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2 **RESOLUTION NO. 2022-41**  
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4 **A RESOLUTION OF THE CITY OF LINCOLN CITY, ADOPTING FINDINGS FOR A PUBLIC**  
5 **CONTRACT EXEMPTION AND AUTHORIZING AN ALTERNATIVE CONTRACTING**  
6 **METHOD FOR THE LINCOLN CITY COMMUNITY PARK IN TAFT**  
7

8 **RECITALS**  
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10 **WHEREAS**, ORS 279C.335(2) permits the City Council, acting as the Local Contract Review  
11 Board, to exempt a public improvement contract or class of contracts from the competitive  
12 bidding requirements of the Lincoln City Public Contracting Code and use an alternative  
13 contracting method, subject to making required findings; and  
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15 **WHEREAS**, on October 24, 2022, the City Council conducted an advertised public hearing on  
16 the proposed findings to exempt the Taft Community Park Project from competitive bidding  
17 and authorize an alternative public contracting method; and  
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19 **WHEREAS**, on October 24, 2022, after due consideration of public comment and the  
20 proposed findings in the record, the City Council, acting as the Local Contract Review Board,  
21 deliberated and decided to approve the exemption and authorize the alternative contracting  
22 method; and  
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24 **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LINCOLN**  
25 **CITY, AS FOLLOWS:**  
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27 **SECTION 1. RECITALS.** The above recitals are true and correct and are incorporated  
28 herein by this reference.  
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30 **SECTION 2 . APPROVAL.** The City Council, acting as the Local Contract Review Board,  
31 hereby approves the required Findings to support the exemption from competitive bidding  
32 and the use of an alternative contracting method for the Lincoln City Community Park Project  
33 in Taft, said findings being attached to this Resolution and incorporated herein by this  
34 reference; and  
35

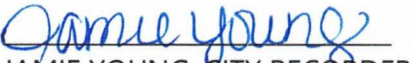
36 **SECTION 3 . EFFECTIVE DATE.** This resolution is effective as of the date of its adoption and  
37 signature by the Mayor or Council President.  
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40 PASSED AND ADOPTED by the City Council of the City of Lincoln City this 24<sup>nd</sup> day of  
41 October, 2022.  
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SUSAN WAHLKE, MAYOR

ATTEST:

  
JAMIE YOUNG, CITY RECORDER

APPROVED AS TO FORM:

  
RICHARD APPICELLO, CITY ATTORNEY

# **Findings in Support of Alternative Contracting Method**

## **For The Community Park in Taft**

### **Introduction**

The Use of Alternative Contracting methods, such as the Progressive Design Build method, is made possible under ORS Chapter 279C, which permits certain contracts or classes of contracts to be exempt from competitive public bidding under strict procedural safeguards.

Pursuant to ORS 279C.335, a local contract review board may exempt specific contracts from traditional, competitive bidding by showing that an alternative contracting process is unlikely to encourage favoritism or diminish competition and will result in cost savings to the public agency. The Oregon Attorney General's Model Public Contract Rules provide for public notice and opportunity for the public to comment on draft findings in favor of an exemption before their final adoption.

ORS 279C.330 provides that: "findings" means the justification for a contradicting agency conclusion that includes, but is not limited to, information regarding:

- Operational, budget and financial data;
- Public benefits;
- Value engineering;
- Specialized expertise required;
- Public safety;
- Market conditions;
- Technical complexity;
- Funding sources

### **Background**

This will be the first community park built in Lincoln City in over 20 years, and the first community park in the Taft District (southern area of Lincoln City) alone. It will host the only public soccer fields, and the only covered public multi-sport courts (basketball/ pickle ball/ tennis) in Lincoln City. This park will host a large covered outdoor special event area, which can convert to multi-sport courts, for Lincoln City.

## **Operational, Budget, and Financial Data**

The estimated cost to complete the Park Project is over \$5 million dollars. The total amount secured to date is \$2,235,000. The implementation plan is as follows:

Fiscal year 22-23

- 30% Concept Design Completed for entire Park
- Construction Task 1 – Pedestrian Access to Parking Lot

Fiscal year 23-24 – Construction Task 2

- Restroom
- Playground

Fiscal year 24-25 – Construction Task 3

- Covered Multi-Sport Area

Fiscal year 25-26 – Construction Task 4

- Covered Courts
- SE 50<sup>th</sup> Street Improvements

Fiscal year 26-27 – Construction Task 5

- Turf Courts
- SE 51<sup>st</sup> Street Improvements

Should funding become available sooner than anticipated, the construction tasks will be completed ahead of the five year schedule. Therefore, it is important that we select a reliable design/build team who can work with the City to meet the flexible time table. The low-bid process offers a level of certainty to the owner that the initial bid price of the project is the lowest cost; however, if changed conditions are encountered during construction, resulting change orders can have significant cost impacts.

With the Progressive Design Build method, the contractor is required to submit their mark-up percent. The percent mark-up includes the contractor's profit. This allows the contractor a level of certainty and eliminates the motivation for finding ways to increase his profit during construction.

With the Progressive Design Build method, the contractor will be asked to review the project for constructability & propose improvements where feasible. This allows the contractor a level of control over implementation of the project schedule, reduces change orders, and results in a more accurate project bid.

Additionally, the use of value engineering through cooperation among the contractor and City is essential to the Project delivery. Value engineering will help eliminate

change orders and progress delays – benefitting both the city budget and residents affected by the construction. Cost savings will result from consideration of construction timing and sequence, public impact, and constructability are not realized under a low bid process.

### **Public Benefit**

The Progressive Design Build Contracting Method provides opportunities for cost savings. Designing the Park to a 35% design level, then being able to construct the phases where funding is available, will allow the Public to use portions of the Park before the entire park is complete. Using the design-bid-build method would require staff to design-bid-build each phase of the project after funding is secured for each phase.

It also benefits the public by allowing the city to take contractor's experience, proposed materials and method of installation into consideration when awarding the bid.

### **Value Engineering**

The Progressive Design Build Method is essentially value engineering. This process allows the contractor, at the city's discretion, to implement real-time cost saving strategies up to the construction phase of the project. These beneficial actions by the team will eliminate the potential for costly change orders. The proposal evaluation criteria will include the Contractor providing any changes in the described project that would improve the project with a better value to the City.

### **Specialized Expertise Required**

The City wants to review the contractor's experience in constructing parks, specifically the elements we are planning to include such as:

- Playground area
- Covered multi-port court Area
- Restrooms
- Outdoor courts
- Synthetic turf soccer field
- Improvements to SE 50<sup>th</sup> and SE 51<sup>st</sup> Streets
- Pedestrian Access to public parking lot on SE Inlet

### **Public Safety**

The Progressive Design Build method allows the City to construct the Community Park in phases, allowing the completed sections to be occupied while the remaining phases are designed and constructed.

### **Market Conditions**

The Progressive Design Build contracting process is a modern construction delivery method used by both public and private organizations. The team is tasked with knowing the latest construction techniques and products. The chosen contractor is given the opportunity to incorporate their knowledge of current market conditions, labor and materials availability, and construction methodologies and reduce construction time and costs. The process also allows the construction timing and sequence to be considered through the design process.

### **Technical Complexity**

A portion of the project is on a capped brownfield with condition that that portion remained capped. This will require designing and constructing over existing asphalt which will be challenging and expert experience will be needed.

### **Funding Sources**

The Progressive Design Build method of contracting provides the greatest cost controls for limited budgets and therefore benefits the City. This method allows the flexibility to be able to construct the phases as funding becomes available. The approach requires the contractor to compete with other proposals and present the most affordable and efficient method of project implementation.

### **Unlikely to Encourage Favoritism or Diminish Competition**

It is unlikely that the process of selecting a contractor through the Progressive Design Build method will encourage favoritism in the awarding of the public contract or substantially diminish competition for the public contract. Competition will not diminish because the Progressive Design Build contract will be awarded based on a competitive process, with clearly identified criteria.

### **Summary**

Using the Progressive Design Build method of contracting provides the flexibility needed for such a phased project with funding unknowns. This method provides the City with the benefit of working with one project team throughout Park project's phases

keeping the vision and architecture consistent rather than with the design- bid-build method phase by phase as funding allows.

DRAFT