

Date: December 12, 2018

To: Board of Directors

From: Doug Kelsey

**Subject: RESOLUTION 18-12-79 OF THE TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF OREGON (TRIMET)
AUTHORIZING AN AMENDMENT TO AN AGREEMENT WITH
PROSPER PORTLAND FOR CONSTRUCTION AND PURCHASE OF
PROPERTY FOR A TRANSIT POLICE FACILITY**

1. Purpose of Item

The purpose of this item is to request that the TriMet Board of Directors (Board) authorize the General Manager to amend an agreement with the City of Portland, acting through Prosper Portland (formerly known as the Portland Development Commission) (Prosper Portland), for the construction and purchase of a portion of a building at the new Convention Center hotel parking garage in the Rose Quarter that will be used to house the Transit Police Central Precinct.

2. Type of Agenda Item

- Initial Contract
 Contract Modification
 Other _____

3. Reason for Board Action

Board approval is required because this amendment will increase the value of the agreement beyond the amount previously authorized by the Board.

4. Type of Action

- Resolution
 Ordinance 1st Reading
 Ordinance 2nd Reading
 Other _____

5. Background

At its December 2016 meeting, the Board approved Resolution 16-12-71, authorizing TriMet to enter into an agreement with the Portland Development Commission, now known as Prosper Portland, for the construction and purchase of a portion of the new Convention Center Hotel garage for a facility to house the Central Precinct of TriMet's Transit Police Division. The amount of the agreement was \$9,000,000, and included approximately 18,000 square feet of space and 50 parking spaces. The facility provided by Prosper Portland will be a shell space, and TriMet will hire its own contractor to perform tenant improvement work once the shell

space is complete. The agreement with Prosper Portland capped TriMet's contribution to the Convention Center hotel garage project at \$9,000,000, unless unforeseen site conditions were encountered or TriMet requested that additional work scope be provided.

At its February 2018 meeting, the Board approved Resolution 18-02-17, authorizing TriMet to increase its agreement with Prosper Portland by \$110,000 to install an emergency generator that was required by the Fire Marshall. This work was originally included in the scope of work for TriMet's upcoming tenant improvement contract, but for construction purposes it was determined that it would be more efficient and less expensive to include the emergency generator in the agreement with Prosper Portland.

This resolution would allow TriMet to increase the amount of the agreement with Prosper Portland by \$180,000, to pay for two items. The first is to include "hangers and embeds," which are items that become part of the building shell and are used to connect interior structures and finishes, such as mechanical equipment, interior walls, and stairs, into the scope of work being performed by Prosper Portland. As with the emergency generator, these are items that were originally included in the scope of TriMet's tenant improvement work, but are more efficiently included in the "shell" work being performed by Prosper Portland's contractor. The cost of these items is about \$40,000.

The second item is to pay for additional costs for soil remediation work that is necessary on the site. Under the differing site conditions clause of TriMet's agreement with Prosper Portland, TriMet agreed to pay its proportionate share (21 percent) of additional costs that were caused by the contractor encountering differing site conditions, which are conditions that were not reasonably expected to be encountered or that differed materially from the due diligence investigation performed by Prosper Portland and its contractor prior to construction. In this instance, the contractor encountered soil contamination that was unexpected, which will cause a significant increase in the cost of performing site remediation and soil disposal. The total cost to the project of this item is about \$700,000, and TriMet has agreed with Prosper Portland that its share of this unexpected cost will be 21 percent of the total cost, or approximately \$140,000.

6. Procurement Process

The original agreement with Prosper Portland was the result of a property search process and negotiations.

7. Diversity

Prosper Portland's contractor Mortenson Construction will be required to comply with Prosper Portland's Equity Policy during construction of the building. Prosper Portland's Equity Policy contains a Business Equity program designed to increase participation by DBE and M/W/ESB contractors and a Workforce Equity program designed to increase employment and apprenticeship opportunities by women and communities of color. At the time TriMet contracts for the tenant improvement work, TriMet will follow its own diversity policies.

8. Financial/Budget Impact

The cost of this amendment is included in the capital budget for FY2019.

9. **Impact if Not Approved**

In order to comply with the terms of its agreement with Prosper Portland, TriMet is required to pay its proportionate share of the soil remediation cost to Prosper Portland. Approval of this resolution is required to allow TriMet to meet those contractual obligations. For the addition of the cost of installing hangers and embeds, if this resolution is not approved TriMet could have its tenant improvement contractor perform this work. However, doing so would be inefficient and more expensive, and installing these components now, during construction of the shell, is much easier.

RESOLUTION 18-12-79

RESOLUTION OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AUTHORIZING AN AMENDMENT TO AN AGREEMENT WITH PROSPER PORTLAND FOR CONSTRUCTION AND PURCHASE OF PROPERTY FOR A TRANSIT POLICE FACILITY

WHEREAS, on December 14, 2016, the TriMet Board of Directors (Board) approved Resolution 16-12-71, which authorized an agreement with the City of Portland, acting through the Portland Development Commission, now known as Prosper Portland, for the Construction and Purchase of a Condominium Interest in Property for a Transit Police Facility (Agreement); and

WHEREAS, on February 28, 2018, the Board approved Resolution 18-02-17, which authorized an amendment to the Agreement; and

WHEREAS, TriMet has authority under ORS 267.200 to execute an additional amendment to the contract with Prosper Portland (Amendment); and

WHEREAS, the total amount of the Amendment exceeds the amount previously authorized by the Board; and

WHEREAS, the Board, by Resolution dated October 25, 2017, adopted a Statement of Policies requiring the Board to approve amendments to contracts that exceed the contract amount previously authorized by the Board;

NOW, THEREFORE, BE IT RESOLVED:

1. That the Amendment shall be in conformance with applicable laws.
2. That the General Manager or his designee is authorized to execute the Amendment in the amount of \$180,000.

Dated: December 12, 2018

Presiding Officer

Attest:

Recording Secretary

Approved as to Legal Sufficiency:



Legal Department