

Misc. Contracts & Agreements
No. 26277

**2003 OREGON TRANSPORTATION INVESTMENT ACT
MODERNIZATION PROGRAM AGREEMENT FOR PRELIMINARY ENGINEERING
SW Moody Avenue: SW River Parkway – SW Gibbs Street**

THIS AGREEMENT is made and entered into by and between THE STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "ODOT"; and City of Portland, acting by and through its elected officials, hereinafter referred to as "CITY", both herein referred to individually or collectively as "Party" or "Parties".

RECITALS

1. SW Moody Avenue, SW River Parkway and SW Gibbs Street are a part of the CITY street system under the jurisdiction and control of CITY.
2. The 2003 Oregon Transportation Investment Act Program (OTIA), hereinafter referred to as the "2003 OTIA Modernization Program", provides funding for modernization projects chosen by the Oregon Transportation Commission.
3. A portion of the existing Moody Avenue passes through ODOT-owned property under the west end of the Marquam Bridge. Said property was previously purchased with federal funds in the name of ODOT for construction of the Marquam Bridge. ODOT has obtained Federal Highway Administration's (FHWA) approval to permit an easement to CITY for Roadway purposes. This Agreement is further described in Cooperative Improvement Agreement Number 11,669, which was executed on May 4, 1994.
4. In August 2005, the Oregon Transportation Commission approved the projects to be funded under the 2003 OTIA Modernization Program as part of the 2006-2009 Statewide Transportation Improvement Program development process. This selection included CITY's Project, SW Moody Avenue: SW River Parkway – SW Gibbs Street as described in Exhibit A, attached hereto and by this reference made a part hereof.
5. In August 2005, the Oregon Transportation Commission approved the projects to be funded under the 2003 OTIA Modernization Program as part of the 2006-2009 Statewide Transportation Improvement Program development process. This selection included CITY's Project, I-5 @ N Macadam project. Subsequently, an amendment to the STIP was requested and granted on October 21, 2009 to split the granted funding for that project and add the additional funding to two projects: SW Harbor Dr/SW River Parkway Improvements and SW Moody Avenue: SW River Parkway – SW Gibbs Street, the subject Project of this Agreement.
6. By the authority granted in ORS 190.110, 366.572 and 366.576, state agencies may enter into cooperative agreements with counties, cities, and units of local

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government for the performance of any or all functions and activities that a party to the Agreement, its officers, or agents have the authority to perform.

7. The improvements described herein are part of CITY and ODOT plans to improve transportation access to and from the adjacent freeway systems to and from the rapidly growing urban area of the South Waterfront District. Such access is necessary for expected growth of the District.

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

TERMS OF AGREEMENT

1. CITY shall make modernization improvements, SW Moody Avenue: SW River Parkway – SW Gibbs Street, hereinafter referred to as "Project". A Project description, budget, and sketch map showing the location and approximate limits of the Project is shown on Exhibit "A", attached hereto and by this reference made a part hereof. Work under this Agreement shall be for the preliminary engineering (PE) phase of the Project as described in Exhibit A.
2. The total estimated cost of the Project is \$43,685,955. The budget and funding is shown on Exhibit "A". The total allowable OTIA funding for eligible, actual costs of the Project is \$12,000,000. For purposes of this agreement, the funding shall be available for PE activities only, currently estimated at \$7,858,584. Should OTIA funds remain after the PE phase of the Project, CITY may use them toward the additional phases of the Project upon execution of an amendment to this Agreement. No work beyond the PE phase of the Project is allowable without an amendment to this Agreement.
3. The 2003 OTIA Modernization Program funds are limited to \$12,000,000. CITY shall be responsible for all costs in excess of the 2003 OTIA Modernization Program funded amount for this Project.
4. This Agreement shall become effective on the date all required signatures are obtained and shall be completed according to the schedule outlined in CITY Obligations, Paragraph 3 or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner. Only work begun after the effective date of this Agreement is eligible for reimbursement with 2003 OTIA Modernization Program funds.
5. The funds available under the 2003 OTIA Modernization Program are State Highway Funds. To be eligible for reimbursement under the 2003 OTIA Modernization Program, expenditures must comply with the requirements of Article IX, Section 3a of the Oregon Constitution.

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6. CITY and ODOT have a joint obligation to ensure timely expenditure of 2003 OTIA Modernization Program monies and to comply with the provisions of the bonds that finance the 2003 OTIA Modernization Program.

CITY OBLIGATIONS

1. CITY, or its consultant, shall conduct the necessary engineering and design work required to produce final plans, specifications and cost estimates; obtain all right of way, if any, required for Project in compliance with ORS Chapter 35, and the ODOT's Right of Way Manual; obtain all required permits; arrange for all utility relocations or reconstruction, if any, required for Project in compliance with the standards in CITY Obligations, Paragraph 12; perform all construction engineering, including all required materials testing and quality documentation; prepare all bid documents; advertise and award all contracts; provide Project management services; and other necessary functions for administration of the contract.
2. The Project shall be developed in conformance with CITY's standards. If CITY has not adopted standards of its own, the Project shall be developed in conformance with the current edition of *A Policy on Geometric Design of Highways and Streets* by the American Association of State Highway and Transportation Officials (AASHTO).
3. CITY shall provide ODOT with sufficient information to complete a Project prospectus to ensure ODOT can track the Project using ODOT's reporting systems.
 - a. CITY shall submit documentation to ODOT's Project Liaison that shows that CITY has met the Project key milestones. The Project key milestones, dates, and required documentation are shown below:
 - i. Planning documents listed in CITY Obligations, Paragraph 2 above: Date Quarter/Year 2nd/2010
 - ii. Anticipated Construction Manager/General Contractor(CMGC) Selection Date Quarter/Year: 4th/2010
 - iii. Documentation: **Copies of the selection results including awarded amount and awarded contractor name.**
 - iv. Pre-Construction Services Contract Award: Date Quarter/Year 1st/2011
 - v. Documentation: **Notice to contractor regarding award of contract.**
 - vi. Construction Services Contract Award: Date Quarter/Year 3rd/2011
 - vii. Documentation: **Notice to contractor regarding award of contract.**

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- viii. Construction Completion: Date Quarter/Year 3rd/2012
 - ix. Documentation: **A letter from CITY indicating that all required construction work is satisfactorily completed and open to traffic.**
 - x. Project Completion: Date Quarter/Year 4th/2012
 - xi. Documentation: **Letter from CITY indicating that the Project is complete and accompanied by CITY's final billing to ODOT. Include final accounting of all funds expended –vs– budgeted.**
- b. If the CITY does not meet a Project milestone date within three (3) months of the date specified in CITY Obligations, Paragraph 3.a, reimbursement of CITY's Project expense, may, at the discretion of ODOT, be changed to one-half of the rate specified in ODOT's Obligations, Paragraph 1, until such time as the milestone has been completed and the Project is back on schedule.
 - c. Immediately upon missing a milestone date, CITY and ODOT shall establish a Project review team including CITY's Project Liaison and ODOT's Project Liaison, at a minimum, and may include such other members as are deemed necessary. The Project review team shall determine (a) if failure to complete the milestone in question will jeopardize successful completion of Project, (b) what steps must be taken by CITY to ensure successful completion of Project, and (c) revise the Project schedule, if changes are required.
 - d. In the event that the Project schedule outlined in CITY Obligations, Paragraph 3.a. is revised pursuant to CITY Obligation, Paragraph 3.c, the CITY's Project Liaison and ODOT's Project Liaison shall incorporate the revised schedule into this Agreement through a formal amendment to this Agreement.
 - e. When the Project is back on schedule according to the milestones set out in CITY Obligations, Paragraph 3.a., including a revised schedule adopted by formal amendment, CITY shall receive any funds withheld by ODOT under the provisions of ODOT's Obligations, Paragraph 1.b.
4. CITY shall present invoices for the eligible, actual costs incurred by CITY on behalf of the Project directly to ODOT's Project Liaison for review and approval. Such invoices shall be submitted in the form as shown on Exhibit "B", OTIA Progress Billing Form, attached hereto and by this reference made a part hereof. Invoices will identify the Project and Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Invoices shall be presented for periods no greater than one (1) month, based on actual expenses incurred, and must clearly specify the percentage of completion of the Project.

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5. CITY shall submit a billing at the time CITY documents that Construction Completion, as set out in CITY Obligations, Paragraph 3, is complete. The billing will indicate total Project costs incurred to date, whether there are unresolved claims, and the anticipated timeline for resolving claims and closing the Project.
6. CITY shall be responsible for any and all costs of Project which are not covered by 2003 OTIA Modernization Program funds, including costs of the Project when the maximum amount of 2003 OTIA Modernization Program funds obligated under this Agreement have been expended.
7. CITY agrees to comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, which hereby are incorporated by reference.
8. CITY shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
9. All employers, including CITY, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. CITY shall ensure that each of its subcontractors complies with these requirements.
10. CITY shall maintain the improvements made as a result of the Project at the same level as other similar facilities owned by CITY.
11. CITY agrees that the Project will be on the public right of way and will serve general transportation needs.
12. Utility relocation or reconstruction may or may not be an eligible Project expense according to the following standard:
 - a. The expense is an eligible expense if the owner of the utility facility possesses a property right for its location on the public right of way.
 - b. The expense is not an eligible expense if the owner of the utility facility does not possess a property right for its location, but the facility exists on the public right of way solely under the permission of the CITY or other road authority, whether that permission is expressed or implied, and whether written or oral.

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13. CITY certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within CITY's current appropriation or limitation of the current budget. CITY further agrees that invoices shall only be submitted to ODOT for reimbursement on work that has been performed and paid for by CITY.
14. CITY shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify, defend, save, and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation, its officers and employees from any and all claims, suits, and liabilities which may occur in the performance of this Project. CITY's total liability shall not exceed the tort claims limits provided in Oregon Tort Claims Act, ORS 30.260 to 30.300, for 'local public bodies'.
15. Notwithstanding the foregoing defense obligations under the paragraph above, neither CITY nor any attorney engaged by CITY shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that CITY is prohibited from defending the State of Oregon, or that CITY is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue any claims it may have against CITY if the State of Oregon elects to assume its own defense.
16. CITY's Project Liaison for this Agreement is Chris Armes, City of Portland Bureau of Transportation, 1120 SW 5th Ave., Rm 800, Portland, OR, 97204-1969, Phone: 503-823- 7051 Email: Chris.Armes@portlandoregon.gov, or an individual designated by the CITY's Manager in the event of the unavailability of the aforementioned individual. When revisions to the Project schedule are deemed necessary by the Project review team the CITY Project Liaison is granted the authority to enter into and execute formal amendments to this Agreement to revise the schedule.
17. CITY shall place signs that identify Project as "Another Project Funded by 2003 Oregon Transportation Investment Act" (ODOT approved design). CITY may affix additional signage that identifies local funds used for the Project.
18. CITY agrees that it will call attention to the Project and help make it visible to the public.
19. CITY agrees to provide to the ODOT, progress information and photographs in a suitable format for posting on the 2003 OTIA Modernization Program web site maintained by and to provide appropriate links from CITY's web sites to the OTIA web site.

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ODOT OBLIGATIONS

- 1a. ODOT shall reimburse CITY for the eligible, actual costs for the PE portion of the Project incurred up to the the maximum amount of \$12,000,000, the maximum amount of 2003 OTIA Modernization Program funds committed for the Project specified in Terms of Agreement, Paragraph 3, provided that CITY is meeting the Project milestones set out in CITY Obligations, Paragraph 3.a. Under no conditions shall ODOT's total obligation exceed \$12,000,000, including all expenses. When reimbursement is requested, CITY shall submit Exhibit B, the OTIA Progress Billing Form.
 - b. In the event that CITY has not met a Project milestone, ODOT shall, at its sole discretion, change its rate of reimbursement to CITY to one-half of the rate specified in Paragraph 1.a. until such time as Project is back on schedule.
 - c. When the Project is back on schedule, according to the milestones set out in CITY Obligations, Paragraph 3.a., including a revised schedule adopted by formal amendment per CITY Obligations, Paragraph 3.d., ODOT shall pay CITY any funds withheld by ODOT under the provisions of ODOT Obligations, Paragraph 1.b.
 - d. ODOT agrees to comply with the provisions of ORS 293.462 with regard to timely payment.
2. ODOT certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within ODOT's current appropriation or limitation of current biennial budget.
 3. ODOT's Project Liaison for this Agreement is Robyn Bassett, ODOT, 123 N.W. Flanders Street, Portland, OR 97209, phone: 503-731-8469, email: robyn.bassett@odot.state.or.us, or an individual designated by the ODOT's Region 1 Manager in the event of the unavailability of the aforementioned individual.

ODOT's Liaison shall:

- a. Receive any notices provided by CITY under this Agreement.
- b. Review and process for payment, all eligible, actual Project costs incurred within thirty (30) days of the date of receipt of CITY's invoices by ODOT.
- c. Advise CITY, at CITY's request, on matters affecting the Project.
- d. ODOT's Project Liaison is granted the authority to enter into and execute formal amendments to this Agreement when revisions to the Project schedule are deemed necessary by the Project review team.

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4. ODOT shall review the documentation provided by CITY to ensure that the Project undertaken by CITY is the Project approved by the Oregon Transportation Commission at its August 2005 meeting.
5. ODOT shall not be required to approve CITY's selection of contractors, right of way purchase, or engineering design documents, except as the Project design affects the state highway system or as required by the conditions of approval adopted by the Oregon Transportation Commission.
6. ODOT shall maintain a web site for the 2003 OTIA Modernization Program listing Project status and accomplishment information for CITY's Project.

GENERAL PROVISIONS

1. This Agreement may be terminated by mutual consent of both Parties.
2. ODOT may terminate this Agreement effective upon delivery of written notice to CITY, or at such later date as may be established by ODOT, under any of the following conditions:
 - a. If CITY fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If CITY fails to perform any of the other provisions of this Agreement or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from ODOT fails to correct such failures within ten (10) days or such longer period as ODOT may authorize.
 - c. If CITY fails to provide payment of its share of the cost of the Project.
 - d. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if ODOT is prohibited from paying for such work from the planned funding source.
3. If ODOT terminates this Agreement for the reasons described in General Provisions, Paragraph 2, "a" or "b" or "c" above, CITY must reimburse ODOT for all OTIA funds expended. If CITY fails to reimburse ODOT, ODOT may withhold CITY's proportional share of State Highway Fund distribution necessary to reimburse ODOT for costs incurred by such CITY breach.

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4. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
5. Both Parties agree that if the widening of SW Moody Street or any other Project elements impact ODOT right of way in the vicinity of the existing easement as mentioned in Recitals number 3, all additional easements or easement amendments shall be completed before proceeding to the construction phase of the Project. An amendment to this Agreement is also required prior to entering into the right of way and construction phases of this Agreement.
6. CITY acknowledges and agrees that ODOT, the Secretary of State's Office of the State of Oregon, and their duly authorized representatives shall have access to the books, documents, papers, and records of CITY which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts during the course of the Project and for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.
7. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
8. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision.

IN WITNESS WHEREOF, each Party, by execution of this Agreement, hereby acknowledges that its signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is amended into the 2008-2011 Statewide Transportation Improvement Program, Key #16973 that was approved by the Oregon Transportation Commission on October 21, 2009.

The Oregon Transportation Commission on December 29, 2008, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-

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to-day operations. Day-to-day operations include those activities required to implement the biennial budget approved by the Legislature, including activities to execute a project in the Statewide Transportation Improvement Program.

On September 15, 2006, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, Paragraph 1, in which authority is delegated to the Deputy Director, Highways to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program or in other system plans approved by the Oregon Transportation Commission, or in a line item in the biennial budget approved by the Director.

SIGNATURE PAGE TO FOLLOW

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CITY OF PORTLAND, by and through its
elected officials

By _____
Mayor

Date _____

By _____
Auditor

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

APPROVED AS TO FORM

By _____
Sharon Armes
CITY ATTORNEY

Date _____ *4/9/10*

CITY Contact:

Chris Armes
Project Manager
Portland Bureau of Transportation
1120 SW 5th Ave., Rm 800
Portland, OR 97204-1969
(503) 823-7051
Chris.Armes@portlandoregon.gov

ODOT Contact:

Robyn Bassett
ODOT, 123 N.W. Flanders Street
Portland, OR 97209
phone: 503-731-8469
email: robyn.bassett@odot.state.or.us,

STATE OF OREGON, by and through
its Department of Transportation

By _____
Deputy Director, Highways

Date _____

APPROVAL RECOMMENDED

By _____
Technical Services Manager/Chief Engineer

Date _____

By _____
[Signature]
Region 1 Manager

Date _____ *4/17/10*

By _____
District 2A Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General

Date: _____

EXHIBIT A
PROJECT DESCRIPTION
City of Portland
SW Moody Avenue: SW River Parkway – SW Gibbs Street

The South Waterfront District within the CITY is being developed to accommodate an estimated 10,000 jobs and 5,000 residences. Based on land use and trip generation assumptions, trips generations are expected to increase by more than 400 percent over the next twenty (20) years. This increase occurs even with new transit options, including increased streetcar operations and a new light rail line. The anticipated growth is expected to exceed the capacity of the existing access points for the district.

To provide for the projected vehicular and transit access needs for the District, SW Moody right of way and road design will be modified with the following changes:

- an additional south bound travel lane will be added
- the existing streetcar tracks will go from a single track to double track
- the existing sidewalks and bike lanes will be widened to meet current district design standards
- the roadway will be realigned to provide a horizontal curve to accommodate vehicular design speeds of 30 mph.
- the grade of the roadway will be raised to accommodate the new light rail bridge

Project Cost Estimate		Project Financing	
Preliminary engineering & design	\$ 7,858,584	CITY Contribution	\$31,685,955
Right of way purchase	\$ 250,000	OTIA	\$12,000,000
Construction	\$35,577,371		
Total	\$43,685,955	Total	\$43,685,955



SW MOODY:
GIBBS TO RIVER PARKWAY
VICINTY MAP

EXHIBIT "A"



**EXHIBIT B
Oregon Transportation Investment Act (OTIA)
Progress Billing Form**

CITY: _____
 Project: _____
 Agreement No: _____
 Billing Period: _____ to _____

	Costs Incurred This Period	Costs Billed Previously	Total Cost To Date	Participation Rate	Total Amount Claimed	Prior Total Claimed	Amount Claimed This Period	Percent Complete This Phase
Planning								
Engineering Design								
Right of Way								
Construction								
Total								

Submission of this request certifies that, in accordance with the laws of the State of Oregon and under the conditions of approval for the Project identified above, actual costs claimed have been incurred and are eligible pursuant to the Intergovernmental Agreement between CITY and ODOT. Also, no other claims have been presented to, or payment made by, the State of Oregon for those costs claimed for reimbursement.

 CITY Project Liaison

Date
 (for ODOT use)

I have reviewed the above Project and related costs and, in my opinion, subject to audit, the costs reflect the progress to date and are eligible for reimbursement in the amount of \$_____.

 ODOT Project Liaison

 Date