

ORDINANCE No. 178679

*Authorize an Intergovernmental Agreement with TriMet for contract management and personnel services for the Portland Aerial Tram. (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. The City Council, on June 10, 2004, adopted Resolution No. 36224 approving the City Engineer's recommendation for the design of the Portland Aerial Tram.
2. The Portland Development Commission, incorporating City Council's advice, approved the South Waterfront Central District Project Development Agreement on August, 13, 2003, and further amended the Development Agreement on June 10, 2004, to reflect an updated budget for the Portland Aerial Tram of \$28,500,000.
3. The City Council, on January 8, 2004, approved Ordinance #178137, authorizing a contract with Doppelmayr-CTEC, Inc., to provide design and engineering services for aerial tram equipment for the Portland Aerial Tram.
4. The South Waterfront Central District Project Development Agreement requires that the aerial tram project be complete and operational concurrent with occupancy of the first OHSU building in South Waterfront, which is currently under construction. In order to deliver the project on schedule, construction documents for the project must be completed by December 31, 2004, and construction contracts executed and in effect by January 21, 2005.
5. TriMet staff with particular expertise in the delivery of complex urban transportation projects are available to assist the City of Portland in the management of the Portland Aerial Tram.
6. Funding for the services described in Exhibit A is provided by the Portland Development Commission through an Intergovernmental Agreement with the Portland Office of Transportation.

NOW, THEREFORE, the Council directs:

- a. The Commissioner of Public Utilities and the City Auditor are hereby authorized to execute an agreement with TriMet, in a form substantially in conformance with the agreement attached to the original of this Ordinance, and by reference made a part hereof (Exhibit A).

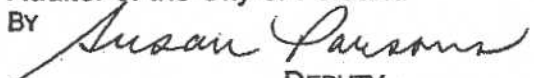
- b. The Mayor and Auditor are hereby authorized to draw and deliver checks to TriMet chargeable to the Transportation Fund.
- c. The City's Project Manager is hereby authorized to agree to and execute, on behalf of the City, any amendment which does not increase the amount of the Agreement.

Section 2. The Council declares that an emergency exists because a delay in executing the agreement will result in significant delays to the ongoing design and construction process for the aerial tram project and result in non-compliance with the City's contractual obligations under the South Waterfront Central District Project Development Agreement (as amended); therefore, this Ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council, AUG 19 2004

Commissioner Jim Francesconi
Matt Brown:slg
August 18, 2004
ORD TriMet IGA 081804.doc

GARY BLACKMER
Auditor of the City of Portland
BY


DEPUTY

Agenda No.

ORDINANCE NO.

Title

*Authorize an Intergovernmental Agreement with TriMet for contract management and personnel services for the Portland Aerial Tram. (Ordinance)

<p>INTRODUCED BY</p> <p>Commissioner Jim Francesconi</p> <p>NOTED BY COMMISSIONER</p> <p>Affairs</p> <p>Finance and Administration</p> <p>Safety</p> <p>Utilities</p> <p>Works</p> <p>BUREAU APPROVAL</p> <p>Bureau: Transportation Engineering & Development</p> <p>Prepared by: Matt Brown:slg <i>MB</i> Date: August 11, 2004</p> <p>Budget Impact Review: <input checked="" type="checkbox"/> Completed <input type="checkbox"/> Not Required</p> <p>Included PPD: Yes <input checked="" type="checkbox"/> No</p> <p>Filename: Ord-TriMet IGA 081804.doc</p> <p>Bureau Head: <i>Don Gardner</i> Donald Gardner</p>	<p>Filed:</p> <p style="text-align: center;">Gary Blackmer Auditor of the City of Portland</p> <p>By: _____ Deputy</p> <p>For Meeting of: _____ AUGUST 18, 2004</p> <p>ACTION TAKEN:</p>
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AGENDA	FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
			YEAS	NAYS
Consent <input checked="" type="checkbox"/> Regular				
NOTED BY	Francesconi	Francesconi		
City Attorney	Leonard	Leonard		
City Auditor	Saltzman	Saltzman		
City Engineer	Sten	Sten		
Approved by:	Katz	Katz		

5 2 3 2 2

Exhibit A

OCT. 05 2004

PERSONNEL AGREEMENT

between

THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON

and

THE CITY OF PORTLAND

This Agreement, dated this 24 day of September, 2004 for personnel related to the Portland Aerial Tram Project ("Tram Project") is made and entered into by and between the Tri-County Metropolitan Transportation District of Oregon (TriMet) and the City of Portland (City).

RECITALS:

- A. Portland Aerial Transportation Inc. is a private nonprofit organization that the Portland City Council empowered to oversee the design and construction of the aerial tram.
- B. A unanimous Portland City Council has strongly endorsed a \$28.5 million Tram project.
- C. The Portland City Council recently approved the final schematic designs for the Tram Project, which will connect Marquam Hill to the South Waterfront Central District.
- D. The City has requested that TriMet provide TriMet employees to the City to fill the position as City Construction Manager and support staff, as approved by the City, to work under City management on the design and construction of the Tram Project.

AGREEMENT:

1. **Term.** The term of this Agreement commences on July 1, 2004 and terminates on June 30, 2006, unless extended or earlier terminated in accordance with this Agreement.
2. **TriMet Obligations.** TriMet agrees that:
 - 2.1 TriMet shall make available to the City the services of Don Irwin ("Irwin") as City Construction Manager in accordance with the schedule set forth in Attachment 1 to this Agreement. Irwin shall at all times remain a TriMet employee.
 - 2.2 TriMet shall submit a monthly invoice to the City for its direct and indirect costs as comprised in the Total Hourly Cost, plus reasonable direct expenses, for

providing Irwin's service to the City, in accordance with Attachment 1. The invoice shall be supported by an accounting of time and costs incurred in providing the services of Irwin.

2.3 TriMet shall make available other support staff as mutually agreed upon by the City and TriMet.

3 **City Obligations.** The City agrees that:

3.1 The City shall be responsible for the design and construction of the Tram Project including but not limited to scheduling work, day to day supervision of personnel and providing support to Irwin in accord with the terms and conditions set out in Attachment 1.

3.2 This Agreement is a cost reimbursement agreement. The City shall reimburse TriMet for all of its direct and indirect costs in furnishing Irwin pursuant to this Agreement, in accordance with budget formula set out in Attachment 1 to this Agreement, and for furnishing other support staff as mutually agreed to by the City and TriMet.

3.3 The City shall make monthly payments to TriMet within 30 days of receiving a TriMet invoice for the direct and indirect costs of Irwin provided to the City by TriMet. Any invoices remaining unpaid when due shall accrue interest at a rate of 0.75% per month.

3.4 Notwithstanding any other provision of this Agreement, the City shall not withhold or offset any monthly payments to TriMet. In the event of a dispute, the parties will resolve the dispute or seek mediation pursuant to Section 7.2 of this Agreement.

4. **Independent Contractors.** In connection with this Agreement, each party is an independent contractor and will not have authority to bind or commit the other. Nothing herein shall be deemed or construed to create a joint venture, joint employment, partnership, or agency relationship between the parties for any purpose.

5. **Liability.** The parties acknowledge and agree that TriMet, and its officers, agents and employees including Irwin, shall have no liability for the design, construction or management of the Tram Project. To the extent permitted by the Oregon Constitution and within the limits of the Oregon Tort Claims Act, ORS 30.260 et. Seq., the City shall defend, hold harmless, and indemnify TriMet and its officers, agents and employees from any liability, settlements, costs and expenses, including but not limited to attorney fees, arising out of any action, suit, or claim in connection with the design, construction or management of the Tram Project.

consent; and any attempted assignment without the written consent of the City shall be void.

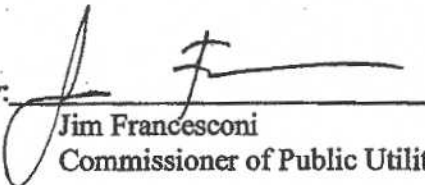
The City shall not assign any of its rights or responsibilities under this Agreement without obtaining TriMet's prior written consent; and any attempted assignment without the written consent of TriMet shall be void.

7.7 No Third Party Beneficiaries. Nothing in this Agreement shall create any legal right or inure to the benefit of any third party not a signatory of this Agreement.

7.8 Integration. This Agreement includes the entire agreement of the parties and supersedes any prior discussions or agreements regarding TriMet's provision to the City of TriMet Employee who will work under City management in connection with the design, construction and management of the Tram Project. This agreement may be modified only by written agreement signed by authorized representatives of the Parties.

APPROVALS:

CITY OF PORTLAND

By: 
Jim Francesconi
Commissioner of Public Utilities

Date: 9/15/04

By: 
City Auditor

Date: 9/15/04

APPROVED AS TO FORM


City Attorney

**TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF
OREGON**

By: 
Fred Hansen
General Manager

Date: 9/26/04

APPROVED AS TO FORM


Deputy General Counsel

ATTACHMENT 1

1. Services

Irwin shall assume the role as the City's Construction Manager and perform duties for the City in connection with its work and role in the Tram Project in accordance with the following estimated time schedule, as expressed by a per cent and priority of tasks:

A. TriMet fiscal year 2005

1. First Quarter (July 1 – September 30, 2004)
 - a. TriMet: 75% of Employee's time
 - Close out Interstate Max major tasks
 - Complete South Corridor PE to FTA requirements
 - Interface with FTA and PMO as necessary
 - b. Tram Project: 25% of Employee's time
 - Get oriented, familiarize regarding design. Advise regarding CM/GC, Dopplemayr, overall program cost, schedule, VE, design services during construction
2. Second Quarter (October 1 – December 31, 2004)
 - a. TriMet: 50% of Employee's time
 - Close out Interstate Max major tasks
 - Develop Transit Mall CM/GC RFP
 - Develop Transit Mall final design RFP
 - Advance I-205 D/B contract
 - b. Tram Project: 50% of Employee's time
 - Familiarize re design. Advise re CM/GC, Dopplemayr, overall program cost, schedule, VE
 - Organize for construction. Develop overall work plan/schedule with CMGC, City and community
 - Identify risks, cost pressures, options
 - Visit/meet with designers, Dopplemayr, City, stakeholders as necessary
3. Third Quarter (January 1 – March 31, 2005)
 - a. TriMet: 25% of Employee's time
 - Procure, negotiate Mall CM/GC contract
 - Procure, negotiate Mall final design contract
 - Negotiate I-205 D/B contract
 - b. Tram Project: 75% of Employee's time
4. Fourth Quarter (April 1 – June 30, 2005)
 - a. TriMet: 25% of employee's time
 - Finalize TriMet contracts described above as necessary

- Monitor/advise re overall South Corridor program cost, schedule, scope, issue resolution
 - b. Tram Project: 75% of employee's time
- B. TriMet fiscal year 2006 (July 1, 2005 – June 30, 2006)
1. TriMet: 25% of Employee's time
 - Monitor/advise overall South Corridor program cost, schedule, scope, issue resolution relating to Project
 2. Tram Project: 75% of employee's time
- C. TriMet fiscal year starting 2007 – return to TriMet on a full-time basis

2. Cost of Services

A. The City shall reimburse TriMet for Irwin's services based on his current "Total Hourly Cost" of \$107.84 per hour, subject to annual adjustments.

B. Expenses: TriMet shall bill and City shall reimburse TriMet for any reasonable direct expenses it incurs to support Irwin in his role as Construction Manager for the Tram Project.

C. Benefits, Pensions, Taxes, other Personnel Expenses. TriMet remains responsible for all salaries, taxes, insurance, workers compensation, pensions and all other expenses related to Irwin and TriMet staff.

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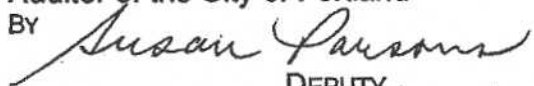
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August 18, 2004
ORD TriMet IGA 081804.doc

GARY BLACKMER
Auditor of the City of Portland
BY


DEPUTY

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**PORTLAND OFFICE OF TRANSPORTATION
COUNCIL CALENDAR ITEM**

Council Calendar No. _____

Submitted for Council Consideration on: Wednesday, August 18, 2004 – Consent Agenda

DESCRIPTION: Approve Intergovernmental Agreement with TriMet for contract management and personnel services. This ordinance will permit the City to hire TriMet staff to manage the construction contracts for the Portland Aerial Tram project.

BACKGROUND: The City is in the process of negotiating construction contracts for the Portland Aerial Tram with two firms - Doppelmayr CTEC, and Kiewit Pacific. Current staff resources at PDOT are inadequate to effectively manage this project. Don Irwin, a TriMet employee, is available to the City to manage the construction process for the Portland Aerial Tram. Don brings excellent credentials to this project, as the past manager for the Interstate Max extension, the construction of the VA hospital bridge on Marquam Hill, and as a mediator/arbitrator in the construction industry. Don's addition will greatly enhance the project team and ensure that the City's and PATI's goals relative to budget, schedule, and quality are met.

ISSUES: None.

POTENTIAL PROBLEMS: None.

RECOMMENDATION: Pass Ordinance

Can be delayed __ week(s), if necessary

Fiscal Review by W

Should be filed this week.

No impact at fund level

Must be filed this week.

Impact on Fund

Contact Person Matt Brown, Project Manager will attend Council session.

Phone No. 503-823-7027

City of Portland
BUDGET/FINANCIAL COUNCIL ACTION IMPACT STATEMENT

INITIATOR=S SUMMARY OF COUNCIL ACTION (Deliver original to Financial Planning Division. Retain copy).

1. Name of Initiator Matt Brown, Project Manager	2. Interoffice Mail Address 106/800	3. Telephone No. 503-823-7027	4. Bureau/Office/Dept. PDOT/BTE&D/PMD
5a. To Be Filed (date) August 18, 2004	5b. Calendar (Check One) Regular CONSENT 4/5ths <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>	5. Date Submitted to OMF Budget Analyst: August 11, 2004	6. Fund Name & Number Transportation Fund

Please check appropriate box and list dollar amount.
 If using electronic MS Word Version, underline appropriate category and type and list dollar amount after. (Opt.)

Category 1 No financial Impact []

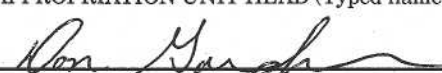
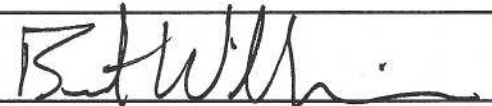
Category 2 Routine and Budgeted Items [X]

- | | |
|---|---|
| <input checked="" type="checkbox"/> Contracts \$310,000.00 (estimated) | <input type="checkbox"/> Annual Supply Contract |
| <input type="checkbox"/> Grants | <input type="checkbox"/> Claims payment under \$15,000 |
| <input type="checkbox"/> Call for bids on purchasing contracts | <input type="checkbox"/> Creation of a Local Improvement District |
| <input type="checkbox"/> Reports to Council regarding completion of projects | <input type="checkbox"/> Other |

Category 3 Non-Routine or Unbudgeted Item []

SUMMARY OF ACTION: In concise terms, describe what is to take place through the enactment of this council action. Where applicable, narrative should include answers to the following questions. Add space as necessary below each question. Multiple page responses are acceptable if necessary to answer all relevant questions.

- A. What action(s) is proposed?
- B. Who will be affected by the proposed action? (List other City bureaus? Citizens? The business community?)
- C. What will the action cost? In this fiscal year? Subsequent year(s)? How much revenue will it generate? In this fiscal year? In subsequent year(s)? If there are indirect costs or future commitments implied as a necessary accompaniment or result of this action, include an estimate of these costs even if the action does not formally authorize any expenditure.
- D. Is the cost included in the current year's budget? If so, which Fund or AU? If not, identify funding sources and amounts -i.e., interagency, contingency/unforeseen, grants, administrative transfer, etc.
- E. What alternatives to this action have been explored?

APPROPRIATION UNIT HEAD (Typed name and signature)  Don Gardner, Manager, Bureau of Transportation Engineering and Development	 Brant Williams, Director, Office of Transportation
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