

RESOLUTION NO. 2024-50

A Resolution adopting findings and exempting from public bidding requirements City's contractual portion of the construction of Meadows Drive along the eastern edge of Jay Pearson Park.

RECITALS:

Whereas, in 2014 the City acquired 3.46 acres of real property as part of a bankruptcy settlement; and

Whereas, added to .65 acres of property the City already owned, this amounted to 4.11 acres, upon which the City has built Jay Pearson Park; and

Whereas, as part of the terms of the bankruptcy settlement agreement (the "agreement"), City and adjacent private property owners were to construct north/south-running street portions between their respective properties upon development of either of the adjacent properties; and

Whereas, in 2017 the property owner to the west of Jay Pearson Park initiated development on that real property and collaborated with the City, under terms of the agreement, to construct the portion of Yohn Ranch Drive along the western edge of Jay Pearson Park; and

Whereas, now the property owner to the east of Jay Pearson Park wishes to begin development on that real property and is seeking to collaborate with the City to fulfill the terms of the agreement and construct a portion of Meadows Drive along the eastern edge of Jay Pearson Park; and

Whereas, according to the agreement, the City may require the adjacent property owner to construct the full section of road and pay 50% of the cost; and

Whereas, such construction, by virtue of the City's payment and the location on City property, amounts to a Public Improvement Contract subject to competitive bidding requirements under ORS 279C.300; and

Whereas, a local contract review board may exempt a public improvement contract from competitive bidding requirements after approving findings required by ORS 279C.335.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF McMinnville, Oregon, as follows:

1. That the following findings are made and approved, as further detailed in Exhibit A, attached hereto:
 - i. The exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts.

- ii. Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the City. In approving this finding, the local contract review board has considered the type, cost and amount of the contract, as well as the factors in Exhibit A.
- 2. That the public improvement contract for construction of Meadows Drive along the eastern edge of Jay Pearson Park is exempt from the competitive bidding requirements of ORS 279C.300.
- 3. That this resolution shall take effect immediately upon passage and shall continue in full force and effect until modified, revoked, or replaced.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 24th day of September 2024 by the following votes:

Ayes: Geary, Garvin, Menke, Chenoweth, Payne, Peralta

Nays: _____

Approved this 24th day of September 2024.



MAYOR

Approved as to form:

Attest:

David Ligtenberg
City Attorney

Claudia Coneros
City Recorder

EXHIBITS:

- A. ORS 279C.335 Findings

Exhibit A
To Resolution No. 2024-50

ORS 279C.335 Findings

1. The exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts.

Supporting Factors:

- a. The work will still be bid according to APWA standards.
- b. The City will have an opportunity to object to submitted cost statements, allowing the City some leverage if there is reason to believe better prices can be had elsewhere.
- c. This format may increase competition by appealing to contractors that do not usually bid on government contracts.
- d. Notwithstanding this process, Alan Ruden, Inc. will still be compelled to pay prevailing wages for the City's portion of the project.

2. Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the City.

Supporting Factors:

- a. The underlying contract also allows the City to build half of the road itself. Having Alan Ruden, Inc. contract and manage the project will save City time and resources.
- b. Alan Ruden, Inc. will be able to maximize efficiencies by constructing the full road as a single project.
- c. The following factors from ORS 279C.335(2)(b)(A)-(N) must be considered to the extent applicable:
 - (A) How many persons are available to bid; Bids will be solicited by the developer but the subcontracts may be additional firms that generally would not be able to bid on a public project;
 - (B) The construction budget and the projected operating costs for the completed public improvement; Operating costs are unchanged; The construction budget will likely be lower since there will be a single contractor mobilization and larger quantities of materials since the work is bid with the adjacent development; Additionally considering the alternative where the City constructs half of the roadway on its own property there are additional savings on engineering bidding services permitting and services during construction; The City would also have to likely demo portions of the road that is being built by Alan Ruden Inc to construct the City's half of the road correctly representing obvious inefficiency;
 - (C) Public benefits that may result from granting the exemption; A single construction phase with less impact to neighboring residents as well as road and sidewalk improvements being constructed a year earlier than if the City had to do this work;
 - (D) Whether value engineering techniques may decrease the cost of the public improvement; N/A - Engineering is already complete;
 - (E) The cost and availability of specialized expertise that is necessary for the public improvement; This type of roadway project does not require specialized expertise but the

developer's engineer does have knowledge specific to this site and the wetland mitigation requirements from Oregon Department of Environmental Quality permitting;

(F) Any likely increases in public safety; A single shorter construction phase rather than two resulting in earlier pedestrian improvements and shorter timeframes for construction related incidents; If Alan Ruden Inc were required to do a full public bidding process it could result in separate contractors each building half of the road and up to doubling the required construction vehicles and deliveries to the site;

(G) Whether granting the exemption may reduce risks to the contracting agency, the state agency or the public that are related to the public improvement; Permitting uncertainty is avoided by the City since Alan Ruden, Inc. has already secured the relevant wetland permit required to construct the road; If Alan Ruden Inc were required to do a full public bidding process the City would need to have additional oversight of the process to insure Alan Ruden Inc correctly follows the process that is unfamiliar to them;

(H) Whether granting the exemption will affect the sources of funding for the public improvement; City funding for its 66% share of the construction is coming from Park SDCs so this exemption will have no effect;

(I) Whether granting the exemption will better enable the contracting agency to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement; N-A;

(J) Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement; The project is neither large nor technically complex; However the project will be better addressed simply by virtue of not having to duplicate engineering and permitting work that is already complete;

(K) Whether the public improvement involves new construction or renovates or remodels an existing structure; N-A;

(L) Whether the public improvement will be occupied or unoccupied during construction; N-A;

(M) Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions; This will be a single phase if the developer builds it; The road will take two phases if the City has to construct its own half;

(N) Whether the contracting agency or state agency has, or has retained under contract, and will use contracting agency or state agency personnel, consultants and legal counsel that have necessary expertise and substantial experience in alternative contracting methods to assist in developing the alternative contracting method that the contracting agency or state agency will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract; N-A;