

# ORDINANCE No. 177184

\*Agreement with Portland Aerial Transportation, Inc. for project management services for the OHSU/South Waterfront Aerial Tram. (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. The City Council, on July 10, 2002, adopted Resolution No. 36085 accepting the City Engineer's recommendation for the OHSU/South Waterfront Aerial Tram. The resolution directed the Portland Office of Transportation to work with Portland Aerial Transportation, Inc. (PATI) to resolve ownership, operating, and other issues associated with the construction of an aerial tram. The resolution also directed the Portland Office of Transportation and PATI to collaborate on the development of a design competition for the aerial tram.
2. PATI has been recognized as the project sponsor for the OHSU/South Waterfront Aerial Tram by the City Council in Resolution No. 36071, adopted on May 23, 2002.
3. PATI has raised and committed \$100,000 to help fund a scope of work for project management and the resolution of ownership, operating, construction and other issues. The proposed scope of work has a total anticipated budget of \$200,000.
4. The City will derive significant cost savings and benefit from entering into a contract with PATI because of the commitment by PATI to fund 50% of the project management costs.
5. The City and PATI have negotiated an agreement for professional services, attached as Exhibit A and Exhibit B, that details the services and funding amounts to be provided. The City funding for the project will not exceed \$100,000 or 50% of the total project cost, whichever is less.
6. Funding for project management services will be provided from funds identified specifically for support of the North Macadam Urban Renewal Area. The funding sources are Portland Office of Transportation System Development Charges (\$50,000) and Portland Development Commission Tax Increment Financing (\$50,000).

NOW, THEREFORE, the Council directs:

- a. The City Council waives Chapter 5.68 of City Code and authorizes the Commissioner of Public Utilities and the Auditor to execute an agreement, substantially in accordance with the Agreement attached to the original of this Ordinance, and by reference made a part thereof.

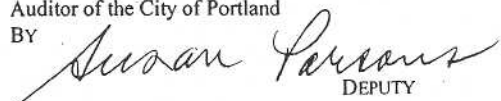
- b. The Mayor and Auditor are hereby authorized to draw and deliver checks to Portland Aerial Transportation, Inc., chargeable to the Transportation Fund.
- c. The City's Project Manager is hereby authorized to agree to and execute, on behalf of the City, any amendment, which does not increase the amount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

Section 2. The Council declares that an emergency exists because a delay in executing the agreement will result in significant delays to the tram design process, will allow design work to proceed without the benefit of the information provided through the agreement, and will result in critical information about the tram not being available for upcoming City Council actions; therefore, this Ordinance shall be in full force and effect from and after its passage by the Council

Passed by the Council, JAN 08 2003

Mayor Vera Katz  
Commissioner Jim Francesconi  
Matt Brown:slg  
December 24, 2002  
Tram PM 010803.doc

**GARY BLACKMER**  
Auditor of the City of Portland  
BY

  
DEPUTY

3 4 6 6 6

**AGREEMENT FOR PROFESSIONAL SERVICES**

This Agreement for Services (Agreement) is between the City of Portland, OR ("City") and Portland Aerial Transportation, Inc. ("Contractor").

**RECITALS:**

Whereas, on July 10, 2002, the City Council passed Resolution 36085, which accepted the Portland Office of Transportation's Marquam Hill to North Macadam Connector Study and endorsed the recommendations contained therein; and

Whereas, Resolution 36085 acknowledged the role of Portland Aerial Transportation, Inc ("PATI") as the project sponsor for the aerial tram; and

Whereas, Resolution 36085 directed the Portland Office of Transportation and PATI to work together to resolve ownership and operational issues; and

Whereas, on November 13, 2002, the City Council passed Resolution 36112 and approved the Design Development Phase work program related to the international design competition; and

Whereas, PATI, in collaboration with the Portland Office of Transportation has developed an additional work program to be conducted parallel to the design competition and provide for project management and resolution of outstanding issues regarding operation, maintenance and construction of the tram; and

Whereas, PATI has secured private sector commitments for funding of fifty percent of the parallel work program; and

Whereas, the additional work proposed by PATI is essential to the timely advancement of the project and necessary to be completed before the City Council can approve imitating final design and construction in Fall 2003.

**AGREEMENT:****1. SCOPE OF CONTRACTOR SERVICES**

(a) The Contractor shall, through subcontractors and its volunteer Board of Directors and with the assistance of the City, oversee and carry out project management, and Design Development Phase work preparatory to final design and construction. The specific services to be provided by the Contractor shall be in accordance with the detailed scope of work and budget as set forth in **Exhibit A** to this Agreement.

(b) The Contractor shall endeavor to carry out the services required by the

Agreement substantially in conformance with the schedule included in the scope of services and marked as **Exhibit B** to this agreement. However, the parties recognize that timely completion of some of the critical tasks set forth in the schedule are subject to the performance of others that are not a party to this Agreement or working under the direction of the Contractor.

(c) The services required by the Agreement do not include final design or actual construction of the Project. If the Project is pursued beyond the Design Development Phase, agreements between the City and Contractor for these activities may or may not be the subject of future negotiations.

2. **SCOPE OF CITY SERVICES**

The City will assist the Contractor in carrying out the requirements of this Agreement. The following sets out the general form of that assistance:

(a) The City Commissioner-in-Charge of the Portland Office of Transportation will serve on the Board of Directors of Portland Aerial Transportation, Inc. as the City's representative.

(b) Provide the services of a City Project Manager and other City Staff to work on a day-to-day basis with the Contractor and its subcontractors, to assist the Contractor in directing the Design Development Phase and to coordinate Public, City and other governmental requirements, review and approval procedures.

3. **COMPENSATION**

(a) The total estimated cost of performing the scope of work detailed in Exhibit A is \$200,000.00. This cost will be equally shared between the Contractor and the City. The Contractor shall advance funds in the amount of \$100,000.00 and provide proof thereof to the City. The City shall pay the Contractor for fifty percent of its actual costs of subcontractors and expenses incurred in carrying out the requirements of this Agreement in the maximum amount of \$100,000.00 provided that the compensation paid to the Contractor shall not exceed the following maximum amounts for each category of work set out in subsection 1(a) SCOPE OF CONTRACTOR SERVICES:

(1) Project Management	\$39,600
(2) Master Scheduling	\$ 7,200
(3) Oversight and Coordination	\$24,000
(4) Capital Plan Review	\$10,200
(5) Operations & Maintenance Plan	\$18,000
(6) Construction Alternatives Analysis	\$23,400
(7) Public Information	\$21,600
(8) Selection Process	\$18,000

(9) Anticipated Expenses	\$ 5,000
(10) Contingency	\$33,000
TOTAL	\$200,000

(b) The City and Contractor, upon written agreement may reallocate the maximum amounts for the categories of work set out in subsection 3(a) provided that the total amount to be paid by the City does not exceed the Total Maximum Compensation set forth in subsection 3(a). Allocations from contingency must be approved by the City Project Manager prior to expense being incurred by the Contractor.

(c) The payments made by the City under this Agreement shall be full compensation for work performed, for services rendered, and for all labor materials, supplies, equipment and incidentals necessary to perform the work and services required by this Agreement.

4. **BILLING AND PAYMENT PROCEDURE**

(a) The Contractor's billing and City's payment procedures shall be as follows: No more frequently than monthly, the Contractor shall submit invoices to the 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 workscope task. All invoices shall bear the signature of a representative of the Contractor.

(b) The City shall pay the Contractor within 30 days of receipt of the invoice.

5. **EFFECTIVE AND TERMINATION DATES**

This Agreement shall be effective as of January 8, 2003, and shall terminate on December 31, 2003, unless extended by a written amendment to this Agreement. The City will acknowledge costs incurred by the Contractor in association with this contract between December 12, 2002 and January 8, 2003, as part of the Contractor's \$100,000 contribution to this project.

6. **EARLY TERMINATION OF AGREEMENT**

(a) The City and the Contractor, by mutual written agreement, may terminate this Agreement at any time.

(b) The City, on thirty (30) days written notice to the Contractor, may terminate this Agreement for any reason deemed appropriate in its sole discretion.

(c) Either the City or the Contractor may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination, however, the

party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the party has not entirely cured the breach within fifteen (15) days of the notice, then the party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination.

(d) The Contractor, on thirty (30) days notice to the City, may terminate this Agreement in the event that the Project proves to be unfeasible due to, for example, absence of timely capital or operating funding commitments, requirements for significant changes in the Project design, significant cost increases and other causes outside of the Contractor's control.

## 7. PAYMENT ON EARLY TERMINATION

(a) In the event of termination under subsection-6(a), 6(b) or 6(d), EARLY TERMINATION OF AGREEMENT, hereof, the City shall pay the Contractor for work performed in accordance with the Agreement prior to the termination date.

(b) In the event of termination under subsection 6(c), EARLY TERMINATION OF AGREEMENT, hereof, by the Contractor due to a breach by the City, then the City shall pay the Contractor as provided in subsection (a) of this section.

(c) In the event of termination under subsection 6(c), EARLY TERMINATION OF AGREEMENT, hereof, by the City due to a breach by the Contractor, then the City shall pay the Contractor as provided in subsection (a) of this section, subject to set off of excess costs, as provided for in section 8(a), REMEDIES.

(d) In the event of early termination all of the Contractor's work product will become and remain property of the City.

## 8. REMEDIES

(a) In the event of termination under subsection 6(c), EARLY TERMINATION OF AGREEMENT, hereof, by the City due to a breach by the Contractor, then the City may complete the work either itself, by agreement with another contractor or by a combination thereof. In the event the cost of completing the work exceeds the remaining unpaid balance of the compensation provided under section 3, COMPENSATION, hereof, then the Contractor shall pay to the City the amount of the excess.

(b) The remedies provided to the City under section 6, EARLY TERMINATION OF AGREEMENT and section 8, REMEDIES, hereof, for a breach by the Contractor shall not be exclusive. The City also shall be entitled to any other equitable and legal remedies that are available.

(c) In the event of breach of this Agreement by the City, then the Contractor's remedy shall be limited to termination of the Agreement and receipt of payment as

provided in section 6(c), EARLY TERMINATION OF AGREEMENT, and section 7(b), PAYMENT ON EARLY TERMINATION, hereof.

9. **CITY PROJECT MANAGER**

(a) The City Project Manager shall be Matt Brown or such other person as shall be designated in writing by the Director of the Office of Transportation.

(b) The Project Manager is authorized to approve work and billings hereunder, to give notices referred to herein, to terminate this Agreement as provided herein and to carry out any other City actions referred to herein.

10. **COMPLIANCE WITH LAWS**

(a) In connection with its activities under this Agreement, the Contractor shall comply with all applicable federal, state and local laws and regulations.

(b) In the event the Contractor provides goods or services to the City in the aggregate in excess of \$2,500.00 per fiscal year, the Contractor agrees it has certified with the City's Equal Employment Opportunity certification process.

11. **OREGON LAW AND FORUM**

(a) This Agreement shall be construed according to the laws of the, State of Oregon.

(b) Any litigation between the City and the Contractor arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.

12. **INDEMNIFICATION**

(a) Indemnification for Public Liability and Property Damage

The Contractor shall hold harmless, defend and indemnify for public liability and property damage the City of Portland, and the City's officers, agents, and employees against all claims, demands, actions, and suits (including all attorney's fees and costs) brought against any of them arising from the Contractor's work or any subcontractor's work under this Agreement

(b) Indemnification for Professional Liability

The Contractor shall hold harmless, defend and indemnify for professional liability the City of Portland, and the City's officers, agents, and employees against all

claims, demands, actions, and suits (including all attorney fees and costs) brought against any of them arising from the Contractor's negligent acts or omissions, or any subcontractor's negligent acts or omissions under this Agreement.

13. **WORKERS' COMPENSATION INSURANCE**

(a) The Contractor, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon workers' compensation law and shall comply with ORS 656.017 which requires them to provide workers' compensation coverage for all their subject workers. A certificate of insurance, or copy thereof, shall be attached to this Agreement, if applicable, and shall be incorporated herein and made a term and part of this Agreement the Contractor further agrees to maintain workers' compensation insurance coverage for the duration of this Agreement.

(b) In the event the Contractor's workers' compensation insurance coverage is due to expire during the term of this Agreement, the Contractor agrees to timely renew its insurance, either as a carrier-insured employer or a self-insured employer, as provided by Chapter 656 of the Oregon Revised Statutes, before its expiration and the Contractor agrees to provide the City of Portland such further certification of workers' compensation insurance as renewals of said insurance occur.

(c) The Contractor agrees to accurately complete the City of Portland's Questionnaire for Workers' Compensation Insurance and for Qualification as an Independent Contractor prior to commencing work under this Agreement. The Questionnaire is attached to this Agreement as EXHIBIT C and shall remain attached to this Agreement and become a part thereof as if fully copied herein. Any misrepresentation of information on the Questionnaire by the Contractor shall constitute a breach of this Agreement. In the event of breach pursuant to this subsection, the City may terminate the Agreement immediately and the notice requirement contained in subsection 6(c), EARLY TERMINATION OF AGREEMENT, hereof, shall not apply.

14. **SUBCONTRACTING**

(a) The Contractor shall not subcontract its work under this Agreement, in whole or in part, without the written approval of the City. The Contractor shall require any approved subcontractor to agree as to the portion subcontracted, to fulfill all obligations of the Contractor as specified in this Agreement. Notwithstanding City approval of a subcontractor, the Contractor shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the Contractor hereunder. The Contractor agrees that if subcontractors are employed in the performance of this Agreement, the Contractor and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

(b) The City has approved the following subcontractors:

Rhodes Consulting, Inc.





20. **FUNDS**

The City certifies that sufficient funds are available and authorized for expenditure to finance the cost of this Agreement.

21. **BUSINESS LICENSE**

The Contractor as a non-profit corporation is not required to obtain a City of Portland business license as required by PCC 7.06.010. The Contractor shall require all subcontractors to obtain a City of Portland business license prior to beginning of work under this Agreement and shall provide a business license number on all agreements between the Contractor and subcontractors.

22. **COMMENCEMENT OF WORK**

The Contractor agrees that work being done pursuant to this Agreement will not be commenced until after:

(a) workers' compensation insurance is obtained as outlined in section 13, WORKERS' COMPENSATION INSURANCE; and,

(b) this Agreement is fully executed by the parties and approved by the City Attorney's Office; and

(c) the effective date of this Agreement as specified in section 5, EFFECTIVE AND TERMINATION DATES.

23. **MAINTENANCE OF RECORDS**

The Contractor shall maintain records on a current basis to support its billings to the City. The City or its authorized representative shall have the authority to inspect, audit and copy, on reasonable notice and from time to time, any records of the Contractor regarding its billings or its work hereunder. The Contractor shall retain these records for inspection, audit and copying for three (3) years from the date of completion or termination of this Agreement.

24. **AUDIT OF PAYMENTS**

(a) The City, either directly or through a designated representative, may audit the records of the Contractor at any time during the three (3) year period established by Section 23, MAINTENANCE OF RECORDS.

(b) If an audit discloses that payments to the Contractor under section 3, COMPENSATION, and section 4, BILLING AND PAYMENT PROCEDURE, were in

excess of the amount to which the Contractor was entitled, then the Contractor shall repay the amount of the excess to the City.

**25. LIABILITY INSURANCE**

(a) The Contractor and all subcontractors shall maintain public liability and property damage insurance that protects the Contractor, the subcontractor and the City and its officers, agents and employees from any and all claims, demands, actions and suits for damage to property or personal injury, including death, arising from the Contractor's work under this Agreement. The insurance shall provide coverage for not less than \$200,000 for personal injury to each person, \$500,000 for each occurrence, and \$500,000 for each occurrence involving property damage; or a single limit policy of not less than \$500,000 covering all claims per occurrence. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon during the term of the Agreement. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in - the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy. The insurance shall provide that the insurance shall not terminate or be canceled without thirty (30) days written notice first being given to the City Auditor. If the insurance is canceled or terminated prior to completion of the Agreement, the Contractor and subcontractors shall provide a new policy with the same terms. The Contractor and subcontractors agree to maintain continuous, uninterrupted coverage for the duration of the Agreement. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by the Contractor and subcontractors.

(b) The Contractor and subcontractors shall maintain on file with the City Auditor a certificate of insurance certifying the coverage required under subsection (a). The adequacy of the insurance shall be subject to the approval of the City Attorney. Failure to maintain liability insurance shall be cause for immediate termination of this Agreement by the City.

**26. OWNERSHIP OF DOCUMENTS**

(a) All work the Contractor performs under this Agreement shall be considered work made for hire and shall be the property of the City. The City shall own any and all data, documents, plans, copyrights, specifications, working papers and any other materials the Contractor produces in connection with this Agreement. On

completion or termination of the Agreement, the Contractor shall deliver these materials to the Project Manager.

(b) The Contractor may retain for its own use and at its own cost copies of the materials referred to in subsection (a) of this section.

(c) Any use the City makes of the materials referred to in subsection (a) of this section, except for purposes of the work contemplated by this Agreement, shall be at the City's risk.

## 27. ARBITRATION

(a) Any dispute arising out-of or-in connection with this Agreement, which is not settled by mutual agreement of the Contractor and the City within sixty (60) days of notification in writing by either party, shall be submitted to an arbitrator mutually agreed upon by the parties. In the event the parties cannot agree on the arbitrator, then the arbitrator shall be appointed by the Presiding Judge (Civil) of the Circuit Court of the State of Oregon for the County of Multnomah. The arbitrator shall be selected within thirty (30) days from the expiration of the sixty (60) day period following notification of the dispute. The arbitration, and any litigation arising out of or in connection with this Agreement, shall be conducted in Portland, Oregon, shall be governed by the laws of the State of Oregon, and shall be as speedy as reasonably possible. The applicable arbitration rules for the Multnomah County courts shall apply unless the parties agree in writing to other rules. The arbitrator shall render a decision within forty-five (45) days of the first meeting with the Contractor and the City. Insofar as the Contractor and the City legally may do so, they agree to be bound by the decision of the arbitrator.

(b) Notwithstanding any dispute under this Agreement, whether before or during arbitration, the Contractor shall continue to perform its work pending resolution of the dispute, and the City shall make payments as required by the Agreement for undisputed portions of the work.

## 28. AMENDMENTS

(a) The City and the Contractor may amend this Agreement at any time only by written amendment executed by the City and the Contractor. Unless otherwise provided, any amendment that increases the amount of compensation payable to the Contractor must be approved by ordinance of the City Council. The Project Manager may agree to and execute any other amendment on behalf of the City.

(b) Any change in the Scope of Contractor Services shall be deemed an amendment subject to subsection (a).

29. **PROGRESS REPORTS**

The Contractor shall provide progress reports to the Project Manager as requested by the Project Manager.

30. **NON-WAIVER**

The City and the Contractor shall not be deemed to have waived any breach of this Agreement by the other party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach be of the same nature as that waived.

31. **PROHIBITED INTEREST**

(a) No City officer or employee during his or her tenure shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

(b) No City officer or employee who participated in the award of this Agreement shall be employed by the Contractor during the period of the Agreement.

35. **PAYMENTS TO VENDORS AND SUBCONTRACTORS**

The Contractor shall pay, in a timely fashion, all suppliers, lessors and contractors providing it services, materials or equipment for carrying out its obligations under this Agreement. The Contractor shall not take or fail to take any action in a manner that causes the City or any materials that the Contractor provides hereunder to be subject to any claim or lien of any person without the City's prior written consent.

PORTLAND AERIAL TRANSPORTATION, INC.

By: [Signature]

Title: Chair

Tax ID No: 43-1962524

APPROVED AS TO FORM:

\_\_\_\_\_  
Legal Counsel

CITY OF PORTLAND

By: [Signature]

Title: Commissioner of Public Utilities

Date: 2/24/03

APPROVED AS TO FORM:

APPROVED AS TO FORM

[Signature]  
City Attorney

CITY ATTORNEY

SUBJECT TO INSURANCE APPROVAL

BY: [Signature]  
AUDITOR



**EXHIBIT A**

**OHSU/SOUTH WATERFRONT AERIAL TRAM**  
**DESIGN DEVELOPMENT PHASE**  
**SCOPE OF WORK**

**PROJECT MANAGEMENT SERVICES**

**PORTLAND AERIAL TRANSPORTATION, INC.**  
**RHODES CONSULTING, INC.**

**DECEMBER 12, 2002**

## **TASK 1: PROJECT MANAGEMENT**

**BACKGROUND:** The PATI Board is comprised of unpaid volunteers and must rely on a Project Manager to oversee day-to-day operations, manage contracts, and provide for organizational needs.

**PRODUCT:** Project management and administrative support usual and customary for such endeavors.

### **WORK TO BE ACCOMPLISHED:**

- 1.1) Schedule monthly PATI Board meetings
- 1.2) Prepare meeting notices, agendas, correspondence and minutes
- 1.3) Review and approve invoices
- 1.4) Track contract schedule/expenditures
- 1.5) Monitor initial capital finance plan development

**TIMEFRAME:** 12/02-9/03



## **TASK 2; MASTER SCHEDULE DEVELOPMENT**

**BACKGROUND:** Preliminary review indicates that there are substantial order times for tram components, including up to twelve months for wire ropes. In order to achieve revenue service in time for building occupancy a schedule is required which reflects the anomalies of the tram industry.

**PRODUCT:** A detailed master schedule for the aerial tram project from commencement of design to start-up of revenue service. The schedule will indicate major benchmark points in the project to allow the PATI Board to measure progress and assure on-time performance.

### **WORK TO BE ACCOMPLISHED:**

- 2.1) Research a variety of issues related to schedule development including:
  - Lead time requirements on equipment and components.
  - Testing and break-in operation requirements.
  - Construction phasing and duration
  - Training requirements for operators and maintenance personnel.
  - Permitting requirements and timelines
  
- 2.2) Develop a detailed project schedule and validate with manufacturers and tram engineering consultants. Submit schedule to PATI Board for approval.

**TIMEFRAME:** 1/03-3/03

### **TASK 3: PROJECT OVERSIGHT AND COORDINATION**

**BACKGROUND:** The aerial tram project will involve the development and implementation of agreements between the City, PATI and consulting firms. While begun as a non-profit entity with stakeholder cash advances, PATI must seek and receive public resources to accomplish its mission. This will require on-going management and coordination with the City and PDC.

**PRODUCT:** Resolution of the aerial tram ownership issue and PATI's contractual relationship with the City. On-going management and coordination with the City.

#### **WORK TO BE ACCOMPLISHED:**

3.1) On-going management and coordination with the City

**TIMEFRAME:** 12/02-9/03

**TASK 4: REVIEW/REVISE CAPITAL FINANCE PLAN (CFP)**

**BACKGROUND:** The capital budget for the Central District relies on a variety of funding sources and estimate elements as outlined in the Master Development Agreement. The current estimate is based on a compilation of costs from various sources.

**PRODUCT:** Review and conformation, or revision if warranted, of the capital budget and funding strategy for design and construction of the aerial tram.

**WORK TO BE ACCOMPLISHED:**

- 4.1) Review/validate the capital budget using an engineering consultant, manufacturers and contractor(s).
- 4.2) Develop and obtain agreement on any necessary revisions to the capital finance plan.
- 4.3) Assist in implementing agreements.

**TIMEFRAME:** 2/03-4/03

## **TASK 5: OPERATIONS AND MAINTENANCE PLAN**

**BACKGROUND:** Operation and maintenance programs for aerial trams are largely tailored to each unique installation. Labor will be the principal cost driver in terms of the operating budget. In addition, preliminary review indicates that hours of operation and operating frequency have a significant effect on overall cost by dictating maintenance staffing. PATI has committed to the City Council that the operating side of the equation would be balanced prior to proceeding with design and construction. It is essential to resolve these issues as soon as possible.

**PRODUCT:** A detailed operating and maintenance requirements plan including staffing requirements, labor sources and strategy, and budget.

### **WORK TO BE ACCOMPLISHED:**

- 5.1) Meet with tram operators and manufacturers to determine maintenance activity levels, the interplay between operating hours/operating scenarios and maintenance activities, and labor skill levels required.
- 5.2) Draft operating policies including service frequency, fare structure, hours of operation, and other revenue service related issues.
- 5.3) Develop a detailed operating budget including:
  - Staffing levels
  - Hours of operation and frequency,
  - Routine maintenance and repair
  - Annualized major maintenance
  - Annual inspection and certification,
  - Utility costs
  - Insurance.

Multiple budgets will be advanced that display for the PATI Board the cost trade-offs of various operating scenarios.

- 5.4) Assist in development of a plan for funding operating requirements.

**TIMEFRAME:** 1/03-4/03

## **TASK 6: DESIGN & CONSTRUCTION ALTERNATIVES ANALYSIS**

**BACKGROUND:** The construction of an aerial tram is somewhat dissimilar from other infrastructure projects in that it involves special design effort with a limited number of available practitioners. In addition, the equipment manufacturer plays a major role in both design and construction. Actual construction will require working adjacent and over I-5 requiring Oregon Department of Transportation and perhaps Federal Highway Administration approval. Terwilliger Parkway represents a significant natural resource with thoughtful community stewards. Construction through and above this resource must be well planned and carefully undertaken in order to avoid adverse impacts.

**PRODUCT:** Recommendation to the PATI Board on the most advantageous design and construction management scenario.

### **WORK TO BE ACCOMPLISHED:**

- 6.1) Research past industry practices and actual project performance.
- 6.2) Perform a construct ability review and prepare a construction plan for I-5 and the Terwilliger Parkway.
- 6.3) Negotiate implementing agreements with the City and Oregon Department of Transportation.

**TIMELINE:** 5/03-8/03

## **TASK 7: PUBLIC INFORMATION PROGRAM**

**BACKGROUND:** Portland has a long history of engaging citizens in planning and design of projects, which transform the built environment. The aerial tram can only attain a high level of community acceptance if our citizens are actively informed and participate in its evolution. The design competition provides for a number of exhibitions, workshops and open houses to facilitate communication.

**PRODUCT:** Support production of public events sponsored by the design competition and participate as required.

### **WORK TO BE ACCOMPLISHED:**

- 7.1) Provide advice and support for the planning and production of public events
- 7.2) Attend public events and regulatory commission meetings

**TIMELINE:** 12/02-9/03

## **TASK 8: FINAL DESIGN & CONSTRUCTION SELECTION PROCESS**

**BACKGROUND:** The design and construction of the aerial tram is a unique undertaking and will likely not fit the standard template for a "public works" project. There are a limited number of technical designers, equipment manufacturers and installers. In order to control both cost and quality it may be beneficial to select a design/build team through a qualification-based process. Once selected, on-going management of the contract will be required.

**PRODUCT:** Development of a white paper outlining the various options for proceeding with design and construction and a recommendation to the City Council. A detailed selection process and agreements for design and construction between the City and PATI.

### **WORK TO BE ACCOMPLISHED:**

- 8.1) Draft issues paper on the various alternatives for selection of final design and construction vendors
- 8.2) Development of a detailed selection process for City Council approval
- 8.3) Negotiation/preparation of agreements between the City and PATI necessary for proceeding with final design and construction

**TIMEFRAME:** 5/03-9/03

EXHIBIT B

Start: 12/20/2002  
Finish: 10/1/2003

TRAM PROJECT DEVELOPMENT PHASE  
Outline Gantt View; Express Table

Page #1

Activity Name	Q1-2003			Q2-2003			Q3-2003			Q4-2003
	01	02	03	04	05	06	07	08	09	10
1 TRAM PROJECT DEVELOPMENT PHASE	9/30/2003									
2 1 PROJECT MANAGEMENT	9/30/2003									
3 1.1 Monthly Board meetings										
4 1.2 Notices, agenda, correspondence & minutes										
5 1.3 Manage agreements										
6 1.4 Track schedule & expenditures										
7 1.5 Monitor Capital Finance Plan development										
8 2. MASTER PROJECT SCHEDULE DEVELOPMENT	3/14/2003									
9 2.1 Research tram scheduling issues										
10 2.2 Develop detailed schedule with benchmarks										
11 3. PROJECT OVERSIGHT AND COORDINATION	9/30/2003									
12 3.1 Coordination with City/PDC										
13 4. REVIEW/REVISE CAPITAL FINANCE PLAN	4/30/2003									
14 4.1 Review/validate capital estimate										
15 4.2 Develop revisions to the Capital Finance Plan										
16 4.3 Assist in negotiating implementing agreements										
17 5. DEVELOP OPERATIONS AND MAINTENANCE PLAN	4/30/2003									
18 5.1 Determine maintenance requirements										
19 5.2 Develop operating plan/policies										
20 5.3 Develop detailed operating budget										
21 5.4 Develop plan for funding operating										
22 6. DESIGNS CONSTRUCTION ALTERNATIVES ANALYSIS	8/29/2003									
23 6.1 Research industry practice										
24 6.2 Prepare construction plan										
25 6.3 Negotiate implementing agreements										
26 7. PUBLIC INFORMATION PROGRAM	9/30/2003									
27 7.1 Support Design Competition Process										
28 7.2 Attend meetings										
29 8. FINAL DESIGN/CONSTRUCTION SELECTION PROCESS	9/30/2003									
30 8.1 Draft issues paper on options										
31 8.2 Design selection process										
32 8.3 Council approval										
33 8.4 Draft implementing agreements										



## ORDINANCE No. 177184

\*Agreement with Portland Aerial Transportation, Inc. for project management services for the OHSU/South Waterfront Aerial Tram. (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. The City Council, on July 10, 2002, adopted Resolution No. 36085 accepting the City Engineer's recommendation for the OHSU/South Waterfront Aerial Tram. The resolution directed the Portland Office of Transportation to work with Portland Aerial Transportation, Inc. (PATI) to resolve ownership, operating, and other issues associated with the construction of an aerial tram. The resolution also directed the Portland Office of Transportation and PATI to collaborate on the development of a design competition for the aerial tram.
2. PATI has been recognized as the project sponsor for the OHSU/South Waterfront Aerial Tram by the City Council in Resolution No. 36071, adopted on May 23, 2002.
3. PATI has raised and committed \$100,000 to help fund a scope of work for project management and the resolution of ownership, operating, construction and other issues. The proposed scope of work has a total anticipated budget of \$200,000.
4. The City will derive significant cost savings and benefit from entering into a contract with PATI because of the commitment by PATI to fund 50% of the project management costs.
5. The City and PATI have negotiated an agreement for professional services, attached as Exhibit A and Exhibit B, that details the services and funding amounts to be provided. The City funding for the project will not exceed \$100,000 or 50% of the total project cost, whichever is less.
6. Funding for project management services will be provided from funds identified specifically for support of the North Macadam Urban Renewal Area. The funding sources are Portland Office of Transportation System Development Charges (\$50,000) and Portland Development Commission Tax Increment Financing (\$50,000).

NOW, THEREFORE, the Council directs:

- a. The City Council waives Chapter 5.68 of City Code and authorizes the Commissioner of Public Utilities and the Auditor to execute an agreement, substantially in accordance with the Agreement attached to the original of this Ordinance, and by reference made a part thereof.

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

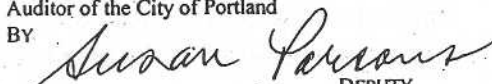
Section 2. The Council declares that an emergency exists because a delay in executing the agreement will result in significant delays to the tram design process, will allow design work to proceed without the benefit of the information provided through the agreement, and will result in critical information about the tram not being available for upcoming City Council actions; therefore, this Ordinance shall be in full force and effect from and after its passage by the Council

Passed by the Council, JAN 08 2003

Mayor Vera Katz  
Commissioner Jim Francesconi  
Matt Brown:slg  
December 24, 2002  
Tram PM 010803.doc

GARY BLACKMER  
Auditor of the City of Portland

BY

  
DEPUTY

file

**PORTLAND OFFICE OF TRANSPORTATION  
COUNCIL CALENDAR ITEM**

Council Calendar No. \_\_\_\_\_

Submitted for Council Consideration on: January 8, 2003 Regular Agenda Time Certain 10:00 a.m.

**DESCRIPTION:** This ordinance executes a contract with PATI for project management and design, operations, and construction scoping services over the next ten months. The City, through this ordinance, is committing up to \$100,000, or 50%, of the total contract cost for this work.

**BACKGROUND:** On July 10, 2002, City Council asked PATI and PDOT to work together to resolve ownership and operating issues related to the aerial tram, and to return to Council with the results of that work. The ordinance and agreement provide for this work to occur, and will help to inform the design team as it begins its work after the design competition. The primary intent of this work is the development of a master project schedule, a capital plan for construction, and an operating plan for ongoing tram operations. Much of this work will require special expertise and will involve extensive work with tram manufacturers, operators, and design consultants.

**ISSUES:** This is a sole source contract and requires Council to waive the purchasing requirements of City Code section 5.68. In addition, PATI has hired Vic Rhodes as a subcontractor for the Project Management scope of work. As the former director of PDOT, Vic has extensive experience in bringing along projects of this scale, profile, and complexity. A sole-source contract with PATI that includes a subcontract with Vic may cause some consternation, but the counter to that is the 50% cost sharing that the contractor (PATI) is bringing to the table on this contract.

Funding for the City's share of the costs for this scope of work will come from PDOT, through System Development Charge (SDC) revenues, and PDC, through North Macadam Tax Increment Financing (TIF).

Agreement has not yet been reached on two critical areas for the tram. First, the City has not yet resolved the ownership issues related to the tram, although there appears to be some willingness to accept the tram into public ownership subject to certain conditions. Second, no funding agreements have been reached with OHSU, River Campus Investors (RCI), North Macadam Investors (NMI), or other stakeholders related to the construction and operations of the tram. These agreements should be in place and ready for public review by March, 2003, as part of a development agreement between PDC and OHSU, RCI, and NMI.

**POTENTIAL PROBLEMS:** A sole source contract with PATI may raise some issues with the public and/or Commissioners. However, PATI has committed 50% of the project funding, and there are no other contractors out there that could offer the City a similar deal.

PATI's hiring of Vic Rhodes may raise some questions about his reappearance so soon after retiring from the City. However, the City's contract is with PATI and not Rhodes Consulting, and the scope of work that PATI has developed for the operations, capital, and construction issues is in direct response to City Council's direction in July, when Council asked for these issues to be addressed and resolved.

Public testimony will likely center on funding for the contract, and the lack of available funding elsewhere in the City to meet basic needs. It will be important to point out that the two sources of funds being used have been earmarked specifically for South Waterfront/North Macadam. PDOT SDC's have been budgeted in the amount of \$4.8 million to support infrastructure development in North Macadam, and PDC TIF can only be used in North Macadam. Neither source can be legally used to fund other operating/maintenance expenses and do not take away from the city's ability to provide basic services.

RECOMMENDATION: Pass Ordinance

<input type="checkbox"/> Can be delayed <input type="checkbox"/> week(s), if necessary	Fiscal Review by <u>TW</u>
<input type="checkbox"/> Should be filed this week.	<input type="checkbox"/> No impact at fund level
<input checked="" type="checkbox"/> Must be filed this week.	<input checked="" type="checkbox"/> Impact on Fund
	_____

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

Phone No. 503-823-7027

City of Portland  
**BUDGET/FINANCIAL COUNCIL ACTION IMPACT STATEMENT**

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

1. Name of Initiator Matt Brown, Project Manager	2. Interoffice Mail Address 106/800	3. Telephone No. 503-823-7027	4. Bureau/Office/Dept. PDOT/BTE&D/PMD
5a. To Be Filed (date) January 8, 2003	5b. Calendar (Check One ) <b>REGULAR</b> Consent 4/5ths <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	5. Date Submitted to OMF Budget Analyst: January 2, 2003	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 [ ]

- |  |   |
|--|---|
| <input type="checkbox"/> Contracts   | <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 [ X ] \$100,000.00 (not-to-exceed)

**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?

**The proposed ordinance and contract with Portland Aerial Transportation, Inc. (PATI) will initiate project management work on the aerial tram. The primary focus of the work will be to define capital and operating plans for the tram, to resolve ownership and operating issues, and to develop a procurement and construction strategy for the tram.**

B. Who will be affected by the proposed action? (List other City bureaus? Citizens? The business community?)

**This action will primarily affect PDOT and PDC within the City, as these two agencies are the City's funding agencies for this action. The results of this work may lead to or inform future agreements with OHSU and North Macadam developers/property owners on the aerial tram. Also, the work will attract intense citizen interest, especially as it relates to any ownership or funding assumptions or conclusions that may be derived from this work.**

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.

**The total cost of the work proposed for this effort is \$200,000. The City will fund up to \$100,000, with the contractor (PATI) assuming the remaining portion of the work. This action does not imply any future commitments, but may inform ongoing and future negotiations surrounding the aerial tram.**

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.

**This cost is not included in this year's budget. However, there are funding sources available to fund this work. 50% of the City's cost (up to \$50,000) will come from PDOT System Development Charges (SDCs), and 50% (up to \$50,000) will come from Portland Development Commission funds allocated to the North Macadam Urban Renewal Area. PDOT will pay PATI directly for 100% of the City's share and bill PDC for its share of the City contribution. PDC funds will be provided out of contingency and/or cost savings in the Bond Avenue engineering budget, which is part of an Interagency Agreement with PDOT for FY 02/03.**

E. What alternatives to this action have been explored?

None.

APPROPRIATION UNIT HEAD (Typed name and signature) 	
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L. David Hill, Acting City Engineer

Brant Williams, Director, Office of Transportation