

Date: June 26, 2013

To: Board of Directors

From: Neil McFarlane

Subject: RESOLUTION 13-06-44 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (“TRIMET”) AUTHORIZING A MODIFICATION TO AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PORTLAND FOR ENDANGERED FISH HABITAT ENHANCEMENT IN THE SOUTH WATERFRONT CENTRAL DISTRICT GREENWAY

1. Issue or Purpose of the Item.

The purpose of this item is to request that the TriMet Board of Directors (“Board”) authorize the General Manager to execute a modification to the intergovernmental agreement (“IGA”) with the City of Portland (“City”) for the design, permitting, construction, maintenance and monitoring of endangered fish habitat enhancements in the South Waterfront Central District Greenway related to the Portland-Milwaukie Light Rail Transit Project (“Project”).

2. Reason for Board Action.

Board authorization is required because the proposed modification increases the IGA amount beyond the amount previously authorized by the Board.

3. Background.

At its January 26, 2011 meeting, the Board approved Resolution 11-01-13 authorizing TriMet to enter into an IGA with the City for design and construction services related to the development of a shallow water beach at the South Waterfront Central District Greenway. The creation, maintenance and monitoring of this beach area was a requirement of federal permits issued for the construction of the Willamette River Bridge and other impacts to rivers and streams along the Project alignment.

To construct the Willamette River Bridge, TriMet must place rock in shallow water areas to protect against re-suspension of contaminated soils that would be caused by the potential scouring around the bridge piers. To mitigate the impact to fish wildlife caused by the placement of this rock, TriMet was required to develop a minimum of 25,500 square feet of shallow water habitat. Similarly, at that time the City was in the process of implementing the South Waterfront Greenway Development Plan, which included constructing the South Waterfront Greenway in the Central District and developing enhanced wildlife habitat, vegetation, bike and pedestrian paths, overlooks and lawn areas. Like TriMet, the City’s project involved obtaining numerous permits and approvals. Recognizing the benefit to each party, TriMet and the City agreed that TriMet would contribute

money set aside to satisfy the Project's mitigation requirements to help fund the City's Greenway Improvements project. This agreement allowed TriMet to meet its requirement to create shallow water habitat, while partnering with the City on a combined, better mitigation project.

To that end, the IGA stated that the TriMet would provide \$1,000,000 to the City for the design, permitting and construction of 25,500 square feet of shallow water beach area in at the Central District Greenway, and an additional \$300,000 for reporting, monitoring and maintenance of this area as required by permits.

The City began construction last summer and encountered additional, unexpected permit requirements and changed site conditions that have caused the overall cost of the habitat enhancement project to increase. Specifically, the Oregon Department of Environmental Quality imposed additional permit requirements, such as a reactive core mat to address hazardous materials, and the Willamette River experienced a higher than expected water table last year, causing delays to construction.

The cost of the added requirements and delay added more than \$1,000,000 to the endangered fish habitat enhancement work. Since TriMet is a partner in the combined undertaking, and would have participated in these costs had they been known at the outset, TriMet has agreed to participate in a portion of the increased cost of the construction of the habitat enhancement project. This modification will increase the IGA amount by \$420,000, to \$1,720,000. TriMet will pay for this modification with Project funds, and has sufficient contingency in the Project budget to do so.

4. Options.

Under federal, state and local permits, TriMet is required to complete these endangered fish habitat enhancements by October 31, 2013 at the Central District location. The only option would be for TriMet to identify another fish habitat enhancement project of similar value and benefits. However, doing so would be expensive and would require changes to federal, state and local permits, as well the purchase of property, and the design and construction of the alternative enhancement project. Therefore, approval of the Resolution is the only recommended option.

5. Recommendation.

The General Manager recommends approval of the Resolution.

RESOLUTION 13-06-44

RESOLUTION OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (“TRIMET”) AUTHORIZING A MODIFICATION TO AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PORTLAND FOR ENDANGERED FISH HABITAT ENHANCEMENT IN THE SOUTH WATERFRONT CENTRAL DISTRICT GREENWAY

WHEREAS, TriMet has authority under ORS 267.200 and ORS Chapter 190 enter into a modification to the Intergovernmental Agreement with the City of Portland for endangered fish habitat enhancement in the South Waterfront Central District Greenway related to the Portland-Milwaukie Light Rail Transit Project (“Modification”); and

WHEREAS, the total amount of the Modification shall exceed the amount previously authorized by the Board of Directors (“Board”); and

WHEREAS, the Board, by Resolution dated November 25, 2009, adopted a Statement of Policies requiring the Board to approve intergovernmental agreements obligating TriMet to pay in excess of \$500,000;

NOW, THEREFORE, BE IT RESOLVED:

1. That the Modification shall be in conformance with applicable laws.
2. That the General Manager or his designee is authorized to execute the Modification.

Dated: June 26, 2013

Presiding Officer

Attest:

Recording Secretary

Approved as to Legal Sufficiency:

Legal Department