

**EXHIBIT A**

**JOB ORDER CONTRACTS**

**FOR CIVIL & BUILDING ALTERATION CONSTRUCTION SERVICES**

**FACTUAL FINDINGS FOR**

**PROPOSED EXEMPTION FROM COMPETITIVE BIDDING**

The City of Portland Procurement Services (“Procurement Services”) recommends that the Portland City Council (“Council”) approve the following factual findings, including the Additional Findings (as hereinafter defined) (collectively, the “Findings”) to establish an exemption for a class of public improvement contracts from the competitive bidding requirements of Oregon Revised Statutes (“ORS”) Chapter 279C and Portland City Code (“PCC”) Chapter 5.34, and to approve Job Order Contracts (“JOC”) as an alternative contracting method. Capitalized terms used herein have the meaning ascribed to them in the Ordinance.

**I. BACKGROUND**

JOC is a delivery method for construction and repair/maintenance projects that establishes contracts with multiple contractors for individual categories of work where the pricing is established by a third-party consultant. Contractors respond to the solicitation by proposing an adjustment factor to the predetermined pricing to cover overhead, profit and other related costs. Once contracts are awarded, the bureaus using them can schedule projects out in advance using the predetermined pricing without having to competitively bid and contract for every job. This model is transparent, auditable and encourages high quality of work and collaboration between the City and the awarded contractors. A benefit to the contractors is that, provided they perform quality work, they can reasonably expect to continue to perform work throughout the term of their contract. Being able to plan-ahead and forecast work through this model will allow the contractors to develop relationships with the City and understand the intricacies of administering a City contract. It should also allow them the ability to forecast resource planning and grow their capacity throughout the life of the contract.

Using JOC will also support successful completion of routine public improvements in the most efficient and cost-effective manner. Ordinarily, the City is required to use the traditional low-bid competitive sealed bidding as the process to award public improvement contracts, however State law permits the City to exempt certain contracts if Council, as the Local Contract Review Board, approves certain findings justifying an alternative approach. Accordingly, an exemption from the requirements of ORS 279C.300 and PCC 5.34.150 that requires, among other things, the solicitation of competitive bids, is needed to deliver the proposed class of public improvements under JOC. With the present action, Council will exempt these classes of public improvement contracts from the competitive bidding requirements of ORS 279C and PCC 5.34 and authorize the JOC method. The factual bases to support the Findings in connection with this class of public improvement contracts, including the Additional Findings (as hereinafter defined) follow.

**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 supported by the following facts.

Contractors will be selected through a competitive Request for Proposals (“RFP”) process. The RFP will be advertised in one newspaper of general circulation and on the City’s online procurement portal three to four 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 contract awards. As a result of the competitive RFP process, the use of an alternative contracting method is unlikely to encourage favoritism in the awarding of public contracts.

### **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 “the 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 class of public improvement projects and is supported by the following facts.

The JOC delivery method’s standardized cost information achieves firm, objective, consistent pricing that results in overall bureau operating and capital budget savings. This delivery method also reduces administrative costs associated with procurement, contracting, and project management activities.

Additionally, the JOC process affords the opportunity for the contractors to participate during the scoping phases of the projects, lending its expertise, knowledge, and experience to provide feedback as to whether the projects’ proposed scope is feasible within the project parameters. Similarly, this allows 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 project’s integrity. Participation in the scoping process also enables the contractors to become more familiar with the projects features and requirements before it prepares its price for the work. This familiarity means that the contractors 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 DBB competitive bid process.

### **IV. CLASS DEFINING CHARACTERISTICS**

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. In making findings to support an exemption for a class of public improvement contracts, ORS 279C.335 (3) requires Council to “[c]learly identify the class using the class’s defining characteristics. The characteristics must include a combination of project descriptions or locations, time periods, contract values, methods of procurement or other factors that distinguish the limited and related class of public improvement contracts from the agency’s overall construction program.” This is supported by the following facts.

The projects covered under this exemption will be civil construction and building alteration projects estimated between \$5,000 and \$1,000,000 and include concrete work, paving, street improvements, ADA ramps, building renovation, rehabilitation, repair and maintenance, and smaller scale new construction for clearing deferred maintenance backlog, performing emergency work, and renovating facilities, with time periods generally within ninety (90) to one hundred eighty (180) calendar days. The classes of work included in this exemption include:

- Civil Construction
- Tenant improvements and remodeling

## **V. 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 alternative process can result in even broader participation and greater competition than the traditional bidding process. All qualified general contractors 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 (“DBB”) bid process. Structuring projects under JOC includes the contractors in jointly scoping the work with the City that allows the selected firms to improve constructability, develop phasing and staging plans to efficiently perform the work, and determine effective construction methods. This may make the projects more attractive to qualified firms because of the opportunity to better understand the projects prior to providing the City with a price, and to reduce their risk in undertaking the projects. Therefore, competition will not be diminished, and may even be enhanced by procuring the construction services through a JOC process.

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

Each project delivered under JOC will have its unique specifications and associated costs, ranging between \$5,000 and \$1,000,000. The operating costs of the completed improvements will typically not be significant, they will be a small part of the larger inventory already being operated and maintained.

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

There are multiple public benefits in connection with this exemption.

- JOC saves time and money. Simplifies and expedites the procurement process and saves on administrative costs.
- More projects completed on time and on budget. The collaborative information sharing, detailed project scopes, and proven processes will improve the quality of the work and speed project delivery.
- Enhanced cost transparency given the predetermined and standardized unit prices that are based on local labor, material and equipment prices and are for the direct cost of construction. Each project cost is developed via line item estimates/costs from the unit prices yielding full transparency and auditability

- Reduction in deferred maintenance backlog. More projects are completed simultaneously per year.
- Fewer change orders. Better communication improves project scope development and yields elimination of contractor-driven change orders.
- Long-term partnerships. Development of partnership relationships with contractors based on their performance and increases local contractor participation.

#### **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 in JOC given that contractors will participate during the scoping phases of the projects, lending its expertise, knowledge, and experience to provide feedback as to whether the projects' proposed scope is feasible within the project parameters. This allows the contractors 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 solutions while maintaining the project's integrity. Participation in the scoping process also enables the contractors to become more familiar with the projects features and requirements before it prepares its price for the work. This familiarity means that the contractors may not include cost contingencies that other contractors frequently include in their bids to account for uncertainties that are not resolvable during the brief bidding period under a traditional DBB competitive bid process.

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

Through the RFP process, the City will have an opportunity to weight qualifications criteria, evaluate and select the contractors with the specialized expertise required for the various projects. The cost for such specialized expertise is included in the overall predetermined unit prices.

#### **F. Likely Increases in Public Safety**

The RFP contracting method allows contractors' actual safety performance on similar projects to be considered as selection criteria. It also permits the City to work closely with the contractors during project scoping to ensure that the construction process provides appropriate safety measures, that the contractors understand the City's safety concerns and that the contractors will take appropriate steps to address them.

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

The JOC project delivery method will facilitate a much greater project understanding by contractors before construction work starts, thereby reducing risks generally associated with the traditional low-bid approach. A major benefit of JOC is its efficiencies associated with project schedules that will enable the City to execute more work with greater schedule certainty. JOC also offer the greatest flexibility, risk reduction, reliability, and ease of construction. Project budgets are likely to be more stable as a result of this approach and it is less likely that there will be cost overruns. Additionally, the RFP process for selecting the contractors allows the City an opportunity to question the proposers to discern their expertise on contracting methods and sequencing.

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

No, the use of JOC will not impact the funding sources. Any bureau utilizing JOC must have resources available in its current budget to cover the cost of the projects delivered under JOC.

**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 JOC model will reach the same or greater market of construction contractors as the traditional low bid process. Additionally, granting this exemption will better enable the City to control the impact that market conditions will have on the cost and time necessary to complete the forecasted projects. As described above, JOC is a model where there is a predetermined catalog of unit prices for the work that the City is looking to contract for. Contractors awarded JOC contracts will propose an adjustment factor to cover overhead, profit and other related costs. By having a pool of contractors and predetermined pricing, JOC will help ensure that the City is able to complete work despite market conditions.

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

Not applicable.

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

The public improvements will typically involve renovations to existing structures, however there may also be new construction delivered under these contracts.

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

There may be tenant improvements to City facilities where such facilities will be occupied during construction.

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

The public improvements will typically be constructed in a single phase.

**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**

The City conducted a Request for Proposals procurement process in 2018 to engage and hire a third-party consultant to help implement JOC. The consultant firm, Gordian Group, has been on contract since January 2019 to develop the catalog of unit prices as well as the necessary solicitation and contract documents so that the City can implement this model.

Additionally, City personnel have the expertise and experience necessary in working with public improvement projects to negotiate, administer and enforce the terms of the resulting contracts and to effectively implement JOC.