

ORDINANCE No. 178136

*Authorize funding agreement with Oregon Health and Science University for pre-construction and engineering services for the Marquam Hill Aerial Tram.
(Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. The City Council, on August 14, 2003, approved Ordinance #177797; authorizing a contract with Portland Aerial Transportation, Inc. (PATI) for schematic design and design development services for the Marquam Hill Aerial Tram. The design team under that contract, led by the architecture firm of Angelil/Graham/Pfenninger/Scholl, has reached the 50% level of Schematic Design.
2. The Portland Development Commission (PDC), incorporating City Council's advice, approved the South Waterfront Central District Project Development Agreement on August, 13, 2003. The agreement was signed by all parties and put into effect on August 22, 2003.
3. The South Waterfront Central District Project Development Agreement provides for \$15,500,000 of funding for the aerial tram project. This funding amount is composed of three primary sources – OHSU, \$9,000,000; Tax Increment Financing, \$2,000,000; South Waterfront LID, \$4,500,000.
4. The funding agreement for PDC's share of the work is in place through Ordinance #177745, adopted on July 31, 2003, authorizing an Intergovernmental Agreement (IGA) between PDC and PDOT. The funding agreement for OHSU's share of the work is being submitted for Council action concurrent with this Ordinance.
5. A funding agreement for OHSU's share of pre-design and engineering services is required in order to fully fund design work for the aerial tram and to initiate a pre-construction contract with the Tram Equipment Supplier, Doppelmayr CTEC.
6. PDOT, with the assistance of Portland Aerial Transportation, Inc. (PATI), has successfully negotiated a scope of services for pre-construction services with Doppelmayr CTEC. The services include preliminary and final engineering and the development of an operations plan for the aerial tram.

Agenda No.

ORDINANCE NO.

Title

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<p>INTRODUCED BY</p> <p>Commissioner Jim Francesconi</p> <p>NOTED BY COMMISSIONER</p> <p>Affairs</p> <p>Finance and Administration</p> <p>Safety</p> <p>Utilities</p> <p>Works</p> <p>BUREAU APPROVAL</p> <p>Bureau: Transportation Engineering & Development</p> <p>Prepared by <i>AHA for 65</i> Matt Brown:slg <i>MB</i> Date December 30, 2003</p> <p>Budget Impact Review: <i>TN</i> <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 Ord Funding 12-30-03.doc</p> <p>Bureau Head: <i>Donald Gardner</i> Donald Gardner, Bureau 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>January 7, 2004</u></p> <p>ACTION TAKEN:</p>
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AGENDA		FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
			YEAS	NAYS
Consent	Regular XX			
NOTED BY		Francesconi	Francesconi	
City Attorney		Leonard	Leonard	
City Auditor		Saltzman	Saltzman	
City Engineer		Sten	Sten	
Approved by:		Katz	Katz	

INTERIM TRAM FUNDING AGREEMENT
PRECONSTRUCTION AND ENGINEERING SERVICES

This Agreement for Interim Tram Funding ("Agreement") is between the City of Portland, OR Office of Transportation ("City") and Oregon Health and Science University ("OHSU"), a public corporation of the State of Oregon for purposes of funding Preconstruction and Engineering Services for the Marquam Hill Aerial Tram ("Tram").

RECITALS:

- 1) OHSU has agreed upon and executed a Development Agreement with the Portland Development Commission (PDC); River Campus Investors, LLC; North Macadam Investors, LLC; and Block 39, LLC, dated August 14, 2003 (the "Development Agreement"). Defined terms used in this Interim Tram Funding Agreement (the "Agreement") and not separately defined in this Agreement, have the meaning given them in the Development Agreement.
- 2) The Development Agreement provides that one of the Basic Contingencies is approval of the Tram by the City, and the approval and execution of an agreement between Portland Office of Transportation (PDOT) and Portland Aerial Transportation, Inc. (PATI) pursuant to which PATI will manage the design of the Tram. The Development Agreement provides that one of the Project Contingencies to the funding and construction of the Tram is the execution of the Tram Construction Funding Agreement among PDC, PDOT and OHSU. The Tram Construction Funding Agreement will supersede this Agreement.
- 3) The funding for the design and construction of the Tram is set forth in the Funding and Financing Plan which is an exhibit to the Development Agreement. In general, the design and construction of the Tram is to be funded as follows: a \$9.0 million contribution from OHSU; a \$2.0 million contribution from PDC; and \$4.5 million of proceeds from bonds secured by an LID. PDC has entered into an Intergovernmental Agreement with PDOT pursuant to 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.
- 4) The City is prepared to enter into an Agreement for Preconstruction and Engineering Services with Doppelmayer-CTEC for design of the Tram system.
- 5) The City is not willing to enter into the Agreement for Preconstruction and Engineering Services unless OHSU and PDOT have agreed to periodically fund the payments to Doppelmayer-CTEC required by the Agreement for Preconstruction and Engineering Services. The Tram Construction Funding Agreement will provide City those assurances; however, that agreement will

not be executed for a period of time. In the interim, the City needs to commence its work and, therefore, needs an assurance of interim funding. OHSU is entering into this Agreement to assure the City that OHSU will provide its share of the needed interim funding.

AGREEMENT

SECTION 1 CITY OBLIGATIONS

City agrees to promptly enter into and perform its obligations under the Agreement for Preconstruction and Engineering Services with Doppelmayr-CTEC.

SECTION 2 PRIOR OHSU ADVANCES

OHSU has previously advanced funds to the project through Portland Aerial Transportation, Inc. (PATI). This Agreement does not change PATI's obligation to reimburse OHSU funds that have been previously advanced by OHSU.

SECTION 3 FUNDING ALLOCATION

OHSU and PDC have agreed in the Funding and Financing Plan that OHSU shall be obligated to fund \$9.0 million (or 58.06%) of the Tram's cost, and that PDC (through PDOT) shall be obligated to fund \$2.0 million (or 12.9%) of the Tram's cost. However, until the Local Improvement District is formed and \$4.5 million of bond proceeds are realized, OHSU and PDC have agreed to fund the amounts required to be paid to the City under this Agreement in the proportions of their relative combined funding obligations which are 81.82% (9/11ths) for OHSU and 18.18% (2/11ths) for PDC. This interim funding allocation does not alter the funding allocation set forth in the Funding and Financing Plan contained in the Development Agreement.

SECTION 4 INTERIM PAYMENTS

The Agreement for Preconstruction and Engineering Services provides that Doppelmayr-CTEC shall submit invoices periodically to the City and that valid invoices shall be paid within thirty (30) calendar days. City agrees to submit to OHSU a copy of each invoice and supporting information.

Invoices shall be submitted at the completion of the submittal of design documents at each of the following stages of design of the Tram:

50% Schematic Design	December 19, 2003
100% Schematic Design	January 23, 2004
50% Design Development	March 5, 2004
100% Design Development	April 30, 2004

Each invoice will be in the amount of 25% of the total compensation due Doppelmayr-CTEC which is \$487,500.00.

Within fifteen (15) business days after City has paid the invoiced amount (or that portion of the invoiced amount approved by City), as evidenced by a copy of City's check faxed to OHSU, then OHSU shall pay its share of the invoiced amount (or that portion of the invoiced amount approved by City) to the City.

SECTION 5 RELATIONSHIP TO DEVELOPMENT AGREEMENT

This Agreement is not and shall not be construed as: a waiver of a Basic Contingency by OHSU; the determination by OHSU that a Basic Contingency has been satisfied; a waiver of a Project Contingency by OHSU; a determination by OHSU that a Project Contingency has been satisfied; or any modification of the Development Agreement.

SECTION 6 TERM OF THIS AGREEMENT

This Agreement shall terminate upon the earlier of: December 31, 2004, any termination of the Agreement for Preconstruction and Engineering Services with Doppelmayr-CTEC, or the execution of the Tram Construction Funding Agreement.

SECTION 7 GENERAL PROVISIONS

7.1 **Complete Agreement.** This Agreement is the complete agreement between OHSU and the City with respect to the interim funding of the costs of the Tram.


7.2 **Notices.** A notice of communication to the parties shall be in writing and given by fax or by first-class mail as follows:

OHSU: Oregon Health & Science University
General Counsel, L 585
3181 SW Sam Jackson Park Road
Portland, Oregon 97201
Attn: Mr. Steven D. Stadum
Fax: 503-494-8935

CITY: Matthew E. Brown
Office of Transportation
1120 SW 5th Avenue, Suite 800
Portland, OR 97204

AGREED TO THIS ____ DAY OF DECEMBER 2003.

OREGON HEALTH AND SCIENCE UNIVERSITY

BY: 
TITLE: _____

Approved as to form:

Legal Counsel

CITY OF PORTLAND

BY: _____
TITLE: _____

Approved as to form:

City Attorney

ATTEST: _____
City Auditor

AGREED TO THIS 2nd February 4
DAY OF DECEMBER 2003.

OREGON HEALTH AND SCIENCE UNIVERSITY

BY: _____

Approved as to form:

TITLE: _____

Legal Counsel

CITY OF PORTLAND

BY: Ji Fra

Approved as to form:

TITLE: Commissioner/City of Portland

Inda Mery
City Attorney

ATTEST: Gary Blum
City Auditor

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7. Funding for the Doppelmayr CTEC contract will be provided by PDC and OHSU. PDC will fund 18.18% of the contract costs, and OHSU will fund 81.82%.

NOW, THEREFORE, the Council directs:

- a. The Commissioner of Public Utilities and the Auditor shall enter into a Funding Agreement with OHSU in substantial conformance with the attached Exhibit A.
- b. The Portland Office of Transportation is hereby authorized to bill and collect from OHSU costs associated with the tram project, in accordance with the attached Funding Agreement (Exhibit A).

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

Passed by the Council,

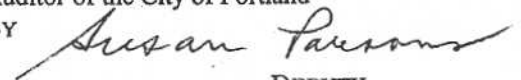
JAN 08 2004

Commissioner Jim Francesconi
Matt Brown:slg
December 30, 2003
OHSU Ord Funding 12-30-03.doc

GARY BLACKMER

Auditor of the City of Portland

BY



DEPUTY

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**PORTLAND OFFICE OF TRANSPORTATION
COUNCIL CALENDAR ITEM**

Council Calendar No. _____

Submitted for Council Consideration on: January 7, 2004 Regular Agenda

DESCRIPTION: This ordinance executes a funding agreement with OHSU to pay for preconstruction services for the aerial tram, including preliminary and final engineering, operations manual development, and design coordination with the design team currently under contract with Portland Aerial Transportation, Inc.

BACKGROUND: In August 2003, Council approved the South Waterfront Central District Development Agreement, which contained the funding and financing plan for a range of public projects, including the aerial tram. The agreement specifies that OHSU is responsible for \$9.0 million of the tram costs, and the agreement attached is to formalize the billing and payment procedures for OHSU's share of the costs.

ISSUES: The estimated cost for the tram appears to be higher than the funds available through the development agreement for South Waterfront. There will likely be pointed questions directed at this item from community members and Council members alike on the strategy for dealing with this issue. At this point, the PATI Board has recommended a course of action that seeks to contain or reduce project costs while maintaining a high degree of design integrity. Updated cost estimates will be available in late January, and the project budget, and any additional funding, can be settled then.

It is critical to formalize OHSU's funding commitment to the tram, even as updated cost estimates are provided.

POTENTIAL PROBLEMS: None.

RECOMMENDATION: Pass Ordinance

Can be delayed week(s), if necessary

Fiscal Review by TN

Should be filed this week.

No impact at fund level

Must be filed this week.

Impact on Fund

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

Phone No. 503-823-7027

City of Portland
BUDGET/FINANCIAL COUNCIL ACTION IMPACT STATEMENT

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

1. Name of Initiator Matt Brown, Project Manager	2. Interoffice Mail Address 106/800	3. Telephone No. 503-823-7027	4. Bureau/Office/Dept. PDOT/BTE&D/PMD
5a. To Be Filed (date) January 7, 2004	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: January 30, 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] **\$399,144.00 (estimated)**

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 funding agreement will allow the City to bill OHSU for OHSU's portion of the tram project. This work implements actions contained within the South Waterfront Central District Project Development Agreement, approved by the Portland Development Commission on August 13, 2003, and an Intergovernmental Agreement (IGA) between PDC and PDOT approved by City Council on July 31, 2003.

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

This action will affect PDOT and PDC within the City. PDOT will ultimately own and operate the tram, and therefore is responsible for contracting for design services and constructing the tram. PDC is responsible for funding the City's share of the project (\$2,000,000 out of \$15,500,000 budget).

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.

This action implements an as yet unbudgeted commitment on the City's behalf to fund its share of the costs for the Marquam Hill Aerial Tram, which are set out in the South Waterfront Central District Project Development Agreement. The South Waterfront Central District Project Development Agreement commits and caps the city's share of funding to the tram project at \$2,000,000 total, which has been committed through a separate IGA between PDOT and PDC. This action will result in the City collecting other funds to ensure that the project is fully funded.

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, but will be included in the budget through a subsequent revision. Funding sources available to fund this work through an existing IGA between PDOT and PDC, and through this ordinance, will be available from OHSU. PDC funds will be provided through this Interagency Agreement with PDOT for FY 03/04.

E. What alternatives to this action have been explored?

None.

APPROPRIATION UNIT LEAD (Typed name and signature)



Grant Williams, Director, Office of Transportation