

RESOLUTION NO. 5212-14

A RESOLUTION ADOPTING FINDINGS IN SUPPORT OF AN EXEMPTION FROM COMPETITIVE BIDDING AND AUTHORIZING THE CITY MANAGER TO ENTER INTO A DIRECT NEGOTIATION CONTRACT WITH CARDNO FOR DESIGN AND CONSTRUCTION MANAGEMENT SERVICES FOR THE TUALATIN RIVER GREENWAY TRAIL PROJECT

WHEREAS, the Tualatin River Greenway Trail Project is included in the City's Parks and Recreation Master Plan and Transportation System Plan; and

WHEREAS, the Tualatin River Greenway Trail Project located north of the CenterCal Nyberg Rivers Development ("Project") was awarded a ConnectOregon V grant; and

WHEREAS, Washington County has provided money through the MSTIP Opportunity Fund grant program for the Project; and

WHEREAS, CenterCal has coordinated with the City to provide a donation toward completion of the Project; and

WHEREAS, the City needs to procure the services of a design and construction management consultant; and

WHEREAS, the City adopted its public contracting rules pursuant to Oregon Revised Statutes (ORS) 279A.065; and

WHEREAS, the City Council is designated as the Local Contract Review Board for the City of Tualatin, pursuant to ORS 279A.060 and Tualatin Municipal Code (TMC) Chapter 1-21; and

WHEREAS, ORS 279C.335 and TMC 1-21-090 authorizes the City Council to exempt contracts from the competitive process upon the adoption of certain written findings; and

WHEREAS, the City published notice of the public hearing in the *Daily Journal of Commerce* a minimum of fourteen days prior to the hearing date to consider a request for proposal process for the Project;

BE IT RESOLVED BY THE CITY COUNCIL, SITTING AS THE LOCAL CONTRACT REVIEW BOARD, OF THE CITY OF TUALATIN, OREGON, that:

Section 1. The contract for professional design and contract management services for the Project is exempt from competitive bidding procedures in order to use a direct negotiation process.

Section 2. The exemption of the Project from competitive bidding is based on the following findings:

A. The Nature of the Contract. This contract scope includes: civil engineering, landscape architecture, survey services, environmental services, lighting, structural engineering, and project management services. The work requires experience in the above as it relates to trail projects.

B. Estimated Cost of the Project. The estimated cost of the Project is approximately \$455,000.

C. Exempting the Project from Competitive Process Will Result in Substantial Cost Savings. Allowing a direct negotiation contract by exempting this project from the competitive process will produce substantial cost savings.

(1) The traditional process for this type of contract is a Request for Qualifications (RFQ) followed by a Request for Proposal (RFP) process. The timeframe in using this formal process is estimated to take at least two months. The City would lose at least two months of design time for the project which increases the risk of a late design and therefore, late start of construction. If construction is late or missed, there would be additional design and construction costs; resulting from additional scope of work, wet-weather work conditions, and escalation due to increases in construction costs. The RFQ/RFP process poses several disadvantages on this project and would subject the City to additional costs and risks, given the unique qualities of the project.

(2) The City already has a qualified pool list for the type of work involved. Going through an RFQ process would likely result in a similarly qualified list of consultants and design professionals. Therefore, the time and expense in developing an RFQ is not needed and would result in additional time and costs.

(3) Proceeding through an RFP process, after the development of the RFQ, will also likely not provide a different result in the selection of the consultant. Cardno has worked with CenterCal, the developers of the Nyberg Rivers project, throughout the duration of the Nyberg Rivers project. Cardno has been performing work for CenterCal that is directly related to the Greenway Trail, including permitting, boundary and topographic survey, tree survey, drainage, trail design, landscaping, grading, phased construction, and integrating trail connections with other improvements on and off site. In addition, CenterCal has a lease interest in the area on which this Project is to be constructed. Therefore, the selected contractor needs to be familiar with and coordinate with the CenterCal development. Cardno is intimately familiar with the design and requirements of the project. Cardno will provide value engineering and be able to coordinate the Greenway design with the CenterCal project. This will result in substantial cost savings to the City.

(4) Directly negotiating with Cardno will provide the following substantial cost benefits, including: (a) coordinated vehicular and pedestrian traffic flow; (b) understanding of existing conditions, design requirements, and utilities; (c) knowledge and coordination of limited staging areas; (d) phasing of improvements to maximize timing and efficiency; and (e) a recognition of the window of time to complete construction.

(5) The range of fees paid for similar services for past trail projects have ranged from 12% (Sweek Pond and east end of Brown's Ferry Park) to 18% (5 greenway trails) to 28.5% (Ki-A-Kuts Bridge and trails). Many grant programs accept 15% as a reasonable range for design and construction management services. The *ConnectOregon V* grant does not contain such a range, but the anticipated range of the direct negotiation contract with Cardno is slightly less than 15% of the overall Project costs.

(6) The traditional procurement process does not allow the City to take into consideration the price of the contract. Using the RFQ/RFP process would subject the City to risk of increased cost and time. Exempting the project from competitive bidding and allowing the direct negotiation contract allows the City to select the best consultant based upon the skills and experience needed to complete the project efficiently and effectively. The direct negotiation process allows consideration of multiple factors, including experience, knowledge of the Project, schedule, and cost. This will provide substantial cost savings and public benefits to the City.

(7) The traditional procurement process does not allow the City to select the appropriate consultant to take into consideration the unique circumstances of the Project and location of the site. The site is located in the downtown core and requires continued access to businesses and public facilities in the area. Authorizing a direct negotiation contract allows the City to select a consultant that can ensure the coordination of construction timing and requirements of continued mobility near the site. This results in cost and operational efficiencies for both the City and public at large. It also allows the City to select the best consultant to manage the integration of the project and continued mobility, while taking into account the needs of each individual part of the project. Such integration reduces costs and eliminates the need to coordinate multiple stages of the improvements at the location.

(8) The biggest risks to the project are complexities regarding communications, continuity, and schedule. The exemption allows the City to coordinate in order to make the construction process as smooth as possible for the public. The exemption process will provide the City and consultant with an opportunity to work cooperatively to resolve construction and management issues in an efficient manner and early in the process. The exemption will provide both time and cost savings that are vital given the location of the project.

The exemption will also allow all of the improvements in the area to be constructed with better communication and continuity. This will expedite decision making and reduce project delays.

(9) The project involves several complicated components, including floodplain impact and mitigation, Clean Water Services mitigation, minimizing tree disturbance and underpass design and safety. The exemption process will provide the City and consultant with an opportunity to work cooperatively to resolve these issues and coordinate with the adjacent Nyberg Rivers development as it relates to these issues.

(10) The completed Project will result in safer transportation for vehicles, bicycles, and pedestrians by providing a needed connection to the Greenway Trail system. In addition, the completed Project will provide a new recreation amenity for the public.

D. The Exemption Is Not Likely To Encourage Favoritism Or Substantially Diminish Competition.

(1) Favoritism is defined as "selection based on friendship or factors other than merit." "Encourage" is defined as "promoting the growth and development." Granting an exemption for the contract will be unlikely to encourage favoritism because this is a single contract exemption that will be procured through a selection from a consultant on the City's qualified pool list. Contractors on the qualified pool list already went through a qualifications based selection process. The direct negotiation process allows consideration of multiple factors, including experience, knowledge of the Project, schedule, and cost.

(2) The City has already proceeded with a qualifications based selection process through use of the qualified pool. All consultants with the type of experience necessary to complete this type of works are on the City's qualified pool list.

(3) This type of design contract does not allow the City to take into consideration the price of the contract. Therefore, all of the consultants have had an opportunity to present the City with their qualifications. If the City were to provide the qualified pool list with the opportunity to provide proposal to be submitted in response a request for proposal process, it is very likely that Cardno would be the selected consultant. This is because Cardno is most familiar with the Project, having performed work for CenterCal that is directly related to the Greenway Trail, including permitting, boundary and topographic survey, tree survey, drainage, trail design, landscaping, grading, phased construction, and integrating trail connections with other improvements on and off site. Cardno conducted the topographical survey of the western portion of the project, has been involved in easement locations for the trail, conducted a tree investigation of the western portion of the project, conducted preliminary natural resource

assessment of the western portion of the project, has a history of working with ODOT and Clean Water Services, and is familiar with the City's requirements for this Project. Granting the exemption will not substantially diminish competition in the awarding of public contracts.

(4) The terms and conditions of the contract will be the result of "arms-length" contract negotiations and the contract will be reviewed and approved by the Community Services Manager, the City Attorney, and the City Manager. The selected consultant will be required to comply with all City requirements and public contracting code requirements. These requirements are the same as if the project was competitively procured, and thus, the City will not be engaging in favoritism in the execution of the contract documents.

E. The Proposed Contracting Method. The proposed contracting method is a direct negotiation contract.

F. The Estimated Contract Let Date. The estimated contract let date is September 30, 2014.

Section 3. The City Manager is authorized to enter into a direct negotiation contract with Cardno for design and construction management services for the Tualatin River Greenway Trail project.

Section 4. This resolution is effective upon adoption.

INTRODUCED AND ADOPTED this 22nd day of September, 2014.

CITY OF TUALATIN, OREGON

BY Monique Berkman
Mayor Council President

APPROVED AS TO FORM

BY S-B
City Attorney

ATTEST:

BY Shelby Domb
City Recorder