

**EXHIBIT A****SULLIVAN'S CROSSING BICYCLE AND PEDESTRIAN BRIDGE  
FACTUAL FINDINGS FOR  
PROPOSED EXEMPTION FROM COMPETITIVE BIDDING**

The Portland Bureau of Transportation (PBOT) and the City of Portland Procurement Services ("Procurement Services") recommend that the Portland City Council ("Council") approve the following factual findings, including the Additional Findings (as hereinafter defined) (collectively, the "Findings") to exempt the Sullivan's Crossing Bicycle and Pedestrian Bridge Project (Project) from the competitive bidding requirements of ORS Chapter 279C and to approve the Construction Manager/General Contractor ("CM/GC") as the alternative contracting method for the selection of a Construction Manager/General Contractor ("Contractor") for the Project. Capitalized terms used herein have the meaning ascribed to them in the Ordinance.

**I. BACKGROUND**

PBOT intends to construct a Bicycle and Pedestrian Bridge across Interstate 84 and the Sullivan's Gulch on the alignment of NE 7<sup>th</sup> Ave. The project will provide bicycle and pedestrian access along 7<sup>th</sup> Ave. connecting the Lloyd District to the Central Eastside Industrial District. The project is also a critical element in the city's Green Loop.

The Portland Bureau of Transportation has allocated \$11 million in Transportation System Development Charge Revenue to the project. Prosper Portland has also provided a \$2 million grant to the project.

Due to the complexity of the Project and the various options to achieve the Project goals for performance criteria and scheduling, it has been determined that a CM/GC contracting method is the best way to ensure that the City receives the best value with the least amount of risk of cost overruns, claims, and workmanship issues. The project will require erection of large steel elements over the both the freeway and a railway. The project will require a time limited closure of the Interstate freeway.

Based on the Findings, using a CM/GC contracting method would support successful completion of the Project in the most efficient and cost-effective manner to achieve community and PBOT goals. Ordinarily, the City is required to use competitive sealed bidding as the process to award a contract for a proposed Project. Accordingly, the Project needs to be exempted from the requirements of ORS 279C which includes, among other things, the solicitation of competitive bids. Council is the Local Contract Review Board with the authority to exempt certain public contracts from the competitive bidding requirements of ORS 279C if it is able to approve certain findings justifying an alternative approach.

With the present action, Council will exempt the Project from the competitive bidding requirements of ORS 279C and authorize the CM/GC contracting method. The factual bases to support the required findings, including the Additional Findings are set forth below.

## II. NO FAVORITISM OR DIMINISHED COMPETITION

ORS 279C.335 (2) requires that Council make certain findings as a part of exempting public contracts or classes of public contracts from competitive bidding. ORS 279C.335 (2) (a) requires Council to make a finding that, “[I]t is unlikely that such an exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts.” This finding is appropriate for the Project and is supported by the following facts.

The Contractor will be selected through a competitive Request for Proposals (“RFP”) process. The RFP for a CM/GC will be advertised in Portland’s Daily Journal of Commerce and on the City’s Online Procurement Center at least three weeks in advance of the deadline set for submitting responses to the RFP. The proposals will be evaluated by a selection committee based on criteria such as experience, technical expertise, key personnel and staffing, diversity program, safety record, and percentage profit and overhead markup. The selection committee will review and rank the written proposals; hold interviews if necessary; and recommend a Contractor for the CM/GC contract award. As a result of the competitive RFP process, the use of an alternative contracting method for the Project is unlikely to encourage favoritism in the awarding of public contracts.

The alternative process can result in even broader participation and greater competition than the traditional bidding process. All qualified general contractors and construction management firms will have an opportunity to compete. These firms include some that might not be willing to face the uncertainties and potential financial risks associated with bidding and contracting for construction under a traditional design-bid-build competitive bid process. Structuring the Project under a CM/GC contract that includes the Contractor in the design phase allows the selected firm to improve constructability, develop phasing and staging plans to efficiently perform the work with minimal disruption to the freeway other transportation facilities, and determine effective construction methods. This may make the Project more attractive to qualified firms because of the opportunity to better understand the Project prior to providing the City with a price for the Project and to reduce their risk in undertaking the Project. Therefore, competition will not be diminished, and may even be enhanced by advertising the Project through a CM/GC process.

## III. SUBSTANTIAL COST SAVINGS

ORS 279C.335 (2) requires that Council make certain findings as part of exempting public contracts or classes of public contracts from competitive bidding. ORS 279C.335 (2) (b) requires Council to find that “[t]he awarding of public improvement contracts under the exemption will result in substantial cost savings to the public contracting agency.” This finding is appropriate for the Project and is supported by the following facts.

The CM/GC contracting method allows the Contractor to both understand and incorporate value-engineering ideas, reducing the overall cost of the Project and avoiding costly change orders or disputes that impact PBOT’s budget for the Project.

The CM/GC contracting process affords the opportunity for the Contractor to participate during the design phases of the Project, lending its expertise, knowledge, and experience to provide feedback as to whether the Project’s proposed design is feasible within the project parameters. Similarly, this

allows the Contractor to make value engineering suggestions, that is, suggestions that propose alternative and less expensive ways of achieving the same result. This can result in more practical, constructible, and economic design solutions while maintaining the design's integrity. Participation in the design process also enables the Contractor to become more familiar with the Project features and requirements before it prepares its price for the work. This familiarity means that the Contractor may not include cost contingencies that other contractors frequently include in their bids to take account of uncertainties that are not resolvable during the brief bidding period under a traditional design-bid-build competitive bid process. This is especially true for the Project, which will require high risk steel erection during limited freeway and rail closure windows, and significant construction adjacent to and over an operating Interstate freeway and railway line.

#### **IV. THE FACTUAL BASES TO SUPPORT THE ADDITIONAL FINDINGS**

In order to declare the exemption, Council must approve additional findings in the areas set forth below (collectively, the "Additional Findings").

##### **A. How Many Persons are Available to Bid**

The CM/GC contracting method will result in broader participation and greater competition than the traditional bidding process. All qualified general contractors and construction management firms will have an opportunity to compete. These firms include some that might not be willing to face the uncertainties and potential financial risks associated with bidding and contracting for construction under a traditional design-bid-build competitive bid process. There are several qualified firms in the Portland area and beyond that will be able bid on this Project.

##### **B. The Construction Budget and the Projected Operating Costs for the Project**

The Project will be funded by Transportation System Development Charge and Prosper Portland funds. The anticipated construction contract costs are estimated at approximately \$11 million. The CM/GC construction method will provide the opportunity for careful consideration of means and methods of construction as well as cost saving measures through construction phasing and timing which will allow for construction without minimal disruption of freeway operation. In particular it will allow for detailed planning of steel erection during the freeway closure period.

##### **C. Public Benefits That May Result from Granting the Exemption**

There are multiple public benefits in connection with exempting the Project. The CM/GC process is critical to facilitating this complicated Project. The risk to the travelling public and the operations of one of the region's most critical pieces of infrastructure is significant. It is imperative that the contractor completing the work is experienced and able to perform the work.

The alternative contracting method also allows the City opportunities to monitor the Contractor's outreach and utilization of D/M/W/ESB subcontractors to achieve equity goals with the Project during construction.

**D. Whether Value Engineering Techniques May Decrease the Cost of the Project**

Value engineering is defined as a process by which multiple subject experts evaluate and propose the most cost-effective ways to deliver a project without reducing project quality and functionality. Value engineering will be enhanced on the Project as it is on other projects where the contractor can be selected before the design is completed. In that way, the contractor's suggestions can be incorporated the final design, rather than have the proposals come after the design or some construction is already completed, which may limit the amount of change that can be accomplished to the Project and still meet schedule requirements. Changes after a project is competitively bid can result in project delays for permit revisions and higher costs for the City.

Having the Contractor review the design prior to the start of construction best leverages the value engineering ideas that are accepted and incorporated into the final design. It is less expensive to implement ideas during the design phase than to wait and provide a change order and potential redesign during construction.

**E. The Cost and Availability of Specialized Expertise Required for the Project**

Through the RFP process, the City will have an opportunity to evaluate and select the Contractor with the specialized expertise required for the Project. The cost for such specialized expertise is included in the overall Project budget. The Project involves several components that require specialized expertise to implement a high-quality Project. The project will require the construction of micro pile bridge foundations, two 400' long steel pipes over the freeway and railway and erection of bridge decking over an operating freeway.

The CM/GC contracting method provides the best opportunity for the City to allocate additional weight in the selection process to contractors with a high degree of specialized expertise necessary for the requirements of the Project.

**F. Likely Increases in Public Safety**

The CM/GC contracting method allows a contractor's actual safety performance on similar projects to be considered as selection criteria. It also permits the City to work closely with the Contractor during the design phase of the Project to ensure that the construction process provides appropriate safety measures, that the Contractor understands the City's safety concerns and that the Contractor will take appropriate steps to address them, including submission of a safety plan. Construction of this project will take place near an active freeway and railway line raising the potential for public safety issues.

**G. Whether Granting the Exemption May Reduce Risks to the City related to the Project**

The Project will be constructed over and adjacent to an Interstate Freeway and active railway. The risk of incident during construction impacting the operations of either facility is real. The interaction between the Project Team and the Contractor during the design process makes it far more likely that the final design will consider any potential construction problems and allow early coordination of construction phases to minimize potential risk during construction.



The RFP process for selecting the Contractor allows BES an opportunity to question the respondents to discern their expertise on contracting methods and phasing. This approach also offers the greatest flexibility, risk reduction, reliability, and ease of construction. The Project budget is likely to be more stable as a result of this approach and it is less likely that there will be Project overruns.

**H. Whether Granting the Exemption will Affect the Funding Sources for the Project**

The overall Project budget is \$13 million the project is funded by Transportation SDC and Prosper Portland funds. The exemption will not impact Project funding.

**I. Whether Granting the Exemption will Better Enable the City to Control the Impact That Market Conditions May Have on the Cost of and Time Necessary to Complete the Project**

The CM/GC contracting method for the Project would reach the same or greater market of construction contractors as the traditional low bid process. The high-profile nature of the project will likely attract a strong market. The project is very dependent on the price of steel which has been subject to significant increases with the discussion of tariffs. Utilizing the CM/GC will allow the contractor to secure or procure the steel earlier in the process could be a substantial cost saving benefit.

**J. Whether Granting the Exemption Will Better Enable the City to Address the Size and Technical Complexity of the Project**

Special technical complexities of the Project include construction deep foundations, erection of large steel elements and installation of decking material near and over an Interstate freeway and active rail line. The CM/GC alternative contracting method will allow the Contractor to proactively be involved in the design phase to help develop construction approaches and methods to maximize the quality and constructability while meeting the requirements of working around the adjacent facilities.

**K. Whether the Project Involves New Construction or Renovates an Existing Structure.**

The Project involves new construction.

**L. Whether the Project Will be Occupied or Unoccupied During Construction**

The Project will be unoccupied during construction; however, it will be in an active location.

**M. Whether the Project Will Require a Single Phase or Multiple Phases of Construction Work to Address Specific Project Conditions.**

The Project will be completed in a single phase once construction commences. It is necessary to carefully consider the means and methods of construction and possible phasing options during the design phase of the Project to ensure a minimum of delays and costs during construction.

**N. Whether the City Has or Will Retain Personnel, Consultants and Legal Counsel that Have Necessary Expertise and Substantial Experience in Alternative Contracting Methods to Assist in Developing the Alternative Contracting Method and to Help Negotiate, Administer and Enforce the Terms of the Project Contract**

City personnel have the expertise and experience necessary to effectively implement the CM/GC contracting method and to negotiate, administer and enforce the terms of the resultant construction contract for the Project. Additionally, the PTE Consultant selected for design of the Project, KPFF Engineering has the cost estimating, project management, construction management, and CM/GC specific project delivery experience with the City to provide support to the City in contract development, estimating, GMP negotiations, and administration of the CM/GC contract.