

AGREEMENT
BETWEEN THE CITY OF PORTLAND AND OMSI
FOR SE WATER AVENUE REALIGNMENT PROJECT DESIGN

The Agreement for the SE Water Avenue Realignment Project Design (hereafter, referred to collectively as "Agreement") is between the Oregon Museum of Science and Industry ("OMSI") and the City of Portland ("City"). The parties to this Agreement shall be referred to individually as "Party", or collectively as "Parties."

RECITALS:

1. In November of 2018, Portland City Council adopted the Central City in Motion plan, which included a proposed design for SE Water Avenue.
2. On February 17th, 2023, Portland City Council adopted the OMSI's Central City Master Plan, which includes a realignment of SE Water Avenue through the OMSI campus.
3. The Parties have agreed upon the need to realign SE Water Avenue between SE Clay Street and SE Caruthers Street to improve the access and circulation for the OMSI District and the Central City, and to accommodate the future development of the OMSI campus.
4. On May 9, 2023, OMSI secured funding from the State of Oregon to further the design of the realigned Water Avenue and secured the services of KPFF to foster this design.
5. The Parties have a shared interest in a contiguous transportation facility on SE Water Ave and to this end, the City has secured funding to design contiguous multimodal facilities on SE Water Avenue between SE Clay and SE Stark related to the project.
6. While the funding necessary to construct the project has not yet been identified, the Parties have agreed to cooperate and share the responsibilities for the design of the SE Water Avenue realignment project (the "Project") and to bring it to final design plans to enhance project readiness should that funding become available.
7. The Parties now desire to express in writing their cooperative roles in the Design Phase for the Project through this Agreement.

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

Exhibit A

TERM OF AGREEMENT:

The term of this Agreement will be effective from the date of full execution through December 31, 2026, unless terminated or extended by mutual written consent.

OMSI OBLIGATIONS:

1. Responsibility for the Project. OMSI has hired KPFF, Inc. to design the Project (“OMSI’s Consultant”). OMSI’s Consultant shall manage, create and update Project design and construction schedules, acquire necessary permits, arrange for the relocation of utilities and take other such actions necessary to complete the design phase of the Project. OMSI has designated a Project Manager (“OMSI’s Project Manager”) and OMSI’s Consultant has a designated Project Manager (“Consultant’s Project Manager”). OMSI will provide written notice of changes OMSI’s Project Manager or Consultant’s Project Manager to the City’s Project Manager (defined below).
2. Design Standards for the Project. OMSI’s Consultant shall use the 2018 City Standard Construction Specifications and standard drawings for the Project improvements that will ultimately be owned and/or maintained by City, unless approved otherwise by City. OMSI’s Consultant shall develop plans for improvements on City facilities in substantial conformance with PBOT’s Design Review Checklists.
3. Development of Final Plans and Specifications. OMSI’s Consultant shall work in close cooperation with City during preparation of final plans and will submit plans and specifications (hereinafter "Plans") for official City review at deliverable stages established by the Project.
4. Real Property Acquisition/Relocation Assistance. OMSI shall be solely responsible for the acquisition of real property or interests therein for the Project, including property that will eventually become City right-of-way, unless otherwise agreed by mutual written consent. For property that will become City right-of-way, prior to conveyance OMSI shall obtain review and approval from the City’s Bureau of Transportation (PBOT) - Right of Way Acquisition Section.
5. Maintenance and/or Ownership Agreement. OMSI shall, in good faith, negotiate with City and other interested parties for one or more maintenance agreements that would define maintenance responsibilities, and where applicable clarify property ownership rights, for the Project. Other interested parties include ODOT, and property owners adjacent to the Project. Unless otherwise agreed, OMSI will take the lead in drafting of these agreements, but City will provide its templates for any such agreements required as part of the permitting process for the Project, if any (the "Maintenance Agreements").

Exhibit A

6. Pursuit of Construction Funding. OMSI shall, in good faith, work in partnership with the City and other interested parties in the pursuit of funding and grant opportunities to fund the construction of the Project.

CITY OBLIGATIONS:

1. Maintaining Project Schedule. City agrees to use its best efforts to assist OMSI in maintaining the Project schedule. To this end, City staff shall assist OMSI with all permit/approval processes including, but not limited to, scheduling all hearings and briefings before City Council, commissions, or other City bureaus.
2. Appointing City's Project Manager. City's Project Manager for this Project is Gabriel Graff, Gabriel.Graff@portlandoregon.gov, 503-823-5291 or their designee upon individual's absence (the "City's Project Manager"). Any changes to City's Project Manager shall be made in writing to OMSI's Project Manager.
3. Coordination of City Issues. City's Project Manager shall coordinate comments about the Project from City bureaus and assist in resolving Project issues raised by any City bureau.
4. Managing Services within Budget. City's Project Manager shall exercise good faith efforts to manage City services related to the Project within the budget specified in this Agreement.
5. Permits and Approvals. City's Project Manager shall assist OMSI in developing a list of the permits or approvals necessary to complete the Project construction and installation. However, nothing in this Agreement waives any Portland city policy or ordinance or prohibits City from maintaining or enforcing its current policies, ordinances or agreements. City is specifically not obligating itself or any of its bureaus with respect to any discretionary or regulatory action, including but not limited to zoning, variances, dedications, vacations, regulatory plan reviews, issuance of permits, code compliance or any other governmental approvals or regulatory actions which may be required or authorized.
6. Maintenance and/or Ownership Agreement. City shall work in good faith with OMSI and other interested parties on the Maintenance Agreements related to the Project and shall provide City's template maintenance agreements where required by the permitting process for the Project improvements.
7. Pursuit of Construction Funding. City shall, in good faith, work in partnership with OMSI and other interested parties in the pursuit of funding and grant opportunities to fund the construction of the Project.

Exhibit A

COMPENSATION:

1. City Compensation. The City's compensation for services provided under this Agreement is listed below. City agrees to proceed in good faith under this Agreement and keep costs within the limits defined below, and within the Project budget. In the event any or all City bureaus' actual costs reach these maximum amounts, then the City shall be released from performing further services under this Agreement to the extent that the Parties fail to execute an amendment signed by authorized representatives. Nothing in the immediately preceding sentence allows any City bureau to cease its services with respect to any permit or approval process for any part of the Project improvements.
2. Budget. OMSI agrees not to withhold the timely approval of additional resources without cause, subject to available budget for the Project. Additionally, the Parties agree that line-item budget entries may be reallocated by mutual agreement of the City's Project Manager and OMSI's Project Manager, so long as the overall approved budget amount for the Project is not exceeded.
3. Estimated Maximum Costs for City Services. The services provided by the City and the costs to OMSI under this Agreement shall not exceed the following unless the Parties execute an amendment signed by authorized representatives. Such services shall be provided on a reimbursable cost basis and are detailed as follows:

| | | |
|----|-----------------------------------|-----------|
| 1. | Portland Bureau of Transportation | \$400,000 |
| 2. | Bureau of Environmental Services | \$40,000 |
| 3. | Portland Water Bureau | \$40,000 |
| 4. | Other City Bureaus | \$20,000 |

Total payments to the City of Portland will not exceed \$500,000

4. Method of Payment. Subject to the limitations stated in this Agreement, OMSI agrees to pay the City's actual costs identified for the performance of the services for the Project required herein. The actual cost shall include direct salary costs, fringe benefits, direct non-salary costs, and general overhead to be determined as follows:
 - a) Actual time computed at the applicable hourly payroll rate and fringe benefits earned with actual time. The City's salary rates for any time period shall be as set out in the official City Compensation Plan or as amended by the City Council for the particular period.

Exhibit A

- b) Charges in addition to Subsection (a) above for vacation, sick leave, holiday, jury duty, and bereavement leave are included in the overhead rates.
 - c) Direct Non-Salary. Those reasonable and actual costs directly incurred in fulfilling the terms of this Agreement, including, but not limited to, reproduction, telephone long distance, equipment rentals, and purchase of outside services requested by OMSI.
 - d) General Overhead. PBOT and the City bureaus of Parks, Water, Environmental Services, and other bureaus as deemed necessary shall charge for general overhead as provided by Chapter 5.48 of the City Code.
5. Billing and Payments. Payment for City services shall be under the following terms:
- a) City shall bill OMSI for the work under this Agreement as follows:
 - i. City shall submit invoices to OMSI for actual work performed and Project-related expenses incurred during the performance of this Agreement.
 - ii. Invoices must show the hours and dates worked, billing rates, and summarize the nature of work done. Expenses must be fully itemized. Only listed expenses will be reimbursed.
 - iii. Invoices for City work performed prior to the execution of the Agreement will be submitted to OMSI not more than 60 days after the execution of the Agreement.
 - iv. With respect to City services performed subsequent to the execution of the Agreement, invoices will be submitted to OMSI on a monthly basis and not more than 90 days after the work is performed and the expense is incurred by the City.
 - b) In addition to the costs set forth in subparagraph 4 above, OMSI will reimburse the city for the following expenses:
 - i. City's purchases of specialized reference material or informational material required to complete the deliverables under this Agreement, which shall be documented with receipts provided to OMSI with the invoice requesting reimbursement.
 - ii. The actual, reasonable costs incurred by the City for mailing, copying, or delivering documents, electronic media, or similar records required

Exhibit A

for the performance of this Agreement, which shall be documented with receipts provided to OMSI with the invoice requesting reimbursement.

- iii. Travel and per diem costs incurred for required travel outside of the greater Portland metro area; reimbursement in accordance with OMSI reimbursement rates and procedures, which shall be documented with receipts provided to OMSI with the invoice requesting reimbursement.

TERMINATION. This Agreement may be terminated by either party upon 60 days' written notice. In the event of such termination, OMSI shall pay the City's costs for services performed prior to the termination date, including any costs necessarily incurred by the City in terminating its work. The City promptly shall submit its termination costs to be paid by the OMSI. If either party has any property in its possession belonging to the other party ("Owner") at the termination date, the party having possession will account for it and dispose of it in the manner the Owner directs.

TERMINATION FOR DEFAULT. If the City fails to perform its obligations under this the Agreement, or if the City fails to comply with any other provisions of the Agreement, OMSI may terminate this Agreement for default after providing the City written notice an opportunity to cure the default as described in this paragraph. Termination for default shall be effected by providing a written notice of termination to the City, setting forth the manner in which the City is in default and providing the City thirty (30) days to cure, or, if the cure would take longer than thirty (30) days, such longer period as may be necessary (up to a maximum of ninety (90) days) so long as the City commences to cure within the 30-day period and thereafter diligently pursues such cure to completion. The City will be paid only the Agreement price for authorized services performed prior to termination in accordance with the manner of performance set forth in this Agreement.

In the event the OMSI fails to pay the City for its services provided under this Agreement, such failure shall be deemed a material breach for which the City may seek any remedy available to it under the law, including but not limited to, termination of this Agreement or suspension of services to be provided pursuant to this Agreement. Notwithstanding the foregoing sentence, in no event shall the City bureaus be authorized to suspend their work with respect to permits or approvals being sought by OMSI for the Project.

INDEMNIFICATION. OMSI shall indemnify, defend, and hold harmless City from and against all liability, loss and costs arising out of or resulting from the acts of OMSI, its officers, employees, and agents in the performance of this Agreement.

Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, City shall indemnify, defend, and hold harmless OMSI from and against all liability, loss and costs arising out of or resulting from the acts of City, its officers, employees, and agents in the performance of this Agreement.

Exhibit A

INSURANCE. Each Party shall each be responsible for providing workers' compensation insurance as required by law. Neither Party shall be required to provide or show proof of any other insurance coverage.

FORCE MAJEURE. The time for the completion of the services or for any other duty of a Party pursuant to this Agreement shall be extended due to a "Force Majeure Delay", which shall mean the period of any failure or delay in the performance of any obligations under this Agreement caused by rain, snow or other adverse weather conditions, floods, earthquakes, fires, wars, terrorism, riots or similar hostilities, strikes and other labor difficulties beyond the such Party's reasonable control, prohibitory court actions (such as restraining orders or injunctions) or other causes beyond such Party's reasonable control. A party shall only be entitled to a Force Majeure Delay if such Party provides the other Party with a written notice of a force majeure event within ten (10) business days after the occurrence thereof and then only for the period of delay.

ADHERENCE TO LAW. Each Party shall comply with all federal, state and local laws and ordinances applicable to this Agreement.

NON-DISCRIMINATION. Each Party shall comply with all requirements of federal and state civil rights and rehabilitation statutes and local non-discrimination ordinances.

ACCESS TO RECORDS. Each Party shall have access to the books, documents, and other records of the other Party which are related to this Agreement for the purpose of examination, copying, and audit, unless otherwise limited by law.

SUBCONTRACTS AND ASSIGNMENT. Neither Party will subcontract or assign any part of this Agreement without the written consent of the other Party.

SEVERABILITY. If any term or provision of this Agreement shall be adjudged invalid or unenforceable, such adjudication shall not affect the validity of enforceability of the remainder of the Agreement, which remaining terms and provisions shall be valid and be enforced to the fullest extent permitted by law.

NOTICES AND DESIGNATED PROJECT MANAGERS:

1. OMSI designates Preston Greene as OMSI's Project Manager

Preston Greene
Oregon Museum of Science and Industry (OMSI)
1945 SE Water Avenue
Portland, OR 97214
Phone: (503) 449-4528
pgreene@omsi.edu

Exhibit A

2. The city designates Gabe Graff as the City's Project Manager. Gabe Graff's address, phone number, and e-mail address are as follows:

Gabe Graff, Project Manager
City of Portland Bureau of Transportation
1120 SW 5th Ave., Suite 1414
Portland, OR 97204
Phone: 503.823.5291
gabriel.graff@portlandoregon.gov

Notices shall be in writing sent to the persons at the address provided above and may be delivered by email, regular US mail, overnight delivery service or by messenger. Notices shall be effective upon receipt (upon delivery for email or, if after 5:00 p.m. on a weekday, the next business day). If sent by US mail, notice shall be deemed received three (3) days after it is sent. Designated contacts and notice addresses may only be changed upon written notice to the other Party.

FUNDS AVAILABLE. In the event that funds cease to be available to OMSI in the amounts anticipated for the Project and this Agreement, OMSI may terminate or reduce the scope of services to be provided.

ISSUE RESOLUTION. In the event of any disputes between the City and OMSI, the dispute shall be referred to resolution as follows:

1. Refer the dispute to the City's Project Manager and OMSI's Project Manager, who shall make a good faith effort to resolve it;

2. If unresolved after ten (10) business days, refer it to the PBOT Manager of Policy, Planning and Projects and OMSI's Project Manager.;

3. If unresolved after ten (10) business days, refer it to the PBOT Director and the OMSI's President.

4. Any dispute that is not resolved in accordance with the above-referenced process shall be submitted to mediated negotiation prior to any Party commencing litigation. In such an event, the Parties to this Agreement agree to participate in good faith in a non-binding mediation process. The mediation shall take place in Portland, Oregon. The mediator shall be selected by mutual agreement of the Parties, but in the absence of such agreement each Party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. The mediator's fees and costs shall be borne equally by the Parties. In the event mediation is unsuccessful, the Parties are free to pursue any legal remedies that may be available.


In the event of the issues or disputes relating to facilities owned and maintained by City bureaus other than PBOT, the corresponding Bureau Manager, Bureau Director, and/or Commissioner-in-Charge will participate in resolving the issue (starting at the second level set forth above).

Exhibit A

THIS IS THE ENTIRE AGREEMENT. This Agreement, including all Exhibits, constitutes the entire agreement between the Parties. This Agreement may be modified or amended only by written agreement of the Parties and in accordance with all terms of Agreement.

[SIGNATURES ON FOLLOWING PAGE.]

**OREGON MUSEUM OF SCIENCE
AND INDUSTRY, an Oregon Nonprofit Corporation**

By: 
Erin Graham, President and CEO

CITY OF PORTLAND

By: _____
Commissioner in Charge

Date:

APPROVED AS TO FORM

By: _____
City Attorney

Date: