

# ORDINANCE No. 183749

\*Authorize an exemption to the competitive bidding process pursuant to ORS 279C and City Code 5.34 and provide for construction of certain Green Street facilities funded by 1% for Green and replacement of certain publicly owned Culverts funded by Grey to Green. (Ordinance)

## **The City of Portland ordains:**

### Section 1. The Council finds:

1. The City of Portland adopted the Green Street Policy and Cross Bureau Report in April of 2007 through Resolution No. 36500.
2. The Bureau of Environmental Services would like to encourage Green Street projects. Green Streets are a target program in the City of Portland's Grey to Green Initiative.
3. Green streets collect runoff and provide natural stormwater treatment, thereby reducing demand on the wastewater treatment facility for those facilities in the combined sewer basin, and on streams and rivers for those facilities in the separated stormwater system. There are over 700 Green street facilities in the City.
4. In July 1998, the Portland City Council adopted Resolution No. 35894 to guide the City's response to the Endangered Species Act. The resolution called on the City to engage the community in the response.
5. The Bureau of Environmental Services will provide access to critical habitat for federally protected salmonids by removing barrier culverts. The culvert program is a target program in the City of Portland's Grey to Green Initiative.
6. Culverts provide important crossings for roads and structures over streams and rivers. Over 200 culverts in the City of Portland partially or completely block fish, amphibians and small mammals from migrating along the stream corridor, and can exacerbate localized flooding and degrade water quality. The City of Portland's Grey to Green Initiative has prioritized the top eight culverts to repair and/or replace in order to restore these important stream connections and reduce localized flooding.
7. To achieve these goals, the City is dependent on voluntary cooperation from private landowners and citizens. Partnerships with private individuals, institutions and businesses help to advance the City's goals by leveraging projects to achieve greater and more cost effective results. The Bureau of Environmental Services has identified a number of potential projects where the private-public partnership will advance the Green Street and Culvert efforts. Because these projects are not otherwise required by federal, state, or local requirements, and are strictly voluntary, it is unlikely that the projects would happen without a private-public partnership. The Bureau of Environmental Services would like to pay for a portion of the total cost of these green street and culvert projects that would not otherwise occur without this public funding.

8. The City Council is the Local Contract Review Board with the authority to exempt certain public contracts from the competitive bidding requirements of ORS Chapter 279.
9. Draft Findings (Exhibit A) addressing cost savings, competition, operational, budget and financial data, public benefits, value engineering, specialized expertise required, market conditions, technical complexity, public safety, and funding sources were available 14 days in advance of the public hearing of this ordinance.
10. The City has identified a limited number of projects in the overall green street and culvert programs that would qualify for the exemption from competitive bidding. Exempted projects would comply with the Draft Factual Findings attached as Exhibit A.
11. The City will realize cost savings from the exemption because of: 1) construction, mobilization and material economies from incorporating work into existing projects, 2) BES does not need to provide project management provided by the private landowner, and 3) the reduced cost of construction because of the developer's monetary and in-kind contributions such as land and/or easements, direct construction costs, contract management and public outreach and education.
12. The exemption provided in this ordinance is effective for the five year period following the adoption of this ordinance.

NOW, THEREFORE, the Council directs:

- a. The Findings attached as Exhibit A to the original of this Ordinance are hereby adopted.
- b. Green Street and Culvert projects identified and/or consistent with Exhibit A are hereby exempt from competitive low bidding requirements of ORS279C and City Code 5.34.150.
- c. That the Director of the Bureau of Environmental Services is authorized to negotiate and execute agreements not to exceed \$1,000,000 for Culvert replacement and \$500,000 for Green Street projects. The Director of the Bureau of Environmental Services is authorized to draw and deliver warrants chargeable to the Sewer System Operating and Capital Fund Budget when demand is presented and approved by the proper authority under the conditions of the exemptions, not to exceed \$1,000,000.
- d. Funds are available in the Sewer System Operating and Capital Fund, FY 2009-2010, and have been requested in the 2010-11 Budget, Bureau of Environmental Services. Additional contracts will be negotiated as future year funds are available.
- e. That a Performance Bond and a Payment Bond each in the amount of 100% of the amount of each exempted contract be furnished by the public-private partner or by the contractor hired by the public-private partner to perform the exempted work.

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- f. The Council declares an emergency exists because the summer construction of culverts is limited to a state required in-water work window. In order to meet this summer construction window for projects that already have partial funding secured and are far along in the design process, contracts must be in place by June 1, 2010; therefore, this Ordinance shall be in full force and effect from and after its passage by Council.

Passed by the Council,  
Mayor Sam Adams

MAY 05 2010

**LaVonne Griffin-Valade**

Auditor of the City of Portland

By



Deputy

Kaitlin Lovell / Ivy Dunlap  
May 5, 2010

Agenda No.  
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INTRODUCED BY Commissioner/Auditor: Sam Adams, Mayor <i>K. Dillmann on behalf of Mayor Adams</i>	CLERK USE: DATE FILED <u>APR 30 2010</u>
<b>COMMISSIONER APPROVAL</b> Mayor—Finance and Administration - Adams Position 1/Utilities - Fritz Position 2/Works - Fish Position 3/Affairs - Saltzman Position 4/Safety - Leonard	LaVonne Griffin-Valade Auditor of the City of Portland  By: <i>Susan Parsons</i> Deputy
<b>BUREAU APPROVAL</b> Bureau: Procurement Services Bureau Head: Christine Moody <i>Agmt for Christine Moody</i>	<b>ACTION TAKEN:</b>
Prepared by: Michael Perrie Date Prepared: April 23, 2010 Financial Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/> Not Required <input type="checkbox"/> Council Meeting Date <b>May 5, 2010</b>	
<b>City Attorney Approval</b>	

<b>AGENDA</b> <b>TIME CERTAIN</b> <input checked="" type="checkbox"/> <b>Start time: 10:00 a.m.</b> <b>Total amount of time needed: 30 minutes</b> (for presentation, testimony and discussion)
<b>CONSENT</b> <input type="checkbox"/>
<b>REGULAR</b> <input type="checkbox"/> <b>Total amount of time needed:</b> _____ (for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz	✓	
2. Fish	2. Fish	✓	
3. Saltzman	3. Saltzman	✓	
4. Leonard	4. Leonard	_____	
Adams	Adams	✓	