

**Date:** September 26, 2018

**To:** Board of Directors

**From:** Doug Kelsey

**Subject:** RESOLUTION 18-09-69 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AUTHORIZING A MODIFICATION TO THE CONTRACT WITH STACY AND WITBECK, INC. FOR CONSTRUCTION MANAGER/GENERAL CONTRACTOR SERVICES FOR THE GIDEON OVERCROSSING PROJECT

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**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 Stacy and Witbeck, Inc. (Stacy and Witbeck) for Construction Manager/General Contractor (CM/GC) services for the Gideon Overcrossing Project (Project).

**2. Type of Agenda Item**

- Initial Contract  
 Contract Modification  
 Other \_\_\_\_\_

**3. Reason for Board Action**

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

**4. Type of Action**

- Resolution  
 Ordinance 1<sup>st</sup> Reading  
 Ordinance 2<sup>nd</sup> Reading  
 Other \_\_\_\_\_

**5. Background**

This Project provides for an accessible pedestrian and cyclist overcrossing over the Union Pacific Railroad and TriMet MAX tracks between SE 14th Avenue and SE 13th Place in Portland and restores an important connection in Southeast Portland's Hosford-Abernethy and Brooklyn neighborhoods that was eliminated due to the addition of the Orange Line MAX tracks.

This overcrossing was originally part of the Portland-Milwaukie Light Rail (PMLR) project, but was deferred in 2010 when federal funding for the project came in below expectations. With the strong support of the surrounding community and the City of Portland, TriMet successfully secured approval from the Federal Transit Administration (FTA) to construct the new pedestrian and bicycle overcrossing using remaining Portland-Milwaukie Light Rail Transit Project funds. The City of Portland will be the ultimate owner, end user/operator, and maintainer of all assets designed and constructed.

At its December 2017 meeting, the Board approved Resolution 17-12-85, authorizing an exemption from the low bid procurement requirement for this Project. This exemption allowed TriMet to utilize a competitive Request for Proposal (RFP) process to select the most qualified contractor to provide CM/GC services for the Project. At its May 2018 meeting, the Board approved Resolution 18-05-43, authorizing award of a contract to Stacy and Witbeck for pre-construction services in an amount not-to-exceed \$91,025. However, the contract was presented to the Board at that time because TriMet anticipated modifying Stacy and Witbeck's contract to include the full scope of construction services in the event that the parties were able to agree on the scope and cost of construction services. Pre-construction services are in process, and TriMet is now prepared to modify the contract to add construction services. The attached authorizes a modification to Stacy and Witbeck's contract, as follows:

1.	Pre-construction Services (Resolution 18-05-43)	\$91,025
2.	Construction Services	\$6,783,235
3.	Construction Fee	\$411,854
4.	<i>Subtotal</i>	<i>\$7,286,114</i>
5.	UPRR Construction Support (flagging)	\$296,487
6.	Requirements, Bid Market & Construction Risk (TriMet controlled)	\$1,282,113
7.	<i>Total Contract Amount</i>	<i>\$8,864,714</i>
8.	Change Order Allowance (12 percent of total Contract Amount)	\$1,075,122
9.	<i>Total Authority</i>	<i>\$9,939,836</i>

A 30% final design has now been completed. Based on this design, TriMet prepared a Fair Cost Estimate, which totaled \$7.3 million for construction. The contractor also prepared a preliminary cost estimate that totaled \$7.2 million. An open book side by side comparison was conducted with both parties to review the preliminary pricing. Final costs will be negotiated once final designs are complete. Competitive pricing of construction tasks has been ensured through open book price negotiations. TriMet requires competitive bidding of work scopes as appropriate, in accordance with TriMet CM/GC practices.

#### 6. Procurement Process

The contract was procured through a competitive RFP process.

#### 7. Diversity

This project is one of the final components of the now completed PMLR construction work. By value, Disadvantaged Business Enterprise (DBE) contracts exceeded 25% (\$174.8 million) of all contracts awarded on the completed project (\$668.9 million). Stacy and Witbeck was the CM/GC contractor for much of that work and demonstrated diligence in exceeding goals for

DBE participation, with nearly \$106 million worth of contracts awarded to DBE firms resulting in more than 27% DBE participation.

In conjunction with their 30% cost estimate, Stacy and Witbeck indicated they would utilize DBE contractors for approximately 11% of Project construction, which meets TriMet's Agency DBE Program aspirational goal of 10.72% for the fiscal years 2017-2019 for contracts with U.S. DOT assistance. TriMet will continue to work with Stacy and Witbeck to maximize DBE opportunities as the construction services contract is negotiated. Stacy and Witbeck currently employs 310 minority group employees out of 836 total employees.

**8. Financial/Budget Impact**

The Project is included in the FY 2018-19 Capital Program budget.

**9. Impact if Not Approved**

Under the terms of the CM/GC contract, TriMet could terminate the CM/GC arrangement at the completion of the already-awarded pre-construction services work, and then obtain bids for the construction work. However, Stacy and Witbeck has performed well on the Project thus far, and TriMet anticipates it will be able to negotiate a construction services agreement that it considers to be fair and reasonable. Furthermore, re-procuring the work at this time would increase costs from escalation; potentially jeopardizing grant funding eligibility and placing the general fund at risk.

**RESOLUTION 18-09-69**

**RESOLUTION OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AUTHORIZING A MODIFICATION TO THE CONTRACT WITH STACY AND WITBECK, INC. FOR CONSTRUCTION MANAGER/GENERAL CONTRACTOR SERVICES FOR THE GIDEON OVERCROSSING PROJECT**

**WHEREAS**, TriMet has authority under ORS 267.200 to enter into a contract modification with Stacy and Witbeck, Inc. for Construction Manager/General Contractor services for the Gideon Overcrossing Project (Contract Modification); and

**WHEREAS**, the total amount of the Contract Modification for construction services will exceed \$1,000,000; and

**WHEREAS**, the TriMet Board of Directors (Board), by Resolution dated October 25, 2017, adopted a Statement of Policies requiring the Board to approve goods and services contracts obligating TriMet to pay in excess of \$1,000,000;

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

1. That the Contract Modification shall be in conformance with applicable laws.
2. That the General Manager or his designee is authorized to increase the total Contract amount to an amount not to exceed \$8,864,714.
3. That the General Manager or his designee is further authorized to execute Change Orders to the Contract in an amount not to exceed \$1,075,122.

Dated: September 26, 2018

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Presiding Officer

Attest:

\_\_\_\_\_  
Recording Secretary

Approved as to Legal Sufficiency:

  
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Legal Department