

ORDINANCE No. 179367^N

*Authorize an Intergovernmental Agreement with Oregon Health & Sciences University to provide capital funding to the City for the Portland Aerial Tram project (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. On August 13, 2003, the Portland Development Commission approved the South Waterfront Central District Project Development Agreement, and the Development Agreement was signed by all parties and put into effect on August 22, 2003. The Development Agreement has subsequently been amended by the Parties, and the latest amendment (Amendment #7) was approved by the Portland Development Commission (PDC) on April 13, 2005.
2. The South Waterfront Central District Project Development Agreement, as amended, contains the funding and financing plan for the Portland Aerial Tram Project. The Funding and Financing Plan provides for \$40,000,000 for the project budget, which is comprised of the following sources: OHSU, \$4,000,000; PDC, \$3,500,000; Local Improvement District, \$30,500,000; capitalized State Energy Tax Credits, \$2,000,000.
3. PDC, through an Intergovernmental Agreement with the Portland Office of Transportation (PDOT), has authorized its share of the funding for the Portland Aerial Tram Project in the amount of \$3,500,000.
4. The Portland Aerial Tram Local Improvement District was formed by City Council on August 18, 2004 with the approval of Ordinance #178675, and was subsequently amended on December 22, 2004, by City Council with the approval of Ordinance #179009. Concurrent with the consideration of this Ordinance, City Council will also consider the approval of an Ordinance further revising the Local Improvement District for the Portland Aerial Tram to provide for the funding identified in the Development Agreement.
5. On January 8, 2004, City Council approved Ordinance #178136, authorizing an Interim Funding Agreement with OHSU to provide funds for the design and engineering of tramway equipment for the Portland Aerial Tram Project. It was acknowledged by the Parties that a future funding agreement would supersede the interim agreement.
6. The South Waterfront Central District Project Development Agreement identifies the establishment of a capital funding agreement for the Portland Aerial Tram between the City and OHSU as a Basic Contingency of the Agreement. Both the City and OHSU desire to enter into a solid funding agreement outlining the funding responsibilities of the parties.

7. OHSU and the City have successfully negotiated an Intergovernmental Agreement (IGA), attached to this Ordinance as Exhibit A, which outlines the funding requirements and roles and responsibilities of the parties for the project.
8. OHSU and PDC have expended significant resources to date on the Portland Aerial Tram Project, and the IGA acknowledges the legitimate past expenditures of both parties to date on the project.
9. OHSU is providing professional staff to assist with the project. Costs for those staff are legitimate project costs that the City would otherwise provide, and have been included in the IGA between OHSU and the City.

NOW, THEREFORE, the Council directs:

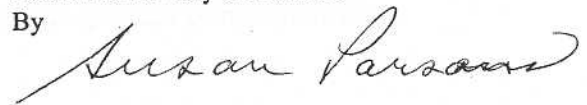
- a. The Mayor and City Auditor are authorized to enter into an Intergovernmental Agreement with Oregon Health and Science University (OHSU), in a form substantially in accordance with the agreement attached as Exhibit A.
- b. The Portland Office of Transportation is hereby authorized to bill and collect OHSU costs associated with the Portland Aerial Tram project in accordance with the provisions identified in the attached Exhibit A.
- c. The City's Project Manager is hereby authorized to enter into any amendment to the Intergovernmental Agreement, subject to the approval of the City Attorney, that does not reduce OHSU's funding obligations to the Portland Aerial Tram project.

Section 2. The Council declares that an emergency exists because it is critical that Funding Agreements be updated to reflect the current status of project funding; that OHSU staff are available to assist in the construction of the project; that cost accountability for the Portland Aerial Tram project be consolidated 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
OHSU IGA Ordinance 051205.doc

GARY BLACKMER
Auditor of the City of Portland
By



DEPUTY

Agenda No.

ORDINANCE NO.

Title

*Authorize an Intergovernmental Agreement with Oregon Health & Sciences University to provide capital funding to the City for the Portland Aerial Tram project (Ordinance)

<p>INTRODUCED BY</p> <p>Mayor Tom Potter</p> <p>NOTED BY COMMISSIONER</p> <p>Affairs</p> <p>Finance and Administration</p> <p>Safety</p> <p>Utilities</p> <p>Works</p> <p>BUREAU APPROVAL</p> <p>Bureau: Transportation Engineering & Development</p> <p>Prepared by: <i>MB</i> <i>CP</i> Date: May 12, 2005 Matt Brown:slg</p> <p>Budget Impact Review: <input checked="" type="checkbox"/> Completed <input type="checkbox"/> Not Required</p> <p>Included PPD: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Filename: OHSU IGA Ordinance 051205.doc</p> <p>Bureau Head: <i>Donald Gardner</i> Donald Gardner, Director</p>	<p>Filed:</p> <p style="text-align: center;">Gary Blackmer Auditor of the City of Portland</p> <p>By: _____ Deputy</p> <p>For Meeting of: <u>June 1, 2005</u></p> <p>ACTION TAKEN:</p>
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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	

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]


- Contracts \$4,000,000 – Contribution from OHSU to City for Portland Aerial Tram Project.
- Annual Supply Contract
- Grants
- Call for bids on purchasing contracts
- Reports to Council regarding completion of projects
- Claims payment under \$15,000
- Creation of a Local Improvement District
- 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

Exhibit A

Intergovernmental Agreement
between
City of Portland, Oregon
and
Oregon Health and Science University
for the
Portland Aerial Tram Project

This Intergovernmental Agreement ("Agreement") for the Portland Aerial Tram Project ("Tram") is between the City of Portland ("City"), a municipal corporation of the State of Oregon, and Oregon Health and Science University ("OHSU"), a public corporation of the State of Oregon, for the purposes of providing funding for the Tram and defining the roles and responsibilities of the City and OHSU over the course of the design and construction of the Project.

RECITALS

WHEREAS, OHSU has executed the South Waterfront Central District Project Development Agreement dated August 22, 2003 (as amended, the "Development Agreement") with the Portland Development Commission ("PDC"), River Campus Investors, LLC, North Macadam Investors, LLC, and Block 39, LLC; and

WHEREAS, the Portland City Council, the Portland Development Commission, the OHSU Board of Directors, and the private parties to the Development Agreement have all taken the appropriate actions to enact the Development Agreement; and

WHEREAS, under the terms of the Development Agreement, PDC acted as agent for the City and its bureaus, including the Portland Office of Transportation ("PDOT"); and

WHEREAS, the Development Agreement has been amended to reflect updated information on project costs and status, including the cost of the Tram, with the most recent amendment to the Development Agreement (Amendment #7) being approved by PDC on April 13, 2005 and the OHSU Board on June 7, 2005; and

WHEREAS, the funding for the design and construction of the Tram is set forth in the Funding and Financing Plan, which is defined in and is an exhibit to the Development Agreement. In general, the design and construction of the Tram is to be funded as follows: (a) a \$4.0 million contribution from OHSU; (b) a \$3.5 million contribution from PDC; (c) \$30.5 million in Local Improvement District (LID) financing; and (d) \$2.0 million in capitalized State Energy Tax Credits, for which OHSU will be the applicant; and

WHEREAS, the parties wish to implement the terms of the Development Agreement, as amended, and not vary from those terms; and

safety reviews, establishing a punchlist, and closing out construction of the Tram financially and otherwise.

The City shall be responsible for managing and tracking project costs. The City shall prepare and deliver to OHSU monthly reports on the status of the project. Such reports shall be delivered on the second Friday of each month, or as otherwise mutually agreed, at a regularly scheduled meeting between OHSU and PDOT, and shall include an updated report on expenditures and a comparison with the then-current Budget (defined below), an updated report on scheduling and a comparison to the then-current Project Schedule (defined below), as well as any other information reasonably requested by OHSU. In addition, the monthly reports will identify any issues which require the attention and direction of the parties.

The City will coordinate construction activities at the terminus of the Tram on Marquam Hill (the "Upper Tram Station") and at the terminus of the Tram on SW Gibbs Street (the "Lower Tram Station") with OHSU facilities staff and with OHSU's contractors working adjacent to the construction sites. In the event of scheduling or technical conflicts, the City will make every attempt to work with OHSU staff and/or contractors to identify means for mutually avoiding the conflict without incurring additional costs or schedule delays. In the event that a mutually acceptable solution is not identified, the provisions of Section 7 of this Agreement (Dispute Resolution) apply. PDOT agrees to take all reasonable steps to efficiently coordinate the activities of their contractors with OHSU's contractors on the sites adjacent to the Upper Tram Station and Lower Tram Station.

B. OHSU Obligations

OHSU has no obligation with respect to construction of the Tram except as provided in this Agreement and in the Development Agreement. Ethos Development Inc. ("Ethos") has contracted with OHSU to provide the following service to the Tram project:

Project management support - Project management support will be provided by Karl Schulz, including assisting PDOT's Project Manager with the following: (i) management of the design team and contractors; (ii) review and assembly of bid packages; (iii) coordination with OHSU activities at the Upper Tram Station and Lower Tram Station; (iv) submission to the City Engineer of a proposed commissioning plan for the Tram in consultation with PATI's expert tram advisor; and (v) other activities as directed by PDOT's Project Manager. The cost of Ethos' project management support services shall be a reimbursable project expense at the rate of \$115 per hour plus \$50 per hour for administrative support, and the total allowance for this expense shall be reflected in the Budget.

WHEREAS, PDC and the PDOT have entered into an Intergovernmental Agreement dated August 12, 2003, which provides for PDC's share of the Tram funding, consistent with the Development Agreement, and in which PDC has assigned to PDOT, and PDOT has assumed, certain obligations, including management of the design and construction of the Tram and funding PDC's contribution to the Tram; and

WHEREAS, the Development Agreement provides that one of the Project Contingencies (as defined in the Development Agreement) to the funding and construction of the Tram is the execution of the Tram Construction Funding Agreement among PDC, PDOT, and OHSU; and

WHEREAS, this Agreement, upon its execution, will fulfill the requirements of the Tram Construction Funding Agreement as described in the Development Agreement; and

WHEREAS, the City has entered into contracts with Doppelmayr-CTEC, Inc., Kiewit Pacific Co., and Portland Aerial Transportation, Inc. ("PATI") for the design and construction of the Tram;

WHEREAS, to insure that all of the project funds are utilized, the parties may invoice one another for certain costs and expenses incurred in the construction and management of the Tram project, all as set forth in Section 4 below; and

WHEREAS, this Agreement must be put into effect to formalize the funding commitments made by the parties to the Development Agreement and ensure that sufficient funds are available to complete PDOT's obligations for delivery of the Tram.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and other considerations contained herein, the parties hereto agree as follows:

1. Obligations of the Parties

A. City Obligations

The City shall be responsible for the design, budget, value engineering and construction administration of the Tram, including but not limited to scheduling work, day to day supervision of personnel, securing equipment purchase and construction contracts, and obtaining any approvals necessary for the successful completion of the Tram. To that end, the City will negotiate contracts with architects, engineers and other contractors, and will prepare and administer budgets and schedules. In addition, the City will supervise the preparation and solicitation of bids for the construction of the Project and shall negotiate change orders with contractors. The City shall oversee architectural and engineering design, obtain permits, supervise construction budgeting, and inspect work on the Tram while in progress. In addition, the City shall provide overall project supervision, including review and approving payment applications, conducting

B. PDC

PDC is obligated to contribute up to \$3,500,000 to the Tram project ("PDC's Contribution Amount"). As described in Section 2, PDC has already expended a portion of PDC's Contribution Amount, leaving a balance of \$2,996,415.23 to be contributed by PDC to PDOT for the Tram project ("PDC's Remaining Contribution Balance").

C. State of Oregon Energy Tax Credits

OHSU will be the primary applicant for State of Oregon Energy Tax Credits ("Tax Credits"). OHSU will advance \$2,000,000 of capital to the project based on the premise that OHSU will receive at least \$2,000,000 in Tax Credits from the Department of Energy over the first ten years of Tram operation. PDOT and OHSU agree that the \$2,000,000 advance on the Tax Credits will be available after July 1, 2006. In consideration of OHSU advancing the \$2,000,000 capital to cover the Tax Credits and the \$4,000,000 cash contribution, OHSU is entitled to any Tax Credits that it may be able to secure above and beyond the \$2,000,000 identified in the Tram budget. The parties acknowledge and agree that obtaining the Tax Credits is a joint obligation of PDOT and OHSU, and PDOT will assist OHSU in applying for the Tax Credits by providing necessary technical information required to complete the application process.

In the event that the State Energy Tax Credit program is modified and results in OHSU receiving less than \$2,000,000 in Tax Credits, or if the program is discontinued or eliminated and results in OHSU receiving less than \$2,000,000 in Tax Credits, or if the application for Tax Credits is denied, the parties agree to negotiate in good faith to modify the Funding and Financing Plan in the Development Agreement to reflect a mutually acceptable solution to providing the full amount of funds required to construct the Tram. Because the time required for recapturing the Tax Credits extends beyond the term of this Agreement, obligations related to the application for and receipt of Tax Credits as well as the dispute resolution provisions set forth in Section 7 will survive the expiration and/or termination of this Agreement.

D. Budgets

PDOT has prepared a construction budget for the Tram, which budget is attached hereto as Schedule 3 (the "Initial Budget"). The Initial Budget includes line items for services provided by OHSU and OHSU contractors and personnel pursuant to this Agreement and for services provided by PDOT and PDOT's contractors and personnel pursuant to this Agreement. The Initial Budget will be updated and amended from time to time, as PDOT identifies that the Initial Budget should be amended to reflect different phases of construction or the actual costs of construction (the Initial Budget and each subsequently approved budget, a "Budget" and collectively, the "Budgets"). OHSU has approved the Initial Budget.

PDOT shall submit all proposed budget amendments to OHSU, and OHSU shall have the right to review and approve only total budgeted costs and use of contingency, which approvals shall not be unreasonably withheld. If OHSU disapproves of the use of contingency as shown in any budget or believes that total construction costs exceed \$40,000,000, then OHSU shall so state with specificity in a written notice to PDOT. PDOT shall have five (5) business days from receipt of OHSU's disapproval notice to (i) respond with a revised budget amendment or (ii) submit the matter to the Project Advisory Team in accordance with Section 7.A. The Project Advisory Team shall work with heightened diligence to resolve the disputed amendment items as expeditiously as reasonably practicable. If OHSU fails to approve or disapprove of any proposed budget amendment in writing within ten (10) business days of its receipt thereof, OHSU shall be deemed to have approved the same.

Upon the written request of either party, the Project Advisory Team shall reconcile the amounts spent by both PDOT and OHSU with the then-applicable Budget on a line item by line item basis (e.g., such reconciliation shall show the amount expended to date on design costs and the remaining balance for the design cost line item). Reconciliation requests shall not be made more frequently than quarterly.

E. Project Schedule.

PDOT has prepared or will prepare within ten (10) business days of execution of this Agreement a Tram construction schedule (the "Project Schedule"), which Project Schedule shall provide for substantial completion of construction of the Tram as required by the Development Agreement. The Project Schedule will be updated and amended from time to time, as PDOT identifies that the Project Schedule should be amended to reflect different phases of construction or the actual construction timetable. PDOT shall submit the Project Schedule and revised versions thereof to OHSU, and OHSU shall have the right to review and approve the same only to the extent OHSU reasonably believes that the Tram will not be completed by the Late Completion Date set forth in the Development Agreement. If OHSU disapproves of the Project Schedule, then OHSU shall so state with specificity in a written notice to PDOT. PDOT shall have five (5) business days from receipt of OHSU's disapproval notice to (i) respond with a revised Project Schedule or (ii) submit the matter to the Project Advisory Team in accordance with Section 7.A. The Project Advisory Team shall work with heightened diligence to resolve the disputed items as expeditiously as reasonably practicable. If OHSU fails to approve or disapprove of any Project Schedule or amendment thereto in writing within ten (10) business days of its receipt, OHSU shall be deemed to have approved the same.

The parties acknowledge that this is a fast track, fiscally constrained project. PDOT will make every reasonable effort to ensure that the Tram is built according to the approved Project Schedule and Budget. In the event that PDOT and/or its contractors reasonably identify a need to (a) accelerate work, (b) modify

the construction approach, or (c) pay schedule premiums in order to meet the Project Schedule (collectively, "Modifications"), PDOT shall seek OHSU's approval of such Modifications in accordance with Sections 3.D. and 3.E. above. If OHSU's concurrence is requested by PDOT but not provided pursuant to Sections 3.D. and 3.E. above for actions reasonably deemed necessary by PDOT to maintain the Project Schedule, then for purposes of this Agreement OHSU shall be deemed to have accepted and approved the resultant modifications, if any, to the Project Schedule; provided, however, that OHSU's concurrence or non-concurrence with any such request(s) by PDOT under this Agreement shall not constitute nor be construed as (a) a waiver of any rights or remedies OHSU may possess under law or by virtue of any other agreement, including but not limited to those rights and remedies specified in the Development Agreement, or (b) an agreement by OHSU to increase its financial contributions to the approved Project Budget, or (c) a waiver of the provisions of Section 8, below.

F. Unavoidable Delay.

Nothing in this agreement is intended to waive or restrict any parties right to invoke the provisions of Section 14 of the Development Agreement regarding Unavoidable Delay.

4. Billing Procedures.

A. General

The parties anticipate that PDOT will invoice OHSU for sums to be paid by OHSU for construction of the Tram in accordance with this Section 4. Notwithstanding the foregoing, OHSU, as a means of providing flexibility to the parties in the use of total project funds, may, at PDOT's request, invoice PDOT for reimbursement of certain sums expended by OHSU for construction of the Tram. Specifically, OHSU will invoice PDOT for reimbursement of the costs of Ethos' services as outlined in Section 1.B. If OHSU obtains such reimbursement, then such costs shall not reduce OHSU's Remaining Contribution Balance. If, however, OHSU incurs the cost of Ethos' services and does not seek reimbursement for such amounts from PDOT, then OHSU's Remaining Contribution Balance shall be reduced by the amount of such costs. The parties do not anticipate that OHSU will invoice PDOT or its contractors for any other costs or expenses. In no event shall OHSU be obligated to pay to PDOT or otherwise expend on the Tram project more than OHSU's Remaining Contribution Balance.

B. City Billings to OHSU

By the fifth (5th) day of each month, PDOT shall submit an invoice to OHSU for payment. The invoice will summarize costs incurred and activities undertaken in the previous month, along with a request for payment by OHSU. In no event will the total of all billings to be paid by OHSU, plus any direct payments by OHSU

for Tram related expenses, less any reimbursement provided to OHSU, exceed OHSU's Remaining Contribution Balance.

C. OHSU Billings to City

If PDOT requests that OHSU invoice PDOT for reimbursement of costs incurred for Ethos' services, then OHSU shall submit an invoice to PDOT for payment by the fifth (5th) day of each month, with the following clearly marked title at the top: "REIMBURSEMENT REQUEST." The invoice will summarize costs incurred and activities undertaken in the previous month, along with a request for payment by PDOT. If PDOT does not request OHSU to submit an invoice for reimbursement, OHSU shall instead submit a statement to PDOT showing the costs incurred for the previous month, with the following clearly marked title at the top: "STATEMENT OF COSTS INCURRED." Unless otherwise mutually agreed in writing by the parties in advance of incurring costs, only those costs related to services provided by Ethos under this Agreement will be eligible for reimbursement or credit against OHSU's Contribution Amount.

D. Payment Terms

Upon receipt of any invoice or statement, the parties will have seven (7) calendar days to review and approve the invoice or statement. If the invoice is approved, payment will be made within thirty (30) days of original receipt of the invoice. If a party objects to an invoice, such party will provide written notice of such objection to the other party within the foregoing 7-day time period. The invoice will then be resubmitted and reviewed within five (5) calendar days, and this process shall continue until the invoice is approved, and once approved, the invoice will be paid within thirty (30) days of the original submission or fifteen (15) days of the approval of the resubmission, whichever is the latest date. Any invoices remaining unpaid when due shall accrue interest at a rate of 0.75% per month. Upon written request by one party, the other party will provide reasonable evidence supporting the costs set forth on any invoice. Disputes regarding payment of invoices will be resolved in accordance with Section 7. An invoice will be deemed to be disputed if not agreed upon after two re-submissions of the same for approval by the other party.

5. Remedies

Nothing in this Agreement shall be deemed to lessen or otherwise modify the remedies provided to the parties in the Development Agreement, including without limitation, the remedies provided by Sections 18.4 and 18.5 thereof.

6. Cooperation between the Parties

The City and OHSU acknowledge that the Tram project's success is contingent on a close and effective working relationship between the City and its employees, officials, and agents, and OHSU and its employees, officials, and agents. The parties agree that they and their agents will cooperate to the greatest possible extent to ensure that the Tram

project, OHSU's construction projects, and OHSU's operations all remain on schedule and within budget to the greatest extent possible. For purposes of this Agreement, PDOT's and OHSU's respective contractors shall be considered their agents.

Approvals required from OHSU which will enable the construction of the Tram in accordance with Project Budget and or the Project Schedule will not be unreasonably withheld. The parties anticipate that OHSU will need to provide, at no additional cost to the Tram project, a number of approvals in order for the Tram project to proceed consistent with the Project Schedule and Budget. OHSU and the City each have a duty to reasonably and collaboratively support their respective projects by providing reasonable access and approvals, including but not limited to the following:

Reasonable access to the Patient Care Facility (PCF) – Reasonable access to the Patient Care Facility will be required in order to properly connect and finish the bridge linking the Tram Upper Station to the PCF and coordinate access to connect new utilities and services to existing utilities and services. OHSU, at PDOT's request, will allow reasonable access to the PCF in order for PDOT and/or its contractors to complete their work in as timely and cost-effective a manner as possible. Similarly, PDOT and/or its contractors shall not unreasonably impact OHSU's operation of the PCF and the planned April 1, 2006 OHSU start up of PCF operations. PDOT and/or its contractors shall allow reasonable access to the PCF parking structure and PCF turnaround at all times during the construction of the Tram. The parking structure will be providing parking for OHSU contractors until 2006. Public parking will be initiated in spring 2006 and will need to be available for this use at all relevant times. OHSU and PDOT and/or their contractors shall agree on a management plan to allow for reasonable delivery access to the PCF loading dock when necessary. The loading dock deliveries will be scheduled to minimize the impact on Tram and PCF project schedules, project budgets and operation, and will be on some agreed regular basis.

Reasonable access to the Casey Eye Garage – OHSU will grant reasonable access to PDOT and/or its contractors to the Casey Eye Garage for the purposes of providing a connection between the Tram elevator/stair core and the Casey Eye Institute. This work shall be conducted in such a manner as to allow 24 hour access by OHSU and the public from the Casey Eye Institute to the Dental School. OHSU will also grant PDOT reasonable access, including restrictions on public access, to the top deck of the Casey Eye Garage for the purposes of providing adequate safety areas for Tram Construction and construction access. PDOT shall reimburse the Casey Eye Institute for lost parking revenue in the same manner as applicable to OHSU construction projects. PDOT and/or its contractors shall act reasonably to minimize the amount of time the deck is closed to minimize the impact to OHSU parking availability.

Reasonable access to Lower Campus Drive and Casey Lawn Area – PDOT will require reasonable access to and across OHSU property between Lower Campus Drive (near Terwilliger Boulevard) and the Upper Station. This staging area is required in order to expeditiously construct the Upper Tram Station foundations and provide access to and from the construction site. PDOT shall, at Tram Project Expense, restore the staging area to the original grading and provide any other site restoration/mitigation as required by the City of Portland that is beyond or in addition to the site restoration/mitigation required for the PCF.

Reasonable Campus Drive Closure – OHSU will agree to any closures (full or partial) of Campus Drive that are reasonably requested by PDOT or its contractors in order to maintain Project Schedule and/or Budget or for the purposes of public safety. Access on Campus Drive to the PCF parking structure and loading dock shall be allowed as provided above. The Tram Project shall be responsible for scheduling and funding any cost impacts to Tri-Met for Campus Drive closures. PDOT and/or its contractors shall provide traffic plans and flagging to minimize the impacts of using Campus Drive during Tram construction.

7. Dispute Resolution

Project management and coordination on a day-to-day basis will occur between the City's project management staff and OHSU's project representatives. The timely resolution of project issues is critical to the success of the Tram project and the elimination or reduction of cost, schedule, or scope impacts. City staff and OHSU staff will collaborate in order to successfully construct the Tram project.

A. Project Advisory Team

In the event of a dispute under this Agreement, including without limitation, a conflict at the staff or project manager level regarding management of construction of the Tram, the disputed issue will be presented in writing (the "Dispute Notice") by a party to a small group of individuals representing PDOT, OHSU and PATI (the "Project Advisory Team") for resolution and direction. The Dispute Notice shall be sent by a method allowed under Section 10.H to each of the addresses set forth below. The Project Advisory Team will meet within ten (10) days of receipt of the Dispute Notice and will work diligently and in good faith to resolve the issues set forth in the Dispute Notice. Decisions of the Project Advisory Team shall be unanimous and will be final and binding on all parties. The Project Advisory Team will be comprised of the following individuals:

Director
Portland Office of Transportation
1120 SW Fifth Avenue, Room 800
Portland, OR 97204

South Waterfront Project Director
OHSU
3181 SW Sam Jackson Park Road
Mailstop L101 - Baird Hall, Room 1011
Portland, OR 97239

Executive Director
Portland Aerial Transportation, Inc.
1325 NW Flanders Street
Portland OR 97209

Notwithstanding the foregoing, if the disputed matter deals with technical issues related solely to public safety and does not (i) increase the overall project budget, (ii) result in the use of project contingency, (iii) cause a delay in the Project Schedule and/or (iv) materially affect the design, appearance or operation of the Tram, the Director of PDOT alone shall reasonably determine the appropriate resolution to the matter, shall immediately communicate that decision to OHSU, and that decision shall be final.

B. Mediation

If the Project Advisory Team is unable to resolve a dispute within forty (40) days of receipt of the Dispute Notice, the dispute shall be submitted to mediation prior to any party commencing litigation. In such an event, the parties to this Agreement shall participate in good faith in a non-binding mediation process. Within ten (10) days of mutual execution of this Agreement, the parties shall agree in writing on a mediator. In the absence of such agreement, each party shall select a mediator within ten (10) days of the expiration of the 40-day time period for the Project Advisory Team to resolve a dispute, and those mediators shall jointly select one individual to mediate and resolve the dispute within five (5) after the 10-day mediator selection time period has expired. All costs of mediation shall be borne equally by the parties.

C. Litigation

If the parties are unable to resolve the dispute described in the Dispute Notice through mediation by the date that is sixty (60) days (i) after selection of the mediator or (ii) if a mediator is selected within ten (10) days of mutual execution of this Agreement, after expiration of the 40-day time period for the Project Advisory Team to resolve a dispute, then the parties shall be free to pursue any and all actions at law or in equity to resolve such dispute.

8. Relationship to Development Agreement

This Agreement is not and shall not be construed as: (a) a waiver of a Basic Contingency (as defined in the Development Agreement) by OHSU or PDC, provided that the parties recognize that this Agreement fulfills one element of one Basic Contingency; (b) the determination by OHSU or PDC that a Basic Contingency has been satisfied; (c) a waiver

of a Project Contingency by OHSU, PDC, or PDOT; (d) a determination by OHSU, PDC or PDOT that a Project Contingency has been satisfied; or (e) any modification of the Development Agreement. Each party to the Development Agreement shall have all rights and responsibilities as provided by the Development Agreement, which shall remain unaltered by this Agreement. In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Development Agreement, the terms of the Development Agreement shall control.

9. Term of this Agreement

This Agreement shall be in full force and effect upon full execution by all of the parties, and shall run through the final acceptance of the Tram project by PDOT, unless terminated by mutual agreement and in writing by the parties.

10. General Provisions

- A. **Complete Agreement.** This Agreement and the Development Agreement constitute the complete agreement between OHSU and the City with respect to the funding plan for the Tram and the project-related responsibilities for the design and construction of the Tram.
- B. **Governing Law; Venue.** This Agreement is governed by and shall be construed in accordance with the substantive laws of the State of Oregon. Subject to the dispute resolution provisions set forth in Section 7, any actions under this Agreement shall be brought in the Circuit Court of Multnomah County.
- C. **Amendments.** This Agreement may not be changed, modified or altered, except by a written amendment executed by each of the individuals identified in Section 10.H. below.
- D. **Waiver of Breach.** No waiver of breach of any provision of this Agreement shall operate as a waiver of any subsequent breach of the same or any other provision.
- E. **Assignment.** Neither OHSU nor the City shall assign or subcontract any of its rights or responsibilities under this Agreement without obtaining mutual agreement in writing prior to such assignment. Any attempted assignment without mutual written consent shall be voidable at the option of the non-assigning party.
- F. **No Third Party Beneficiaries.** Nothing in this Agreement shall create any legal right or inure to the benefit of any third party not a signatory of this Agreement.
- G. **Recitals.** Each of the Recitals is incorporated into the body of this Agreement as if fully set forth herein.

H. Notices. All notices required or otherwise given hereunder shall be made in writing and sent by messenger, overnight courier service, fax or by certified or registered mail, return receipt requested, as follows:

If to OHSU: Oregon Health and Science University
Baird Hall
Legal Department, L585
3181 SW Sam Jackson Park Road
Portland, OR 97239
Attention: Chief Administrative Office
Facsimile: (503) 494-8935

with a copy to: Oregon Health and Science University
3181 SW Sam Jackson Park Road
Mailstop L101 - Baird Hall, Room 1011
Portland, OR 97239
Attention: Mark Williams, South Waterfront
Project Director
Facsimile: (503) 494-8935

If to the City: Portland Office of Transportation
1120 SW Fifth Avenue, Room 800
Portland, OR 97204
Attention: Matthew E. Brown, Project Manager
Facsimile: (503) 823-7371

Notices shall be deemed given on the earlier of actual delivery or refusal of a party to accept delivery thereof; provided, however, that notices transmitted by facsimile shall be deemed given on the date shown on a transmittal confirmation sheet if transmitted before 5:00 p.m. (otherwise on the following business day) and only if simultaneously transmitted by another means allowed by this Section 10.H. A party may change its address or fax number by delivery of notice to the other party in accordance with this Section.

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APPROVED:

CITY OF PORTLAND

**OREGON HEALTH AND SCIENCE
UNIVERSITY**

By: Tom Potter
Mayor Tom Potter

By: Peter O. Kohler
Peter O, Kohler, M.D.
President

Date: 7/6/05

Date: 6/14/05

By: Gary Blackmer
Auditor Gary Blackmer

Date: 7/7/05

Approved as to Form:

Approved as to Form:

[Signature]
City Attorney

[Signature]
OHSU General Counsel

Schedule 1
OHSU's Project Costs Through May 31, 2005

Vendors	Amount
Ball Janik LLP	\$ 2,633.40
City of Portland	199,436.25
Ethos Development Incorporated	11,609.00
Gordon E. Davis	88,939.67
OHSU Personnel	800.48
Newlands and Company Incorporated	7,626.25
Portland Aerial Transportation Incorporated	1,821,946.56
Grand Total	\$ 2,132,991.61

Schedule 2
Initial Budget

Doppelmayr CTEC Contract	\$ 9,968,163.00
Kiewit Pacific Company Contract	\$19,762,835.00
Soft Costs	\$ 7,155,301.00
Contingency	\$ 3,113,701.00
Total Budget	\$40,000,000.00

ORDINANCE No. 179367

*Authorize an Intergovernmental Agreement with Oregon Health & Sciences University to provide capital funding to the City for the Portland Aerial Tram project (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. On August 13, 2003, the Portland Development Commission approved the South Waterfront Central District Project Development Agreement, and the Development Agreement was signed by all parties and put into effect on August 22, 2003. The Development Agreement has subsequently been amended by the Parties, and the latest amendment (Amendment #7) was approved by the Portland Development Commission (PDC) on April 13, 2005.
2. The South Waterfront Central District Project Development Agreement, as amended, contains the funding and financing plan for the Portland Aerial Tram Project. The Funding and Financing Plan provides for \$40,000,000 for the project budget, which is comprised of the following sources: OHSU, \$4,000,000; PDC, \$3,500,000; Local Improvement District, \$30,500,000; capitalized State Energy Tax Credits, \$2,000,000.
3. PDC, through an Intergovernmental Agreement with the Portland Office of Transportation (PDOT), has authorized its share of the funding for the Portland Aerial Tram Project in the amount of \$3,500,000.
4. The Portland Aerial Tram Local Improvement District was formed by City Council on August 18, 2004 with the approval of Ordinance #178675, and was subsequently amended on December 22, 2004, by City Council with the approval of Ordinance #179009. Concurrent with the consideration of this Ordinance, City Council will also consider the approval of an Ordinance further revising the Local Improvement District for the Portland Aerial Tram to provide for the funding identified in the Development Agreement.
5. On January 8, 2004, City Council approved Ordinance #178136, authorizing an Interim Funding Agreement with OHSU to provide funds for the design and engineering of tramway equipment for the Portland Aerial Tram Project. It was acknowledged by the Parties that a future funding agreement would supersede the interim agreement.
6. The South Waterfront Central District Project Development Agreement identifies the establishment of a capital funding agreement for the Portland Aerial Tram between the City and OHSU as a Basic Contingency of the Agreement. Both the City and OHSU desire to enter into a solid funding agreement outlining the funding responsibilities of the parties.

7. OHSU and the City have successfully negotiated an Intergovernmental Agreement (IGA), attached to this Ordinance as Exhibit A, which outlines the funding requirements and roles and responsibilities of the parties for the project.
8. OHSU and PDC have expended significant resources to date on the Portland Aerial Tram Project, and the IGA acknowledges the legitimate past expenditures of both parties to date on the project.
9. OHSU is providing professional staff to assist with the project. Costs for those staff are legitimate project costs that the City would otherwise provide, and have been included in the IGA between OHSU and the City.

NOW, THEREFORE, the Council directs:

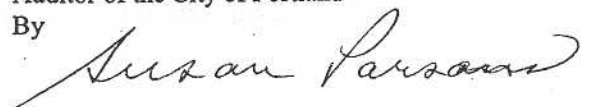
- a. The Mayor and City Auditor are authorized to enter into an Intergovernmental Agreement with Oregon Health and Science University (OHSU), in a form substantially in accordance with the agreement attached as Exhibit A.
- b. The Portland Office of Transportation is hereby authorized to bill and collect OHSU costs associated with the Portland Aerial Tram project in accordance with the provisions identified in the attached Exhibit A.
- c. The City's Project Manager is hereby authorized to enter into any amendment to the Intergovernmental Agreement, subject to the approval of the City Attorney, that does not reduce OHSU's funding obligations to the Portland Aerial Tram project.

Section 2. The Council declares that an emergency exists because it is critical that Funding Agreements be updated to reflect the current status of project funding; that OHSU staff are available to assist in the construction of the project; that cost accountability for the Portland Aerial Tram project be consolidated 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
OHSU IGA Ordinance 051205.doc

GARY BLACKMER
Auditor of the City of Portland
By



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

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

FOR MAYOR'S OFFICE USE ONLY

Reviewed by Bureau Liaison _____

Eileen
Argentina
System
Management

RE: *Authorize an Intergovernmental Agreement with Oregon Health & Science University to provide for capital funding for the Portland Aerial Tram project. (Ordinance)
EMERGENCY ORDINANCE

Bryant
Engle
Finance

1. INTENDED THURSDAY FILING DATE: May 12, 2005
2. REQUESTED COUNCIL AGENDA DATE: June ~~X~~, 2005
3. CONTACT NAME & NUMBER: Matt Brown, 823-7027
4. PLACE ON: CONSENT X REGULAR
5. BUDGET IMPACT STATEMENT ATTACHED: X Y N N/A
6. (3) ORIGINAL COPIES OF CONTRACTS APPROVED AS TO FORM BY CITY ATTORNEY ATTACHED: Yes X No N/A

Don
Gardner
Engineering &
Development

Sam M.
Irving, Jr.
Maintenance

Laurel
Wentworth
Planning

7. BACKGROUND/ANALYSIS

This ordinance is related to and accompanied by an ordinance amending the Portland Aerial Tram Local Improvement District and an ordinance amending Contract #35021 with Portland Aerial Transportation, Inc. On August 13, 2003, the Portland Development Commission (PDC) approved the South Waterfront Central District Project Development Agreement containing, among other items, the funding plan for design and construction of the Portland Aerial Tram. At that time, the budget had been set at \$15.5 Million, and the funding plan was broken out as follows: \$9.0 Million OHSU, \$2.0 Million PDC, and \$4.5 Million South Waterfront Local Improvement District. The agreement anticipated that OHSU could request the City to include \$5.0 Million of its \$9.0 Million obligation as part of a Local Improvement District assessment for OHSU owned properties on Marquam Hill. This amount was included in the original formation ordinance for the Portland Aerial Tram LID, and resulted in the reduction of OHSU's "cash" contribution to the project being revised to \$4.0 Million.

On April 13, 2005, the Portland Development Commission approved Amendment #7 to the South Waterfront Central District Project Development Agreement. The Amendment dealt with the issue of the revised budget for the Portland Aerial Tram, increasing the project budget from \$28.5 Million to \$40.0 Million. In the Development Agreement Amendment, OHSU committed to financing the entire \$11.5 Million cost increase through an increase in its Local Improvement District assessment.

The Development Agreement also calls for PDOT and OHSU to execute a Capital Funding Agreement for the Aerial Tram project. This item is a Basic Contingency of the Development Agreement, meaning that it must be completed and fulfilled before all the parties are fully obligated under the terms of the Agreement. This funding agreement, which is taking the form of the proposed Intergovernmental Agreement with OHSU, and the revision of the LID are the two remaining Basic Contingencies that must be fulfilled to fully enact the Development Agreement.

To date, OHSU has contributed a significant amount of the \$4.0 Million cash obligation called for under the IGA. These funds have been used to pay for design costs incurred by Portland Aerial Transportation, Inc. (PATI), engineering performed by Doppelmayr CTEC, the tram manufacturer, and for OHSU staff directly

ORDINANCE No. 179366

*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