

ORDINANCE No. 179366^N

*Amend contract with Portland Aerial Transportation, Inc. for the Portland Aerial Tram project (Ordinance; amend Contract No. 35021)

The City of Portland ordains:

Section 1. The Council finds:

1. The City Council, on January 8, 2003, approved Ordinance No. 177185, authorizing a contract with Portland Aerial Transportation, Inc. (PATI) for a design competition for the Portland Aerial Tram. The Design Competition for the Portland Aerial Tram resulted in the selection of agps architecture as the architect for the project.
2. City Council approved Ordinance No. 177797 on August 14, 2003, authorizing Contract No. 35021 between the City and PATI. The contract provides for design, project management, and expert advisory services for the Portland Aerial Tram for the Schematic Design and Design Development phases of project engineering and design.
3. City Council approved Ordinance No. 178482 on June 10, 2004, amending Contract No. 35021 between the City and PATI to extend design, project management, and expert advisory services for the Portland Aerial Tram through the Construction Document phase of the project.
4. City Council approved Ordinance No. 179222 on April 28, 2005, amending Contract No. 35021 between the City and PATI to extend design, project management, and expert advisory services for the Portland Aerial Tram through the Construction phase of the project.
5. The City and PATI have negotiated an amendment, attached as Exhibit A, to their agreement for professional services that will modify the payment terms between the City and PATI. The current payment terms state that the City will provide payment equal to 18.18% of the cost PATI incurs for the scope of services under Contract #35021; the proposed contract amendment modifies the City's responsibility to full reimbursement for PATI's costs under Contract No. 35021 beginning June 1, 2005. The total increase in compensation provided by the City under these terms is \$1,294,934.
6. Concurrent with City Council's consideration of this Ordinance, PDOT has also submitted an Intergovernmental Agreement (IGA) with Oregon Health and Science University (OHSU) for City Council's action. The IGA provides for OHSU to reimburse the City for expenses incurred on the Portland Aerial Tram Project, consistent with the funding plan for the project as laid out in the South Waterfront Central District Project

Development Agreement, as amended by the Portland Development Commission on April 13, 2005.

7. Funding for the City's share of the services described in Exhibit A is provided by the Portland Development Commission through an Intergovernmental Agreement with PDOT.

NOW, THEREFORE, the Council directs:

- a. The Mayor and the Auditor are hereby authorized to execute an amendment to Contract No. 35021, in substantial conformance with the contract attached as Exhibit A to this Ordinance.
- c. The Mayor and Auditor are hereby authorized to draw and deliver checks to Portland Aerial Transportation, Inc., chargeable to the Transportation Fund.
- d. The City's Project Manager, with concurrence from the City's Purchasing Agent, 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 it is critical that contract documents and funding agreements be updated to reflect the current status of project funding; that cost accountability for the Portland Aerial Tram project be consolidated with the City as soon as possible; and that the City is able to honor its commitments to deliver the Portland Aerial Tram Project consistent with the schedule outlined in the South Waterfront Central District Project Development Agreement; therefore, this Ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council,

JUN 22 2005

Mayor Tom Potter
Prepared by: Matt Brown:slg
May 12, 2005
PATI Amendment 3.Ordinance 051205.doc

GARY BLACKMER
Auditor of the City of Portland

By

Susan Parsons

DEPUTY

ORDINANCE NO.

Title

Amend Contract with Portland Aerial Transportation, Inc. for the Portland Aerial Tram project. (Ordinance; amend Contract No. 35021)

INTRODUCED BY	Filed:
Mayor Tom Potter	Gary Blackmer Auditor of the City of Portland
NOTED BY COMMISSIONER	
Affairs	By: _____ Deputy
Finance and Administration	
Safety	
Utilities	
Works	
BUREAU APPROVAL	
Bureau: Transportation Engineering & Development	ACTION TAKEN:
Prepared by: Matt Brown:slg <i>MB</i> Date: May 12, 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: PATI Amendment 3 Ord 051205.doc	
Bureau Head: <i>Donald Gardner</i> Donald Gardner, Director	

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



**CONTRACT NO. 35021
AMENDMENT NO. 3
AGREEMENT FOR PROFESSIONAL SERVICES**

This Amendment modifies the Agreement for Professional Services (City Contract No. 35021) between the City of Portland, Office of Transportation ("City") and Portland Aerial Transportation, Inc. ("PATI") dated September 15, 2003.

AGREEMENT

Section 4. BILLING AND PAYMENT PROCEDURE of the original Agreement is hereby deleted in its entirety and replaced with the following:

Section 4. BILLING AND PAYMENT PROCEDURE

The Contractor's billing and City's payment procedures shall be as follows:

- (a) No more frequently than monthly, the Contractor shall submit invoices to the City's Project Manager for Project Management, Expert Tram Advisory Services and Peer Review Services provided through this Agreement as amended by Amendment No. 2. For these services performed through May 31, 2005 the City's share of the costs will be 18.18% of the total costs incurred by the Contractor. The balance of the invoiced amounts will be invoiced to and paid by Oregon Health and Science University ("OHSU"). For services performed after May 31, 2005 the City will reimburse PATI the full amount of the costs incurred, subject to the approval of the invoices by the City's Project Manager. The invoices shall include a statement of current expenditures, previous billings, total costs to date and the allocation of the costs to the appropriate Scope of Work task. All invoices shall bear the signature of a representative of the Contractor.
- (b) For Design Services as described in the Scope of Work in the Agreement as amended by Amendments No. 1 and 2, the Contractor shall submit invoices to the City Project Manager at the following times:
 - 1) Upon completion of 50% Schematic Design
 - 2) Upon completion of 100% Schematic Design
 - 3) Upon completion of 50% Design Development
 - 4) Upon completion of 100% Design Development
 - 5) Upon completion of 50% Construction Documents
 - 6) Upon completion of Value Engineering of the 50% Construction Documents
 - 7) Upon completion of 100% Construction Documents

The City's share of the cost for Invoices 1 through 6 will be 18.18% of the total costs incurred by the Contractor for these services. The balance of the invoiced amounts will be invoiced to and paid by OHSU. The City will reimburse PATI the full amount of expenses incurred for Invoice #7, subject to approval of the invoice by the City's Project Manager. All invoices shall include a statement of current expenditures, previous billings, and total costs to date. All invoices shall bear the signature of a representative of the Contractor.

- (c) City shall review and approve invoiced billings prior to payment. City shall endeavor to pay Contractor within thirty (30) days of receipt of the invoice.
- (d) Any invoices not paid by City within thirty (30) days of receipt shall bear interest at the rate of 0.75% per month, compounding monthly.

ALL OTHER PROVISIONS OF THE AGREEMENT AS PREVIOUSLY AMENDED REMAIN UNCHANGED.

AMENDMENT NO. 3, AGREED THIS 22 DAY OF JUNE 2005.

Portland Aerial Transportation, Inc.

By: Mike Lindberg
Mike Lindberg, President

City of Portland

By: Tom Potter
Tom Potter
MAYOR

Attest: Gary Blackmer
Gary Blackmer
City Auditor

Mark Ish
City Attorney
Approved as to Form

ORDINANCE No. 179366

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The City of Portland ordains:

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4. City Council approved Ordinance No. 179222 on April 28, 2005, amending Contract No. 35021 between the City and PATI to extend design, project management, and expert advisory services for the Portland Aerial Tram through the Construction phase of the project.
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Development Agreement, as amended by the Portland Development Commission on April 13, 2005.

7. Funding for the City's share of the services described in Exhibit A is provided by the Portland Development Commission through an Intergovernmental Agreement with PDOT.

NOW, THEREFORE, the Council directs:

- a. The Mayor and the Auditor are hereby authorized to execute an amendment to Contract No. 35021, in substantial conformance with the contract attached as Exhibit A to this Ordinance.
- c. The Mayor and Auditor are hereby authorized to draw and deliver checks to Portland Aerial Transportation, Inc., chargeable to the Transportation Fund.
- d. The City's Project Manager, with concurrence from the City's Purchasing Agent, 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 it is critical that contract documents and funding agreements be updated to reflect the current status of project funding; that cost accountability for the Portland Aerial Tram project be consolidated with the City as soon as possible; and that the City is able to honor its commitments to deliver the Portland Aerial Tram Project consistent with the schedule outlined in the South Waterfront Central District Project Development Agreement; therefore, this Ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council, JUN 22 2005

Mayor Tom Potter
Prepared by: Matt Brown:slg
May 12, 2005
PATI Amendment 3 Ordinance 051205.doc

GARY BLACKMER
Auditor of the City of Portland
By

Susan Parsons

DEPUTY



CITY OF
PORTLAND
 OFFICE OF
TRANSPORTATION

Mayor Tom Potter
 1120 S.W. 5th Avenue, Suite 800
 Portland, Oregon 97204-1914
 503-823-5185
 FAX 503-823-7576 or 823-7371
 TDD 503-823-6868

Brant Williams
 Director

Eileen Argentina
 System Management

Bryant Enge
 Finance

Don Gardner
 Engineering & Development

Sam M. Irving, Jr.
 Maintenance

Laurel Wentworth
 Planning

DATE: May 12, 2005
 TO: Mayor Tom Potter
 FROM: Matt Brown, Project Manager

FOR MAYOR'S OFFICE USE ONLY

Reviewed by Bureau Liaison _____

RE: *Amend Contract with Portland Aerial Transportation, Inc. for the Portland Aerial Tram project.
 (Ordinance; amend Contract No. 35021) EMERGENCY ORDINANCE

- 1. INTENDED THURSDAY FILING DATE: May 12, 2005
- 2. REQUESTED COUNCIL AGENDA DATE: June 1, 2005 *June 8²², 2005*
- 3. CONTACT NAME & NUMBER: Matt Brown, 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

7. BACKGROUND/ANALYSIS

This ordinance is related to and accompanied by an ordinance approving a capital funding Intergovernmental Agreement with OHSU and an ordinance amending the Portland Aerial Tram Local Improvement District for the Portland Aerial Tram project.

The current contract with Portland Aerial Transportation, Inc. (PATI) for the Portland Aerial Tram project defines a compensation amount for the City based on the original cost estimate (\$15.5 Million) for the tram. The City is responsible for 18.18% of the cost of the professional services provided under the contract. PATI has a side agreement with OHSU to fund the remaining 81.82% of the costs. The basis for the cost breakdown was the original breakdown between the contributions of the parties, exclusive of any LID amount - \$2.0 Million for PDC (2/11 or 18.18%), and \$9.0 Million for OHSU (9/11, or 81.82%).

As the project moves into the construction phase, it is important to ensure that accounting responsibility lies with a single source, and that the City, which holds the construction contracts for the project, is able to hold and control all of the financial and accounting centers for the project. The proposed amendment removes the 18.18% provision in the current contract and, effective June 1, 2005, makes the City responsible for 100% of the costs incurred under the contract, and moves an accounting center from PATI to the City, enabling City staff to see the total financial picture for the project.

At the same time as Council considers this ordinance, the Council will also consider approving an IGA with OHSU that obligates OHSU to provide the City with its \$4 Million cash contribution for the project that is part of the \$40 Million tram budget. This IGA, along with the Portland Aerial Tram Local Improvement District, will provide all of the necessary funds for payment under the PATI contract, and the total compensation due to PATI and its subconsultants under this contract has been previously captured in the overall tram budget.

Request for Emergency Designation

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

The current actions before Council are also the last remaining items necessary to finalize the Basic Contingency Period in the South Waterfront Central District Project Development Agreement. Upon revision of the LID ordinance and the approval of the capital funding IGA with OHSU, PDC, the City, and the Developer Parties will have fulfilled the Basic Contingencies under the Development Agreement, and the Agreement will be in full force from that point forward. It is important to finalize these last steps as soon as possible and enable all of the parties to pursue their respective projects with the assurance that the Development Agreement is in full force.

Implementing this contract amendment sooner, rather than later, is also critical to the success of this project. To date, the City has had to rely on PATI to provide accounting for the bulk of the soft costs on the project, and while PATI has fulfilled those duties, the process has been more difficult, confusing, and time-consuming than necessary.

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

This item is being filed as soon after the completion of the tram contract negotiations as possible, and is being filed as part of a trio of financially related items before Council – the PATI contract amendment, the OHSU/City IGA, and the LID revision. Of the three, the LID revision has taken the most time to finalize, and has required lengthy discussions with both internal and external counsel to ensure that the LID revision proposal was well-crafted and sound. Therefore, filing this item 30 days earlier and out of context with the other two items was not a possibility.

3) 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?

The emergency designation will not impede the public's ability to comment on the ordinance, and the ordinance will be heard on the Regular Agenda and the public will have an opportunity to comment. Previous community outreach efforts and City Council sessions have dealt with the substantive issues of the project in great detail. This item provides only for a bookkeeping change and is entirely consistent with past Council direction for the project.

8. FINANCIAL IMPACT

None. The City's financial contribution to the contract will increase from 18.18% to 100%, but those costs are covered within the existing Tram budget and through the proposed OHSU IGA and tram LID revision.

9. RECOMMENDATION/ACTION REQUESTED

Pass Ordinance.

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	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) June 1, 2005	5b. Calendar (Check One) REGULAR Consent 4/5ths <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	5. Date Submitted to OMF Budget Analyst: May 12, 2005	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 \$1,294,934 | <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)



Brant Williams, Director, Office of Transportation

