

MCH:pf
6/6/80

Misc. Contracts & Agreements
No. 5662

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 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. Holgate Boulevard is a part of the Federal Aid Urban System network under the jurisdiction and control of the City of Portland, and has been designated as FAU Route No. 9793.

2. 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 construct the S.E. 17th Avenue-S.E. 28th Avenue Section of Holgate Boulevard, hereinafter referred to as "project". The location of said project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof. The project will be financed with Interstate Transfer (e)(4) Funds and local matching funds provided by State and City.

3. 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.

4. It is proposed that the project will consist of all work necessary to widen Holgate Boulevard and replace the structure crossing the Southern Pacific Transportation Company railroad tracks. The required 15 percent local matching funds will be provided by the State (9%) and the City of Portland (6%), approximately. The State shall provide 9 percent local matching funds only for that portion of federal funds allocated to the project from the "FAU Replacement Fund." The City will perform the construction engineering.

5. This agreement is intended to supercede and take precedence over that certain State-City agreement dated October 10, 1979, authorized by City Ordinance No. 148460 adopted September 19, 1979. Upon execution of this agreement the aforementioned agreement shall become null and void and have no further force or effect.

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 approval of federal aid participation in all engineering, eligible utility relocations and construction work for the project. No work shall proceed until said approval has been obtained. Said program shall include services to be provided by both State and City. 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 in progress for compliance with acceptable procedures, standards, specifications and related report forms during construction of the project. All billings due the City, its contractor and the Southern Pacific Transportation Company must be approved prior to presentation to the Highway Division Accounting Office for payment.

3. State shall prepare the contract documents, advertise for bid proposals, award all contracts and, prior to proceeding with any work, arrange a pre-construction conference with representatives of State, City, Contractor and the Southern Pacific Transportation Company in attendance. Particular attention will be given to rules and regulations governing work adjacent to railroad facilities.

4. State shall, as a participating construction engineering function, process and pay all contractor progress estimates and railroad bills, perform any required laboratory testing of materials, check final quantities and costs, and oversee and provide intermittent inspection services during construction of the project. The actual cost of services provided by State will be included in the total project costs and the City matching share of said costs will be billed when the actual total cost of the project has been computed.

5. 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 the full amount of federal aid and State participation.

6. 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 work prior to receiving written authorization from State. All work and records of such work shall be in conformance with Federal statutes, rules and regulations, and the Oregon Action Plan.

2. 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, its contractor and the Southern Pacific Transportation Company.

3. City shall, upon award of a contract, furnish all construction engineering, field testing of materials, technical inspection and resident engineer services for administration of the contract, and 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 shall, within 20 days following the opening of bid proposals, 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 construction work, excluding construction engineering, and the amount anticipated to be contributed by the State and 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.

5. 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 the full amount of federal aid and State participation in 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.

6. City shall relocate, or cause to be relocated, all utility conduits, lines, poles, mains, pipes and such other facilities where such relocation is necessary in order to conform said utility and other facilities with the plans and ultimate requirements of the project. Only those utility relocations which are eligible for federal participation under Federal Aid Highway Program Manual, Volume 1, Chapter 4, Section 4, shall be included in the total project costs and participation; all other utility relocations shall be at the sole cost of City or others.

7. City shall, five weeks prior to the bid opening, furnish State with an estimate, based on the plans for the project, of the cost of eligible reimbursable utility relocation work so the work can be properly coordinated into the project and receive proper authorization.

8. Upon completion of the project, City shall not permit any encroachment upon the project right-of-way which will cause more than a temporary obstruction to the free and convenient flow of traffic over the project; and City shall not impose any regulations of traffic which shall unduly hinder the flow of traffic upon the project by granting preference to traffic entering from other intersecting roads or streets.

9. City shall, upon completion of the project, control all parking within the limits of the project. Any alterations in regard to traffic control measures shall have concurrence of State.

10. Upon completion of construction, 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.

11. 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 in behalf of the project.

12. 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 State and 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. Said contribution shall be on the basis of 9 percent by State and 6 percent by City, approximately. City shall contribute 100 percent of the cost of any portion of the project in which federal funds do not participate. Non-participation of federal funds in any portion of the project occurs when federal rules and regulations exclude an item or the available federal funds are depleted. State participation shall be limited to 9 percent matching funds for that portion of federal aid funds allocated to the project from the "FAU Replacement Fund".

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.

4. The parties hereto mutually agree and understand that work performed within the Southern Pacific Transportation Company right-of-way shall be subject to railroad rules and regulations.

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 Oregon Transportation Commission on April 25, 1978, at which time the State Highway Engineer was authorized and directed to sign the necessary agreements for and on behalf of the Commission. Said authority is set forth in the Minutes of the Oregon Transportation Commission.

APPROVAL RECOMMENDED

Metropolitan Administrator

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

State Highway Engineer

Date _____

APPROVED AS TO FORM

City Attorney

CITY OF PORTLAND, by and through
its designated City Officials

By _____
Auditor

By _____
Commissioner of Public Works

PROPOSED F. A. URBAN SYSTEM PROJECT



EXHIBIT A

ORDINANCE NO. 150023

An Ordinance authorizing the City to enter into a revised agreement with the Oregon Department of Transportation providing for finance and construction of Holgate Boulevard and Bridge between SE 17th Avenue and SE 28th Avenue, repealing the existing finance-construction agreement for the project, and declaring an emergency.

The City of Portland ordains:

Section 1. The Council finds:

1. The State and the City propose to improve SE Holgate Boulevard from SE 17th Avenue to SE 28th Avenue.
2. Ordinance No. 148460, passed by the Council September 19, 1979, authorized a finance-construction agreement, No. 18213.
3. Agreement No. 18213 needs to be revised to provide for State payment of a portion of the local match, to provide for City payment of advance deposit into the State Investment Pool and to provide for meeting Southern Pacific Transportation Company rules and regulations when working within the railroad right-of-way.
4. The State has submitted a revised agreement for finance and construction of the project which includes these modifications.

NOW, THEREFORE, the Council directs:

- a. The Commissioner of Public Works and the Auditor are authorized to execute, on behalf of the City, an agreement with the State of Oregon, by and through its Department of Transportation, said agreement to be substantially in accordance with the form of agreement marked Exhibit "A," attached to the original of this Ordinance.
- b. Upon execution of this agreement, Agreement No. 18213, authorized by Ordinance No. 148460, shall become null and void and have no further force or effect.

Calendar No. 2568

ORDINANCE No. 150023

Title

An Ordinance authorizing the City to enter into a revised agreement with the Oregon Department of Transportation providing for finance and construction of Holgate Boulevard and Bridge between SE 17th Avenue and SE 28th Avenue, repealing the existing finance-construction agreement for the project, and declaring an emergency.

THE COMMISSIONERS VOTED AS FOLLOWS:		
	Yeas	Nays
Ivancie	1	
Jordan	1	
Lindberg	1	
Schwab	1	
McCready	1	

FOUR-FIFTHS CALENDAR	
Ivancie	
Jordan	
Lindberg	
Schwab	
McCready	

INTRODUCED BY
Commissioner Mike Lindberg

NOTED BY THE COMMISSIONER
Affairs
Finance and Administration
Safety
Utilities
Works <i>ML/mg</i>

BUREAU APPROVAL
Bureau: Street & Structural Engineering
Prepared By: Steve Riddell:mmc Date: 7-1-80
Budget Impact Review: <input checked="" type="checkbox"/> Completed <input type="checkbox"/> Not required
Bureau Head: <i>D Vargas</i> David J. Vargas, Acting Chief

NOTED BY
City Attorney
City Auditor
City Engineer Approved John M. Lang
By: <i>[Signature]</i>

Filed JUL 10 1980

GEORGE YERKOVICH
Auditor of the CITY OF PORTLAND

[Signature]
Deputy

120083