

**Date:** September 26, 2012

**To:** Board of Directors

**From:** Neil McFarlane 

**Subject:** **RESOLUTION 12-09-78 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AUTHORIZING AN INCREASED CHANGE ORDER ALLOWANCE TO THE CONTRACT WITH I & E CONSTRUCTION, INC. FOR THE BARBUR BOULEVARD TRANSIT CENTER STORMWATER RETROFIT PROJECT**

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### 1. Issue of Purpose of the Item

The purpose of this item is to request that the TriMet Board of Directors (“Board”) approve a resolution authorizing an increased change order allowance to the contract with I&E Construction, Inc. for the Barbur Boulevard Transit Center Stormwater Retrofit Project (“Project”).

### 2. Reason for Board Action

Board approval is required for change orders for a contract if the cumulative amount of the change orders exceeds the change order allowance previously approved by the Board.

### 3. Background

In December 2011, the Board approved Resolution 11-12-88, authorizing a contract with I&E Construction to retrofit the Barbur Boulevard Transit Center parking area to manage the stormwater runoff and provide for water quality treatment and mitigation of the stormwater flows. This work was being done as part of the Oregon Department of Transportation (“ODOT”) Stormwater Retrofit Program, through which ODOT committed funds towards stand-alone stormwater retrofit projects over fiscal years 2011 through 2014. The TriMet Barbur Boulevard Transit Center parking lot is owned by ODOT and is leased to TriMet. TriMet, the City of Portland (through the Bureau of Environmental Services (“BES”)), and ODOT entered into an Intergovernmental Agreement (“IGA”) under which ODOT and BES agreed to fund the work.

The original authorized contract amount was \$587,528, plus a change order allowance of \$80,000, for a total contract amount of \$667,528. The Project required construction to be performed at an active transit center. In order to construct the Project in a way that reduces impacts to transit center operations, the construction has been divided into four distinct geographic phases. Due to this geographic separation, each phase of work carries separate risks of unforeseen subsurface conditions and unknowns about the existing systems that are being modified, such as lighting, drainage, and irrigation. To date, in

each geographic phase I&E Construction has encountered areas of conflict between the engineering design documents, unforeseen existing underground components of existing systems, and unforeseen soil conditions.

In August 2012, the Board approved Resolution 12-08-74, authorizing an increase in the change order allowance from \$80,000 to \$175,000, increasing the total contract amount to \$762,528. At that time, work had been completed on the first phase and was underway on phase two. The amount authorized by the Board was based on negotiations for issues that had been encountered in those phases to that date.

This Resolution authorizes a further increase to the change order allowance by an additional \$265,207, from \$175,000 to \$440,207, increasing the total contract amount to \$1,027,735. As change order proposals for issues encountered in phases one and two were further negotiated with the contractor, it became apparent that the costs to resolve these issues had been previously underestimated. In addition, the work on phase three had begun, and reinforced the experience of unforeseen conditions on this Project. The amount of this request takes into account the experience of the previous phases to project a change order allowance that should be adequate to complete the Project.

Under the IGA between TriMet, the City of Portland and ODOT, ODOT agreed to reimburse TriMet the cost paid to I&E Construction to perform the work. TriMet is providing up to \$50,000 of in-kind services by managing the Project construction, including contract administration and construction inspection. Any costs related to the increased change order allowance will be borne by ODOT and BES. TriMet's contribution to the Project will remain limited to its in-kind contribution. ODOT and BES have agreed to pay the increased cost to complete the Project.

#### **4. Options.**

Because the Project is approximately 65 percent completed, TriMet's options are limited. It would be inefficient and unrealistic to procure a new contractor to perform the remainder of the construction work, and I&E Construction has performed well thus far. The additional costs are due to unforeseen conditions, and will be paid completely by ODOT and BES. Therefore, approval of the resolution is the only option recommended.

#### **5. Recommendation.**

The General Manager recommends that the Board approve the Resolution.

**RESOLUTION 12-09-78**

**RESOLUTION OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AUTHORIZING AN INCREASED CHANGE ORDER ALLOWANCE FOR THE CONSTRUCTION CONTRACT WITH I & E CONSTRUCTION, INC. FOR THE BARBUR BOULEVARD TRANSIT CENTER STORMWATER RETROFIT PROJECT**

**WHEREAS**, TriMet has authority under ORS 267.200 to enter into a contract including a change order allowance with I&E Construction, Inc. for the Barbur Boulevard Transit Center Stormwater Retrofit Project (“Contract”); and

**WHEREAS**, the total amount of change orders under the Contract shall exceed the change order allowance previously approved by the Board resolution authorizing Contract award; and

**WHEREAS**, the TriMet Board of Directors (“Board”), by resolution dated November 25, 2009, adopted a Statement of Policies requiring the Board to approve change orders for a contract if the cumulative amount of the change orders exceeds the change order allowance previously approved by the Board resolution authorizing contract award;

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

1. That the Contract change orders shall be in conformance with applicable laws.
2. That the General Manager or his designee is authorized to execute change orders to the Contract in a cumulative amount not to exceed \$440,207.

Dated: September 26, 2012

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Presiding Officer

Attest:

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Recording Secretary

Approved as to Legal Sufficiency

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Legal Department