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37567

Resolution

Authorize the City Attorney to take legal action against TriMet and other construction and design entities to recover costs for necessary remediation and repair that have been and will be expended by the City due to the atypical settling for the Streetcar SE 2nd Approach Structure

Adopted

WHEREAS, in 1988 the City of Portland Central City Plan created a vision for an "Internal Transit Loop," which would create a public transportation system that connects in a continuous loop the west and east sides of the City of Portland over the Willamette River; and

WHEREAS, in 2012 the City began service on the Streetcar Loop Extension from SW Market Street to the Oregon Museum of Science and Industry ("OMSI") which provided a northerly Streetcar Loop crossing of the Willamette River via the Broadway Bridge and provided service to the eastside of Portland in preparation for full loop service; and

WHEREAS, the City constructed the SE 2nd Approach Structure as part of the south approach embankment at the SE terminus of the Eastside Streetcar service; and

WHEREAS, the City hired engineers, design, and construction professionals including but not limited to David Evans and Associates, Inc. and Stacy and Witbeck, Inc. to design and construct the SE 2nd Approach structure; and

WHEREAS, the SE 2nd Approach Structure was completed in 2013 and served as the SE terminus of the Streetcar; and

WHEREAS, the City and TriMet then cooperatively pursued the vision of completing the "Internal Transit Loop"; and

WHEREAS, in 2013, TriMet began construction for the Portland-Milwaukie Light Rail Transit Project to extend service through the South Waterfront District, across the Tillicum Bridge and through Southeast Portland and the City of Milwaukie; and

Introduced by

[Commissioner Jo Ann Hardesty](#)

Bureau

[Transportation](#)

Requested Agenda Type

Consent

WHEREAS, the City and TriMet endeavored to “close the loop” for the Streetcar as part of the Portland-Milwaukie Light Rail Transit Project; and

WHEREAS, the City entered into an Intergovernmental Agreement (IGA), TriMet Contract No. GH130434 BC, also known as the Eastside Streetcar Close the Loop project, and attached hereto as Exhibit A, wherein TriMet agreed to make improvements to the OMSI Station platform and SE 2nd Approach Structure as part of the Portland-Milwaukie Light Rail Transit Project; and

WHEREAS, the scope of the Eastside Streetcar Close the Loop project required TriMet to design and construct improvements to the OMSI Station platform and approach, including the construction of a new retaining wall in SE 2nd Place, the widening of the approach structure to accommodate the installation of an additional Streetcar track, the provision and installation of an overhead catenary system, the provision of Automatic Train Stop equipment, and the installation of signal connections on and off the east end of the Project; and

WHEREAS, the IGA required TriMet to design and construct the project and hire all design and construction professionals to complete the scope of work; and

WHEREAS, TriMet delivered the completed Project to the City in 2015; and

WHEREAS, the City hired a geotechnical engineer to investigate and monitor unanticipated settlement of the Project after delivery; and

WHEREAS, the geotechnical investigation recently released preliminary findings indicating the unanticipated settlement requires repair and remediation; and

WHEREAS, the law provides a remedy for the City to recover costs attributable to the acts and omissions of those responsible for the settlement and repair of the SE 2nd Approach Structure; and

WHEREAS, it is in the public interest for the City to recover public funds expended because of breaches of contract, failure to adhere to applicable professional standards of care and / or negligence on behalf of others;

NOW, THEREFORE, BE IT RESOLVED, that, the City Attorney or his designee is authorized to commence an action in any competent tribunal to protect the City's rights and recover damages and any other relief against TriMet and any and all design professionals, engineers, and contractors for which there is a good faith basis to assert legal claims, and to pursue to conclusion in any higher tribunal and to make any stipulation, agreement, or admission as in his judgment may be in the best interest of the City. The City Attorney is further authorized to retain outside counsel to assist in the prosecution of such litigation if in his judgment doing so is in the best interest of the City.

Documents and Exhibits

 [Exhibit A](#) (1.31 Mb)

Impact Statement

 [Impact Statement](#) (175.15 Kb)

Budget Office Financial Impact Analysis

The City has been working toward the delivery of the “Internal Transit Loop,” to create an interconnected public transportation system for some time now.

As part of this ongoing endeavor, the City partnered with TriMet to extend the Portland Streetcar as part of TriMet’s Portland Milwaukie Light Rail Transit Project (“PMLRT”). The City and TriMet entered into an intergovernmental agreement (“Close the Loop IGA”) for a portion of this work. The Close the Loop IGA required TriMet to design and construct improvements to the OMSI station platform, including widening the SE 2nd Approach Structure and constructing a new retaining wall. TriMet hired all engineers, designers, and construction professionals for this second phase of work.

The approach structure has experienced and will continue to experience atypical settling which requires remediation and repair. The City of Portland must commence litigation to recover damages and/or any other relief against TriMet and any responsible design professionals, engineers, and contractors to recover costs associated with the remediation and repair of the SE 2nd Approach Structure.

Budgetary impacts include litigation filing costs, expert fees, and other out-of-pocket expenses. Additionally, the City may incur costs from retaining outside counsel if necessary. In-house lawyers in the City Attorney’s Office are anticipated to provide additional services.

Agenda Items

197 Consent Agenda in [March 16, 2022 Council Agenda](#)

Adopted

Commissioner Carmen Rubio Yea

Commissioner Dan Ryan Yea

Commissioner Jo Ann Hardesty Yea

Commissioner Mingus Mapps Yea

Mayor Ted Wheeler Yea