

ORDINANCE No.

179224
As Amended

*Authorize contract with Doppelmayr CTEC, Inc. to fabricate, deliver and install aerial tram equipment for the Portland Aerial Tram project. (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. On August 13, 2003, City Council approved Ordinance No. 177795, which exempted the Portland Aerial Tram project from the competitive low bid process and permitted the City to procure Tram Equipment from a tram equipment supplier and select a Construction Manager/General Contractor (CM/GC) to construct the proposed Tram by means of a competitive Request for Proposal (RFP) process.
2. Upon the passage of Ordinance No. 177795, The Bureau of Purchases and Portland Office of Transportation (PDOT) developed a Request for Proposal (RFP) for the selection of a Tram Equipment Supplier. The RFP was advertised on August 20, 2003, and responsive proposals were submitted by Doppelmayr CTEC, Inc. and Leitner Poma, Inc., the only two aerial tramway companies in existence worldwide.
3. Proposals for the project were evaluated based on experience, qualifications, and other factors. An evaluation committee appointed by the Commissioner-in-Charge of PDOT evaluated the proposals and interviewed the respondents. Doppelmayr CTEC, Inc., was recommended for selection by the evaluation committee based on Doppelmayr's excellence across all of the selection criteria.
4. Based on the selection committee's recommendation, City Council endorsed the selection of Doppelmayr CTEC, Inc. as the tram equipment supplier for the Portland Aerial Tram project. On January 8, 2004, City Council approved Ordinance No. 178137 selecting Doppelmayr CTEC, Inc. as the Tram Equipment Supplier and authorizing a contract for preconstruction services with Doppelmayr CTEC, Inc.
5. On March 9, 2005, City Council approved Ordinance No. 179095, reauthorizing the competitive bidding exemption for the Portland Aerial Tram in accordance with State of Oregon procurement statutes.
6. The City and Doppelmayr CTEC, Inc. have negotiated acceptable construction contract conditions and construction cost proposal of \$9,938,191 for Doppelmayr CTEC, Inc. to provide all machinery, tools, apparatus, materials, equipment, labor and other means of construction necessary to perform and complete the work in the manner specified and in accordance with the requirements of the Contract Documents.
7. The contract offer by Doppelmayr is subject to modification based on two factors: the published exchange rate of Swiss Francs to US dollars the day previous to execution of the contract, and the most recent monthly European Steel Cost Index. Adjustments to the construction cost proposal based on these two factors will be made and locked in at the time

of contract execution in authorizing the execution of these contracts, Council acknowledges that some adjustment, either up or down, will be required to the contract proposal, but under no circumstances will that adjustment exceed the total authorization identified in this ordinance of \$9,938,191 plus \$500,000.00 in reserve contingency.

8. Funds for the contract with Doppelmayr CTEC, Inc. have been identified and approved as part of the South Waterfront Central District Project Development Agreement, as amended, and through the formation of the Portland Aerial Tram Local Improvement District. City Council authorized the formation of the Portland Aerial Tram Local Improvement District through Ordinance No. 178675 on August 18, 2004.
9. Funds are available in the Transportation Operating Fund, AU 159, Center Code 15942123, Account Code 563000, Project Number 37385.

NOW, THEREFORE, the Council directs:

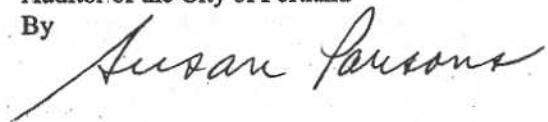
- a. The Mayor and City Auditor are hereby authorized to execute a Contract with Doppelmayr CTEC, Inc. for the purposes described in Section 1, in the amount of \$9,938,191, based on an exchange rate of 1.21 Swiss Francs per US dollar, subject to approval by the City Attorney's office.
- b. The City's Project Manager is authorized to approve an increase in the contract amount for tramway equipment fabrication, delivery and installation not to exceed \$500,000 that will be held in reserve as contingency for additional work due to changed conditions and/or additional work not contemplated in the Contract Documents.
- c. The Mayor and Auditor are hereby authorized to draw and deliver checks payable to Doppelmayr CTEC, Inc., chargeable to the Transportation Operating Fund, AU 159, Object Code 630.

Section 2. The Council declares that an emergency exists because delays in the fabrication, delivery and installation of tramway equipment for the Portland Aerial Tram Project will adversely affect development progress in South Waterfront and will force the City to miss contractual deadlines for project delivery; therefore, this Ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council, APR 28 2005

Mayor Tom Potter
Prepared by: Matt Brown:slg
April 7, 2005
Doppelmayr Ordinance 040605.doc

GARY BLACKMER
Auditor of the City of Portland
By



DEPUTY

Agenda No.

ORDINANCE NO.

Title

*Authorize contract with Doppelmayr CTEC, Inc. to fabricate, deliver and install aerial tram equipment for the Portland Aerial Tram project. (Ordinance)

INTRODUCED BY	Filed:
Mayor Tom Potter	Gary Blackmer Auditor of the City of Portland
NOTED BY COMMISSIONER	
Affairs	
Finance and Administration <i>Tom Potter</i>	By: _____ Deputy
Safety	
Utilities	For Meeting of: <u>APRIL 28, 2005 2:00 Time Certain</u>
Works	ACTION TAKEN:
BUREAU APPROVAL	
Bureau: Transportation Engineering & Development	
Prepared by: Matt Brown:slg <i>MB</i> Date: April 6, 2005	
Budget Impact Review: <input checked="" type="checkbox"/> Completed <input type="checkbox"/> Not Required	
Included PPD: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Filename: Doppelmayr Ordinance 040605.doc	
Bureau Head: <i>Donald Gardner</i> Donald Gardner, Director	

AGENDA	FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
		YEAS	NAYS
Consent <input type="checkbox"/> Regular <input checked="" type="checkbox"/> XX			
NOTED BY	Adams	Adams	
City Attorney	Leonard	Leonard	
	Saltzman	Saltzman	
	Sten	Sten	
	Potter	Potter	

TRIPPLICATE

MAY 12 2005

RFP NO. IO2403A

CONTRACT NO. 35825

**FOR
PORTLAND AERIAL TRAM**

This Agreement, made and entered into this 12th day of May, 2005, by and between **Doppelmayr CTEC, Inc.**, 3160 West 500 South, Salt Lake City, UT, 84104, hereinafter called the "**Contractor**" and the **City of Portland** 1120 S.W. 5th Avenue, Suite 800, Portland, Oregon 97204-1914, a municipal corporation of the State of Oregon, by and through its duly authorized representatives, hereinafter called the "**City**".

RECITALS:

WHEREAS, the City intends to construct the **Portland Aerial Tram Project**, hereinafter called the "Project;" and

WHEREAS, the drawings, plans, specifications and general conditions for all the work have been prepared by the Contractor; and

WHEREAS, the Contractor has developed its design in coordination with **agps architecture**, hereinafter called the "Architect."

AGREEMENT

Therefore, in light of these facts and in consideration of the mutual covenants and other considerations contained herein, the parties hereto agree as follows:

1. Description of Work.

A. Pursuant to a Preconstruction Services Agreement, the Contractor prepared design drawings for the Project. The design documents produced by Contractor are incorporated herein as Exhibits B, C and E.

B. The Contractor agrees to provide all the machinery, tools, apparatus, materials, equipment, labor and other means of construction necessary to perform and complete the work in the manner specified and in accordance with the requirements of

the Contract Documents. Contractor warrants that if the design is followed, Contractor's portion of the project will be fully functional as contemplated by those documents.

C. The Work to be performed by the Contractor on the Project consists of the following elements:

1. Final engineering, which consists of all project management, engineering, design, and home-office costs required to deliver elements 2-6 below.
2. Upper station tramway equipment fabrication and delivery;
3. Main tower tramway equipment fabrication and delivery;
4. Lower station tramway equipment fabrication delivery;
5. Tram cabin fabrication and delivery,
6. Tramway equipment; and tram cabin Installation,

The work stated above shall be performed pursuant to the design set forth in Exhibits B, C and E and in accordance with all other requirements of the Contract Documents.

D. Not included in the scope of Work is the design, procurement and construction of the Upper Station, Lower Station, and Intermediate Tower ("Civil Work") that is being provided by Kiewit Pacific Company to the City.

E. Exhibit L is a matrix defining the responsibilities for various elements of the project and how they are allocated to the various parties.

F. Contractor will support the City's efforts in the coordination for design, construction planning, construction and testing of the Civil Work, but is not responsible for Kiewit Pacific Co.'s performance or work performed by Kiewit Pacific Co.

2. Contract Documents. The Contract Documents are comprised of this Agreement, and the following documents:

- a) Exhibit A, "Schedule of Values Estimate" dated April 20, 2005.
- b) Exhibit B, "Rope and Drive Calculation" dated November 13, 2004.
- c) Exhibit C, "Final Technical Specifications" dated January, 2005.
- d) Exhibit D, "Milestones and Contractors Schedule" dated April 20, 2005
- e) Exhibit E, "Plans," dated May 3, 2005.

- f) Exhibit F, "Special Specifications," (Amendments to Division 1(A) Standard Specifications), dated May 6, 2005
- g) Exhibit G, "Standard Specifications" (General Conditions of the Contract for Construction Division 1 (A), dated July 2004), as amended.
- h) Exhibit H, "Subcontracting Plan and Matrix"
- i) Exhibit I, "Workforce Training and Hiring Plan"
- j) Exhibit J, " Prevailing Wage Rates"
- k) Exhibit K "Upper Station Restrictions"
- l) Exhibit L "Project Interface Matrix"
- m) Addenda, Change Orders, and permits

The Contractor acknowledges that this will be a fast-track Project in which construction may be commenced on one or more components prior to completion of all Construction Documents for the Project. Currently applicable milestone dates of design, construction and completion for the Project are set out in Exhibit D. The Contractor will develop a baseline Project Schedule in accordance with the major milestones and keep it current throughout construction.

The City and Contractor agree to make all records, calculations, drawings, pricing information and other documentation available to each other on an ongoing basis and in a timely manner as necessary to facilitate the execution of the work under this contract.

3. Order of Precedence. The Standard Specifications (Exhibit G), as modified by the Special Specifications (Exhibit F), shall govern order of precedence in the event of conflict in the documents.

4. Commencement and Completion of Work. The Contractor shall commence work as soon as practicable after receipt of **Notice to Proceed** and shall substantially complete all work and turn the Project over to the City ready for occupancy on **September 30, 2006**, except as this date may be extended pursuant to the terms of the Contract Documents.

5. Cost of Work and Guaranteed Maximum Price.

A. The Cost of Work consists of the following items:

1. Profit;
2. Home office overhead including, but not limited to, all company costs for the salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or branch offices or other locations agreed to in advance that cannot be directly attributable to the Work, or which benefit more than one project of the Contractor including, but not limited to, items such as rent, equipment, home office support staff;
3. Field office overhead includes those costs that cannot be directly attributed to a discrete portion of the project. They include contract administration, on-site project management, field office costs, support clerical staff, utilities, postage, the cost of telephone calls, preparation and revision of schedules, and the like;
4. Costs for the use of money, including interest on amounts borrowed and on the Contractor's money used in regard to the performance of the Work;
5. Preparation of the Contractor's response to the Request for Proposals;
6. All costs related to the performance of Warranty work;
7. Insurance deductibles;
8. All costs associated with Contractor-provided insurance and bonding costs;
9. All costs associated with the Contractor's project manager throughout the life of the project.
10. Wages of construction workers, including those of a full time project superintendent, directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's agreement, at off-site workshops;
11. Wages or salaries, and necessary travel expenses, of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's agreement;

12. Wages and salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work;
13. Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by laws or collective bargaining agreements, and for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work above.
14. Subcontractor costs for amounts required to be paid by legally binding subcontractors.
15. Reasonable costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction and materials in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage.
16. Costs of other materials and equipment, including transportation, maintenance, dismantling and removal of supplies, temporary facilities, machinery, and equipment, which are provided by the Contractor at the site and fully consumed in the performance of the Work, and costs less salvage value on such items if not fully consumed, whether sold to others or retained by the Contractor; cost for items previously used by the Contractor; rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Contractor at the site, whether rented by the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof;
17. The portion of premiums for insurance and bonds directly attributable to the Work; sales, use or similar taxes imposed by a government authority which are related to the Work and for which the Contractor is liable; fees and assessments for the plan check, building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay; fees of testing laboratories for tests required by the Contract

Documents except those specifically stated to be paid for by the Owner;

18. Costs of removal of debris from the site;
19. Cost of the Contractor's safety program;
20. cost of all drawings, specifications, and other documents, except as provided by Owner or A/E;
21. other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.
22. Any costs due to the fault or negligence of the Contractor, subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to costs for the correction of damaged, defective or nonconforming work;
23. Disposal and replacement of materials and equipment incorrectly ordered or supplies, and making good damage to property not forming part of the Work;
24. The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
25. Salaries and other compensation of the Contractor's personnel stationed the Contractor's principal office or offices other than the site office.
26. Overhead and general expenses, except as may be expressly included or excluded in Section 109 for extra or changed work.
27. Rental Costs of machinery and equipment except as specifically provided elsewhere in the Conditions of the Contract (such as crane time provided by Owner);
28. Prior Costs: all costs of the Contractor prior to the start of construction.
29. Costs resulting from claims arising under ORS 279.314.
30. Professional costs: cost of providing design estimates, value engineering, constructability options, and other construction management services throughout the design and construction

process;

31. Reporting Costs: cost of providing comprehensive monthly project reports and accounting reports throughout the Project;
32. Premiums for insurance and bonding;
33. M/W/ESB Costs: all costs attributable to the Contractor's compliance with all aspects of the City's MBE/WBE/ESB Good Faith efforts program and the Workforce Training and Hiring Program and the Workforce Training and Hiring Program and in response to Section 7 of the RFP;
34. Design Corrections: all costs associated with design corrections or errors that are necessary to complete the Work, as described in Section 1 of this Contract.

B. The parties agree that the Contract Amount is the amount of \$9,938,191 (Cost of the Work). The Cost of the Work is a fixed amount for the Work in accordance with the Contract Documents. Unless modified in accordance with Section F and G below, the Cost of the Work is the total maximum compensation due the Contractor for the execution of work under this Contract, regardless of whether it cost more or less than that amount to perform the work required by Paragraph 1.C of this Agreement.

C. The Cost of the Work includes all costs necessary to perform the Scope of Work as described by the Contract Documents, complete in every detail regardless of the quality or completeness of those contract Documents. In addition,

1. the Contractor shall be responsible for providing all materials, equipment, products, and labor to rectify any such omissions or errors without additional cost to the Owner;
2. the Contractor shall provide the Owner and the A/E with timely notification of any omissions or errors in the Contract Documents that are necessary to produce a complete and fully functioning facility so that the A/E and Owner can work with the Contractor to develop details and/or specifications as required, while attempting to minimize adverse impact on the Contractor.

D. The Cost of the Work has been formatted into a Schedule of Values, shown on Exhibit A. The Contractor shall provide updates of the Schedule of Values in the event that adjustments to the Cost of the Work, when permitted by the contract, occur.

E. The City has set aside a Risk/Contingency Allowance of the Amount of \$500,000 and its expenditure has been authorized by Ordinance. The Cost of the Work together with the Risk/Contingency Allowance comprises the Guaranteed Maximum Price (GMP). The Purpose of the Risk/Contingency Allowance is to permit the City to order Extra Work and to take into account any increases in the Cost of the Work in the event that the circumstances described in Paragraph I and J cause an increase without the need for additional Council approval. Therefore, the Risk/Contingency Allowance is to benefit the City and not the Contractor. The Contractor is not entitled to any portion of the Risk/Contingency Allowance unless the City authorizes extra work or unless the circumstances described in Paragraph F and G cause an increase to the Cost of the Work.

F. Foreign Exchange Rate

1. The Parties agree that the tramway equipment identified in the Specifications will be fabricated in Switzerland and Austria, and that the fabrication of the equipment and the installation portion of the project being undertaken by Swiss-based employees of the Contractor have been priced using Swiss Francs (CHF) as the cost basis. The Cost of the Work identified in Exhibit A is based on an exchange rate of 1.21 CHF/US Dollar.

2. Upon execution of the Agreement by all the parties, the Cost of the Work will be adjusted based on the previous day's closing exchange rate for Swiss Francs/US Dollars, as published in the Wall Street Journal. The Schedule of Values will be updated proportionally to account for any increase or decrease in the Cost of the Work. Should the exchange rate calculation result in a reduction in the Cost of the Work, the decrease shall be added to the Risk/Contingency Allowance. Should the exchange rate calculation result in an increase in the Cost of the Work, the increase shall be deducted from the Risk/Contingency allowance and added to the Cost of the Work.

3. Other than the adjustment contemplated by Paragraph F.2 above, the Contractor shall assume all risk for fluctuations in exchange rate once the Contract has been executed. Contractor already has priced this risk completely within the Cost of the Work previously provided to the City. No other consideration will be offered by the City for the exchange rate risk.

4. If the Contract is cancelled or delayed, and the cancellation or delay is not the fault of the Contractor, Contractor is entitled to reimbursement for actual losses, if any, for the cancellation or extension of forward contracts on the Swiss Franc. If the cancellation or extension of the forward contracts result in a gain on the forward contracts, the Owner is entitled to the benefit of this gain.

G. Adjustment for European Steel Index

1. The Parties agree steel prices have increased dramatically since the date of the initial proposal by the Contractor in October 2003. Because the tramway equipment will be fabricated in Switzerland and Austria, the fairest adjustment for the price of steel is based on the European Steel Cost Index. The Cost of the Work is based on a European Steel Index Value of 159.5 (October 2004) and accounts for the increase in steel prices between October, 2003 (Index Value = 98.8) and October, 2004.

2. Upon execution of the Agreement by all the parties, the Cost of the Work will be adjusted based on the most recently published monthly European Steel Index, published by the Swiss Federal Statistical Office, Division Enterprises, Section Prices, Espace de l'Europe 10, CH-2010 Neuchâtel. The adjustment will be based on the following formula. Should the steel price calculation result in a reduction in the Cost of the Work, the decrease shall be added to the Risk/Contingency Allowance.

$$\text{Cost Increase (Decrease)} = ((623,225 \times (\text{MRI}/98.8 - 1)) - 382,892)/\text{ER}$$

623,225 = original value of steel (CHF)

382,892 = Steel increase value included in GMP (CHF)

MRI = Most Recent Index (Most recently published European Steel Index, as described above), and

ER = Exchange Rate (Exchange Rate identified at execution of Contract as described above and expressed in CHF/US Dollar).

By way of example, and for illustrative purposes only, should the European Steel Index for the most recent month equal 155.0, and the Exchange Rate at contract execution is equal to 1.21 CHF/USD, then the resulting formula would read:

$$= ((623,225 \times (155.0/98.8 - 1)) - 382,892)/1.21$$

$$= (\$23,459)$$

Therefore, based on the theoretical steel index and exchange rate values, the Cost of the Work would decrease by \$23,459.00, and the cost reduction would be added to the Risk/Contingency Allowance.

3. Other than the adjustment contemplated by Paragraph G(2) above, the Contractor shall assume all risk and gain all the rewards for fluctuations in the price of steel once the Contract has been executed. Contractor already has priced this risk completely within the Cost of the Work previously provided to the City. No additional consideration will be offered by the City for this risk in the event that steel prices rise.

H. Further Adjustments to the GMP

At project close-out, the parties shall conduct a final accounting and determine whether the Contract, as may have been modified by any subsequent Change Orders and Paragraphs F and G above, requires any further adjustment to the GMP or the Cost of the Work.

6. **Payment.** The City shall pay the Contractor in United States Dollars for the Contractor's performance of the Work, in accordance with the Schedule of Values Estimate. After any adjustment in the Cost of the Work as provided in Paragraph 5(F) above, the Contractor shall assume all risk and reward for currency exchange fluctuations for the fabrication or import of aerial tramway equipment originating outside of the United States other than those risks associated with cancellation or delay as defined in 5(F)(4) above.

7. **Liquidated Damages.** The Contractor acknowledges and agrees that time is of the essence. The parties agree that if the Work is not Substantially Complete by the final completion date of the Project, as adjusted by Change Orders, the amount of the City's actual damages for delay will be difficult or impractical to determine. Accordingly, the parties agree that if the Work for an element, as well as the final completion date of the Project, is not substantially complete by the agreed date(s) of substantial completion, as adjusted by Change Orders, the Contractor shall pay to the City as liquidated damages in accordance with the following schedule for each and every day after the agreed date of substantial completion of the Work, as adjusted by Change Orders, that each element is not substantially complete:

One to Thirty Days Late	\$2000 per day
Thirty-one to Sixty Days Late	\$3500 per day
Sixty-one to Ninety Days Late	\$4500 per day
More than Ninety Days Late	\$5500 per day

The parties further acknowledge and agree that the daily sums in liquidated damages to be paid as set out above are reasonable under the circumstances existing as of the date of this Contract and that the maximum liquidated damages paid will not exceed five percent (5%) of the Cost of the Work.

In addition to the liquidated damages described above, if the Contractor fails to meet interim milestones identified on the Project Schedule, and the failure to meet such milestones causes the Owner to absorb additional costs to absorb the project delay, Contractor shall pay \$2,000 per day in liquidated damages until the milestone is reached. Any liquidated damages accrued due to failure to meet interim milestones

shall be included in the calculation of the maximum liquidated damages described above.

8. Notices. Any notices to be given by either party to the other pursuant to this Contract or other communications shall be faxed, e-mailed, hand delivered or mailed by certified mail, return receipt requested, at the address of the respective parties as follows:

If to Contractor: DOPPELMAYR CTEC, INC.
3160 West 500 South
Salt Lake City, Utah 84104
Attn: Mark Bee
E-mail: mark.bee@doppelmayrctec.com
Fax: (801) 973-9580

With a copy to (which shall not constitute notice):

DOPPELMAYR CTEC, INC.
Job Site Office in Portland (location to be determined)

If to Owner: CITY OF PORTLAND OFFICE OF TRANSPORTATION
1120 SW Fifth Avenue, Room 800
Portland, OR 97204
Attn: Matt Brown, Project Manager
E-Mail: matt.brown@pdxtrans.org
Fax: (503) 823-7371

With a copy to (which shall not constitute notice):

TRIMET
710 NE Holladay Street
Portland, OR 97232
Attn: Don Irwin, Contract Manager
E-Mail: irwind@tri-met.org
Fax: (503) 823-7371

The time of the giving of such notice shall be deemed to be the time when it is faxed, e-mailed, personally hand delivered or, if mailed, the third day following mailing. Either party may change the address E-mail address or fax number to which notice shall be given by notice so given to the other party in writing.

9. Miscellaneous.

- (a) Contractor agrees to furnish fully executed Performance and Payment Bonds, each in the amount of \$9,938,191 (Nine Million, Nine Hundred and Thirty Eight Thousand, One Hundred and Ninety One Dollars). The cost is a reimbursable cost of the Project and included in the Cost of the Work, and such bonds shall be delivered to the City.
- (b) Contractor agrees that this contract or any interest herein shall not be transferred to any party/parties without the prior written consent of the City. In the event of transfer without prior written consent, the City may refuse to carry out this agreement with either the transferor or transferee and yet retain and reserve all rights of action for any breach of contract committed by Contractor.
- (c) Title to all work completed and in the course of construction and to all materials and supplies on account of which any payment has been made shall be in the City.
- (d) The Contractor hereby agrees that no officer or employee of the City is or shall be entitled to any share, part or benefit(s) derived from this Contract.
- (e) The Contractor hereby agrees to pay all royalties and license fees for all patented articles or processes and save City free from all loss or damage that may result from the wrongful or unauthorized use of said items.
- (f) During the warranty period, the Contractor agrees to make all necessary repairs and replacements to remedy all defects or failures in work performed under the plans and specifications without cost to the City and in a manner consistent with the Contract Documents and satisfactory to the City Engineer.
- (g) Contractor specifically warrants that it is the owner and authorized licensee or representative of any patent used in connection with construction of the equipment.
- (h) All rights of action for any breach of this contract by Contractor are reserved to the City.
- (i) There are no third party beneficiaries to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this instrument, through their authorized officers, effective the date first above written.

(Affix Corporate Seal)

Doppelmayr CTEC, Inc.

By 
DAN W. LEONARD, Pres
(Print Name and Title)

APPROVED AS FORM


Linda Meyer
CITY ATTORNEY
City Attorney

Address: 3160 West 500 South
Salt Lake City, Utah 84104

Telephone: (801) 973-7977
Fax: (801) 973-9580

STATE OF OREGON
CONTRACTORS BOARD NUMBER


152209

CITY OF PORTLAND

CITY OF PORTLAND
BUSINESS LICENSE NUMBER

668537

By 
Auditor Gary Blackmer

By 
Mayor Tom Potter
Randy Leonard
Council President 5/12/05

Center Code: 15942123/37385 Initial: MB Date Typed: May 6, 2005
Funding: LID/PDC/PRIVATE

APPENDIX A

Contractor shall observe all applicable state and local laws pertaining to public contracts. ORS Chapter 279 requires every public contract to contain certain provisions. Pursuant to ORS Chapter 279, the following provisions shall be a part of this contract, as applicable.

- Pursuant to ORS 279C.505, the contractor shall make payments promptly, as due, to all persons supplying to such contractor labor or material for the prosecution of the work provided for in such contract. The contractor shall pay all contributions or amounts due the Industrial Accident Fund from such contractor or subcontractor incurred in the performance of the contract. The contractor shall not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished. The contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- Pursuant to ORS 279C.510 (1) (2), in every public contract for demolition the contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective. In every public contract for lawn and landscape maintenance the contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.
- Pursuant to ORS 279C.515, if the contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public contract as such claim becomes due, the proper officer or officers representing the state, county, school district, municipality, municipal corporation or subdivision thereof, as the case may be, may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of such contract. The payment of a claim in the manner authorized by ORS 279C.515 shall not relieve the contractor or the contractor's surety from obligation with respect to any unpaid claims.
- Pursuant to ORS 279C.520, no person shall be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279C.520. (3), the employee shall be paid at least time and a half pay for all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or for all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and for all work performed on Saturday and on any legal holiday specified in ORS 279C.540. The contractor shall give notice to employees who work on a public contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work. In the case of contracts for personal services as defined in ORS 279C.200 (3), an employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. sections 201 to 209 from receiving overtime. Persons employed under contracts for services shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279C.540 (9) (a) and for all time worked in excess of 10 hours a day or in excess of 40 hours in a week, whichever is greater. The contractor shall give notice to employees who work on a contract for services in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.
- Pursuant to ORS 279C.530, in every public contract, the contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such contractor, of all sums which the contractor agrees to pay for such services and all monies and sums which the contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service. In every public contract, all employers working under the contract are subject employers that shall comply with ORS 656.017.
- Pursuant to ORS 279.530 (2), as amended effective 5/25/01, "Every public contract also shall contain a clause or condition that all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- Pursuant to ORS 279C.830 (2), a fee is required to be paid to the Commissioner of the Bureau of Labor and Industries as provided in ORS 279.375(1). The fee shall be paid to the Commissioner pursuant to the administrative rule of the Commissioner.
- Pursuant to ORS 279C.580 (a), in each contract awarded by a public contracting agency, the contractor shall include in each subcontract for property or services entered into by the contractor and a subcontractor, including a material supplier, for the purpose of performing a construction contract, a payment clause that obligates the contractor to pay the subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the contractor by the public contracting agency under such contract, and an interest penalty clause that obligates the contractor to pay to the subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to ORS 279C.580 (b), for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made, and computed at the rate specified in ORS 279C.515 (2).

The contractor shall include in each of its subcontracts, for the purpose of performance of such contract condition, a provision requiring the subcontractor to include a payment clause and an interest penalty clause conforming to the standards of ORS 279C.580 (B) (4) in each of its subcontracts and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

Pursuant to ORS 279C.505 (2) (1), Contractor shall demonstrate that an employee drug-testing program is in place.

ORDINANCE No.

179224
As Amended

*Authorize contract with Doppelmayr CTEC, Inc. to fabricate, deliver and install aerial tram equipment for the Portland Aerial Tram project. (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. On August 13, 2003, City Council approved Ordinance No. 177795, which exempted the Portland Aerial Tram project from the competitive low bid process and permitted the City to procure Tram Equipment from a tram equipment supplier and select a Construction Manager/General Contractor (CM/GC) to construct the proposed Tram by means of a competitive Request for Proposal (RFP) process.
2. Upon the passage of Ordinance No. 177795, The Bureau of Purchases and Portland Office of Transportation (PDOT) developed a Request for Proposal (RFP) for the selection of a Tram Equipment Supplier. The RFP was advertised on August 20, 2003, and responsive proposals were submitted by Doppelmayr CTEC, Inc. and Leitner Poma, Inc., the only two aerial tramway companies in existence worldwide.
3. Proposals for the project were evaluated based on experience, qualifications, and other factors. An evaluation committee appointed by the Commissioner-in-Charge of PDOT evaluated the proposals and interviewed the respondents. Doppelmayr CTEC, Inc., was recommended for selection by the evaluation committee based on Doppelmayr's excellence across all of the selection criteria.
4. Based on the selection committee's recommendation, City Council endorsed the selection of Doppelmayr CTEC, Inc. as the tram equipment supplier for the Portland Aerial Tram project. On January 8, 2004, City Council approved Ordinance No. 178137 selecting Doppelmayr CTEC, Inc. as the Tram Equipment Supplier and authorizing a contract for preconstruction services with Doppelmayr CTEC Inc.
5. On March 9, 2005, City Council approved Ordinance No. 179095, reauthorizing the competitive bidding exemption for the Portland Aerial Tram in accordance with State of Oregon procurement statutes.
6. The City and Doppelmayr CTEC, Inc. have negotiated acceptable construction contract conditions and construction cost proposal of \$9,938,191 for Doppelmayr CTEC, Inc. to provide all machinery, tools, apparatus, materials, equipment, labor and other means of construction necessary to perform and complete the work in the manner specified and in accordance with the requirements of the Contract Documents.
7. The contract offer by Doppelmayr is subject to modification based on two factors: the published exchange rate of Swiss Francs to US dollars the day previous to execution of the contract, and the most recent monthly European Steel Cost Index. Adjustments to the construction cost proposal based on these two factors will be made and locked in at the time

of contract execution in authorizing the execution of these contracts, Council acknowledges that some adjustment, either up or down, will be required to the contract proposal, but under no circumstances will that adjustment exceed the total authorization identified in this ordinance of \$9,938,191 plus \$500,000.00 in reserve contingency.

8. Funds for the contract with Doppelmayr CTEC, Inc. have been identified and approved as part of the South Waterfront Central District Project Development Agreement, as amended, and through the formation of the Portland Aerial Tram Local Improvement District. City Council authorized the formation of the Portland Aerial Tram Local Improvement District through Ordinance No. 178675 on August 18, 2004.
9. Funds are available in the Transportation Operating Fund, AU 159, Center Code 15942123, Account Code 563000, Project Number 37385.

NOW, THEREFORE, the Council directs:

- a. The Mayor and City Auditor are hereby authorized to execute a Contract with Doppelmayr CTEC, Inc. for the purposes described in Section 1, in the amount of \$9,938,191, based on an exchange rate of 1.21 Swiss Francs per US dollar, subject to approval by the City Attorney's office.
- b. The City's Project Manager is authorized to approve an increase in the contract amount for tramway equipment fabrication, delivery and installation not to exceed \$500,000 that will be held in reserve as contingency for additional work due to changed conditions and/or additional work not contemplated in the Contract Documents.
- c. The Mayor and Auditor are hereby authorized to draw and deliver checks payable to Doppelmayr CTEC, Inc., chargeable to the Transportation Operating Fund, AU 159, Object Code 630.

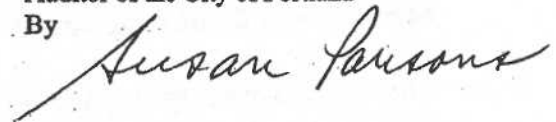
Section 2. The Council declares that an emergency exists because delays in the fabrication, delivery and installation of tramway equipment for the Portland Aerial Tram Project will adversely affect development progress in South Waterfront and will force the City to miss contractual deadlines for project delivery; therefore, this Ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council, APR 28 2005

Mayor Tom Potter
Prepared by: Matt Brown:slg
April 7, 2005
Doppelmayr Ordinance 040605.doc

GARY BLACKMER
Auditor of the City of Portland

By



DEPUTY

PERFORMANCE BOND

Bond No. 34BCSDK1611

Amount: \$ 9,938,191.00

KNOW ALL MEN BY THESE PRESENTS that we DOPPELMAYR CTEC, INC.* as Principal (Contractor), and HARTFORD FIRE INSURANCE COMPANY, a corporation organized and existing under the laws of the State of Connecticut, and duly authorized to transact a SURETY business in the State of Oregon, as SURETY, are held and firmly bound unto the CITY OF PORTLAND, a municipal corporation of the State of Oregon, in the sum of (Nine Million, Nine Hundred and Thrity Eight Thousand, One Hundred and Ninety One Dollars) (\$9,938,191) lawful money of the United States of America, for the payment whereof well and truly to be made, we and each of us, jointly and severally, bind ourselves, our and each of our heirs, executors, administrators, successors and assigns firmly by these presents.

THE CONDITIONS of this obligation are such that, whereas the above Principal did on the 12th day of May, 2005, enter into a Contract with the City of Portland for which Contract is made a part hereof as if fully copied herein;

NOW, THEREFORE, if the said principal faithfully, punctually and completely performs and abides by all covenants and conditions of said Contract, and with all laws, ordinances, regulations, and orders of the State of Oregon and the City of Portland, and the agencies and bureaus thereof, directly or indirectly governing or applicable to the Principal's performance under the said Contract, including but not limited to the requirements of Oregon Revised Statutes Chapter 279 relating to public contracts, which hereby is made a part hereof as if fully copied herein, then this obligation shall be null and void, otherwise to be in full force and effect.

SURETY agrees (1) that any extension of time allowed said Principal for completion of work or for delivery under the said contract shall not impair this obligation or reduce any period of maintenance or warranty provided in said Contract; (2) that any change made in the terms or provisions of said contract increasing the price to be paid to Principal, without notice to the SURETY shall not impair this obligation, PROVIDED that all such increases shall not in the aggregate exceed twenty-five percent (25%) of the original Contract Price without consent of the SURETY, however, any such change shall not increase the obligation of the SURETY hereunder; and (3) that this obligation shall continue to bind the said Principal and SURETY notwithstanding successive payment made hereunder for successive breaches, until the full amount of the said obligation is exhausted.

*3160 West 500 South, Salt Lake City, Utah 84104
**Portland Aerial Tram Project

IN WITNESS WHEREOF, the Principal and Surety have caused these presents to be executed on this 12th day of May, 2005.

DOPPELMAYR CTEC, INC.

PRINCIPAL

BY

TITLE

PRESIDENT

Approved AS TO FORM *JVD*

Sandra M. Henry

CITY ATTORNEY

CITY ATTORNEY

HARTFORD FIRE INSURANCE COMPANY

SURETY

BY

Cynthia M. Burnett

Attorney-in-Fact Cynthia M. Burnett

COUNTERSIGNED:

HRH OF OREGON, INC.

BY

Peter K. Nielsen
Oregon Resident Agent Peter K. Nielsen

5100 SW Macadam, Suite 270

Address

Portland, Oregon, 97239

NOTE

If the Principal is operating under an assumed business name there must also be set forth in the first paragraph of the bond, the names of all the partners or the individuals owning the business, and the bond must be executed by one of them.

If the Principal is a corporation, the bond must be executed by one of the officers authorized to execute bonds, showing his official title and the seal of the corporation.

The bond must be executed by an attorney-in-fact for the surety company, showing on the face thereof the Oregon agent for service, and bear the seal of the surety company. Where the bond is executed by a person outside the state of Oregon, his authority to execute bonds should be shown.

PAYMENT BOND

Bond No. 34BCSDK1611

Amount \$ 9,938,191.00

KNOW ALL MEN BY THESE PRESENTS that we DOPPELMAYR CTEC, INC.* as Principal (Contractor), and HARTFORD FIRE INSURANCE COMPANY, a corporation organized and existing under the laws of the State of Connecticut, and duly authorized to transact a SURETY business in the State of Oregon, as SURETY, are held and firmly bound unto the CITY OF PORTLAND, a municipal corporation of the State of Oregon, in the sum (Nine Million, Nine Hundred and Thrity Eight Thousand, One Hundred and Ninety One Dollars) (\$9,938,191) lawful money of the United States of America, for the payment whereof well and truly to be made, we and each of us, jointly and severally, bind ourselves, our and each of our heirs, executors, administrators, successors and assigns firmly by these presents.

THE CONDITIONS of this obligation are such that, whereas the above Principal did on the 12th day of May, 2005, enter into a Contract with the City of Portland for which Contract is made a part hereof as if fully copied herein;

NOW, THEREFORE, if the said principal faithfully, punctually and completely performs and abides by all covenants and conditions of said Contract, and with all laws, ordinances, regulations, and orders of the State of Oregon and the City of Portland, and the agencies and bureaus thereof, directly or indirectly governing or applicable to the Principal's performance under the said Contract, including but not limited to the requirements of Oregon Revised Statutes Chapter 279 relating to public contracts, which hereby is made a part hereof as if fully copied herein, and shall make payment promptly, as due, to the City of Portland and all other public entities as may be required, and to all subcontractors and to all persons supplying to the Principal or his(its) subcontractors, equipment, supplies, labor, or materials for the prosecution of the work or any part thereof, provided for in said Contract, then this obligation shall be null and void, otherwise to be in full force and effect.

SURETY agrees (1) that any extension of time allowed said Principal for completion of work or for delivery under the said contract shall not impair this obligation or reduce any period of maintenance or warranty provided in said Contract; (2) that any change made in the terms or provisions of said contract increasing the price to be paid to Principal, without notice to the SURETY shall not impair this obligation, PROVIDED that all such increases shall not in the aggregate exceed twenty-five percent (25%) of the original Contract Price without consent of the SURETY, however, any such change shall not increase the obligation of the SURETY hereunder; and (3) that this obligation shall continue to bind the said Principal and SURETY notwithstanding successive payment made hereunder for successive breaches, until the full amount of the said obligation is exhausted.

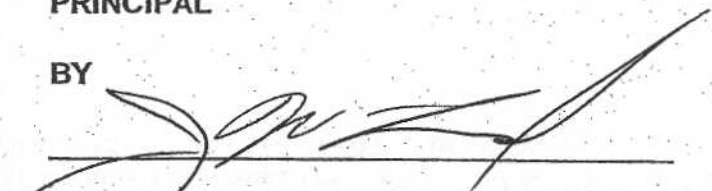
*3160 West 500 South, Salt Lake City, Utah 84104
**Portland Aerial Tram Project

IN WITNESS WHEREOF, the Principal and Surety have caused these presents to be executed on this 12th day of May, 2005

DOPPELMAYR CTEC, INC.

PRINCIPAL

BY



TITLE PRESIDENT

APPROVED AS TO FORM *JVD*




CITY ATTORNEY
CITY ATTORNEY

HARTFORD FIRE INSURANCE COMPANY

SURETY

BY

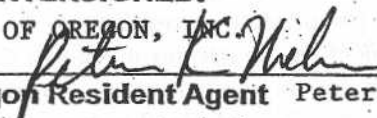


Attorney-in-Fact Cynthia M. Burnett

COUNTERSIGNED:

HRH OF OREGON, INC.

BY



Oregon Resident Agent Peter K. Nielsen

5100 SW Macadam, Suite 270

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The bond must be executed by an attorney-in-fact for the surety company, showing on the face thereof the Oregon agent for service, and bear the seal of the surety company. Where the bond is executed by a person outside the state of Oregon, his authority to execute bonds should be shown.



<i>Insured's Name</i> DOPPELMAYR CTEC, INC.
<i>Insured's Mailing Address</i> 3160 West 500 South Salt Lake City, Utah 84104
<i>Policy Number</i> 34BCSDK1611

IMPORTANT NOTICE TO OBLIGEEES/POLICYHOLDERS – TERRORISM RISK INSURANCE ACT OF 2002

You are hereby notified that, under the Terrorism Risk Insurance Act of 2002, effective November 26, 2002, we must make terrorism coverage available in your bond/policy. However, the actual coverage provided by your bond/policy for acts of terrorism, as is true for all coverages, is limited by the terms, conditions, exclusions, limits, other provisions of your bond/policy, any endorsements to the bond/policy and generally applicable rules of law.

Any terrorism coverage provided by this bond/policy is partially reinsured by the United States of America under a formula established by Federal Law. Under this formula, the United States will pay 90% of covered terrorism losses exceeding a statutorily-established deductible paid by sureties/insurers until such time as insured losses under the program reach \$100 billion. If that occurs, Congress will determine the procedures for, and the source of, any payments for losses in excess of \$100 billion.

The premium charge that has been established for terrorism coverage under this bond/policy is either shown on this form or elsewhere in the bond/policy. If there is no premium shown for terrorism on this form or elsewhere in the bond/policy, there is no premium for the coverage.

Terrorism premium:	\$0
--------------------	-----

POWER OF ATTORNEY

Direct Inquiries/Claims to:

THE HARTFORD

BOND, T-4

690 ASYLUM AVENUE

HARTFORD, CONNECTICUT 06115

call: 888-266-3488 or fax: 860-757-5835

Agency Code: 34-341300

KNOW ALL PERSONS BY THESE PRESENTS THAT:

- Hartford Fire Insurance Company, a corporation duly organized under the laws of the State of Connecticut
- Hartford Casualty Insurance Company, a corporation duly organized under the laws of the State of Indiana
- Hartford Accident and Indemnity Company, a corporation duly organized under the laws of the State of Connecticut
- Hartford Underwriters Insurance Company, a corporation duly organized under the laws of the State of Connecticut
- Twin City Fire Insurance Company, a corporation duly organized under the laws of the State of Indiana
- Hartford Insurance Company of Illinois, a corporation duly organized under the laws of the State of Illinois
- Hartford Insurance Company of the Midwest, a corporation duly organized under the laws of the State of Indiana
- Hartford Insurance Company of the Southeast, a corporation duly organized under the laws of the State of Florida

having their home office in Hartford, Connecticut, (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint, up to the amount of unlimited:

James S. Rosulek, J. R. Richards, Douglas J. Rothey, Cynthia M. Burnett, Frank C. Penn, Dilynn Guem, Pamela J. Hansen, Kevin W. McMahon, Donald E. Appleby, Gloria C. Blackburn, Florietta Acosta, Kristen L. McCormick, Susan J. Lattarulo of Denver, CO

their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety(ies) only as delineated above by , and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, and as authorized by a Resolution of the Board of Directors of the Companies on July 21, 2003 the Companies have caused these presents to be signed by its Assistant Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.



Paul A. Bergenholtz

Paul A. Bergenholtz, Assistant Secretary

David T. Akers

David T. Akers, Assistant Vice President

STATE OF CONNECTICUT }
COUNTY OF HARTFORD } ss. Hartford

On this 4th day of August, 2004, before me personally came David T. Akers, to me known, who being by me duly sworn, did depose and say: that he resides in the County of Hampden, Commonwealth of Massachusetts; that he is the Assistant Vice President of the Companies, the corporations described in and which executed the above instrument; that he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that he signed his name thereto by like authority.



CERTIFICATE

Scott E. Paseka

Scott E. Paseka
Notary Public

My Commission Expires October 31, 2007

I, the undersigned, Assistant Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of Signed and sealed at the City of Hartford.



Gary W. Stumper

Gary W. Stumper, Assistant Vice President

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
05/09/05

PRODUCER Seattle Office ABD Insurance & Financial Service 601 Union St. Suite 3310 Seattle, WA 98101	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	INSURERS AFFORDING COVERAGE	NAIC #
INSURED Doppelmayr CTEC, Inc. 3160 West 500 South Salt Lake City, UT 84104	INSURER A: XL Insurance America, Inc.	
	INSURER B: Great Northern Insurance Co.	
	INSURER C: United States Fire Insurance Company	
	INSURER D:	
	INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Owners Contr <input type="checkbox"/> Protective GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	US00007330LI05A	04/01/05	04/01/06	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$1,000,000
B		AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	70206152	07/12/04	07/12/05	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
		EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$				WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
C		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	4086173574	09/01/04	09/01/05	\$5,000,000 Limit Any One Job Site \$5,000 Deductible
D		OTHER Builders Risk	QT6600518B885TIL	06/01/04	06/01/05	

APPROVED AS TO FORM
Paula Mery
 CITY ATTORNEY

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

RE: Portland Aerial Tram Contract. City of Portland, its officers, employees and agents, the Oregon Health & Science University, its officers, employees and agents, and OHSU and its officers, employees, and agents are added as additional insureds as respect operations of the named (See Attached Descriptions)

CERTIFICATE HOLDER

City of Portland
 1130 SW 5th Avenue, Suite 800
 Portland, OR 97204-1914

CANCELLATION Ten Day Notice for Non-Payment of Premium

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL PROVIDE 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BY MAIL TO THE ADDRESS OF THE CERTIFICATE HOLDER.

AUTHORIZED REPRESENTATIVE
James L. Jones

IMPORTANT

If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

DESCRIPTIONS (Continued from Page 1)

Insured. The insurance described shall not be canceled or materially altered without giving the City Auditor 30 days written Notice in advance of that action. Coverage is considered primary and non-contributory to any other insurance carried by the additional insureds.

NAMED INSURED: Doppelmayr CTEC, Inc.
POLICY NUMBER: US00007330LI05A

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES OR
CONTRACTORS (FORM B)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE:

Name of Person or Organization:

City of Portland, its officers, employees and agents, the Oregon Health & Science University, its officers, employees and agents, and OHSU and its officers, employees, and agents are added as additional insureds as respect operations of the named insured.

RE: Portland Aerial Tram Contract

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you.


Authorized Representative

CG 20 10 11 85

Includes copyrighted material of Insurance Services Office, Inc. with its permission.
Copyright, Insurance Services Office, Inc. 1984

ORDINANCE No. 179224 AS AMENDED

*Authorize contract with Doppelmayr CTEC, Inc. to fabricate, deliver and install aerial tram equipment for the Portland Aerial Tram project. (Ordinance)

The City of Portland ordains:

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3. Proposals for the project were evaluated based on experience, qualifications, and other factors. An evaluation committee appointed by the Commissioner-in-Charge of PDOT evaluated the proposals and interviewed the respondents. Doppelmayr CTEC, Inc., was recommended for selection by the evaluation committee based on Doppelmayr's excellence across all of the selection criteria.
4. Based on the selection committee's recommendation, City Council endorsed the selection of Doppelmayr CTEC, Inc. as the tram equipment supplier for the Portland Aerial Tram project. On January 8, 2004, City Council approved Ordinance No. 178137 selecting Doppelmayr CTEC, Inc. as the Tram Equipment Supplier and authorizing a contract for preconstruction services with Doppelmayr CTEC Inc.
5. On March 9, 2005, City Council approved Ordinance No. 179095, reauthorizing the competitive bidding exemption for the Portland Aerial Tram in accordance with State of Oregon procurement statutes.
6. The City and Doppelmayr CTEC, Inc. have negotiated acceptable construction contract conditions and construction cost proposal of \$9,938,191 for Doppelmayr CTEC, Inc. to provide all machinery, tools, apparatus, materials, equipment, labor and other means of construction necessary to perform and complete the work in the manner specified and in accordance with the requirements of the Contract Documents.
7. The contract offer by Doppelmayr is subject to modification based on two factors: the published exchange rate of Swiss Francs to US dollars the day previous to execution of the contract, and the most recent monthly European Steel Cost Index. Adjustments to the construction cost proposal based on these two factors will be made and locked in at the time

of contract execution in authorizing the execution of these contracts, Council acknowledges that some adjustment, either up or down, will be required to the contract proposal, but under no circumstances will that adjustment exceed the total authorization identified in this ordinance of \$9,938,191 plus \$500,000.00 in reserve contingency.

8. Funds for the contract with Doppelmayr CTEC, Inc. have been identified and approved as part of the South Waterfront Central District Project Development Agreement, as amended, and through the formation of the Portland Aerial Tram Local Improvement District. City Council authorized the formation of the Portland Aerial Tram Local Improvement District through Ordinance No. 178675 on August 18, 2004.
9. Funds are available in the Transportation Operating Fund, AU 159, Center Code 15942123, Account Code 563000, Project Number 37385.

NOW, THEREFORE, the Council directs:

- a. The Mayor and City Auditor are hereby authorized to execute a Contract with Doppelmayr CTEC, Inc. for the purposes described in Section 1, in the amount of \$9,938,191, based on an exchange rate of 1.21 Swiss Francs per US dollar, subject to approval by the City Attorney's office.
- b. The City's Project Manager is authorized to approve an increase in the contract amount for tramway equipment fabrication, delivery and installation not to exceed \$500,000 that will be held in reserve as contingency for additional work due to changed conditions and/or additional work not contemplated in the Contract Documents.
- c. The Mayor and Auditor are hereby authorized to draw and deliver checks payable to Doppelmayr CTEC, Inc., chargeable to the Transportation Operating Fund, AU 159, Object Code 630.

Section 2. The Council declares that an emergency exists because delays in the fabrication, delivery and installation of tramway equipment for the Portland Aerial Tram Project will adversely affect development progress in South Waterfront and will force the City to miss contractual deadlines for project delivery; therefore, this Ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council, April 28, 2005

GARY BLACKMER
Auditor of the City of Portland
By /S/ Susan Parsons

Mayor Tom Potter
Prepared by: Matt Brown:slg
April 7, 2005
Doppelmayr Ordinance 040605.doc

DEPUTY

BACKING SHEET INFORMATION

AGENDA NO. 401-2005

ORDINANCE/RESOLUTION/COUNCIL DOCUMENT NO. 179224 AS AMENDED

COMMISSIONERS VOTED AS FOLLOWS:		
	YEAS	NAYS
ADAMS	X	
LEONARD	X	
SALTZMAN	X	
STEN	X	
POTTER	X	



CITY OF
PORTLAND
 OFFICE OF
TRANSPORTATION

Mayor Tom Potter
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Brant Williams
 Director

Eileen Argentina
 System Management

Bryant Enge
 Finance

Don Gardner
 Engineering & Development

Sam M. Irving, Jr.
 Maintenance

Laurel Wentworth
 Planning

DATE: April 7, 2005
 TO: Mayor Tom Potter
 FROM: Matt Brown, Project Manager, Project Management Division

FOR MAYOR'S OFFICE USE ONLY
 Reviewed by Bureau Liaison _____

RE: *Authorize contract with Doppelmayr CTEC, Inc. to fabricate, deliver and install aerial tram equipment for the Portland Aerial Tram project. (Ordinance)

EMERGENCY ORDINANCE

- 1. INTENDED THURSDAY FILING DATE: April 7, 2005
- 2. REQUESTED COUNCIL AGENDA DATE: April 28, 2005, 2:00 Time Certain
- 3. CONTACT NAME & NUMBER: Matt Brown, Project Manager, 823-7027
- 4. PLACE ON: CONSENT REGULAR
- 5. BUDGET IMPACT STATEMENT ATTACHED: Y N N/A
- 6. (3) ORIGINAL COPIES OF CONTRACTS APPROVED AS TO FORM BY CITY ATTORNEY ATTACHED: Yes No N/A DRAFT ATTACHED

7. BACKGROUND/ANALYSIS

The Portland Aerial Tram project was initiated by City Council in 2002 as part of the Marquam Hill Plan process. At that time, City Council asked PDOT to undertake a process for identifying alternatives for connecting the Marquam Hill Campus of OHSU with South Waterfront, and return with a recommendation for Council consideration. PDOT developed a five step process for considering a "suspended cable transportation system" (SCTS) and presented that process to the Planning and Design Commissions for review and feedback prior to submitting the process to City Council for approval.

The process that PDOT developed included five primary steps:

- 1. Process Development
- 2. Alternatives Analysis
- 3. Policy Evaluation and Development
- 4. Design Development
- 5. Engineering and Construction

The process was set up under the City Engineer's authority to consider and approve public transportation improvements in the public right-of-way. Each step of the process requires meaningful public involvement and City Council action prior to moving on with the next step.

The Process Development portion of the project was completed when City Council approved Resolution #36071 on May 23, 2002, which accepted the City Engineer's recommendation for the consideration of a SCTS and directed the City Engineer to undertake an alternatives analysis for connecting Marquam Hill to South Waterfront. Upon receiving direction from City Council, the City Engineer proceeded with the Alternatives Analysis, studying ten unique connection alternatives including shuttle bus systems, aerial gondolas, and aerial trams. Concurrently, the Bureau of Planning developed policy recommendations within the Marquam Hill Plan process to support the City Engineer's final recommendation to pursue an aerial tram on the SW Gibbs Street alignment. Both the Alternatives Analysis and the Policy Evaluation and Development portions of the process were completed and approved by City Council on July 10, 2002.



Following the completion of the Alternatives Analysis and Policy Evaluation and Development, City Council directed the City Engineer to undertake the Design Development phase of the project and to work with Portland Aerial Transportation, Inc. (PATI), a non-profit board dedicated to pursuing the aerial tram project, on an international design competition for the project. PATI and PDOT successfully managed the design competition, involving over 1500 Portland residents in the process. The selected firm, agps architecture, was retained to design the tram project and work with the PATI Board and the Portland Aerial Tram Citizens Advisory Committee (CAC) to develop a world-class design for the project.

The Design Development phase included an extensive public participation process. 18 CAC meetings were held to guide the design and identify neighborhood improvements. The CAC was guided by additional public events, Design Commission sessions and numerous public briefings with interested stakeholders that took place over a year and a half. The process culminated with the CAC unanimously forwarding a report to City Council on the project, and the City Council approving the City Engineer's and CAC's recommendations for the design of the project and neighborhood improvements on June 10, 2004. At that time, Council directed the City Engineer to undertake the final step of the project – Final Engineering and Construction – and return to Council for final approval of construction contracts required to undertake the project.

The Ordinance before City Council is for the fabrication, delivery, and installation of tramway equipment. Doppelmayr CTEC, Inc. was selected as the contractor to provide the tramway equipment for the project through a qualifications-based selection process (as opposed to a standard low-bid process). Doppelmayr CTEC, Inc. is one of two aerial tramway companies in existence worldwide, and is seen as the world leader in the supply of bicable aerial tramways. Because Doppelmayr will produce most of the equipment in Switzerland and Austria, the contract price has been subject to fluctuations in the strength of the dollar. Upon execution of the contract, that fluctuation will be eliminated, and the contract will be converted into a guaranteed maximum price (GMP) in US Dollars. Until the contract is executed, the contract price will not be fully locked due to the exchange rate issue.

Current legal issues associated with the Portland Aerial Tram project include challenges to the validity of the Local Improvement District (LID) formed to finance the project by the Zidell family, and the probability of a lawsuit to be filed by Gibbs Street property owners concerning the ownership of air rights within the Gibbs Street right-of-way. The latter issue will likely be filed immediately after the passage of the Doppelmayr and Kiewit contracts, as these contracts are seen as the Council's final decision on the Portland Aerial Tram project.

The authority to construct the Portland Aerial Tram project is derived from the City Engineer's Charter and Code authority to determine the type and nature of improvements within the public right-of-way. Part of this process includes working with the Portland Design Commission to gather advice on the design of the project, as there are no current City standards for this type of project. To date, we have been before Design Commission on five different occasions to brief them on the project and solicit their advice on the design of the project.

Emergency Ordinance

Why is it necessary to circumvent the regular agenda process and timelines?

The Portland Aerial Tram project is identified as a contingent project in the South Waterfront Central District Project Development Agreement (DA). The DA commits the City to delivery of public projects, including the aerial tram, by certain dates. In the case of the tram, the project must be open by September 30, 2006, concurrent with the opening of OHSU's Building One adjacent to the lower terminus. The tram is critical to the success of South Waterfront development and OHSU's campus, and delays in opening would force the City to provide other temporary transportation (e.g., shuttle buses) to serve South Waterfront/Marquam Hill. The schedule for the Portland Aerial Tram project is very tight. The cost issues encountered on the project last October forced the project to be placed on hold for four months as cost issues were researched and design alternatives identified that would lower project costs. When the project was restarted in mid-February, the



schedule was reviewed and further developed to determine whether it was still possible to achieve the project opening date of September 30, 2006. While it is still possible to make a September 30, 2006 opening, the schedule is very aggressive and relies on the ability to place orders for long lead-time items (tram equipment, structural steel) in early May, 2005.

Why couldn't this item have been filed a month earlier preventing the need for the emergency clause?

The project team, upon receiving notice to restart the project in mid-February, had less than two months to finalize contract negotiations for the Tram Equipment Supply and Construction Manager/General Contractor contracts. Moving these items up 30 days would have been impossible, as the contracts are highly complex and required more than three weeks to assemble. In assembling the project schedule, the project team identified the fact that to meet the September 30, 2006 opening date, the Council actions would need to be in the form of emergency ordinances, as completing the contract negotiations 30 days earlier would not be possible and adding 30 days for a non-emergency ordinance to take effect would simply push the end date of the project out 30 days. In February, PDOT and Mayor's office staff met to identify the schedule for the project, including the need for an emergency ordinance to meet the proposed opening date for the project.

In addition, the increased project cost has necessitated an amendment to the South Waterfront Central District Project Development Agreement. This amendment was negotiated on as fast a timeline as possible, and filed for Portland Development Commission approval on April 13th, with a follow-up action on April 27th if necessary. The tram contracts could not be considered by City Council any earlier than April 27th, as funding commitments by OHSU to pick up the additional tram costs would not be in place prior to the 27th.

Why is it in the public's best interest to have the item filed as an emergency, precluding the opportunity for public review and input through the regular agenda process?

There has been extensive public review and input on the Portland Aerial Tram project, and there will continue to be in the future. The items before Council simply implement the direction given by Council previously – there are no “surprises” to the public. Over the last month, City staff have communicated directly with the Tram CAC, CTLH and Homestead Neighborhoods, Friends of Terwilliger, the Design Commission, North Macadam URAC, and Gibbs Street Residents on the status of the project and the actions before Council at this time. We will continue to work with these groups and others as the project moves further into the construction process.

The public is best served with an emergency ordinance for this project because it protects the City from taking on additional costs (in the form of temporary transportation and damage claims) should the September 30, 2006 opening date be delayed. Also, the sooner that the City can execute the construction contracts, the sooner that cost drivers on the project (steel materials costs, exchange rate fluctuations) can be mitigated by locking in costs and taking cost variability out of the most volatile project elements. Last, it is in the public's best interest to ensure that the Tram project does what it is supposed to do – provide a quick, reliable transportation link between South Waterfront and Marquam Hill. It is important that this link be available at the opening of the first OHSU building to encourage proper travel behavior from the beginning in South Waterfront.

8. FINANCIAL IMPACT

No Financial Impact/Budgeted Item.

9. RECOMMENDATION/ACTION REQUESTED

Pass Ordinance.

