

**EXHIBIT A (Amended)
% for Green GREEN STREET PROJECTS**

187 565

**FACTUAL FINDINGS
PROPOSED EXEMPTION FROM COMPETITIVE BIDDING****SUMMARY**

BES's *% for Green* program would benefit from using alternative contracting methods in lieu of competitive sealed bidding or competitive price quotations. The *% for Green* program is designed to reduce stormwater runoff from the public right-of-way (ROW) from entering into the City's stormwater system. This program benefits from the assistance of private property owners and thus makes an alternative contracting process desirable rather than using the competitive bidding process.

I. BACKGROUND

Portland's *Watershed Management Plan* (PWMP) was adopted in 2006 (Resolution No. 36384, incorporated herein by reference). The *Framework/or Integrated Management of Watershed Health*, which sets out the scientific basis for the plan, was adopted with the plan. The PWMP focuses efforts to protect and restore the natural systems within the city's boundaries, and lays out an integrated, system-wide approach. Since its adoption, the PWMP has been instrumental in assisting bureaus' consideration of watershed health as construction projects are designed and implemented.

Rather than focusing separately on single issues such as flooding, combined sewer overflows, or contaminated sediments, the PWMP considers all activities that affect watershed conditions including issues like transportation, redevelopment, and open space needs. Features like trees, ecoroofs, and swales integrated into the urban environment can capture and filter precipitation that would otherwise drain through outfall pipes directly into rivers and streams, or drain to the wastewater treatment plant. Protecting existing habitat and providing access to that habitat can continue and improve the health of our rivers. The six strategies to achieve these goals are stormwater management, revegetation, aquatic and terrestrial enhancement, protection and policy changes, operations and maintenance and education, involvement and stewardship.

While the PWMP builds on previous efforts, it is unique because it is the first plan to present the shared goals, objectives, strategies, and actions of the city's five watersheds. It is a first step toward documenting all of the City's watershed work, as well as the functional and organizational relationships between the work elements.

A. Green Street Policy

The City of Portland adopted the Green Street Policy in April of 2007 (Resolution No. 36500 incorporated herein by reference). A Green Street is part of the City's sustainable stormwater strategy to meet the goals of the PWMP.

B. Benefits of Green Streets

Green Streets transform impervious street surfaces into landscaped green spaces that capture stormwater runoff and let water soak into the ground as plants and soil filter pollutants. Green Streets convert stormwater from a waste directed into a pipe, to a resource that replenishes groundwater supplies. They also create attractive streetscapes and urban green spaces, provide natural habitat, and help connect neighborhoods, schools, parks, and business districts.

Green Streets are an innovative, effective way to restore watershed health. They protect water quality in rivers and streams, manage stormwater from impervious surfaces, and can be more cost efficient than new sewer pipes. Green Streets offer many benefits that sewer pipes cannot, including:

- Clean and cool air and water
- Enhance neighborhood livability
- Increase community and property values
- Enhance pedestrian and bicycle access and safety
- Protect valuable surface and groundwater resources
- Add urban green space and wildlife habitat
- Help meet regulatory requirements for pollutant reduction and watershed resource management
- Reduce stormwater in the sewer system
- Save money on wastewater pumping and treatment costs

The plants absorb water and their roots help water soak into the ground. Green Streets can be attractive neighborhood amenities, and a variety of plants can provide a range of looks.

C. Current Green Street Programs

Green Streets are currently constructed by developers as part of street improvements required at the time of development. These projects are governed by the requirements of BES's Stormwater Management Manual (SWMM). The purpose of the SWMM is to respond to regulatory mandates by providing stormwater management principles and techniques that help preserve or mimic the natural hydrologic cycle, minimize sewer system problems, and improve water quality. The manual provides developers and design professionals with specific requirements for reducing the impacts of stormwater from new development and redevelopment, including green street construction details and requirements.

Additionally, BES builds green streets as Capital Improvement Program (CIP) projects to meet the SWMM requirements and to meet pipe capacity and water quality goals.

Ongoing monitoring proves green streets effectively reduce peak stormwater flows and runoff volume. Keeping stormwater runoff out of sewer pipes reduces sewer backups in basements, street flooding, and combined sewer overflows (CSOs) to the Willamette River.

There are approximately 1,600 Green Street facilities throughout the City of Portland.

D. The % for Green Program

Not all stormwater improvements are captured by the City's current Green Streets Policy and programs. For example, if ROW improvements are not required with a new development, if green streets are not identified as part of a CIP project, or if the SWMM is not triggered, there are few resources to construct green streets.

Because the City would benefit by additional Green Streets, BES established a *% for Green* program as one mechanism to encourage and fund additional green streets. The *% for Green* program is also a mechanism to take advantage of the willingness of private property owners to make improvements in the public ROW.

The *% for Green* program is funded by collecting one percent of the construction budget of City of Portland projects within the ROW that are not subject to the requirements of the SWMM and By developers that are approved to pay off-site management fees (OSMF) in-lieu of building a stormwater management facility.

Projects to be funded through this program involve the participation of private property owners. Private property owners have expressed a willingness to make improvements to the public ROW for the purposes of stormwater management that are not covered under the Green Streets Policy discussed above. Therefore, the City wants to take advantage of private funding to support and facilitate construction in the ROW that is the basis of this request for exemption from competitive bidding.

The review process starts by first analyzing proposals from private property owners and City agencies who want to make stormwater improvements in the ROW. Any individual or entity can apply to receive *% for Green* funding. The program is promoted through city bureaus, and information is distributed to neighborhood coalitions, and others interested in green streets. The green street projects are optional; they are not triggered by development requirements. If the applicant did not receive *% for Green* funding, the projects would most likely not be constructed.

Applicants submit to a competitive process. Projects selected to receive *% for Green* funding must achieve multiple objectives. In addition to meeting threshold program guidelines, applicants will be evaluated on additional project selection criteria. Such criteria include improving pedestrian and bike safety, innovative design, high visibility, diverse employment opportunities and community involvement. If more applications are received than there are funds to complete, then those meeting the most criteria will be awarded the funds for their projects. Therefore, there will in fact be competition.

The review committee consists of representatives from the Water Bureau, Portland Bureau of Transportation (PBOT), Bureau of Environmental Services (BES), Bureau of Planning and Sustainability (BPS), The Portland Development Commission (PDC) and a representative from the community. Project applications will be accepted only if they meet the program guidelines and will be evaluated based on the additional project selection criteria. The committee makes recommendations to the Director of the Bureau of Environmental Services for final approval.

To be selected for funding, the private party must provide a minimum of 10% match (financial or in kind services) for the project.

If this exemption is approved, the contractor who will be hired to construct the improvements will be hired by the private party. The City will contract with that private party to perform the portion of the project.

II. FINDINGS REGARDING COMPETITION

Based on the background information presented in Section I, the following conclusion can be reached for this program:

ORS 279C.335 (2) requires that an agency make certain findings as a part of exempting public contracts or classes of public contracts from competitive bidding. ORS 279C.335 (2) (a) requires an agency to find that: *The exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts.* This conclusion is appropriate for this program as the Applicant is the only entity reasonably available to enter into a contract to construct and partially finance the Green Street facility given the additional circumstances of the % for Green program. Because the private property owner will be selecting the contractor and entering into the construction contract, the City is not involved in the selection process and therefore will not be encouraging favoritism among contractors nor substantially diminishing competition.

III. FINDINGS REGARDING COST SAVINGS AND OTHER BENEFITS

Based on the findings below, the following conclusion can be reached for this program:

ORS 279C.335 (2) requires that a public agency make certain findings as part of exempting public contracts or classes of public contracts from competitive bidding. ORS 279C.335 (2)(b) requires and agency to find that: *Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the contracting agency . . . or the public.* This conclusion is appropriate for this program because the Applicant is contributing its own funds to construct the % for Green project and it is anticipated that the City's contribution to the private project will be less than if the City were to separately construct the improvement through the competitive low bid process.

The following findings are based on the background information provided in Section I:

A. How Many Persons are Available to Bid

The Applicant is the only entity reasonably available to enter into a contract to construct and partially finance the Green Street facility given the additional circumstances of the % for Green program. Because the private property owner will be selecting the contractor and entering into the construction contract, the City is not involved in the selection process and therefore will not be encouraging favoritism among contractors nor substantially diminishing competition.

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

The City is seeking an exemption from the Competitive Bidding process for the *% for Green* program because the unique nature of the projects, the efficiencies of private projects in the same area, and the willingness of the landowner or developer to manage and construct the project results in a significant cost savings to the City. The City's interest is in being able to financially contribute to the efforts.

If the City were to do comparable projects, it would require finding a willing adjacent land owner, public involvement and outreach, permitting, project management, engineering, construction, and maintenance. Because the applicant already has a site identified, and has consent from surrounding neighbors, the city does not have to spend time and money on these tasks or coordinating with these tasks. There is additional savings in the *% for Green* program because the projects require a 10% match (financial or in kind services) from the private party as well which would not occur if the City were to go out and try to complete these projects through our normal capitalization route.

Cost

The cost of constructing a Green Street through this program varies depending on the existing conditions, utility improvements, changes to the curb alignment, and if additional improvements such as curb ramps are included. The costs for design, construction, and public outreach will range from approximately \$25,000 for simple projects to approximately \$150,000 for larger complicated corner improvements.

Budget

The total amount of *% for Green* funds to be spent on projects using alternative contracting methods over the next five years is anticipated not to exceed \$1,000,000. This is sufficient to fund approximately 20 green streets based on an average contribution of \$50,000 per Green Street. This compares to the approximately \$20 million BES will spend on constructing green streets to meet identified system plan needs and requirements over the next five years. Therefore, the *% for Green* program will constitute a small portion of the money expected to be spent for Green Streets.

This program preserves City funds as compared to the low bid contracting process. A low bid competitive contracting process would unnecessarily duplicate construction efforts. A separate construction project funded by the City would cost more than if the City is able to join a current ongoing project being conducted by the private party.

Furthermore, a low bid contracting process would not be able to take advantage of private money and non-monetary matching. The exemption from competitive bidding will improve operations and lessen the financial strain on the City's budget.

C. Public Benefits That May Result from Granting the Exemption

For Green Streets, the public benefits depend on the existing sewer infrastructure. 1) In combined sewer/stormwater areas, the benefits include reducing flow into undersized pipes which helps prevent local basement sewer backups, and reducing the stormwater sent to the wastewater treatment plant, thus reducing the amount that must be treated there. 2) In the Municipal Separate Sewer System (MS4), Green Streets improve water quality of the runoff

before it reaches the stream or river. 3) In UIC (Underground Injection Controls) areas, green streets can provide pre-treatment.

In addition to these system benefits, the projects must also have community benefits, for example, improved pedestrian and bike safety, education and demonstration component, wide community support, new sustainable stormwater technology and design, and/or catalyst for future improvements.

The public benefits from the *% for Green* projects because the projects are completely voluntary, there is no adjacent development and/or redevelopment that triggers ROW improvements. Thus without the *% for Green* funding these projects with watershed and community benefits would not be feasible.

As compared to a low bid competitive method, the exemption from competitive bidding for this program will generate similar or greater public benefit over a longer period of time, some of which are monetary while others are benefits to livability. In addition, by having construction performed at the same time as the private party's own construction, the public benefits because their neighborhood is subject to less disruption than if two projects were to be performed, each at a different time.

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

If there are value engineering possibilities, in which the cost of construction can be reduced because of a change in the manner or method of construction, the Applicant would be the entity most likely to be able to incorporate value engineering ideas into the projects.

For example, the contractor can look at performing the required work desired by the City in the context of the overall construction work to be performed and find the best, most efficient way to proceed with construction. Such efficiencies would never occur if two construction projects had to be performed. Therefore, some work, like excavation, would likely have to be performed twice. This will not occur if one project accomplishes both the private party's goals and the City's goals.

This is particularly true if the Applicant is paying a portion of the construction costs or other elements of the project and therefore has an incentive to save money. In addition, if this project was competitively bid, the City would not be able to take into account any value engineering ideas of various bidders on the project, which will then have to bid on the plans and specifications as drafted. They will have no incentive to reduce the cost of the project.

The *% for Green* program provides value engineering possibilities, while the competitive low bid process would not. Although it is unclear what value engineering aspects the projects will enjoy, it nonetheless is clear that the program is more likely to produce value engineering proposals and reduce City costs than if the City were to use the low bid competitive method.

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

Engineered, stamped drawings are required for permitting of green street projects. Accurate construction by experienced contractors is necessary for functioning facilities. The Applicants will be required to obtain all permits required to complete the work.

Grading in and around the facility, proper soil handling and planting sequencing are all important for green streets, including landscape design, traffic engineering, and safety.

The *% for Green* program provides opportunities to use specialized expertise beyond what the competitive bidding system would provide. Although it is unclear what aspects of specialized expertise will be required because the projects vary in scope and size, any specialized expertise that is required is more likely to arise and be utilized to save money by having one construction project taking into account all construction variables as opposed to two construction projects where the contractor cannot accomplish all the construction without knowledge of the other project. Awarding a contract through the exemption process is likely to produce the same or better specialized expertise since it is less likely to be compromised as compared to the low bid method.

F. Likely Increases in Public Safety

Green Streets have public safety benefits in all areas of the city. In the combined sewer area Green Streets enhance public safety by reducing the risk of local basement sewer back up and combined sewer overflows. Projects in the municipal separate storm sewer systems (MS4) to improve water quality, reduce, and detain runoff to adjacent streams and rivers. Green Streets in areas with Underground Injection Controls (UIC) help to meet regulatory compliance to protect groundwater.

In some cases Green Streets are also designed with pedestrian and bike safety goals. Curb extensions can treat stormwater and making street crossings safer for pedestrians. Curb extension can prevent cars from parking adjacent to the corner, clearing site triangles for motorists, bicycles and pedestrians.

The *% for Green* program will enhance public safety in ways that the competitive low bid process would not. Primarily, this program will permit one construction project to be undertaken, rather than two. This means that there is less duplication of construction effort, and less time for the public to be exposed to an ongoing construction site. No matter how much safety is emphasized, a shorter time frame for construction enhances public safety.

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

Applicants will be required to match the *% for Green* funding with a minimum of 10% of the project cost. In addition, Green Streets have public safety benefits in all areas of the city. In the combined sewer area Green Streets enhance public safety by reducing the risk of local basement sewer back up and combined sewer overflows. Projects in the municipal separate storm sewer systems (MS4) to improve water quality, reduce, and detain runoff to adjacent streams and rivers. Green Streets in areas with Underground Injection Controls (UIC) help to meet regulatory compliance to protect groundwater.

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

Green Streets are funded and constructed in a variety of ways described above. BES funding for green street construction is primarily through capital (rate payer) dollars. Green Street projects compete with all BES pipe and wastewater treatment projects for capital funding. Small scale projects that take advantage of timing with adjacent construction, and property owners willing to partner do not compete for capital funding.

%for Green collects one percent of the construction budget of City of Portland projects within the city right-of-way that are not subject to the requirements of the SWMM. Additional funding is provided by Off-site Management Fees collected from public and private projects that are approved to pay the offsite management fee instead of building a stormwater facility.

The projected *%for Green* budget over the next five years is approximately \$5,000,000. The majority of *%for Green* projects will not be exempt from the competitive bidding process. A maximum of \$1,000,000 is available over the next five years to fund private green street design and construction covered under this exemption.

Since the start of the *%for Green* program in April of 2008, approximately \$3.5 million has been pledged to green street projects. To date, approximately \$2.4 million has been spent, thirty seven projects are complete, and twelve others are in design or construction. Of these projects twelve have used or will use alternative bidding methods accounting for a total of approximately \$1,160,000 of the 3.5 million.

Applicants will be required to match the *%for Green* funding with a minimum of 10% of the project cost.

The exemption from competitive bidding will provide additional funding sources that would otherwise be unavailable from a low bid competitive 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

Applicants will be required to match the *%for Green* funding with a minimum of 10% of the project cost.

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

This finding is not applicable to the Project

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

This finding is not applicable to the Project

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

This finding is not applicable to the Project

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

Primarily, this program will permit one construction project to be undertaken, rather than two. This means that there is less duplication of construction effort, and less time for the public to be exposed to an ongoing construction site. No matter how much safety is emphasized, a shorter time frame for construction enhances public safety.

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 proposed contracting method and to negotiate, administer and enforce the terms of the resultant construction contract for the Project.