

MCH:pf
3/14/80

Misc. Contracts & Agreements
No. 7281

PRELIMINARY ENGINEERING AND
CONSTRUCTION-FINANCE AGREEMENT
INTERSTATE TRANSFER PROJECT

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, Highway Division, hereinafter referred to as "State"; and the CITY OF PORTLAND, a municipal corporation within the State of Oregon, acting by and through its designated City Officials, hereinafter referred to as "City".

W I T N E S S E T H

RECITALS

1. By the authority granted in ORS 366.775, State and City may enter into agreements for the construction, reconstruction, improvement or repair of any street, highway, road or bridge upon such terms and conditions as are mutually agreeable to the contracting parties. Under said authority, State and City plan and propose to design and construct the Arterial Street Light Conversion Program, hereinafter referred to as "project". The project will be financed with Interstate Transfer (e)(4) Funds and local matching funds provided by the City of Portland with no expense to State.

2. By the authority granted in ORS 366.425, as amended by Chapter 365, Oregon Laws, 1979, any county or city may deposit monies, or an irrevocable letter of credit, with the Department of Transportation for performance of work upon any public highway within the state. When any money or a letter of credit is deposited, the state shall proceed with the project. Money so deposited shall be disbursed for the purpose for which it was deposited.

3. It is proposed that the project will consist of all work necessary to convert the existing mercury vapor illumination system to a high pressure sodium vapor system on various arterial streets. The City will purchase and stockpile the illumination equipment and will be reimbursed after installation. The City will engage a consultant to prepare the plans, specifications and estimates for installation of the equipment and to perform the construction engineering.

NOW, THEREFORE, the premises being in general as stated in the foregoing RECITALS, it is agreed by and between the parties hereto as follows:

STATE OBLIGATIONS

1. State shall submit a program to the Federal Highway Administration with a request for federal aid participation in all engineering, illumination equipment purchase and construction work for the project. Said program shall include services to be provided by State, City and City's Consultant. State shall notify City in writing when authorized to proceed with each phase of the work.

2. State shall, as a participating expense, assign a liaison engineer to provide advice and guidance to City and to monitor the work for compliance with acceptable procedures, standards, and specifications during development and prosecution of the project. All billings received from City, or its Consultant, must be approved by the liaison engineer prior to presentation to the Highway Division Accounting Office for payment.

3. State shall, as a participating preliminary engineering function, review and approve all preliminary plans, specifications and estimates received from City, prepare the contract documents, advertise for bids and award all contracts.

4. State shall, as a participating construction function, perform all required laboratory testing of materials, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during construction of the project.

5. State shall prepare an estimate of cost for preliminary engineering services to be provided by State and furnish copies of said estimate to City. The actual cost of services to be provided by State will be included in the total project costs and, when the actual total cost of the project has been computed, the City matching share of said costs will be billed.

6. Upon receipt of monthly approved itemized statements for 100 percent of actual costs incurred by City on behalf of the project to date, State shall promptly reimburse City for 85 percent of said costs.

7. State shall, in the first instance, pay all costs of the project, submit all claims for federal aid participation to the Federal Highway Administration in the normal manner, compile accurate cost accounting records and when the actual total cost of the project has been computed, furnish City with an itemized statement of said costs.

CITY OBLIGATIONS

1. City shall not undertake any phase of the project prior to receiving written authorization from State. All work and records of such work shall be in conformance to Federal statutes, regulations and the Oregon Action Plan.

2. City shall obtain State concurrence in any third party agreements for engineering services.

3. City shall assign the City Engineer and his staff to be in responsible charge of the project, and to review, approve and forward to the State Liaison Engineer all billings due the City, or its Consultant. City shall certify that all materials used are in substantial compliance with the controlling specifications and that the completed project meets the quantity requirements of the contract.

4. City, or its Consultant, shall perform all preliminary engineering and design work required to prepare preliminary plans, specifications and estimates and, upon award of a contract, furnish all construction engineering, field testing of materials, technical inspection and resident engineer services for administration of the contract.

5. City shall forward to State, through its Metropolitan Administrator, preliminary plans, specifications and estimates and all pertinent field data for use by State in preparation of the contract documents. Plans shall be submitted on "federal-aid" sheets as prescribed by State.

6. City shall, on a monthly basis, present properly certified bills for 100 percent of actual costs incurred by City on behalf of the project directly to the State Liaison Engineer for review and approval. Said bills shall be in a form acceptable to State and documented in such a manner as to be easily verified. Billings shall be presented for periods of not less than one month duration, based on actual expenses to date. City shall be reimbursed for 85 percent of said eligible expenses. City's actual costs, direct and indirect, shall be those allowable under the provisions of Federal Management Circular 74-4 and OMB Circular A-102, Attachments G and P.

7. City shall, prior to proceeding with each phase of the work covered by this agreement, forward to State an advance deposit, or irrevocable letter of credit, in the amount of 100 percent of the difference between the estimated total cost of said work and the amount anticipated to be contributed by the Federal Highway Administration. When the actual total cost of the project has been computed, an adjustment will be made in the City matching share of costs. In the event that City elects to perform certain phases of the work with its own forces, no advance deposit will be requested for said work nor will an advance deposit for preliminary engineering services to be provided by State be requested if the anticipated amount is less than \$2,500. City will be billed for its share of matching funds at the time of construction.

8. Upon completion of the project, City shall thereafter, at its own cost and expense, maintain and operate the project in a manner satisfactory to State and/or the Federal Highway Administration.

9. City agrees that should it cancel or terminate the project prior to its completion, it will reimburse State for any costs that have been incurred by State on behalf of the project.

10. City shall adopt an ordinance authorizing its designated City Officials to enter into and execute this agreement, and the same shall be attached hereto and become a part hereof.

GENERAL PROVISIONS

1. The parties hereto mutually agree and understand that City shall contribute 100 percent of the difference between the actual total cost of the project and the amount contributed by the Federal Highway Administration, with no expense to State.

2. The parties hereto agree and understand that they will comply with all applicable Federal and State statutes and regulations, including but not limited to: Title 6, U.S.C., Civil Rights Act; Title 18, U.S.C., Anti-Kickback Act; Title 23, U.S.C., Federal Aid Highway Act; Titles 2 and 3 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; and the Oregon Action Plan.

3. Provisions of State and Federal law applicable to public contracts and agreements of this type are hereby incorporated by reference as if fully set forth herein.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their seals as of the day and year hereinafter written. City has acted in this matter pursuant to Ordinance No. _____, adopted by its City Council on the _____ day of _____, 1980.

This project was approved by the State Highway Engineer on January 7, 1980, under delegated authority from the Oregon Transportation Commission.

The Oregon Transportation Commission, by a duly adopted delegation order, authorized the State Highway Engineer to sign this agreement for and on behalf of the Commission. Said authority is set forth in the Minutes of the Oregon Transportation Commission.

APPROVAL RECOMMENDED

Asst. State Highway Engineer

STATE OF OREGON, by and through
its Department of Transportation,
Highway Division

State Highway Engineer

Date _____

Metropolitan Administrator

CITY OF PORTLAND, by and through
its designated City Officials

By _____
Mayor

APPROVED AS TO FORM

City Attorney

By _____
Commissioner of Public Works

EXHIBIT "A"

The true and actual whole consideration for this transfer is as follows:

Reference is hereby made to Item No. 4 (quoted below) of the Agreement dated January 30, 1961, between Frank Spada and his wife, Guiseppina Spada, parties of the first part, and Amil Spada and Vito Spada, parties of the second part, recorded in Book 2047, Page 209, Multnomah County Deed Records, which provides that parties of the second part covenant, promise and agree,

"That the water from the well situated near the residence situated at 4615 N.E. 158th Ave., Portland, Oregon, and presently piped to the residence situated at 4939 N.E. 158th Ave., Portland, Oregon, shall be available to the latter residence, and any subsequent deeds made upon an ultimate division of this tract of land shall specifically provide by easement and user rights."

The grantee will construct a new water production well on Tax Lot 17, Section 24, Township 1 North, Range 2 East of the Willamette Meridian, to serve above stated residence number 4939 with water from the same aquifer as the water produced by the existing well situated on the parcel described on the quitclaim deed near above stated residence number 4615 which has been demolished. Said new well shall also produce water of equivalent flow and pressure as that produced by said existing well.

Grantee will also close and abandon said existing well and pipeline to residence number 4939. This existing well shall not be abandoned until after the new well is in operation.

All work by Grantee will be in compliance with applicable regulations of the State of Oregon.

All construction costs of the new well, including well, wiring and piping, shall be paid by Grantee. Said new well shall be a completed job ready for use including pump, pressure tank, electrical service, and all necessary valves and fittings.

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, That AMIL and ELVA ETHEL SPADA

hereinafter called grantor, for the consideration hereinafter stated, does hereby remise, release and quitclaim unto CITY OF PORTLAND, OREGON, a municipal corporation of the State of Oregon, hereinafter called grantee, and unto grantee's heirs, successors and assigns all of the grantor's right, title and interest in that certain real property with the tenements, hereditaments and appurtenances thereunto belonging or in any-wise appertaining, situated in the County of Multnomah, State of Oregon, described as follows, to-wit:

A parcel located in Section 24, Township 1 North, Range 2 East of the Willamette Meridian, more particularly described as follows:

Beginning at the Northeast corner of the George Hamilton D.L.C. in said Section 24; thence South 0° 06' West along the D.L.C. line 580.66 feet; thence North 71° 33' 40" West 21.07 feet to an iron pipe in the West line of N.E. 158th Avenue (40 feet wide); thence South 0° 06' West along said West line 281.65' to the True Point of Beginning of the herein described parcel; thence continuing South 0° 06' West along said West line 300.00 feet; thence West 10.00 feet; thence North 49° 30' West 222.83 feet; thence North 65° 30' West 22.02 feet; thence North 146.15 feet; thence East 200.00 feet to the True Point of Beginning

(IF SPACE INSUFFICIENT, CONTINUE DESCRIPTION ON REVERSE SIDE)

To Have and to Hold the same unto the said grantee and grantee's heirs, successors and assigns forever.

The true and actual consideration paid for this transfer, stated in terms of dollars, is \$ See Attached Exhibit

However, the actual consideration consists of or includes other property or value given or promised which is the whole part of the consideration (indicate which). (The sentence between the symbols, if not applicable, should be deleted. See ORS 93.030.)

In construing this deed and where the context so requires, the singular includes the plural and all grammatical changes shall be implied to make the provisions hereof apply equally to corporations and to individuals.

In Witness Whereof, the grantor has executed this instrument this 23 day of May, 1980; if a corporate grantor, it has caused its name to be signed and seal affixed by its officers, duly authorized thereto by order of its board of directors.

Amil Spada
Elva Ethel Spada

(If executed by a corporation, affix corporate seal)

STATE OF OREGON, County of Multnomah, May 23, 1980. Personally appeared the above named

Amil Spada and Elva Ethel Spada

and acknowledged the foregoing instrument to be their voluntary act and deed.

Before me: Dale K. Brunta, Notary Public for Oregon, My commission expires: 10-11-80

STATE OF OREGON, County of... ss. Personally appeared... and... who, being duly sworn, each for himself and not one for the other, did say that the former is the president and that the latter is the secretary of

a corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and each of them acknowledged said instrument to be its voluntary act and deed.

Before me: (SEAL) Notary Public for Oregon, My commission expires:

ORDINANCE NO. 149815

An Ordinance obligating the City of Portland to construct a water well on real property owned by Amil and Elva Ethel Spada as consideration for a quitclaim deed relinquishing the rights of the Spadas to an existing water well on real property owned by the City of Portland, accepting this quitclaim deed, and declaring an emergency.

The City of Portland ordains:

Section 1. The Council finds:

1. Ordinance No. 149183 authorized the purchase of a parcel of real property for a well site under the Groundwater Development Program of the Bureau of Water Works.
2. A private water well exists on this parcel to which the owners of the adjacent northerly parcel, Amil and Elva Ethel Spada, have a right of use.
3. It is necessary to close and abandon this existing well in order to develop the City parcel as one of the well sites in the Groundwater Development Program.
4. Negotiations have been conducted with Amil and Elva Ethel Spada with the result that the Bureau of Water Works is willing to construct a similar private water well at an estimated cost of \$5,300.00 as consideration for a quitclaim deed relinquishing the rights of the Spadas on the City parcel, as described in the quitclaim deed, and its Exhibit "A," similar to the copy attached to the original only hereof, marked Supplement 1, and by this reference made a part hereof.
5. The transaction described above was recommended by the Administrator of the Bureau of Water Works, and approved by the Commissioner-in-Charge, and funds are available in the Fiscal Year 1980-81 Budget.

NOW, THEREFORE, the Council directs:

- a. The obligation to construct the private water well as consideration for the quitclaim deed under the terms stated herein is hereby authorized.

Calendar No. ²¹⁵¹~~2100~~

ORDINANCE No. 149815

Title

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JUN 18 1980

CONTINUED TO **JUN 25 1980**

Filed **JUN 13 1980**

GEORGE YERKOVICH
Auditor of the CITY OF PORTLAND

By *Gordon Powell*
Deputy

THE COMMISSIONERS VOTED AS FOLLOWS:		
	Yeas	Nays
Ivancie		
Jordan		
Lindberg		
Schwab		
McCready		

FOUR-FIFTHS CALENDAR	
Ivancie	
Jordan	
Lindberg	
Schwab	
McCready	

INTRODUCED BY
COMMISSIONER IVANCIE

NOTED BY THE COMMISSIONER
Affairs
Finance and Administration
Safety
Utilities <i>FJI/may</i>
Works

BUREAU APPROVAL
Bureau: WATER WORKS
Prepared By: R.E.Rector/ij Date: June 6, 1980
Budget Impact Review:
<input checked="" type="checkbox"/> Completed <input type="checkbox"/> Not required
Bureau Head: <i>Carl Goebel</i> Carl Goebel, Administrator

NOTED BY
City Attorney
City Auditor
City Engineer <i>GC</i>