

Date: May 15, 2019

To: Board of Directors

From: Doug Kelsey

Subject: **RESOLUTION NO. 19-05-36 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AUTHORIZING A MODIFICATION TO THE CONTRACT WITH CONVERGENT PACIFIC, LLC FOR BUILDING AND INDUSTRIAL EQUIPMENT DESIGN SERVICES FOR THE RUBY JUNCTION SHOP MODIFICATIONS PROJECT**

1. Purpose of Item

The purpose of this item is to request that the TriMet Board of Directors (Board) authorize the General Manager to execute a modification to the contract with Convergent Pacific, LLC (Convergent) for building and industrial equipment design services for TriMet’s Ruby Junction Shop Modifications Project (Project).

2. Type of Agenda Item

- Initial Contract
- Contract Modification
- Other _____

3. Reason for Board Action

Board authorization is required because the proposed modification increases the contract amount beyond the amount previously authorized by the Board.

4. Type of Action

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

5. Background

At its December 14, 2016 meeting, the Board approved Resolution 16-12-72, authorizing TriMet to execute a contract with Convergent in the amount of \$475,000 for design services for the Project. TriMet anticipated the contract’s duration to be under one year, based on preliminary estimates of structural complexity and the four to six months estimated time needed to procure the cranes and light rail vehicle (“LRV”) lift equipment.

As the design progressed and more was learned about the Project, additional design work and coordination became necessary to minimize disruptions to TriMet’s Stores Department, which has a storeroom in the basement of Ruby Junction and provides repair and overhaul parts for Rail Equipment Maintenance. Staff also learned that the time to procure the cranes and LRV lift equipment for the Project would be closer to one year. Therefore, at its October

2017 meeting, the Board approved Resolution No. 17-10-71, which increased the contract amount from \$475,000 to \$600,000 and extended the contract term for an additional year.

However, in November of 2018, TriMet's LRV lift equipment contractor, Stellar J Corporation, notified TriMet that its LRV lift equipment manufacturer, Macton Corporation, was in default, that the manufacturing facility had been seized by Macton's bank, and that Stellar J would not be receiving the LRV lift equipment from Macton Corporation. Stellar J and TriMet consultants went to the Macton facility to take inventory of the previously ordered and purchased equipment, and found that the materials and components did not exist or had been claimed by a prior purchaser.

Stellar J has tendered its claim arising from the Macton fraud and breach to Stellar J's insurer and has acknowledged TriMet's claim against it for approximately \$606,000. Meanwhile, Stellar J continues to perform its contract with TriMet while working to cure the breach (TriMet also is protected by a performance bond). Stellar J has secured another LRV lift equipment supplier and TriMet is currently waiting for Stellar J's proposed schedule for installation of the new LRV lift at Ruby Junction Bay M5, which TriMet expects to receive within the next few weeks.

At the same time, differing site conditions and multiple requests from Stellar J for additional construction work needed to accommodate the alternate replacement lift equipment required by the Macton failure in Ruby Junction Bay M6 and the Truck Shop Bays have extended the Project timeline. Newly discovered utilities conflicts with the structural installations have also extended the design review timeline of this Project.

In order to address all of these changes, the design services Contract Modification with Convergent would increase the not-to-exceed contract amount from \$600,000 to \$720,000.

6. Procurement Process

The original design services contract was procured via a competitive Request for Proposals process.

7. Diversity

Convergent is a certified DBE firm. In its proposal, Convergent indicated that it expected to be able to achieve 62 percent DBE participation on the contract by self-performing work such as project management and scheduling, structural design, drafting, and quality control work. To date, it has achieved 70 percent participation and expects to maintain that level with the anticipated additional task order work.

8. Financial/Budget Impact

The additional design work for the Project is included in Engineering and Construction's FY 2019 budget.

9. Impact if Not Approved

If the Resolution is not approved, TriMet would need to hire additional staff to complete the design work. This option is not preferred because procurement of this design services contract requires highly specialized expertise and addresses a short-term staffing need that will not exist after this Project is complete. The completion of the Project would also be delayed.

RESOLUTION NO. 19-05-36

**RESOLUTION NO. 19-05-36 OF THE TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF OREGON (TRIMET) AUTHORIZING A
MODIFICATION TO THE CONTRACT WITH CONVERGENT PACIFIC, LLC
FOR DESIGN SERVICES FOR THE RUBY JUNCTION SHOP
MODIFICATIONS PROJECT**

WHEREAS, TriMet has authority under ORS 267.200 to enter into a Contract Modification with Convergent Pacific, LLC for Design Services for the Ruby Junction Shop Modifications Project (Project); and

WHEREAS, the total amount of the Contract Modification exceeds the contract amount originally authorized by the TriMet Board of Directors (Board); and

WHEREAS, by Resolution dated October 25, 2017, the Board adopted a Statement of Policies requiring it to approve personal services contracts obligating TriMet to pay in excess of \$500,000;

NOW, THEREFORE, BE IT RESOLVED:

1. That the Contract Modification shall conform with applicable law.
2. That the General Manager or his designee is authorized to execute the Contract Modification increasing the contract amount from \$600,000 to an amount not to exceed \$720,000, through the June 30, 2019, termination of the contract

Dated: May 15, 2019

Attest:

Presiding Officer

Recording Secretary

Approved as to Legal Sufficiency:



Legal Department

