BUSINESS AND COMMUNITY SERVICES
NORTH CLACKAMAS PARKS AND RECREATION DISTRICT
Development Services Building
150 Beavercreek Road, Oregon City, OR 97045

Sarah Eckman, BCS Interim Director

June 24th, 2021

Board of County Commissioners
Clackamas County
Board of North Clackamas Parks and Recreation District

Members of the Board:

Approve Resolution for Bid Exemption and Authorization to use the CM/GC RFP Procurement Method for Oak Lodge and Gladstone Community Project

Purpose/Outcome	Public hearing before the Board acting as the Board of Directors of the North Clackamas Parks and Recreation District (NCPRD) and Approval of Resolution for the Proposed Exemption and Authorization to use the Request for Proposals (RFP) procurement method to obtain a Construction Manager/General Contractor (CM/GC) for the Oak Lodge and Gladstone Community Project.
Dollar Amount and Fiscal Impact	The project has a preconstruction budget for the CM/GC of approximately $150,000. NCPRD total project cost is estimated at $23,800,000.
Funding Source	Oak Lodge Library and NCPRD Funds
Duration	Through April 2024
Previous Board Action/Review	• Board Order 85-1221 entitles the Library Board of Trustees to conduct studies to recommend to the BCC appropriate sites for the location of the library building or satellite facilities. • Oct.16, 2017: The County and the City of Gladstone enter into a Settlement Agreement which requires the County to construct and operate two library facilities, one in the City of Gladstone and one in unincorporated Clackamas County. • Sept. 26, 2019: Board approves a contract between Business and Community Services (BCS) and Opsis for the North Clackamas Parks and Recreation District (NCPRD) Concord Property, Oak Lodge Library and Gladstone Library planning processes. • Nov. 14, 2019: Board approves an Intergovernmental Agreement (IGA) between Clackamas County and the City of Gladstone for library construction and operations which included milestones for the Gladstone Library project. • Jan. 14, 2021: Board approves the Concord and Gladstone master plan reports and approved staff working with community and consultants to complete design and engineering for the library on the Concord Property and the Gladstone Library. • Jan. 14, 202: Board, acting as the Board of Directors of NCPRD, approves the Concord master plan reports and approves staff working with community and consultants to complete design and engineering for the NCPRD portions of the Concord Property. • March 9, 2021: Board, and the Board acting as the Board of Directors of NCPRD, approve staff moving forward with the Opsis contract amendment.

	• April 1, 2021: Board, and the Board acting as the Board of Directors of NCPRD, approve Opsis contract amendment #2 for the Oak Lodge and Gladstone Libraries. • May 13, 2021: Board, and the Board acting as the Board of Directors of NCPRD, approve the purchase and sale agreement between NCPRD and Brolin for a land parcel at the Concord Site. • June 8, 2021: BCC approves CM/CG findings to move to 6/24/2021 Consent Agenda.
Strategic Plan Alignment	• Provide economic development, public spaces, and community enrichment services to residents, businesses, visitors, and partners so they can thrive and prosper in healthy and vibrant communities. • Promote a *Healthy and Active Lifestyle* by providing a park and community center with spaces to be active. • Designed with a lens of *Equity, Diversity and Inclusion* by engaging diverse audiences and maximizing access to a library, park and recreation that are near public transportation. • Promote *Carbon Neutrality* by providing higher quality natural areas and access by building near alternative modes of transportation and building sustainable projects using photovoltaic panels for power to reduce future operating costs.
Counsel Review	1. Date of Counsel review: 6/8/2021 2. Initials of County Counsel performing review: ARN
Procurement Review	1. Was the item processed through Procurement? yes X no ☐ 2. If no, provide brief explanation:
Contact Person	Allegra Willhite, BCS Deputy Director, 503-201-4321 Jason Varga, Project Manager, 503-351-4012
Contract No.	N/A

Background:
Business and Community Services (BCS) is requesting an exemption from the traditional competitive procurement process and authorization to use the Request for Proposals (RFP) procurement method to obtain a Construction Manager/General Contractor (CM/GC) for the Gladstone Library, Oak Lodge Library, NCPRD administrative offices, community center and park.

The public hearing satisfies requirements under ORS 279C.335 to provide notice and the opportunity for a public hearing for the purpose of taking comments on the draft findings for an exemption to use the RFP method to retain a construction contractor in a CM/GC project delivery method. Clackamas County Procurement placed a public notice on the Oregon Procurement Information Network (ORPIN) on June 10, 2021, and with the Business Tribune online edition and print version on June 10, 2021, which included the date and time of a public hearing to take place before the Board.

The Oak Lodge and Gladstone Community Project is made up of three interrelated projects:

1. The redevelopment of the NCPRD Concord Property, a six-acre site at 3811 Concord Road in Oak Lodge, as a new community center, park and NCPRD administrative offices;
2. A library located on the Concord Property to serve the residents of the Oak Lodge Library service area, and
3. A new library building at 525 Portland Ave. in the City of Gladstone to serve residents of the Gladstone Library service area.

The project has a budget of approximately $150,000 for CM/GC preconstruction services. The total project cost for the NCPRD Administrative Offices, Community Center and Park is estimated

at $23,800,000. The total project cost of the Oak Lodge and Gladstone Libraries is $19,800,000. These totals include direct construction costs as well as indirect construction costs (such as design, engineering, permitting, CM/GC preconstruction services, furniture and equipment). The RFP will solicit a CM/GC for Phase I Preconstruction and Phase II Construction; however, only Phase I Preconstruction is authorized until a later amendment sets a Guaranteed Maximum Price and full project funding is authorized.

CM/GC Method
The CM/GC procurement method is an alternative contracting method in which the owner hires the construction contractor to provide feedback during the design phase before construction. The general benefits of this method include fostering innovation, mitigating risk, improving design quality, improving cost control, and optimizing construction schedules and logistics.

The alternative procurement process offers safeguards for cost control of the project, including involvement by the construction contractor from design development through construction documents and construction cost development process, as well as limiting change orders. The Request for Proposals process also adds safeguards, as it allows the agency to consider cost as well as experience and expertise in completing similar projects when selecting the most advantageous contractor for the project.

Specifically, CM/GC is the preferred project delivery methodology for this project for several reasons, including:

- the need for cost control (see more details below);
- the multi-faceted nature of the proposed scopes of work;
- the priority to optimize the construction schedule to coordinate various funding sources, and to minimize closure of the Concord community center;
- the specialized expertise required to address the unique needs of modern libraries and the varied and technical aspects of the project, and
- the emphasis on sustainable design and providing public spaces and community enrichment services to residents, businesses, visitors and partners so they can thrive in healthy and vibrant communities.

Cost Control: More specifically, the anticipated cost savings from the CM/GC approach result from the following:

1. An accelerated project timeline that will assist BCS in quickly addressing the critical scope of work items and meet critical financial milestones required by third parties, and lessens the risk of material/labor cost inflation.
2. Provides both management and construction of the site improvements, which enables the project to select the cost-effective construction methods, sequencing and phasing that best meet project goals.
3. Allows BCS to evaluate alternative approaches and make changes before construction documents are finalized. This allows BCS to find more optimal solutions within the time and resource constraints.
4. Allows use of real-time market pricing to more accurately assess design options and maximize opportunities for value engineering, resulting in cost savings that cannot be achieved by the standard competitive-bid process.
5. Close working relationship between the designer, CM/GC and BCS during preconstruction and construction, with the contractor directly involved in value engineering evaluations with the design team. Resolution of construction conflicts or deficiencies is the

responsibility of the CM/GC. Together, these conditions help BCS minimize costly change orders and claims during construction, while optimizing project value.

6. The opportunity to establish a Guaranteed Maximum Price (GMP) cooperatively with the CM/GC team, in order to establish a fixed total project cost and budget before construction begins, and reduce change orders and additional costs during construction.
7. Reduce BCS and NCPRD administrative burden by conducting one solicitation for the project, as opposed to conducting multiple solicitations for a design/ bid/ build approach.
8. Constructing the Gladstone and Concord construction concurrently to allow for shared project management cost by the CM/GC.

In summary, BCS believes the unique nature of this project makes it appropriate for an exemption from the standard bidding process and ideally suited for approval to use the RFP procurement process to retain the services of a CM/GC.

COMPETITIVE PROCESS

Once BCS has been approved to use the CM/GC process, the following competitive process will be used to select the CM/GC contractor:

1. Publicly advertise a RFP;
2. Select the contractor through an evaluation process conducted by an evaluation committee that considers qualifications, construction team experience, and demonstration of project understanding.
3. The Selection Committee recommends the award to the Board of County Commissioners and NCPRD Board of Directors for their approval. Upon approval, a notice of intent to award will be published. It will include a lump-sum cost proposal for Phase1 preconstruction services and a CM/GC fee proposal for Phase II construction costs.

NEXT STEPS

- Develop and issue a CM/GC RFP (July 2021).
- Select CM/GC and issue contract for Phase I preconstruction services (September 2021).
- Work on an Intergovernmental Agreement (IGA) between NCPRD and the Oak Lodge Library to outline shared capital and operational expenses and procedures (ongoing – summer 2021).
- Begin construction (spring 2022).

RECOMMENDATION:

Adopt the resolution approving a contract-specific exemption for the project that permits use of the CM/GC delivery method, and permit use of the competitive RFP process to select a CM/GC contract.

ATTACHMENT:

1. Draft Findings

Respectfully submitted,

Sarah Eckman, Interim Director
Business and Community Services

Oak Lodge and Gladstone Community Project

FINDINGS IN SUPPORT OF USE OF REQUEST FOR PROPOSALS AND ALTERNATIVE CONTRACTING METHODS

These Findings are for the approval of the use of an alternative contracting method so Business and Community Services ("BCS") may utilize the request for proposals ("RFP") competitive process to retain a construction contractor in a Construction Manager/General Contractor ("CM/GC") project delivery method for the Oak Lodge Gladstone Community Project ("Project").

A. Alternative Contracting Exemption under Oregon Law

Oregon law requires all contracts for public improvement projects to be based on competitive bids unless the local contract review board grants an exemption under LCRB C-049-0600 and ORS 279C.335. ORS 279C.400 permits a contracting agency to solicit and award public improvement contracts through a Competative Proposal Process when an exemption is granted under ORS 279C.335. To grant an exemption, ORS 279C.335 requires the public contract review board to approve two findings submitted by the agency: (1) that the exemption is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition; and (2) awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the public agency.

ORS 279C.335(2) provides that an exemption may be granted to "a public improvement contract or a class of public improvement contracts" if the described findings are approved.

For public improvement projects, ORS 279C.330 and 279C.335 provide that the agency must consider the type, cost and amount of the contract(s) and information regarding the following:

a. Operational, budget and financial data;
b. Public benefits;
c. Value engineering;
d. Specialized expertise required;
e. Public safety;
f. Market conditions;
g. Technical complexity; and
h. Funding sources.

The local contract review board also is required to consider the following items when evaluating whether award of a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the public agency:

a. How many persons are available to bid;
b. The construction budget and the projected operating costs for the completed public improvement;
c. Public benefits that may result from granting the exemption;
d. Whether value engineering techniques may decrease the cost of the public improvement;
e. The cost and availability of specialized expertise that is necessary for the public improvement;
f. Any likely increases in public safety;
g. Whether granting the exemption may reduce risks to the contracting agency or the public that are related to the public improvement;
h. Whether granting the exemption will affect the sources of funding for the public

improvement;

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;
j. Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement;
k. Whether the public improvement involves new construction or renovates or remodels an existing structure;
l. Whether the public improvement will be occupied or unoccupied during construction;
m. Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions; and
n. Whether the contracting agency or state agency has and will use contracting 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 will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract.

B. Background Information

In October 2017, Clackamas County (the County) and City of Gladstone entered into a settlement agreement in which the County agreed to construct and manage two new libraries – a 6,000-square-foot facility in the City of Gladstone and an approximately 19,500-square-foot facility in the Oak Lodge Library service area. The agreement called for a "one library, two building" approach, with both libraries operated by the County to achieve economies of scale and best provide library services to the Oak Lodge and Gladstone service areas.

In a similar timeframe to this settlement agreement, NCPRD and the North Clackamas School District (NCSD) entered a strategic partnership to acquire three NCSD properties, including the Concord Elementary School (Concord Property) in Oak Grove. Since Oak Lodge Library and NCPRD are both divisions of the County's Business and Community Services Department, it was decided to pool resources and use time and money efficiently by creating a joint process to plan for the Concord Property and the Oak Lodge and Gladstone libraries. A process outline was approved by the Clackamas County Board of County Commissioners (BCC) in 2018.

These decisions led to the Oak Lodge and Gladstone Community Project (OLGCP), a comprehensive planning effort for the Gladstone and Oak Lodge libraries, and NCPRD divisions of the County's Business and Community Services Department (BCS).

Together, they developed a vision for a new library for the Gladstone service area, and a new library, community center, park and NCPRD administrative offices for the Oak Grove/Jennings Lodge community. Opsis Architecture and Johnston Architects, with their consultant team, are leading the planning and design efforts for both projects. The effort is guided by the Gladstone Community Library Planning Task Force and the Concord Property and Library Planning Task Force, who serve as ambassadors of community interests.

In January 2021, this process produced a pair of simultaneous Master Plan Reports, summarizing the collective, collaborative effort between the design team, task forces, community, and staff to recommend preferred scenarios to the Board of County Commissioners (BCC).

To advance the two projects, the master planning team engaged the community to deliver a master plan

for a new 6,000-square foot Gladstone Library to serve residents of the Gladstone service area at the location of the former Gladstone City Hall at 525 Portland Ave, Gladstone, OR 97027, which is the corner of Portland Avenue and E. Dartmouth Street.

The master planning team also engaged the community to create a master plan for a 47,600 square foot facility to house a new community center, park, and NCPRD administrative offices for District residents to be located at the site of the former Concord Elementary School (Concord Property) in Oak Grove, at approximately 3811 SE Concord Rd. Milwaukie, OR 97267. In addition, they recommended the Concord Property for a new 19,500-square foot Oak Lodge Library to serve the Oak Lodge Library service area.

Project Descriptions:

At the conclusion of the Master Planning process, the following project plans emerged:

Gladstone Library. The consensus plan includes a new 6,000-square foot library at the corner of Portland Avenue and E. Dartmouth Street, the site of the former Gladstone City Hall. The program includes spaces to meet the following needs:

- Flexible meeting space
- Dedicated areas for children and teens
- Private tutoring/meeting rooms
- Library Foundation sale and work areas
- Designated primary service point
- Book-drop with exterior access
- Holds area
- Self-check and public-access computers
- General collection area with reading and lounge spaces
- Staff workroom and support
- Convenient public restrooms
- Public computer area

Concord Property and Oak Lodge Library. The master plan for this 5.94-acre site includes renovation of the former Concord Elementary School at 3811 SE Concord Road in Milwaukie for a new 47,600 square foot community center and NCPRD administrative offices, a park, and a new 19,500 square foot building addition to house the Oak Lodge Library. The two buildings will be joined to form a 67,000 square-foot facility benefitting from numerous shared features and uses.

The program for this site will include:

- Indoor recreation amenities
- Community spaces
- Park spaces, including an interactive water feature, an outdoor amphitheater with seating, a universal access playground, and a loop trail.
- NCPRD administrative offices
- Library

The total project cost estimate to complete the Projects is $43.6 million, which includes $6 million for the Gladstone Library, $13.8 million for the Oak Lodge Library and $23.8 million for the NCPRD Administrative offices, community center and park. Funding will come from up to 14 sources, all of which must be coordinated and timed to support the Projects. The need for to apply so many sources of

funding to cover the costs of the Projects underscores the importance of budget compliance.

Anticipated funding sources include the following:

Clackamas County(Oak Lodge and Gladstone Libraries)

1. Oak Lodge Library District Reserves
2. Clackamas County Capital
3. Library Services Capital Reserve
4. Oak Lodge Library Beginning Fund Balance
5. Clackamas County Revenue Bond – Library Portion
6. Clackamas County Revenue Bond – General Fund
7. Seismic Grant

NCPRD(administrative offices, community center and park)

8. Grants (Park)
9. Hood View Sale Proceeds
10. Other Potential Property Proceeds
11. System Development Charges (SDCs)
12. NCPRD General Fund Reserves
13. Clackamas County Revenue Bond – NCPRD portion
14. Seismic Grant

Contracting Approach

The CM/GC method is an alternative contracting method in which the owner hires the construction contractor to provide feedback during the design phase before the start of construction. The benefits of the CM/GC method include fostering innovation, mitigating risk, improving design quality, improving cost control, and optimizing construction schedules and logistics.

CM/GC is the preferred project delivery methodology for the Projects for several reasons, including the need for cost control, the multi-faceted nature of the proposed scopes of work, the priority to optimize the construction schedule to coordinate various funding sources, and the specialized expertise required to address the unique needs of modern libraries and the varied and technical aspects of the Projects.

Cost control and predictability are critical and especially challenging for these Projects. Because up to 14 sources of funding are involved, any changes to the project budget can have wide-ranging implications for the feasibility of the project. Use of a CM/GC enables earlier and more frequent cost estimating for the Projects, providing estimates during the design phases, when changes are less expensive, and also provides a degree of transparency and predictability not available in a traditional contracting method. The multifaceted nature of the Projects will also benefit from a CM/GC, who can gain an in depth understanding of the projects during the design phase, and provide construction, materials, and logistics expertise that can streamline the completion of the Projects. Finally, the technical demands of modern libraries, as well as some unique aspects of the Projects requiring specialized expertise, will benefit from a CM/GC who can be selected based on qualifications and experience delivering similar projects.

The wide array of funding sources for these projects underscores the need for several features that a CM/GC contracting approach can provide. First, some of the funding sources require project initiation/completion by a predetermined date. Second, the Projects will need as much predictability

and transparency as possible, so all funders can understand the impact of project changes on their obligations. Third, cost estimating needs to be as accurate and timely as possible.

BCS also seeks a number of the other advantages offered by a CM/GC approach. Design refinements that must be made before construction documents are finalized will benefit from input from a qualified contractor and partnership during the preconstruction phase on facets such as: (1) effective construction techniques and sequencing to optimize schedule and maintain quality; (2) long-term performance of materials and furnishings to minimize life cycle costs of the facilities; (3) overall costs and how to choose methods, materials, delivery and sequencing to optimize quality outcomes within the project budget. Working together with a CM/GC, NCPRD anticipates the team can refine the design and construction documents to meet the budget and timeline effectively.

In preparation for construction, the packaging and marketing of the construction procurements also must meet the demands of a busy construction marketplace. With a CM/GC on the team, the Project will have the expertise and teamwork necessary to meet the demands of a tight timeline and mitigate the risk of losing access to critical funding.

Generally, the alternative procurement process offers safeguards for cost control of the Project, including involvement by the construction contractor from the design development phase through construction documents and construction cost development process, as well as limiting change orders. The Request for Proposals process also adds safeguards, as it allows the agency to consider cost as well as experience and expertise in completing similar projects when selecting the most advantageous contractor for the Project.

In summary, BCS believes the unique nature of this class of Projects makes it appropriate for an exemption from the standard bidding process and ideally suited for approval to use the RFP procurement process to retain the services of a CM/GC.

C. Findings

1. Appropriate alternative contracting methods will be used.

   The qualifications-based RFP process for selecting a CM/GC contractor for these Projects falls within the purview of ORS 279C.335(2) because the process is competitive and contractors will be selected based not only on price, but also on their ability to best complete the Projects. The qualifications-based RFP approach is widely used and recognized as one of the preferred alternative approaches where projects are more complex. RFP responses allow contractors to compete based on their skills and experience in addition to their price. In these projects, some of the complexities require a combination of skills that cannot be evaluated in a standard low-bid process, such as time constraints, budget constraints, and work within a partially developed and constrained site. The benefits of utilizing the CM/GC delivery method have been identified above. As such, the CM/GC delivery method, selected through a qualifications-based RFP process, is the most appropriate contracting method for the Project.

2. No favoritism or diminished competition.

   The exemption is sought only to authorize a different competitive process from the standard low-bid procurement process. The CM/GC contractor will still be selected through the competitive RFP process. To ensure the exemption requested does not encourage favoritism or substantially diminish competition, a well-defined competitive procedure will be followed to select the contractor for this public improvement contract.

Procurement will include advertisements in the *Portland Tribune* and post the opportunity on the State of Oregon Procurement Website ("ORPIN"). Further steps include direct notification to qualified CM/GC contractors, scheduling a pre-proposal conference, and appointment of an unbiased evaluation committee that will consider proposals received utilizing the criteria identified in the RFP. BCS staff research indicates that market conditions are such that many of the same contractors who would bid the projects under a traditional low-bid procurement will compete in the qualifications-based RFP process.

Additionally, during the subcontractor bidding phases of the project, outreach to minority, women-owned, and emerging small businesses ("MWESB") will be conducted by the selected CM/GC contractor to inform this audience of bidding opportunities.

By Procurement marketing these opportunities and working to notify all likely potential proposers, the process will not encourage favoritism in the awarding of the public improvement contract, nor substantially diminish competition. Use of the alternative contracting method will also allow BCS to maximize opportunities for participation by all potential subcontractors, including MWESB businesses.

The evaluation criteria may include, among other things, consideration of the contractor's background, references, experience, capacity, personnel, client relations, schedule, quality control, and problem and solution identification. In addition, the proposals will include, where appropriate, an evaluation of the contractors' fee proposals for providing preconstruction services and overhead and profit fee rates for performing construction work. The evaluation criteria will be used by the committee to score proposals using a scoring system that quantifies the value for each criterion and assures that proposers are fairly evaluated based on criteria set forth in the RFP.

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

In terms of the benefits of using an RFP process for CM/GC, BCS staff research and experience indicate that standard low-bid contracting for work of this nature is likely to result in numerous change orders and increased costs through claims. This typically occurs when a contractor identifies issues after construction has begun that require a "re-working" of the original design. The result is more change orders, not realizing the benefits of value engineering and not optimizing quality that would occur in the CM/GC method.

Further, by utilizing the RFP process to engage a CM/GC partner during design, BCS has the capacity to obtain real-time market pricing information. This pricing will facilitate more accurate assessment of design options and maximize opportunities for value engineering, resulting in cost savings that cannot be achieved by the standard competitive-bid process. The involvement of the CM/GC contractor will allow phasing of the bidding and construction more effectively. This will significantly mitigate schedule impacts with a resulting cost savings in material/labor inflation and construction general conditions.

In terms of the benefits of selecting a CM/GC contractor through a competitive RFP process, such a process will allow BCS to select contractors based upon criteria in addition to price. It will allow selection of a contractor whose proven experience matches the nature of the required work, in both the design and the construction phases. CM/GC contracts are more easily structured to accommodate variable and changing conditions while minimizing cost and avoiding disruptive change orders and claims.

As the analysis below shows, permitting a contract-specific exemption for the Projects pursuant to an exemption will result in substantial cost savings and other substantial benefits to BCS.

a. How many persons are available to bid.

Beyond the finding that many of the same contractors would propose on the Project if it were procured through the standard low-bid contracting process, BCS has interviewed local contractors, and based on those interviews, anticipates there are numerous contractors that would be interested in submitting proposals for the Project. Additionally, BCS anticipates the project will generate interest among contractors because the sites are prominent, the plans are well known and heavily supported by the community, and the combined budgets of the Projects will be attractive to a large group of local contractors.

b. The construction budget and the projected operating costs for the completed public improvement.

The construction budget totals approximately $30,900,000, as prepared and refined by the design team led by OPSIS Architecture and BCS staff for the master plan. As the contract is established, each site's budget will become fixed by a Guaranteed Maximum Price ("GMP") negotiation, including limited contractor's contingencies. The funding will include a variety of public sources including local and regional funding.

An RFP process allows selection of a CM/GC contractor during the design phase, thereby encouraging increased collaboration, teamwork and ownership. This results in a more efficient design, fewer change orders attributable to design issues and unforeseen costs, and faster progress with fewer unexpected delays. This, combined with specific expertise from the contractors that will build the project (in timely real market pricing, constructability guidance, and other areas), allows BCS to better control costs. Moreover, the ability to have the CM/GC do early work if applicable prior to completion of design may shorten the overall duration of construction. A shortened construction duration will allow BCS to more quickly open one or both facilities, as well as some of the outdoor community amenities at the Concord site. This will generally benefit the public by expanding recreational opportunities and events. Faster progress and an earlier completion date may also help BCS mitigate the risk of inflationary increase in materials and construction labor costs and the risk of non-compliance with grant funding agreements.

In addition, during constructability reviews in the design phase, the selected contractors will review long-term operating costs and advise BCS regarding the operational advantages and disadvantages associated with design alternatives. An evaluation of these alternatives will result in selections that match BCS's capacity for operations and maintenance and decrease long-term operating and maintenance costs.

Last, by selecting a CM/GC contractor through a competitive RFP process, versus a standard low-bid procurement, BCS will ensure the selected contractor is best able to maximize the savings to the overall Project budget described above.

c. Public benefits that may result from granting the exemption.

By utilizing an RFP process to select the CM/GC, BCS can select the contractor who can also

best maximize public benefits. With the CM/GC method, BCS expects to shorten the construction duration, mitigate change orders, enhance constructability and minimize inflation impacts. The CM/GC delivery method also provides an opportunity to minimize disruptions to the surrounding areas, including neighboring property owners and activities at both sites. All of these significant benefits are in the public's interest.

In addition, collaboration with a qualified CM/GC contractor early in the Projects' schedule allows the development of practical approaches that can achieve higher levels of participation by MWESB businesses. The CM/GC contractor's valuable advice throughout design will result in a more cohesive and higher-quality design being maintained through necessary value engineering.

With respect to using a competitive RFP process, the use of this alternative contracting method will allow BCS to identify, evaluate, and select contractors who can work with the public and maximize the aforementioned public benefits for these types of projects.

d. Whether value engineering techniques may decrease the cost of the public improvement

Utilizing a competitive RFP process to select a CM/GC contractor to provide input and constructability review directly with the design team during the early design phase will facilitate the value engineering process by ensuring the contractor is selected based upon specific experience in these areas. Utilizing the CM/GC delivery method ensures options can be considered while the design is being finalized and with minimal issuance of change orders during construction. Since the contractor is directly involved in value engineering evaluations, unrealistic or impractical options can be dismissed quickly when appropriate. When it occurs, value engineering on standard low-bid projects typically results in increased design costs because the completed design must be revised to accommodate the changes that result from value engineering. These additional costs may be avoided or limited under the CM/GC delivery method, thereby decreasing the cost of this public improvement.

This type of contract also allows the designer and contractor to more easily explore the feasibility of innovative design solutions and incorporate ongoing value engineering, which BCS expects to result in more innovative projects, at a lower cost, with shortened project completion times.

With respect to using a competitive RFP process, as before the use of this alternative contracting method will allow BCS to better identify, evaluate, and select contractors with requisite value engineering experience as part of the selection process.

e. The cost and availability of specialized expertise that is necessary for the public improvement.

With respect to the CM/GC delivery method, it will be a requirement in the RFP that the CM/GC have expertise in working on projects with similar size, scale, and complexity as the proposed Projects. The design and construction of specific project elements, including the interactive water feature and universal access playground, requires special expertise, knowledge, and experience, all of which can be factored into the contractor selection in the RFP process. The selection of a contractor with such specialized expertise to construct the Projects will result in a substantially lower risk to BCS, resulting in lower costs and increased benefit to the community.

The ability to factor expertise and experience into contractor selection is inherent in the RFP process, but is not normally part of the standard low-bid process. The standard process does not ensure a contractor will possess the needed special expertise because prospective bidders need meet only limited responsiveness criteria. The ability to consider each proposer's degree of expertise in these areas is an integral component of the CM/GC proposal evaluation process.

f. Any likely increases in public safety.

In terms of the competitive RFP process, the contractor's actual safety performance on similar past projects is critical and will be evaluated as part of the proposal review process. A competitive RFP procurement affords BCS the best opportunity to select contractors with proven, successful safety records.

These projects will require the utmost attention to public safety, as the surrounding uses include an active business district, fire station, overhead power lines, and single-family homes (Gladstone) and a residential neighborhood and adjacent state route (OR-99/McLoughlin Boulevard) (Concord). At the Concord site, informal passage through the site will need to be interrupted for some duration while permanent improvements are made.

Construction-generated staging, delivery, and parking activity will need to be considered in a comprehensive construction traffic safety and mitigation plan for both sites. Constant attention to needs of neighbors, visitors, and construction crews is crucial to maintaining a safe working and living environment for workers and the general public. By utilizing the CM/GC delivery method, the contractor will work with the project team during the design phase to understand, plan for, and minimize safety hazards and conflicts between the Projects and the public. The contractor will provide input into issues of project phasing, construction staging areas, construction access corridors, and scheduling to reduce impacts. The close teamwork provides maximum flexibility to address both anticipated issues and new concerns that may arise. Ultimately this input will increase the public safety of the Project and reduce the risk of delays and costly injury claims.

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;

For the reasons previously identified, granting an exemption for alternative contracting and utilizing the RFP for selection of the CM/GC contractor reduce risk to BCS through Project cost savings. As detailed in section (f), granting of the exemption for the CM/GC delivery ensures the highest levels of project oversight and an increase to the safety of the public during construction. Using the RFP process further reduces risks by expanding the factors and qualifications considered in the contractor selecting process.

h. Whether granting the exemption will affect the sources of funding for the public improvement.

Construction of the Project will be funded through a variety of sources as outlined in Section B, including local bonding and System Development Charges ("SDCs"). The use of SDCs is permitted by existing policies. The exemption will allow use of the CM/GC alternative delivery, via competitive RFP selection, to best ensure timely progression to the construction phase and an efficient timeline for the construction phase. BCS expects both of these to enable

the project team to accept and utilize eligibility of the project for SDC funds under current policies.

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.

Market conditions for construction in the Portland metro area are extremely busy, with rising construction costs and a tight labor market. General contractors have been able to be much more selective in the work they pursue. It will be important to package this work in the most attractive manner to draw quality contractors and to eliminate as many barriers as possible.

A competitive RFP procurement to select a CM/GC contractor will better enable BCS to manage construction bid risks within a robust construction market. BCS is more likely to attract experienced and capable general contractors using alternative contracting methods. In addition, using the CM/GC delivery method will provide the advantages of real-time market pricing during design to inform material and equipment selection. In addition, an alternative contracting method will allow BCS to collaborate with the contractors on items and installations that are not off-the-shelf, such as the universal access play area, the interactive water feature and the installation of public art integrated into the overall park design. Such elements/installations often require one-of-a-kind construction details for which the professional design community and/or construction industry do not have standard pricing structures.

Use of a standard low-bid approach in a tight or rising cost construction market increases the risk bids will exceed budget, with limited options to address overages through scope reductions. When bids exceed budget, it causes delay and budget problems as staff work to find solutions to make the project viable. Any delays translate into additional costs due to increasing construction material costs and other associated costs. Use of the CM/GC delivery methods will enable BCS to better respond to market conditions in a manner that results in a lower-cost Project.

j. Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement

These Projects face several complexities making site design and construction more complex:

- *Site conditions and context:* working in a developed downtown setting next to an active fire station and proximate to overhead electrical wires, , working adjacent to a residential neighborhood, combining new construction with renovation of an existing structure, the need to maintain or detour public access;
- *Unique project elements:* the universal access play area, interactive water feature and installation of public art which require specialized and/or site-specific technical expertise, knowledge, and experience; and
- *Requirements of Settlement Agreement:* The 2017 Settlement Agreement between City of Gladstone and Clackamas County governing the development of the Projects required the design and development of two libraries, one in the Gladstone, Oregon and one in Oak Grove, Oregon.
- *Requirements of Intergovernmental Agreement:* The 2019 Intergovernmental Agreement between the City of Gladstone and Clackamas County outlined the Project design documents for the Gladstone Library to be completed by 12/30/21. Permits must be obtained, contractor must be procured and GMP proposal approved by board

by 6/30/22.

As noted previously, the CM/GC delivery method will better enable BCS to address these complexities in a more efficient and cost-effective manner. The competitive RFP selection process for a CM/GC contractor will ensure selection of a contractor with necessary experience to manage these complexities, require the contractor to demonstrate the necessary experience and expertise to address them, and require the contractor to perform work in accordance with a schedule that meets contract deadlines driven by financing and the owner's project delivery obligations to the community.

The selection of a contractor with demonstrated experience and success in implementing such projects increases the likelihood of the project being completed on budget and with fewer construction delays and change orders. This results in lower costs, lower risk, and increased benefit to BCS and the public. The CM/GC method will facilitate early identification and mitigation of risks by leveraging the expertise of the CM/GCs in addition to the county and designers.

Beyond the minimum requirements for bidder responsibility, a standard low-bid procurement does not permit an in-depth evaluation of a contractor's technical qualifications or proven ability to address these complex technical issues. Use of an RFP process for the CM/GC method, which will include several evaluation criteria in addition to price, allows BCS to evaluate a contractor's experience in similar work and in successfully navigating similar complexities.

k. Whether the public improvement involves new construction or renovates or remodels an existing structure.

The Projects include a combination of new construction, remodeling, and landscape improvements. Both projects will occur on sites with previous land uses and structures that could present unforeseen conditions. The Concord project requires the construction of a new building that will adjoin the existing structure, which is to be remodeled. The Gladstone project includes demolition of an existing structure, and new construction on the site. It also requires protection of hardscape, furnishings, parking and landscape elements on neighboring sites and public right-of-way, as well as protection of existing stormwater facilities; fire hydrants; overhead power lines; curb, gutter, and sidewalk; mature street trees, and a TriMet bus stop. BCS must ensure that both Projects are properly, safely, efficiently, and successfully implemented and considers the CM/GC process the preferred method for this as it allows for revising the design in close collaboration with the design team and resequencing work as needed.

In addition, the ability to perform early work under a CM/GC contract, such as additional soil testing or grading and excavation, provides the team opportunities to identify unforeseen conditions at the project site and thereby enables project designers to efficiently address design changes during the design phase, rather than during the construction phase.

The qualifications-based RFP process will allow BCS to give appropriate weight to proposers that are skilled and experienced in performing similar site work. Because of the nature of constructing park improvements on a site formerly utilized for commercial buildings, it will be important for BCS to select a contractor with experience in addressing unforeseen conditions.

l. Whether the public improvement will be occupied or unoccupied during construction.

For both projects, the construction area will be proximate to, but closed off from, adjacent properties and uses that must remain accessible. At the Concord site, pass-through traffic will need to be interrupted during all or part of the construction. At the Gladstone site, the site itself will be vacant during construction, but immediately adjacent properties, including a fire station, will remain open and operational throughout construction. A CM/GC contractor provides the expertise on construction staging, access, detouring, sequencing, scheduling, and proactive communications that will be required to maintain public safety and minimize disruption as much as possible around the sites without compromising budget compliance or timely completion. The use of the competitive RFP process to select the CM/GC will ensure this expertise is available.

m. Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions.

It is expected that the construction efforts for the Projects will be a single phase. However, BCS will look to the CM/GC to determine the most appropriate phasing based on the scope of work.

In addition, the ability of the parties to perform early work if advantageous before the design is completed may allow construction to be completed earlier. Moreover, where appropriate, early work may be performed to investigate potential unforeseen conditions that could impact the Projects' designs, thus avoiding costly re-design work and change orders. The use of the competitive RFP process to select the CM/GC will ensure the input is provided to make the best decision for successful project execution.

n. Whether the contracting agency has retained under contract, and will use contracting 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 will use to award the public improvement contract and to help negotiate, administer, and enforce the terms of the public improvement contract.

A Project team has been established that includes staff from BCS, County Counsel, and County Procurement that will actively participate in the project from inception to completion. BCS will retain the services of an owner's representative to assist with the procurement and contracting phase and construction management services during construction. BCS has also retained the services of an architect-led design team and will retain other consultants as needed throughout the project. The combination of staff and consultants have experience completing similar projects using the CM/GC project delivery methods and have the necessary qualifications and expertise to negotiate, administer, and enforce the terms of the public improvement contract.

D. Contract Terms and Conditions

The technical complexities and uncertainties of the Project make it critical for the contract to contain specific terms and conditions that will increase efficiency and result in reduced costs. The above referenced Project team along with the owner's representative will ensure the resulting contract includes industry best practices, mitigates BCS and the Project's risk exposure, and ensures that fees are fair and reasonable for the project. County Counsel will also ensure that the contract includes all

legally required public procurement terms.

E. Reservation of Rights

ORS 279C.335(6) provides that the representations in and the accuracy of these findings are the bases for a contract-specific exemption if adopted by a Board of County Commissioners resolution. These findings also describe, to some extent, anticipated features of the RFP and resulting public improvement contract, but the final parameters of the contract are those characteristics that will be announced in the solicitation document, and BCS specifically reserves all of its rights in this regard.

G. Recommendation

A competitive RFP process to procure a CM/GC contractor is the preferred option for the Project. The RFP process will ensure that the selected contractors have the experience, expertise, and past performance to position the Project for success. Further, the RFP competitive process ensures that meaningful competition will occur and that favoritism is not an element of the selection process. All these factors will assist BCS in achieving fair and equitable selection of a contractor that will deliver both good design and successful completion while minimizing public impacts, controlling construction costs, and meeting an agreed-upon schedule.

Utilizing the CM/GC delivery method will enable the selected contractor to collaborate in the design effort and will yield the most cost-effective and practical choices in design options while still allowing BCS to retain control of the design and costs. Perhaps most importantly, the CM/GC method will provide the team collaboration needed to meet financing timelines for construction and allow for a smoother and timelier progression to the start and completion of construction. This ultimately results in substantial cost savings and other substantial benefits, as described above, to BCS.

BCS staff therefore recommends adoption of a resolution approving a contract-specific exemption for the Project that permits use of the CM/GC delivery method, and to permit use of the competitive RFP process to award a CM/GC contract.