtained or derived.
 - Whether the bridge is to be operated free to the public or as toll bridge.
 - Any other appropriate matters or provisions consistent with the prudent principles of economy and good business.

In Washington, RFP requirements for projects undertaken under the TIP Act are detailed in WAC 468-600 include the following:⁶⁴

- General information:
 - Notice of any preproposal conference as follows:
 - The time, date, and location of any preproposal conference.
 - Whether attendance at the conference will be mandatory or voluntary.

⁶² ORS § 381.015 “[Requirements for request for proposals or invitation to bid.](#)”

⁶³ ORS § 381.015 “[Requirements for request for proposals or invitation to bid.](#)”

⁶⁴ WAC 468-600-105 “[Issuance of requests for proposals.](#)”

Bi-State Agreement Options Assessment

- A disclaimer that statements made by the department’s representatives at the conference are not binding on the state unless confirmed by written addendum.
- The name and title of the person authorized and designated by the department to receive the proposals and contact person (if different).
- Instructions and information concerning submission requirements, including the address of the office to which proposals must be delivered and any other special information — e.g., whether proposals may be submitted by facsimile or electronic data interchange (secured email).
- The time and date of closing after which the department will not accept proposals.
- The form and submission of proposals and any information required therein.
- If the agreement resulting from a solicitation will be a contract for a public work subject to Chapter 39.12 RCW or the Davis-Bacon Act (40 U.S.C. Section 3141 through 3148), a statement that no proposals will be considered by the state unless the proposal contains a statement by the proposer, as part of its proposal, that proposer agrees to be bound by and will comply with the provisions of Chapter 39.12 RCW and 40 U.S.C. Sections 3141 through 3148.
- Contractor’s certification of nondiscrimination in obtaining required subcontractors in accordance with state law.
- How the state will notify proposers of addenda and how the state will make addenda available.
- Project description — A description of the eligible project for which the department is requesting proposals for a public-private partnership in such detail as the department considers appropriate or feasible under the circumstance.
- Evaluation process — A description of the process by which the proposals will be evaluated, including:
 - A statement that the commission and/or department may reject any proposal not in compliance with all prescribed procedures and requirements and other applicable laws and that the state reserves its rights under WAC 468-600-810.
 - The anticipated solicitation schedule, deadlines, protest process, and evaluation process, if any.
 - Evaluation criteria that the state will use to select a proposal(s) from among those submitted in response to the request for proposals.
 - Desired contract terms — The department shall provide an outline or draft term sheet of those contract terms and conditions, including warranties and bonding requirements, that the department considers necessary.
 - Federal funds — If federal funds are involved, the federal laws, rules, and regulations applicable to the fund requirements shall govern in the event they conflict with a provision required by state law.

Appendix B: Supplemental Information on Prior CRC Agreements

- **WSDOT and the Regional Transportation Council** (GCA 4767, 5647, 6666) — An interlocal agreement that states that the Regional Transportation Council would support preparation and review scopes of work for IGAs; assist with the review and feedback process for the Project Management Plan; assist with policy issues (e.g., tolling, bi-state authority), travel demand modeling, financial feasibility analysis; and assist with developing the EIS. The second agreement focused on project administration, project controls, transportation planning, data analysis, and travel demand modeling. The third agreement focused on publishing the final EIS, obtaining record of decision, financial plan analysis, participating in intergovernmental agreements, data support for C-Tran, and updating the FTA New Starts application.
- **WSDOT and TriMet** (GCA 4793, 5667, 6524) — TriMet would assist with transportation planning, milestones for the draft EIS, and transit planning/engineering tasks. The second agreement focused on reviewing draft financial plan elements, reviewing publicly available documents, joining the Modeling Working Group, supporting draft EIS and NEPA work, supporting transit planning/engineering, and supporting preparation of the project to enter the preliminary engineering phase. The third agreement engaged TriMet in the next phase of the project (e.g., final EIS, obtaining record of decision, and preliminary engineering).
- **WSDOT and City of Vancouver** (GCA 4811, 5757, 5972, 6007) — The City agreed to staff project meetings and public meetings, coordinating CRC policy decisions, and participating in the development of final work products. Specifically, staff would be provided to advise on engaging local stakeholders for bicycle and pedestrian facilities in the greater project area. The second agreement focused on evaluating the financial plan as related to transit, leading communication efforts to city commissions and boards, supporting transportation planning aspects, commenting on the draft EIS, technical evaluations for transit alignments, and technical support for highway design. The third agreement arranged for the City to pay a consultant to act as the competition manager for the contest to select the firm to design the concept for the passive connection and for WSDOT to take this design into consideration. The fourth agreement engaged the City in a project scope similar to the third agreement, through the end of 2009.
- **WSDOT and City of Portland** (GCA 4842, 5586, 6027, 6649) — An IGA covered participation by the City in the EIS phase of the project from March 2006 through March 2007. An additional IGA was executed 2008 that covered Phase II of the EIS. The third agreement engaged the City in the EIS phase of the project from 2008 through 2010, whereby the City would build consensus for the project, act on post-locally preferred alternative decisions, and assist with the final EIS and record of decision. The fourth agreement established the City's involvement in the next phase of the CRC, from 2010 through 2011, focusing on refining the financial plan, engaging with stakeholders, address planning elements of the project, and reviewing the final EIS, among other tasks.
- **WSDOT and Metro** (GCA 4843, 5744, 6667) — Metro would be responsible for seven primary areas of the project: Federal Transit Administration liaison for NEPA and New Starts; project review and decision-making as Metropolitan Planning Organization for the Portland region; travel demand forecasting; review of land use forecasts, issues, and assumptions;

development of project funding scenarios; day-to-day project committee support; and congestion pricing and tolling review. The second agreement focused on participation during the EIS phase of the project. The third agreement focused on Metro's involvement in advancing the final EIS, record of decision, and FTA New Starts process toward the final design phase.

- **WSDOT and C-Tran** (GCA 4844, 6304, 6618) — C-Tran will focus on developing and reviewing financial structures for the project, participating in Environmental Working Group and Transit Working Group meetings, and initial development of project alternatives. The second agreement focused on C-Tran's involvement in Phase III of the EIS. The third agreement established C-Tran's involvement in assisting in the preparation of the final EIS and record of decision.
- **WSDOT and the Nez Pierce Tribe** (GCA 5195, 5201) — Stipulated that WSDOT would pay for a speaker from the Nez Pierce Tribe to present at the 2007 CRC History Seminar.
- **WSDOT and the Yakama Nation** (GCA 5199, 5202) — Stipulated that WSDOT would pay for a speaker from the Yakama Nation to present at the 2007 CRC History Seminar.
- **WSDOT and the Confederated Tribes of the Umatilla Indian Reservation** (GCA 5200) — Stipulated that WSDOT would pay for a speaker from the Confederated Tribes of the Umatilla Indian Reservation to present at the 2007 CRC History Seminar.
- **WSDOT and the Confederated Tribes of Warm Springs** (GCA 5203) — Stipulated that WSDOT would pay for a speaker from the Confederated Tribes of Warm Springs to present at the 2007 CRC History Seminar.
- **WSDOT and Sound Transit** (GCA 5271) — Stipulated that WSDOT would pay for a speaker from to present at the 2007 Value Engineering Workshop.

Appendix C: Supplemental Information on Existing Agreements

Port Authority of New York and New Jersey

Board Meeting Procedure Process⁶⁵

Ten Board meetings are scheduled for 2021 — one per month, except for January and August.

Quorum — Six commissioners, three from each state, constitutes a quorum for all meetings of the Board of Commissioners. In the absence of a quorum, or if as a result of prospective recusals there would not be a sufficient number of commissioners present at such meeting to consider any item on the agenda for such meeting, the Committee on Operations (composed of select board members plus the chairman) is authorized to act for and on behalf of the Board of Commissioners at a special meeting of the Committee on Operations called by the chairman.

At any meeting of the Board of Commissioners, after a debate, the vote is recorded on all resolutions or amendments thereto presented. If three votes from each state are not cast in the affirmative (or in case six commissioners from either state are present if four votes from such state are not be cast in the affirmative), the resolution or amendment is deemed lost. But a motion to adjourn, to lay on the table, to postpone consideration, or to refer a matter may be carried by a vote of a simple majority of commissioners present.

Washington Metropolitan Area Transit Authority

A director for a signatory (referring to Maryland, Virginia, or the District of Columbia) may be removed or suspended from office only as provided by the law of the signatory from which the director was appointed. The nonfederal appointing authorities also appoint an alternate for each director. In addition, the General Services administrator appoints two nonvoting members who serve as the alternates for the federal directors. An alternate director may act only in the absence of the director for whom the alternate has been appointed, except that in the case of the District of Columbia where only one director and one alternate are present, such alternate may act on behalf of the absent director. Each alternate, including the federal nonvoting directors, serves at the pleasure of the appointing authority.⁶⁶

A quorum requires the presence of four directors, including one appointed by each of the District of Columbia, Maryland, and Virginia. A director participates in any meeting of the board of directors by means of conference telephone or other communications equipment by means of which all persons participating therein can hear each other, and participation in a meeting by such means constitutes an in-person presence at such meeting.⁶⁷

⁶⁵ Port Authority of New York and New Jersey — “[By-Laws of The Port Authority of New York and New Jersey](#).”

⁶⁶ Washington Metropolitan Area Transit Authority, “[Annotated Compact](#).” 2009, p. 2.

⁶⁷ Washington Metropolitan Area Transit Authority, “[Annotated Compact](#).” 2009, p. 3.

The board takes action by a vote of a majority of the directors present at a meeting of the board at which a quorum is present, which majority includes at least one director appointed by each of the District of Columbia, Maryland, and Virginia, provided, however, that a plan of financing may be adopted or a mass transit plan may be adopted, altered, revised, or amended by the unanimous vote of the directors representing any two signatories.⁶⁸

⁶⁸ Washington Metropolitan Area Transit Authority, "[Bylaws](#)," 2018, p. 3.