

**Date:** December 13, 2023

**To:** Board of Directors

**From:** Sam Desue, Jr.



**Subject:** **RESOLUTION NO. 23-12-62 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AUTHORIZING TRIMET TO ACQUIRE BY PURCHASE OR EMINENT DOMAIN CERTAIN REAL PROPERTY INTERESTS NECESSARY TO CONSTRUCTION OF THE PARK AVENUE PARK AND RIDE GARAGE PROJECT**

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**1. Purpose of Item**

This Resolution requests the TriMet Board of Directors (Board) to authorize the General Manager or his designee to acquire certain real property interests necessary for construction of the Park Avenue Park & Ride Garage Expansion Project (Project), by purchase or eminent domain.

**2. Type of Agenda Item**

- Initial Contract
- Contract Modification
- Other Authorization to Acquire Real Property Interests by Purchase or Eminent Domain

**3. Reason for Board Action**

Chapter 267 of the Oregon Revised Statutes authorizes TriMet to acquire real property interests by purchase or eminent domain, and Chapter 35 sets forth the process for acquiring property by eminent domain. ORS 35.235, requires the Board to declare by resolution or ordinance the necessity and purpose for which the property interests are required. Here, the real property interests to be acquired are necessary for construction and operation of the Project. TriMet now seeks Board authority to acquire the real property interests by exercise of eminent domain.

**4. Type of Action**

- Resolution
- Ordinance 1<sup>st</sup> Reading
- Ordinance 2<sup>nd</sup> Reading
- Other \_\_\_\_\_

**5. Background**

In September 2015, TriMet completed the construction of the Park Avenue Park & Ride Parking Garage (Parking Garage) in Milwaukie, as part of the Portland-Milwaukie Light Rail (PMLR or Orange Line) project. The original scope of the Orange Line project envisioned four floors of parking at the Parking Garage. Although two floors were deleted from the project scope as the result of value engineering considerations early in the design phase, TriMet still anticipated that two additional floors eventually would be needed. Therefore, TriMet required the original design to accommodate future construction of additional floors.

Because the Orange Line project was finished under its allocated budget, TriMet was eventually successful in receiving an addendum to the project budget to allow construction of the additional two floors. Although the work was paused during the pandemic, TriMet staff anticipates that future Orange Line ridership should recover enough to warrant construction of the additional floors. TriMet is now moving forward with the expansion of the Parking Garage, with construction expected to begin in February 2024.

In order to construct and operate the Project, TriMet must acquire a temporary construction easement over a portion of the adjacent parcel owned by the Milwaukie-Portland Elks Lodge No. 142 (Property), allowing TriMet to use a portion of the Elks Lodge parking lot for construction staging, parking, field office and related purposes for a period of 16 months. The Elks Lodge parking lot is the only large, open site located adjacent to the Project site that is suitable for construction staging. The legal description and map of the Property is attached to this Resolution as Exhibits A and B.

At its June 28, 2023 meeting, via Resolution No. 23-06-26, the Board declared that the temporary construction easement over the Property was necessary for the construction and operation of the Project and authorized the General Manager to attempt to acquire the Property through agreement. Thereafter, TriMet received an independent appraisal of the Property and made a formal offer to the Property owner on August 30, 2023.

TriMet has engaged in negotiations with the Property owner but those negotiations have not, thus far, been successful. As a result, TriMet is now seeking Board authorization to acquire the temporary construction easement over the Property through condemnation pursuant to this Resolution No. 23-12-62. Initiation of condemnation proceedings will allow the parties to continue negotiations while still maintaining the Project schedule.

Condemnation is a process defined by statute that protects both the property owner and the public body engaged in the property acquisition process. The property owner may access funds while the ultimate amount of just compensation is being determined, and may receive an award of legal fees in the event the public body's offer is deemed insufficient by the judge or jury. At the same time, the public body is able to obtain possession of the real property interest (in this case, the temporary construction easement), thereby reducing the risk to the Project schedule. In addition, both parties benefit by allowing a judge or jury to decide the amount of just compensation when they cannot otherwise agree.

Since the construction easement over the Property is needed in the near future, initiating condemnation now will ensure it is available to the Project in a timely manner.

#### **6. Financial/Budget Impact**

The acquisition of the necessary Property interest is a Project cost, and is included in the Project budget.

#### **7. Impact if Not Approved**

TriMet remains hopeful that the Property can be acquired by purchase through negotiations, subsequent to the initiation of condemnation proceedings. However, in order to ensure that the Property interests are available when needed for the Project, and to avoid costs that would be associated with a delay of construction, condemnation proceedings should commence in the near future. If the Board does not adopt the Resolution, the likelihood of Project delay and TriMet's

exposure to costs related to that delay will increase. Condemnation is the only acquisition method by which TriMet can be assured of timely obtaining this needed Property.

**RESOLUTION NO. 23-12-62**

**RESOLUTION NO. 23-12-62 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AUTHORIZING ACQUISITION BY PURCHASE OR EMINENT DOMAIN CERTAIN REAL PROPERTY INTERESTS NECESSARY FOR CONSTRUCTION OF THE PARK AVENUE PARK & RIDE GARAGE EXPANSION PROJECT**

**WHEREAS**, the Park Avenue Park & Ride Parking Garage Expansion Project (Project) will add two additional floors to the existing Park Avenue Park & Ride Parking Garage; and

**WHEREAS**, the Project has been approved as part of the Federal Transit Administration grant for the Portland-Milwaukie Light Rail (Orange Line) Project; and

**WHEREAS**, TriMet has identified certain real property interests owned by the Milwaukie-Portland Lodge No. 142 Benevolent and Protective Order of Elks of the United States of America, and generally described and depicted on the attached Exhibits A and B, as necessary to acquire for the construction and operation of the Project; and

**WHEREAS**, pursuant to ORS 267.200(2) and ORS 267.225(2), TriMet is authorized and empowered to acquire by condemnation, purchase, lease, devise, gift or voluntary grant, real and personal property or any interest therein located inside the TriMet boundaries; and

**WHEREAS**, after first declaring through its Board by Resolution the necessity of the acquisition of real property and the purpose for which it is required, ORS 35.235 requires TriMet to attempt to agree with the owner of said real property the compensation to be paid therefor, and the damages, if any, for the taking thereof;

**WHEREAS**, the Board adopted Resolution No. 23-06-26 on June 28, 2023, and TriMet has attempted to agree with the property owner for compensation to be paid; and

**WHEREAS**, for the accomplishment of the Project, it is necessary that TriMet have the immediate right of possession of the real property interests described in this Resolution;

**NOW, THEREFORE, BE IT RESOLVED:**

1. That the Board hereby declares that the acquisition of a temporary construction easement on certain real property, generally described and depicted on the attached Exhibits A and B and owned by the Milwaukie-Portland Lodge No. 142 Benevolent and Protective Order of Elks of the United States of America, previously known as Milwaukie Lodge Number 2032, Benevolent and Protective Order of Elks of the United States of America, a corporation of Oregon, who also is shown of record as Milwaukie Elks Lodge #2032, is necessary for the construction and operation of the Project.
2. That Exhibit A and Exhibit B are attached hereto and made a part hereof, as if fully set forth herein.
3. That the construction of the Project is necessary for the public interest, and has been planned, designed, located and will be constructed in a manner that will be most compatible with the greatest public good and the least private injury.

4. That the General Manager or his designee is authorized and directed to attempt to make agreements with the owners of the real property and any other persons in interest as to the compensation to be paid for the real property interests identified in the attached Exhibits A and B, and damages, if any, for the acquisition thereof, and is authorized to make a binding offer for such compensation.
5. That the Board hereby ratifies any offers to purchase any and all rights, title and interest that have been previously made in connection with the Project.
6. That in the event no satisfactory agreement for TriMet's acquisition of the identified real property interests can be reached, TriMet is authorized to commence and prosecute to final determination such proceedings as may be necessary to obtain immediate possession and acquire the property interests; and TriMet is further authorized to make such stipulations, agreements, or admissions in the course of such proceedings as may be in TriMet's best interests.
7. That the immediate possession of the real property interests is necessary.
8. That there is hereby authorized the creation of a fund in the amount estimated to be the just compensation for the real property interests identified in Exhibits A and B which, to obtain possession of the property, shall be deposited with the clerk of the Court in which such legal proceedings are commenced, for the use by the defendant or defendants in such proceedings.
9. That the General Manager or his designee is authorized to execute the necessary documents on behalf of the Board in a form approved by TriMet's General Counsel.

Dated: December 13, 2023



Presiding Officer

Attest:



Recording Secretary

Approved as to Legal Sufficiency:



Legal Department