

Date: February 28, 2024

To: Board of Directors

From: Sam Desue, Jr.

Subject: **RESOLUTION NO. 24-02-12 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AUTHORIZING MODIFICATION OF THE SHARED USE AGREEMENT (SUA) WITH PORTLAND & WESTERN RAILROAD FOR ONGOING WESTSIDE EXPRESS SERVICE (WES) OPERATIONS**

1. Purpose of Item

This Resolution requests that the TriMet Board of Directors (Board) authorize the General Manager or his designee to execute a modification (Amendment #6) to the Shared Use Agreement (SUA) with Portland & Western Railroad, Inc. (P&W) for the next five years of Westside Express Service (WES) operations.

2. Type of Agenda Item

- Initial Contract
- Contract Modification
- Other:

3. Type of Contract Procurement

- Low Bid / Invitation to Bid (ITB)
- Request for Proposals (RFP) (inc. CM/GC)
- Request for Qualifications (RFQ) (Personal Services)
- Other (inc. sole source): Sole Source

4. Reason for Board Action

Board authorization is required for all contracts obligating TriMet to pay in excess of \$1,000,000.

5. Type of Action:

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

6. Background

On November 22, 2006, the Board approved Resolution No. 06-11-83, authorizing the fifty-year SUA with P&W for the operation and maintenance of the WES commuter rail line from November 27, 2006 to November 26, 2056. Under the SUA, TriMet is obligated to make annual payments to P&W for the railroad’s actual costs of certain railroad personnel and dispatching, track and signal maintenance service, and other basic maintenance essential for WES operations.

Periodic Amendments to the SUA must be made to update overhead billing rates for annual costs of operations and maintenance services provided by P&W, and these overhead billing rates ordinarily are made effective each February for a new five-year period.

Upon the opening of WES service in 2009, the parties executed Amendment #1 to the SUA to establish P&W overhead billing rates for February 2, 2009 through February 1, 2014. These rates are shown on Schedules 2.2(c) and 4.1(a) to the SUA. Schedule 2.2(c) applies to operations services, including dispatchers, operators, conductors, trainmaster, and contract administrators. Schedule 4.1(a) applies to maintenance services, including cab signal inspections, MOW supervisor, track inspector, foreman, truck driver, track laborers, signal maintainers, and essential maintenance materials. Over the subsequent decade, the parties executed additional amendments to the SUA that updated billing rates for P&W’s services.

On January 22, 2020, via Resolution No. 22-01-06, the Board authorized the execution of Amendment #5, which established billing rates on Schedules 2.2(c) for operations services and 4.1(a) for maintenance services and materials, for the four-year period of February 2, 2020 to February 1, 2024. Under Amendment #5, TriMet’s payment to P&W for the four-year period was estimated to be \$12,196,878.

This Resolution will authorize execution of Amendment #6 to the SUA, and establish updated billing rates for the five-year period of February 2, 2024 through February 1, 2029, at a total estimated cost of \$22,618,442. For Amendment #6, P&W has used the same methodology as in Amendments #4 and #5 to determine estimated overhead billing rates for Schedules 2.2(c) and 4.1(a), and similarly complies with federal guidance specified in 23 CFR Part 140, Subpart I “Reimbursement for Railroad Work” and 48 CFR Part 31 “Contract Cost Principals and Procedures.”

For budgetary purposes, the annual estimated costs, including overhead, for Amendment #6 over five years are summarized in the chart below. The initial estimates for each Schedule and the estimated total annual payment are shown under Year 1. Over the following Years 2 through Year 5, the estimated costs are assumed to increase at the rate of 3% annually. Under the SUA, TriMet pays the actual costs, plus overhead, for P&W’s Services.

Item / Schedule	Year 1: Begin Feb 2, 2024	Year 2: Begin Feb 2, 2025	Year 3: Begin Feb 2, 2026	Year 4: Begin Feb 2, 2027	Year 5: Begin Feb 2, 2028
Operations (2.2c)	\$2,696,057	\$2,776,939	\$2,860,247	\$2,946,054	\$3,034,436
Maintenance services/materials (4.1a)	\$1,564,230	\$1,611,157	\$1,659,492	\$1,709,276	\$1,760,555
Estimated Annual Total	\$4,260,287	\$4,388,096	\$4,519,738	\$4,655,331	\$4,794,991
Estimated Five Year Total					\$22,618,442

7. Description of Procurement Process

The SUA is a sole source operational agreement with P&W because the railroad is the owner of the heavy-rail tracks on which WES must operate. The Amendments to the SUA are processed through Finance and Administrative Services and reviewed and approved by Legal Services.

8. Diversity

WES Commuter Rail is jointly operated by TriMet vehicle maintenance personnel under the direction of TriMet management, and by P&W maintenance of way and train operating personnel under the direction of P&W management. TriMet is an equal opportunity employer, committed to developing and maintaining a diverse organization that is reflective of and sensitive to the needs of the community it serves, and encourages its contractors to maintain similar diversity goals. P&W is subject to federal and state civil rights and equal employment statutes.

9. Financial/Budget Impact

The costs of WES operating services are budgeted annually within the Transportation Division's operating budget. Under proposed Amendment #6, the estimated cost of reimbursement to P&W for WES operations from February 2, 2024 to February 1, 2029 is projected to be \$22,618,442. However, the SUA requires TriMet to pay the actual annual costs, including overhead, not the estimated amount.

10. Impact if Not Approved

The working relationship between TriMet and P&W has been collaborative and mutually supportive to date, and maintaining this relationship is important to the continued efficient operation of WES. This Resolution authorizes the execution of Amendment #6, which establishes TriMet's estimated five-year payments to P&W pursuant to the SUA. The passage of this Resolution is strongly recommended.

RESOLUTION NO. 24-02-12

**RESOLUTION NO. 24-02-12 OF THE TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF OREGON (TRIMET) AUTHORIZING
MODIFICATION OF THE SHARED USE AGREEMENT (SUA) WITH
PORTLAND & WESTERN RAILROAD FOR ONGOING WESTSIDE EXPRESS
SERVICE (WES) OPERATIONS**

WHEREAS, on November 22, 2006, the TriMet Board of Directors (Board) approved Resolution No. 06-11-83 authorizing the General Manager to enter into a fifty-year Shared Use Agreement (SUA) with Portland and Western Railroad (P&W), allowing TriMet's Westside Express Service (WES) to operate in the P&W right of way; and

WHEREAS, the SUA requires TriMet to reimburse P&W annually for the actual costs of labor and overhead for train operations, dispatching, maintenance of way, signal maintenance and basic maintenance services (P&W Services), and requires periodic updates to the SUA; and

WHEREAS, the most recent Amendment #5 to the SUA established billing rates and estimated annual amounts to be paid by TriMet for P&W Services for the period from February 2, 2020 through February 1, 2024, and was authorized by the Board in Resolution No. 20-01-06; and

WHEREAS, by Resolution No. 22-05-35, dated May 25, 2022, the Board adopted a Statement of Policies requiring it to approve agreements obligating TriMet to pay in excess of \$1,000,000; and

WHEREAS, Amendment #6 to the SUA establishes billing rates and estimated annual amounts to be paid by TriMet for P&W Services, not to exceed \$22,618,442 over the five-year period from February 2, 2024 through February 1, 2029;

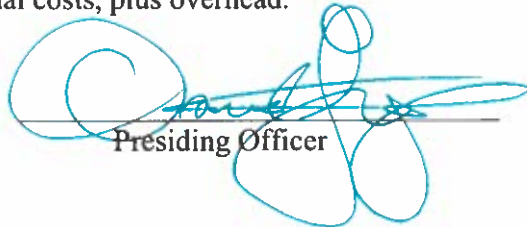
NOW, THEREFORE, BE IT RESOLVED:

1. That Amendment #6 to the SUA shall conform with applicable law.
2. That the General Manager or his designee is authorized to execute Amendment #6 to the SUA in a total estimated amount of \$22,618,442, over the period from February 2, 2024 through February 1, 2029.
3. That in the event the actual costs of P&W Services differ from \$22,618,442, the General Manager or his designee is authorized to execute modifications to Amendment #6 that reflect P&W's actual costs, plus overhead.

Dated: February 28, 2024

Attest:


Recording Secretary


Presiding Officer

Approved as to Legal Sufficiency:


Legal Department