

Date: January 22, 2019
To: Board of Directors
From: Doug Kelsey
Subject: **RESOLUTION NO. 20-01-05 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AUTHORIZING MODIFICATION OF THE SHARED USE AGREEMENT (SUA) WITH PORTLAND & WESTERN RAILROAD, INC. FOR 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 #4) to the Shared Use Agreement (SUA) with Portland & Western Railroad, Inc. (P&W) for Westside Express Service (WES) operations.

2. Type of Agenda Item

- Initial Contract
- Contract Modification
- Other: Modification of Shared Use Agreement

3. Reason for Board Action

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

4. Type of Action:

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

5. Background

On November 22, 2006, the Board passed Resolution No. 06-11-83, authorizing a fifty-year SUA with P&W for the operations and maintenance of the WES commuter rail line from November 27, 2006 to November 26, 2056. Under the SUA, TriMet is obligated to pay P&W annually for certain railroad personnel and dispatching costs, track and signal maintenance and other basic maintenance services essential for WES operations.

Periodic Amendments to the SUA are made to update overhead billing rates for costs of annual operations and maintenance services provided by P&W, and these overhead billing rates ordinarily are made effective each February 2 for a new five year period. Historically, payments to P&W for these services have ranged from approximately \$2,000,000 to \$2,500,000 per year.

Upon the opening of WES service in 2009, the SUA was amended (Amendment #1) to

establish P&W overhead billing rates for Schedules 2.2(c) and 4.1(a), from February 2, 2009 through February 1, 2014. Schedule 2.2(c) covers P&W operations services including dispatchers, operators, conductors, trainmaster, and contract administrators. Schedule 4.1(a) covers P&W maintenance services including cab signal inspectors, track inspectors, foreman, track laborers, signal maintainers, maintenance of way supervisor, and basic maintenance materials. TriMet and P&W continued to perform under the terms of Amendment #1, despite the expiration of the Amendment on February 1, 2014.

On May 28, 2015, Amendment #3 to the SUA was executed to provide P&W's services for a five-year period from February 2, 2014 through February 1, 2019 (Amendment #2 did not address overhead billing rates). Even though Amendment #3 to the SUA expired on February 1, 2019, TriMet and P&W continued to perform in accordance with its existing overhead billing rates, instead of entering into another five-year Amendment at that time.

In the interim, P&W worked on a new overhead billing rate structure to be incorporated into the anticipated Amendment #4. P&W did not provide the final details of the new rate structure to TriMet until approximately November of 2019.

The methodology used by Amendment #3 to determine overhead billing rates in Schedules 2.2(c) and 4.1(a) was not auditable, and did not comply with federal guidance as specified in Title 23 Code of Federal Regulations (CFR) Part 140, Subpart I "Reimbursement for Railroad Work," and Title 48 CFR Part 31 "Contract Cost Principals and Procedures." Beginning with Amendment #4, a new methodology will comply with federal guidance, be easier to audit and simplify reporting.

This Resolution authorizes a retroactive, one-year Amendment #4 to the SUA that will adjust payments from TriMet to P&W for WES operations to reflect the costs for services provided from February 2, 2019 through February 1, 2020. An accompanying Resolution will authorize a separate, four-year Amendment #5 to the SUA, which will bring the TriMet and P&W back to their ordinary five-year contract schedule.

The contract periods for each Amendment* to the SUA are shown in the following table:

Amendment #1	2/2/2009 to 2/1/2014	5 years
Amendment #3	2/2/2014 to 2/1/2019	5 years
Amendment #4	2/2/2019 to 2/1/2020	1 year
Amendment #5	2/2/2020 to 2/1/2024	4 years

*Amendment #2 did not address overhead billing rates.

The immediate net result of the new billing methodology in Amendment #4 will be to reduce costs to TriMet by approximately \$129,438 for contract year February 2, 2019 through February 1, 2020. Upon execution of Amendment #4, P&W will issue a credit memo to TriMet in this amount for this contract period.

The table below illustrates these cost savings by month using the new methodology utilized by Amendment #4:

Original Invoice Number	Period Covered	P&W Billed Amounts – existing methodology	P&W Billed Amounts under Amendment #4	Billing Reduction 2/2/19 to 2/1/20
PWRR-0003255	Feb-19	\$237,227	\$226,988	\$(10,240)
PWRR-0003285	Mar-19	\$221,721	\$210,601	\$(11,120)
PWRR-0003290	Apr-19	\$220,342	\$209,575	\$(10,767)
PWRR-0003313	May-19	\$329,292	\$320,693	\$(8,599)
PWRR-0003326	Jun-19	\$277,243	\$269,800	\$(7,443)
PWRR-0003352	Jul-19	\$245,561	\$236,706	\$(8,855)
PWRR-0003362	Aug-19	\$307,333	\$285,539	\$(21,794)
PWRR-0003378	Sep-19	\$225,877	\$216,645	\$(9,232)
PWRR-0003383	Oct-19	\$223,696	\$213,009	\$(10,687)
N/A - Estimate*	Nov-19	\$229,751*	\$220,622	\$(9,129)
N/A – Estimate**	Dec-19	\$251,804**	\$241,018**	\$(10,787)**
N/A – Estimate**	Jan-20	\$251,804**	\$241,018**	\$(10,787)**
Anticipated Total		\$3,021,652***	\$2,892,214***	\$(129,438)***

* P&W did not finalize November invoice by date of writing Resolution.

** Estimated amounts based on averages from February 2019 through January 2020.

*** Totals may vary due to rounding.

In the proposed Amendment #5 to the SUA, the overhead billing rates for Schedules 2.2(c) and 4.1(a) will change to allow for a percentage based overhead structure, based on 23 CFR Part 140 and 48 CFR Part 31 referenced above. TriMet will only be billed at cost and for overhead services. This change will result in a more clearly defined overhead number, better support for TriMet federal reporting requirements, and more easily auditable records for P&W. Amendment #5 also will put the SUA amendment cycle back on its five-year frequency.

6. Procurement Process

The SUA is processed through TriMet’s Budgeting and Finance and the Legal Department.

7. 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 TriMet encourages its contractors to have similar diversity goals. While P&W is subject to federal and state civil rights and equal employment statutes, TriMet has no direct control over P&W’s compliance with these statutes or P&W’s diversity goals.

8. Financial/Budget Impact

The costs for WES operating services provided by P&W are budgeted within the Transportation Division’s FY20 operating budget. Under proposed Amendment #4, the total financial impact to TriMet for WES operations from February 2, 2019 through February 1, 2020 is \$2,892,214. This amount is reflected in the comparisons between the “P&W Billed Amounts” and the “P&W Billed Amounts under Amendment #4,” and the “Billing Reduction” through January 2020, as shown in the table above.

Upon execution of Amendment #4, P&W will issue a credit for the difference between the paid invoices under the old methodology and the new methodology established by Amendment #4. This anticipated credit amount is expected to be approximately \$129,438.

9. **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 efficient operation of WES. Staff strongly recommends passage of this Resolution and approval of the retroactive Amendment #4 and its improved overhead billing methodology.

RESOLUTION NO. 20-01-05

**RESOLUTION NO. 20-01-05 OF THE TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF OREGON (TRIMET) AUTHORIZING
MODIFICATION OF THE SHARED USE AGREEMENT (SUA) WITH
PORTLAND & WESTERN RAILROAD, INC. FOR WESTSIDE EXPRESS
SERVICE (WES) OPERATIONS**

WHEREAS, on November 22, 2006, the TriMet Board of Directors (Board) approved Resolution 06-11-83 authorizing the General Manager to enter into a fifty-year Shared Use Agreement (SUA) with Portland and Western Railroad (P&W) to permit TriMet's Western Express Service (WES) to operate in the P&W right of way; and

WHEREAS, the SUA requires TriMet to reimburse P&W annually for labor and overhead for train operations, dispatching, maintenance of way, signal maintenance and basic maintenance services, which has been accomplished through a series of five-year amendments to the SUA; and

WHEREAS, the Amendment #3 to the SUA expired on February 1, 2019, but TriMet and P&W have continued to perform in accordance with its terms to date; and

WHEREAS, the TriMet and P&W propose to enter into a more rational, auditable and federally compliant Amendment #4 to the SUA, which will reduce TriMet's total payments to P&W by approximately \$129,438 for the February 2, 2019 to February 1, 2020 period; and

WHEREAS, the total amount of TriMet's payment to P&W under Amendment #4 will be approximately \$2,892,214 through its February 1, 2020 termination date; and

WHEREAS, by Resolution dated October 25, 2017, the Board adopted a Statement of Policies requiring it to approve agreements obligating TriMet to pay in excess of \$1,000,000;

NOW, THEREFORE, BE IT RESOLVED:

1. That Amendment #4 to the SUA shall conform with applicable law.
2. That the total amount of TriMet's reimbursement to P&W pursuant to Amendment #4 of the SUA shall not exceed the amount of \$2,892,214 through February 1, 2020.
3. That the General Manager or his designee is authorized to execute Amendment #4 to the SUA.

Dated: January 22, 2020

Attest:

Recording Secretary

Presiding Officer

Approved as to Legal Sufficiency:



Legal Department

