

EXHIBIT A

NW PARK AVENUE & JOHNSON / KEARNEY STREETS L.I.D. PROJECT

FACTUAL FINDINGS FOR PROPOSED EXEMPTION FROM COMPETITIVE BIDDING

The Portland Bureau of Transportation (“PBOT”), Prosper Portland, and the Portland Office of Management and Finance - Procurement Services (“Procurement”) 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 **NW Park Avenue & Johnson / Kearney Streets L.I.D. Project** (the “Project”) from the competitive bidding requirements of ORS Chapter 279C and to approve the selection of a contractor through the Best Value RFP solicitation process. Capitalized terms used herein have the meaning ascribed to them in the Ordinance.

I. BACKGROUND

NW Park Avenue & Johnson / Kearney Streets L.I.D. Project (Project) will construct two new streets on the former United States Postal Service site (“USPS site”) in NW Portland, and provide traffic signal improvements at the intersection of NW 9th & Lovejoy, adjacent to the USPS site. These transportation improvements are associated with redevelopment of the USPS site, which is owned by the City of Portland and part of the larger Broadway Corridor redevelopment effort led by Prosper Portland, the City of Portland’s economic development agency.

The USPS Master Plan, approved by Portland Planning and Sustainability Commission on August 20, 2020 (case number LU 19-147114 CCMPA), calls for extension of the street grid onto the USPS site, as well as further investigation into the addition of nearby traffic signals, to support as much as 4,065,000 gross square feet of mixed-use urban development on nine development parcels with buildings as high as 400 feet.

Prosper Portland worked with PBOT to package a portion of the required onsite and offsite improvements into a public sector transportation project funded by a Local Improvement District (LID) and Transportation System Development Charges (TSDCs). City Council formed the LID on October 21, 2020. The publicly funded transportation project includes a large Phase 1 investment (the Project subject to these Findings), as well as a later Phase 2 investment.

The Project subject to these Findings consists of the following improvements:

- **Extension of NW Johnson Street from NW 9th Avenue to NW Station Way**, including removing existing surfaces and obstructions; removing and disposing of subsurface contaminated media; grading the street to its proper subgrade;

EXHIBIT A

constructing a street with aggregate base and a combination of asphalt and concrete pavement; installing sanitary sewer, stormwater sewer, water main, and communications duct bank; constructing a raised two-way bikeway; constructing new ADA crossings of both NW 9th Ave and NW Station Way; constructing a combination of temporary asphalt and permanent concrete sidewalks on both sides of the street; installing street lighting; installing signage and striping; and planting street trees and landscaping.

- **Extension of NW Kearney Street from NW 9th Avenue to NW Station Way**, including removing existing surfaces and obstructions; removing and disposing of subsurface contaminated media; grading the street to its proper subgrade; constructing a street with aggregate base and asphalt pavement; constructing new ADA crossings of both NW 9th Ave and NW Station Way; installing sanitary sewer, stormwater sewer, water main, and communications duct bank; constructing temporary asphalt sidewalks on both sides of the street; installing street lighting; installing signage and striping; and planting street trees.
- **Signalized Intersection Improvements at NW 9th Avenue and Lovejoy**, including modification of the signal to accommodate a new NBRT lane and protected bike phase. Relocates existing Portland Streetcar OCS pole to accommodate upgraded ADA curb ramps.

The Project requires a contractor with strong skills and experience operating in a dense urban environment, construction on a brownfield site with unknown underground elements and contaminated media, and coordination with adjacent demolition and construction of vertical buildings and overlapping public and franchise utility projects.

City Council is the Local Contract Review Board with the authority to exempt certain public contracts from the competitive bidding requirements of ORS 279C upon approval of certain findings justifying an alternative approach. These Findings of Fact are intended to support Council's exemption of the Project from the competitive bidding requirements of ORS 279C and Council's authorization to use a Best Value RFP solicitation. 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 part of the process 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.

EXHIBIT A

The Contractor will be selected through a competitive Request for Proposals (“RFP”) process. The RFP for the construction contract 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 submitted in accordance with the RFP will be evaluated by a selection committee based on criteria including experience, technical expertise, key personnel qualifications and staffing, project approach, ability to meet Regional Workforce Equity Agreement (RWEA) objectives, safety record, and overall price. The selection committee will review and rank the written proposals and recommend a Contractor for the Best Value RFP 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.

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 competitive low bid process due to the unknown underground elements that increase risk. The Best Value RFP will require the contractor to develop a proposal outlining how they would approach and sequence the Project considering this risk, how they will comply with the RWEA requirements and coordinate with other private and public work occurring along the corridor. This may make the Project more attractive to qualified firms because of the opportunity to develop and be evaluated on other elements than just cost including the contractor’s construction approach and experience dealing with similar projects. Therefore, competition will not be diminished, and may even be enhanced by advertising the Project through a Best Value RFP contracting method.

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 Best Value RFP contracting process affords the opportunity for the Contractor to think more holistically about the Project, lending its expertise, knowledge, and experience to propose how the Project should be constructed within the current construction environment on the former USPS site and other parameters set forth by the City. The scopes and schedules for other private and public work, and acknowledgement of unknown underground materials and potential risk, will be included in the solicitation. This familiarity means that the Contractor may not add 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.

EXHIBIT A

This contracting approach also intends to decrease the chance of change orders and delay claims during construction as the contractor's proposed approach for the Project will have to take into account the scope of work, potential risk, and schedules of all the other projects under construction near the site. The contractor's proposed coordination and sequencing requires the contractor to anticipate coordination and collaboration with other public and private projects and the community. This should decrease overall contract delays and can result in substantial cost savings to the Project due to reduced construction contract and staff costs over the life of the Project.

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 (the "Additional Findings").

A. How Many Persons are Available to Bid

The Best Value RFP contracting method could result in broader participation and greater competition than the traditional bidding process. The high-profile nature of the Project will likely attract a strong market. Considering the size and location of the Project and major components of work, the RFP will reach the broad regional marketplace.

All qualified general contractors and construction management firms will have an opportunity to compete. These firms may include those that would otherwise be unwilling to face the uncertainties and potential financial risks associated with bidding and contracting for construction under a traditional design-bid-build competitive bid process. Several qualified firms in the Portland area and beyond will be able to submit proposals for this Project. Additionally, continued market interest is evident as increasing contractor submittals for a variety of infrastructure projects have been observed.

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

The Project will be funded by Local Improvement District (LID) and City of Portland Transportation System Development Charges (TSDC's). The anticipated construction Project costs are estimated at \$15 to \$18 million.

The Best Value RFP solicitation method will provide the opportunity for careful consideration of means and methods of construction which will allow for construction with minimal disruption to the community and adjacent business owners. It will allow the construction of the Project to meet the highest possible construction standards and support a high level of expertise to successfully complete the overlapping coordination efforts of this multi-bureau Project in a way that mitigates risk, can best meet the project schedule, and aligns with the City and Project's equity goals. This will promote the delivery of a high-quality Project.

EXHIBIT A

C. Public Benefits That May Result from Granting the Exemption

There are multiple public benefits in connection with exempting the Project:

- Construction of this Project aims to complete construction in 2025 to accommodate future development. The Best Value RFP contracting method promotes schedule efficiencies through recognition of other planned projects, and the opportunity to negotiate the project schedule in a way that ensures coordination with the Project's and City's needs.
- The Project requires working on a brownfield site in an urban environment with unknown underground elements. A Best Value RFP contracting method allows the City to select a contractor with experience with similar types of projects and minimizes the risk to the general public of improperly handling and disposing of contaminated materials by reviewing their contaminated materials plan prior to award.
- The City seeks opportunities to adhere to the RWEA and Contractor Equity Program (CEP) to increase project diversity, apprenticeship participation, and local investment while meeting inclusivity objectives established by the City. Utilizing the Best Value RFP contracting method for this Project allows the City to monitor Contractor outreach and utilization of apprentices and subcontractors certified by the State's Certification Office for Business Inclusion and Diversity (COBID) and help the City achieve the RWEA/CEP objectives for this Project. The RWEA/CEP objectives promote diversity, inclusion, and local workforce and business opportunities in the City's construction contracts, and are intended to set the City and local economy on a path where more local contractors have the ability to provide services while meeting the qualifications established by the RWEA/CEP. Additionally, the Project will require monthly reporting to the Broadway Corridor Labor Management Community Oversight Committee (LMCOC).

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

The project is too far advanced in the design process to benefit from the typical early engagement of a contractor under such methods as CM/GC or Design-Build, but the City will still benefit from the technical proposals provided by Qualified Prime and Sub-Contractors that outline how they would approach and sequence the work in the area and handle potential contaminated materials, which could result in a reduction of construction cost risk.

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 and experience required for the Project. The cost for such specialized expertise is included in the overall Project budget. The Project

EXHIBIT A

involves several components that require specialized expertise to implement a high-quality Project as well as to meet the Project schedule. This includes experience and expertise working on a site with unknown underground materials and contaminated media, working adjacent to a major structure (the Broadway Bridge), and coordination with public transit agencies (especially the Portland Streetcar).

The Best Value RFP 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 and experience necessary for the requirements and success of the Project in a way that minimizes risk.

F. Likely Increases in Public Safety

The Best Value RFP contracting method allows a contractor's safety performance on similar projects and approach to public safety to be considered as a selection criterion, especially in relation to contaminated media in urban environments and mitigation of risks. It also permits the City to work closely with the Contractor to ensure that the construction process provides appropriate safety and risk mitigation measures, that the Contractor understands the City's safety and risk concerns and that the Contractor will take appropriate steps to address them. As construction of this Project will take place near active roadways in a dense urban environment currently experiencing challenges related to public safety, it is imperative that the Contractor maintain good safety practices for themselves as well as the public within the construction work zone. It also requires previous experience and expertise dealing with contaminated media and mitigating risk to the general public.

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

The Project will be constructed within a major urban setting. Site conditions are complex with construction of new roadway through a previous building site, with contaminated material and unknown utilities, and exposure to the general public that sits adjacent to a densely populated area. Project sequencing is also complex due to the combination of transportation, stormwater and water infrastructure on and off corridor in combination with the adjacent demo project and neighboring utility infrastructure improvement projects. The Best Value RFP contracting method allows for risks to the City posed by these conditions be potentially lessened by involving an experienced contractor team.

Additionally, limiting the time frame during which people and businesses are exposed to construction traffic or activity is a major goal of the City and can help garner more public support for the phased development of the site. Using the Best Value RFP contracting method will require the Contractor to think about and develop a comprehensive construction schedule before initiating the work, which is evaluated by the Project Team.

EXHIBIT A

The RFP process for selecting the Contractor allows the City an opportunity to question the respondents to discern their expertise on contracting methods and phasing, as well as experience on similar projects. This approach also offers the greatest flexibility, risk reduction, reliability, and ease of construction. Maximum construction contract amounts within the fixed budget will be negotiated with the selected Contractor.

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

The Project is funded by a combination of TSDCs and the formation of an LID on October 21, 2020. The publicly funded transportation project includes a large Phase 1 investment (the Project subject to these Findings), as well as a later Phase 2 investment. The City is required to advertise all contracts but there is no requirement to award the Project to the lowest bidder. Funding availability or utilization is not impacted by the use of the Best Value RFP contracting method.

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

Selection of the Best Value RFP Contractor will be made by a committee that, in addition to cost, will evaluate non-cost factors including qualifications, expertise, and the ability to deliver on the City's policy goals and community expectations. Because cost is one of the factors for evaluation and Contractor selection, competitive pricing is expected.

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

Technical complexities of the Project include constructing a new roadway through a previous building site over contaminated soils, construction of new utilities including seismically designed water mains, and installation of unique urban design elements. This work is all to be completed in a dense urban environment where certain traffic patterns will need to be maintained and collaboration with the general public will need to be thoughtfully maintained and protected. Project sequencing is complex due to the combination of transportation, stormwater and water infrastructure and the overlapping projects to connect in the Project area. The Best Value RFP will allow the City to evaluate proposers' previous experience working on similar complex projects and ensure the Contractor has the appropriate expertise to work on a large, complex project in a dense urban setting.

This contracting method will also allow proposers to proactively understand risks and challenges on the project and develop their proposals so that the City can rank select the proposal that results in the best value for the City by minimizing risk.

EXHIBIT A

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

The Project involves both new construction as well as rehabilitation of existing infrastructure. Newly constructed features include sidewalks, bicycle lanes, stormwater inlets and conveyances, utility replacement and relocation, and landscaping features. Rehabilitated features including grind and overlay of roadway paving near impacted intersections, and replacement of fire hydrants impacted by the project footprint.

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

The Project will primarily be unoccupied during construction, as the USPS Site is currently private property and does not provide access to the public. However, planned improvements on NW 9th Avenue and NW Johnson Street between NW 9th and 10th Avenues will be adjacent to occupied properties, and work at the intersection of NW 9th Avenue and NW Lovejoy Street will require closures and coordination with Portland Streetcar. Work on perimeter roads will also require sidewalk, shoulder, and lane closures during various phases of construction which will be accomplished through flagging and detours identified with potential efficiencies from the Best Value RFP contractor based on the Project Traffic Control Plans.

Construction access to and from the site, as well as transfer of materials, will also require movement through downtown streets and facilities.

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

An important goal of the Project is to complete the construction in an expeditious manner while providing through travel access to the regional road network. It is anticipated that the Project will be completed in a single phase once construction commences but will need to ensure coordination with adjacent construction projects. As noted previously, a second phase of the project, currently unfunded and undesignated, will provide additional streets and public infrastructure within the USPS site.

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 and legal counsel have the expertise and experience necessary to effectively implement the Best Value RFP contracting method and to negotiate, administer and enforce the terms of the resultant construction contract for the Project. The bureau has delivered Best Value RFP projects in recent years including the Outer Division Multimodal Safety Project. Accordingly, the professional services consultant

EXHIBIT A

utilized under the Project's PBOT on-call design team contract, David Evans and Associates, has the cost estimating, project management, construction management, and special project delivery experience with the City to assist as necessary with the process, including alternative delivery analysis, RFP preparation, and preparation of BV RFP selection criteria.