

Approved: L. E. George
MCH:pf
12/20/79

Misc. Contracts & Agreements
No. 7219

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. The Mt. Hood Highway, State Primary Highway No. 26, is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission, and is routed through the City of Portland along S.E. Powell Boulevard.

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 so deposited, the state shall proceed with the proposed project. Money so deposited shall be disbursed for the purpose for which it was deposited.

3. 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 50th Avenue - 92nd Avenue Section of the Mt. Hood Highway, hereinafter referred to as "project". The location and limits of said project are 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 with local matching funds to be provided by State and City.

4. It is proposed that the project will consist of all work necessary to upgrade the present facility with provisions for left-turn refuges, sidewalks, landscaping, sound barriers, off-street parking and traffic signals. Right-of-way will be acquired as a participating part of the project. The State will perform the construction engineering. The required 15 percent local matching funds will be provided by State to the limit of the State Bond Fund reserved for the Ross Island Bridge to I-205 Section of the Mt. Hood Highway with the remainder to be provided by the City of Portland.

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, right-of-way acquisition, eligible utility relocations and construction work for the project. 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 obtain the necessary right-of-way, easements and permits, prepare the contract documents, advertise for bids, award all contracts, furnish all construction engineering, material testing, technical inspection and resident engineer services for administration of the contract and, upon completion of construction, thereafter perform all necessary roadway maintenance operations from face-of-curb to face-of-curb within the limits of the project, excepting the landscaped medians.
3. State shall arrange conferences with City during construction of the project to review the work in progress and assure conformance with City requirements. As a minimum, a preconstruction conference will be arranged with representatives of State, City and the contractor in attendance, and at any time alternates are to be considered. State shall submit plans and estimates for City review and approval prior to advertisement for contract bids.
4. State shall, upon receipt of itemized statements for 100 percent of actual costs incurred by City for prior approved work on behalf of the project, promptly reimburse City for 100 percent of said costs.
5. State shall locate and construct certain city street connections and off-street parking areas within the limits of the project and, upon completion of construction, shall dispose of all State's right, title and interest in those portions of property lying outside state highway jurisdiction, with all jurisdiction, maintenance and control thereupon passing to City to be performed at its sole expense.
6. State shall close S.E. 71st Avenue at the southerly right-of-way boundary of the Mt. Hood Highway (Powell Boulevard).
7. State shall, without cost to City, relocate or cause to be relocated all existing privately-owned utility conduits, lines, poles, mains, pipes and other such facilities that are located on private property where such relocation is necessary to conform said utility or facilities to the plans for the project.
8. State shall, upon receipt of itemized statements in triplicate of such expenses, reimburse City for the reasonable expenses incurred by City in relocating or extending any City-owned utility conduits, lines, poles, mains, pipes and other such facilities located within a public right-of-way, upon City-owned property, or on private property under City easements, where such relocation or extension is necessary to conform said facilities to the

plans for the project; except that in the event such facilities are located within or upon the right-of-way of a state highway under a permit issued by the Oregon Transportation Commission under condition that the permittee will bear the cost of any relocation, the expense of relocating or extending such facilities shall be borne by the City or others.

9. 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, at its own initial cost and upon request by State, relocate or extend those City-owned utility facilities described in Paragraph 8 under STATE OBLIGATIONS, subject to reimbursement as therein provided. City shall comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as Regulations), which are herein incorporated by reference and made a part of this agreement. Civil Rights Assurances must be included in all utility relocation contracts where Federal funds are involved and the City does not perform the relocation work with its own forces. This would usually occur when the City enters into a contract or agreement with a contractor to perform all or a portion of the work.

3. City shall, upon request by State and without cost to State, relocate or cause to be relocated, all City-owned utility conduits, lines, poles, mains, pipes and other such facilities not located within a public right-of-way, upon City-owned property, or on private property under City easement, where such relocation is necessary to conform said facilities to the plans for the project.

4. City shall, without cost to the State, relocate or cause to be relocated all city-owned utility conduits, lines, poles, mains, pipes and other such facilities located within or upon the right-of-way of a state highway under a permit issued by Oregon Transportation Commission upon condition that the permittee will bear the cost of any relocation.

5. City shall, upon request by State and without cost to State, relocate or cause to be relocated all privately-owned utility conduits, lines, poles, mains, pipes and other such facilities located within the limits of City on public streets or ways where such relocation is necessary to conform said utilities or facilities to the plans for the project. To this end City shall exercise all its municipal powers, including the legislative power, to require relocation of such utilities or facilities.

6. After State has requested City to move any of the above-mentioned City-owned utilities or facilities, City shall notify the engineer prior to commencing the relocation work on such utilities or facilities so that the relocation work can be properly coordinated with the other work of the project.

7. City shall allow state engineers and/or inspectors to inspect any relocation of utility conduits, lines, poles, mains, pipes, and other such facilities, as described in Paragraphs 3 and 4 in order to determine whether said utilities or facilities have been relocated in accordance with the plans for the project.

8. City shall, upon execution of this agreement, assign a liaison engineer to assure that construction of the project is in conformance with City requirements. The liaison engineer shall act as coordinator between State and the various interested City Bureaus and Departments during construction of the project.

9. City shall, prior to proceeding with the construction phase of the project, 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 such work and the amount anticipated to be contributed by the Federal Highway Administration and State. When the actual total cost of the project has been computed, an adjustment will be made in the City matching share of costs.

10. City shall present properly certified bills for 100 percent of actual costs incurred by City directly to the State Resident 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 for periods of not less than one month duration, based on actual expenses to date.

11. City hereby consents to the closure of S.E. 71st Avenue at the southerly right-of-way boundary of the Mt. Hood Highway (Powell Blvd.).

12. City shall, upon completion of construction, assume at its sole expense all jurisdiction, maintenance and control of those street connections and off-street parking areas, referred to in paragraph 5 under STATE OBLIGATIONS, with all State's right, title and interest passing to City.

13. 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.

14. City shall, upon completion of construction, control all parking on the project. In compliance with various rules, regulations and policies pertaining to the Federal Aid Highway System, City shall obtain from State prior approval for any future changes, including traffic-control measures, that may affect the operation of that portion of the Federal Aid Highway System covered by this agreement.

15. City shall, upon completion of the project, at its sole expense, furnish the necessary irrigation water and perform all required maintenance of landscaped areas, including any planted median strips.

16. City shall, in the first instance, perform all necessary maintenance operations associated with the signal equipment and pay all costs of electrical energy consumed in operation of the equipment. The costs of maintenance and power shall be shared by State and City as negotiated on an annual basis.

17. 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.

18. City shall adopt an ordinance authorizing its City Officials to enter into 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, with State funds limited to approximately \$2.9 million.

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; and Titles 2 and 3 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

3. Signing, lighting or traffic protection devices that are necessary to protect the motoring public will be included as a part of the project with costs of maintenance and power to be shared by State and City in accordance with the "Policy Statement for Cooperative Traffic Control Projects" approved by the Oregon State Highway Commission and the League of Oregon Cities bearing the date of September 8, 1971.

4. 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.

5. State and City mutually agree and understand that jurisdictional responsibilities will not be altered by reason of this agreement.

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 _____, 19____.

The Oregon Transportation Commission, by a duly adopted delegation order, authorized its Chairman or Vice Chairman to act in its behalf in approving this agreement. Approval was given for this agreement on _____ by _____, which approval is set forth in the Minutes of the Oregon Transportation Commission. The delegation order also authorizes the State Highway Engineer to execute the agreement for and on behalf of the Commission.

APPROVAL RECOMMENDED

Region Engineer

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

State Highway Engineer

APPROVED AS TO FORM

City Attorney

CITY OF PORTLAND, by and through
its designated City Officials

By _____
Mayor

By _____
Commissioner of Public Works

ORDINANCE NO. 149817

An Ordinance authorizing the City to enter into an agreement with the State of Oregon, by and through its Oregon Department of Transportation, providing for construction, financing, City payment of local share in excess of available State Highway Bond Funds, and maintenance of Powell Boulevard between SE 50th Avenue and SE 92nd Avenue and declaring an emergency.

The City of Portland ordains:

Section 1, The Council finds:

1. Construction of SE Powell Boulevard, utilizing City share Interstate Withdrawal Funds and using State Highway Bond Funds for local match, has been authorized by the Council as part of the Eastside Transportation Program.
2. The CRAG (METRO) Transportation Improvement Program, adopted by CRAG on August 4, 1977, authorized use of Mt. Hood Freeway Withdrawal Funds to accomplish this project.
3. The project will consist of right-of-way acquisition and construction to upgrade Powell Boulevard between SE 50th Avenue and SE 92nd Avenue, with provisions for left-turn refuges, sidewalks, landscaping, sound barriers, off-street parking and traffic signals.
4. Due to inflationary cost increases, the total cost of the project will be approximately \$20,300,000 at the time of construction in May 1982 instead of the \$13,529,000 originally programmed.
5. The Local match originally programmed at \$2,029,000 will be approximately \$3,045,000.
6. The ODOT has \$1,982,000 in State Bond Funds reserved for local match for this project, leaving a shortfall of approximately \$1.1 million.
7. The ODOT does not have sufficient funds available for the local match which will be required.
8. The ODOT has submitted an agreement to the City for approval providing for construction, maintenance and City payment of the local share of project costs in excess of the State Bond Funds reserved for this project.

ORDINANCE No.

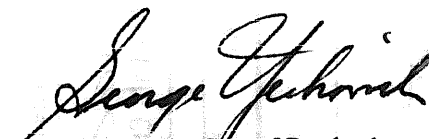
NOW, THEREFORE, the Council directs:

- a. That 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. That the Council will authorize funds in the FY 1981-82 budget of the Bureau of Street and Structural Engineering to pay the local share of project costs in excess of the State Bond Funds reserved for this project.
- c. That the Auditor is directed to transmit five executed copies of the agreement to the Oregon Department of Transportation, 5821 NE Glisan Street, Portland, Oregon 97213, attention Jon Rose.

Section 2. The Council declares an emergency exists because delay in executing this agreement will result in delay in obtaining Federal approval to acquire right-of-way, resulting in hardship to owners of property to be acquired and in increased costs to the City, due to inflationary cost increases. Therefore, this Ordinance shall be in force and effect from and after its passage by the Council.

Passed by the Council, JUN 25 1980

Commissioner Mike Lindberg
Steve Riddell:mmc
June 4, 1980


Auditor of the City of Portland

2156

Calendar No. ~~2144~~

ORDINANCE No. 149817

Title

THE COMMISSIONERS VOTED
AS FOLLOWS:

	Yeas	Nays
Ivancie	1	
Jordan	1	
Lindberg	1	
Schwab	1	
McCreedy	1	

An Ordinance authorizing the City to enter into an agreement with the State of Oregon, by and through its Oregon Department of Transportation, providing for construction, financing, City payment of local share in excess of available State Highway Bond Funds, and maintenance of Powell Boulevard between SE 50th Avenue and SE 92nd Avenue and declaring an emergency.

JUN 18 1980

CONTINUED TO JUN 25 1980

FOUR-FIFTHS CALENDAR	
Ivancie	
Jordan	
Lindberg	
Schwab	
McCreedy	

Filed JUN 13 1980

GEORGE YERKOVICH

Auditor of the CITY OF PORTLAND

B. *George Yerkovich*
Deputy

INTRODUCED BY

Commissioner Mike Lindberg

NOTED BY THE COMMISSIONER

Affairs

Finance and
Administration

Safety

Utilities

Works

WBL/ms

BUREAU APPROVAL

Bureau:

Street & Structural Engineering

Prepared By:

Date:

Steve Ridde11 6-12-80

Budget Impact Review:

☐ Completed ☒ Not required

Bureau Head:

David J. Vargas
David J. Vargas, Acting Chief

NOTED BY

City Attorney

City Auditor

City Engineer Approved:

John M. Lang, City Engineer

John M. Lang