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May 21, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Ordinance 04-2020 Amending Clackamas County Code
Chapter 2.05.200 – Layoff and Seniority of the Personnel Policies and Procedures for
Clackamas County Employees and Declaring an Emergency

Purposes/Outcome	To amend County Code Chapter 2.05 to clarify that non-represented employees do not have bumping rights in the event of a layoff.
Dollar Amount and Fiscal Impact	Costs savings of clarifying and simplifying the layoff process for non-represented employees is difficult to calculate. No increased cost associated with the change.
Funding Source	Not applicable.
Duration	Indefinite until amended.
Previous Board Action	County Code 2.05.200.4, which defines the bumping procedure in the event of a layoff, was codified July 2000 and has been amended twice since then. This matter was presented at Issues on January 14 and April 21, 2020. This Ordinance had a First Reading at the April 30, 2020 Board business meeting.
Strategic Plan Alignment	Build Public Trust through Good Government
Contact Person	Andrew Narus, Assistant County Counsel

Background:

This matter previously came before the Board during the Issues session on January 14, 2020, and again on April 21, 2020. During the January 14 Issues session, the Board requested that non-represented employees be given the opportunity to provide input on the proposed changes and Administrator Schmidt scheduled a forum for employees to provide input. Generally, non-represented employees were either unaware of this Code provision or supportive of the change.

Currently, 2.05.200.4 sets out a bumping procedure for all regular employees in the classified service, including non-represented employees. In the event of a reduction in the workforce, employees whose positions are being eliminated are “permitted to exercise bumping rights by displacing a classified employee with less seniority in a different classification with the same salary grade or lower in the department, provided that the bumping employee is qualified to do the work . . .” The proposed Code change would eliminate the right of non-represented employees to bump down into other non-represented positions.

Eliminating bumping rights for non-represented employees would allow for a more efficient layoff process, in the event a reduction of force is necessary, and would ensure that the employees who are retained have the knowledge, skills, abilities, and professional experience to ensure efficient operations at the County following the layoff, consistent with County Code 2.05.200.3 (Layoff Order).

The other jurisdictions surveyed do not permit non-represented employees to bump down in the event of a layoff, including City of Portland, Multnomah County, Washington County, City of Vancouver, and Metro. The proposed change would align our layoff process for non-represented employees with our regional partners.

Finally, the proposed modification would not affect bumping procedures for represented employees, who rely on a bargained-for bumping process set out in their collective bargaining agreements with the County.

Recommendation:

The matter was presented to the Board for a first reading on April 30, 2020. Staff respectfully request the Board hold a public hearing and the second reading of this ordinance and adopt the proposed ordinance 04-2020 and declare an emergency making the ordinance effective upon adoption.

Respectfully submitted,

/s/ Andrew Narus

Andrew Narus
Assistant County Counsel

Attachments

ORDINANCE NO. 04-2020

**An Ordinance Amending Clackamas County Code
Chapter 2.05.200 – Layoff and Seniority of the Personnel Policies and Procedures
for Clackamas County Employees and Declaring an Emergency**

Whereas, Chapter 2.05 - Personnel Policies and Procedures for Clackamas County Employees was adopted in 2000 and amended twice over the past 20 years; and

Whereas, it has become apparent that the County Code provisions related to the layoff and bumping procedures for non-represented employees are in need of modification; and

Whereas, such modification is necessary to ensure that a reduction of force involving non-represented employees occur in an efficient manner designed to retain employees who possess skills, knowledge, and abilities required for ongoing operations in all positions and classifications;

**NOW, THEREFORE, THE CLACKAMAS COUNTY BOARD OF COMMISSIONERS
ORDAINS AS FOLLOWS:**

Section 1: Chapter 2.05.200 is amended as depicted in Exhibit A, attached hereto and incorporated by this reference.

Section 2: Emergency Clause. The Board of Commissioners hereby finds and declares that due to the need to amend the Code and apply the new standards for employees, an emergency exists that requires the Ordinance to take immediate effect. Accordingly, this Ordinance shall be effective upon its adoption.

ADOPTED this 21st day of May, 2020.

CLACKAMAS COUNTY BOARD OF COMMISSIONERS

Chair

Recording Secretary

Exhibit A to Ordinance No. 04-2020
Showing Proposed Changes to 2.05.200.4 of the County Code

2.05.200 Layoff and Seniority

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2.05.200.4 Bumping Procedure

When an employee is laid-off due to a reduction in the work force, the employee shall be permitted to exercise bumping rights by displacing a classified employee with less seniority in a different classification with the same salary grade or lower in the department, provided that the bumping employee is qualified to do the work as determined by the appointing authority and the Director of Employee Services. For bumping purposes, seniority will be defined as length of continuous service within the County. This provision does not apply to non-represented employees.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05; Amended by Ord. 04-2007, 4/26/07]



**BUSINESS AND COMMUNITY SERVICES
NORTH CLACKAMAS PARKS AND RECREATION DISTRICT**

Development Services Building
150 Beaver Creek Road, Oregon City, OR 97045

Laura Zentner, BCS Director

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

Members of the Board:

Public Hearing and Approval of a Resolution for Exemption and Authorization to use the Request for Proposals Method to Obtain a Construction Manager/General Contractor for the Milwaukie Bay Park Project

Purpose/Outcomes	Public Hearing before the Board of County Commissioners acting as the Board of Directors of the North Clackamas Parks and Recreation District and Approval of Resolution for the Proposed Exemption and Authorization to use the Request for Proposals procurement method to obtain a Construction Manager/General Contractor (CM/GC) for the Milwaukie Bay Park Project.
Dollar Amount and Fiscal Impact	The Project has a preconstruction budget for the CM/GC contractor not to exceed \$175,000. The total project cost is estimated at \$9,600,000.
Funding Source	NCPRD System Development Charges (for preconstruction)
Duration	If the Resolution is approved, a Request for Proposal for a CM/GC will be issued and a contractor selected in the summer of 2020. The Project is expected to be complete by the end of 2023.
Previous Board Action	<ul style="list-style-type: none"> March 19, 2020 Business Meeting: Boards Orders approving submission of grant applications (Order 2020-18, Order 2020-19) February 18, 2020 Policy Session: Milwaukie Bay Park Final Design Project Update
Strategic Plan Alignment	<ul style="list-style-type: none"> 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 <i>Healthy and Active Lifestyle</i> by providing a park with recreational pathways, equipment and spaces Designed with a lens of <i>Equity, Diversity and Inclusion</i>, engaging diverse audiences and maximizing park connections Promote <i>Carbon Neutrality</i> by providing higher quality natural areas and access by alternative modes of transportation
Counsel Review	
Contact Person	Heather Koch, NCPRD Project Manager 503-742-4354 Ryan Rice, Contract Analyst, 503-742-5446 George Marlton, Chief Procurement Officer 503-742-5442

BACKGROUND:

North Clackamas Parks and Recreation District (“NCPRD”) is requesting an exemption from the traditional competitive procurement process and authorization to use the Request for Proposals

procurement method to obtain a Construction Manager/General Contractor ("CM/GC") for the Milwaukie Bay Park Project ("Project").

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 Request for Proposals method to retain a construction contractor in a construction manager/general contractor ("CM/GC") project delivery method. Clackamas County Procurement placed a Public Notice on the Oregon Procurement Information Network ("ORPIN") on May 6 2020, and with the Business Tribune online edition on May 7, 2020 and its print version on May 12, 2020, which included the date and time of a Public Hearing to take place before the Board.

NPCRD partnered with the City of Milwaukie ("City") in 2018-19 to develop a final design to complete three acres of undeveloped waterfront land at Milwaukie Bay Park. The design includes an amphitheater, nature play area, interactive water feature, plaza with picnic terrace, a permanent alignment for the trolley trail, pathways, natural areas, public art and restrooms. NPCRD has also engaged a broad and diverse range of over 1,300 community members throughout the District, advanced a funding strategy to leverage local, regional, state and other funds, and developed a process to build a preconstruction and construction services team in FY20-21.

The park is identified as a high priority need in the 2004 NPCRD Master Plan and 2007 NPCRD Parks and Recreation System Development Charges (SOC) Update Methodology Report and Capital Improvements Plan. NPCRD is partnering with the City to complete design and construction documents and construct the park. The City owns the park and NPCRD plans for, develops and manages the City's parks under an Intergovernmental Agreement.

A CM/GC is the preferred project delivery methodology for the Project because of the need for cost control, the multi-faceted nature of the proposed scope of work, the priority to optimize the construction schedule to minimize closure of an existing public park, and the emphasis on design and materials that provide both longevity in a high-use urban environment and sustainable resilience in a floodplain environment.

The Project has a preconstruction budget for the CM/GC contractor not to exceed \$175,000 or less, consistent with the final published RFP. The total project cost is estimated at \$9,600,000. This includes construction costs as well as preconstruction costs such as design, engineering, permitting and the CM/GC preconstruction services. The RFP will solicit a CM/GC for Phase I Preconstruction and Phase II Preconstruction; however, only Phase I Preconstruction is authorized until a later amendment sets a Guaranteed Maximum Price and full project funding is authorized.

A CM/GC is an alternative form of contracting that results in an agreement with a CM/GC contractor who becomes involved at a much earlier point in the Project compared to the standard low-bid process. This early involvement allows the contractor to provide input during the design phase that can accelerate the overall construction schedule and provide cost-savings opportunities. The CM/GC contractor undertakes a scope of work that includes design development; constructability reviews; value engineering; scheduling; estimating; establishing a Guaranteed Maximum Price ("GMP") to complete the work as may be allowed under the contract; coordinating and managing the construction process; providing general contractor expertise; and participating as a member of the project team along with NPCRD staff, project landscape architects and engineers, and other consultants.

COMPETITIVE PROCESS AND COST SAVINGS OF CM/GC:

Once NCPRD 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 Request for Proposal ("RFP").
2. The contractor will be selected through an evaluation process that will consider qualifications, construction team experience, and demonstration of project understanding. It will include a lump-sum cost proposal for Phase I preconstruction and a CM/GC fee proposal for Phase II construction costs.
3. The submitted proposals will be reviewed and scored by the evaluation committee. Points will be awarded based on the relative merit of the information provided in response to the solicitation. The highest rated response in each area will be given the maximum number of points available. NCPRD may ask proposers to make oral presentations to discuss and clarify the submitted proposal.
4. The Selection Committee will provide a recommendation of award to the District Director for their approval. Upon approval, a notice of intent to award will be published.

The anticipated cost savings from the exemption to use the Request for Proposals Method to Obtain CM/GC Construction Services results from the following:

1. The CM/GC approach provides for an accelerated Project timeline that will assist NCPRD in addressing the critical scope of work items quickly. This allows the Project meet critical financial milestones required by third parties and lessens the risk of material/labor cost inflation.
2. The CM/GC entity 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. The CM/GC approach allows NCPRD to evaluate alternative approaches and make changes before construction documents are finalized. This allows NCPRD to find more optimal solutions within the time and resource constraints.
4. The CM/GC approach 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. Project costs may be lower because of the close working relationship between the designer, CM/GC contractor and NCPRD during preconstruction and construction. The contractor is directly involved in value engineering evaluations with the design team. This allows for design efficiencies and more economical design features to be incorporated into the construction process much earlier, and for resolution of design issues arising during construction. Resolution of construction conflicts or deficiencies is the responsibility of the CM/GC entity. Together, these conditions help NCPRD minimize costly change orders and claims during construction, while optimizing project value.

6. NCPRD gains 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. NCPRD's administrative burden for the Project is reduced by conducting one solicitation for the project, as opposed to conducting multiple solicitations for a design/ bid/ build approach.
8. The CM/GC will be expected to plan for public safety from very early in the process, which can increase the public safety of the Project and reduce the risk of costly injury claims.

RECOMMENDATION:

Staff respectfully recommends the Board of County Commissioners, acting as the governing body of the North Clackamas Parks and Recreation District, take the following actions:

- 1) Hold a Public Hearing to provide the opportunity for members of the public to provide comments related to the request for an exemption.
- 2) Direct NCPRD staff to make any changes necessary to the proposed exemption as a result of the Board's consideration of any testimony received.
- 3) Barring the need for significant revisions to the exemption findings, proceed with approval of the Resolution by the Board on May 21, 2020.

Respectfully submitted,

Laura Zentner, Director
North Clackamas Parks and Recreation

Placed on the Agenda of _____ by Procurement and Contract Services

MILWAUKIE BAY PARK FINAL DESIGN

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 that the North Clackamas Parks and Recreation District (“NCPRD”) 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 Milwaukie Bay Park Final Design project (“Project”).

A. Alternative Contracting Exemption under Oregon Law

Oregon law requires all contracts for public improvement projects 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.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.

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

Milwaukie Bay Park is a Willamette River waterfront property located at 11211 SE McLoughlin Boulevard, at the western boundary of NCPRD and the western edge of the City of Milwaukie (“City”). The almost seven acre site connects to nearby parks, natural resources, and transit. The multi-use Trolley Trail runs through the park and connects neighborhoods, schools, parks and businesses. The City owns the land while NCPRD maintains and operates the park.

NCPRD, in close partnership with the City, began leading the Milwaukie Bay Park Final Design project in 2017 to transform three acres of unimproved land at the heart of the park into a place for all in the District to gather, play, rest and connect with nature. Over almost twenty years, the City, the community, and their partners have converted the site into a scenic riverfront park; however, the full vision for the park – including civic, play and natural areas – has not been realized. NCPRD identified the completion of the park as “Priority 1” in its adopted 2004 NCPRD Master Plan and 2007 System Development Charges Capital Improvement Plan. The City approved an earlier master plan in 2010 to guide the first two phases of construction, identified the completion of the park as a high priority in the 2015 Downtown and Riverfront Land Use Framework Plan and the 2017 Milwaukie Community Vision and Action Plan, and included park completion as one of its three goals to be pursued during the 2017-2019 biennium.

In 2019, NCPRD presented a final design to the public that features an amphitheater, nature play area, interactive water feature, plaza with picnic terrace, a permanent alignment for the Trolley Trail, pathways, natural areas, public art and restrooms. From 2018 through today, NCPRD has engaged a broad and diverse range of over 1,300 community members throughout the District – a process that has confirmed a design to meet the priorities of park users. An active Steering Advisory Committee (“SAC”) guided the design process and provided support for the final design while Technical Advisory Group members provided technical feedback on key components.

The total project cost estimate to complete the park is \$9,600,000, which includes \$8,200,000 for construction and \$1,400,000 for all other costs. NCPRD anticipates use of the following resources and plans to confirm financing in the 4th quarter of 2020 (during the preconstruction phase).

- NCPRD SDC Zone 1 funds (existing)
- City funds
- Metro NCPRD Local Share*
- Metro City Local Share*
- State Parks Grants
- Metro CIP Grant*

- Other (to be identified from sources such as future SDC Zone 1 funds, grants, bonds)

**Funding from voter-approved Metro Parks and Nature Bond (2019)*

2.ink Studio Landscape Architecture leads the Project's design team. With a CM/GC partner, the design team will prepare 100% design and construction documents, assist NCPRD with necessary permitting and approvals, assist with refined cost estimates, and provide construction administration. The scope of work for the CM/GC includes both preconstruction (including cost estimating) and construction phases. During construction, major tasks NCPRD anticipates include grading and excavation, foundation/framing/finishing for structures (restroom, shade structure), plumbing and irrigation, electrical and mechanical, installation of various surfacing types, installation of water feature elements, installation of nature play area elements, installation of other fixtures, furnishings and public art, and planting and soil amendment.

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 Project for several reasons, including the need for cost control, the multi-faceted nature of the proposed scope of work, the priority to optimize the construction schedule to minimize closure of an existing public park, and the emphasis on design and materials that provide both longevity in a high-use urban environment and sustainable resilience in a floodplain environment.

The Project's design and construction is complex due to several factors including site conditions, site location in and along the floodplain of the Willamette River, constrained construction access, the need to maximize the number and quality of features on site within the existing construction budget, and the need to complete construction within designated time limits established by expected grant funding contracts. Design refinements that must be made before construction documents are finalized require input from a qualified contractor and partnership during the preconstruction phase on facets such as: (1) effective construction techniques and sequencing to optimize schedule, maintain quality, and maximize access to the site; (2) long-term performance of materials and furnishings to ensure their longevity and resilience within a floodplain and high-use urban environment; (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.

To take advantage of the full funding package NCPRD is securing, the Project requires a timely progression from design refinement and construction document preparation to construction. Grant awards expected in 2020 must be applied to construction between 2020 and 2022, making it critical that the Project complete construction within that time window. 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, NCPRD believes the unique nature of this Project makes it appropriate for an exemption from the standard bidding process and 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 this Project 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 Project. 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 this project, 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 to 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. NCPRD 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 NCPRD 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, NCPRD staff research and experience indicates 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, NCPRD 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 NCPRD 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 Project pursuant to an exemption will result in substantial cost savings and other substantial benefits to NCPRD.

- a. *How many persons are available to bid.*

Beyond the finding that many of the same contractors would propose on the Project if it was procured through the standard low-bid contracting process, NCPRD anticipates there are numerous contractors that would be interested in submitting proposals for the Project. Additionally, NCPRD anticipates the project will also generate interest because the site is very prominent, the plan is heavily supported by the community, and the location is well-connected to other prominent development projects close to the site.

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

The construction budget totals approximately \$7,200,000, as prepared and refined by the design team led by 2.ink Studio Landscape Architecture and NCPRD staff for the 100% schematic design. As the contract is established, the Project 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, regional

and state funding.

An RFP process allows selection of a CM/GC contractor during the design phase, thereby encouraging increased collaboration, team work 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 NCPRD 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 also will allow NCPRD to more quickly open the improved public park. This will lessen the impact to the public trying to access the site (including the river access) and generally benefit the public by expanding recreational opportunities and events. Faster progress and an earlier completion date may also help NCPRD 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 NCPRD regarding the operational advantages and disadvantages associated with design alternatives. An evaluation of these alternatives will result in selections that match NCPRD'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, NCPRD 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, NCPRD can select the contractor who can also best maximize public benefits. With the CM/GC method, NCPRD expects to shorten the construction duration, mitigate change orders, enhance constructability, minimize inflation impacts, and allow the park to open sooner for public use. The CM/GC delivery method also provides an opportunity to minimize disruptions to the surrounding area, including the existing boat ramp, river access, parking, and pathways. All of these significant benefits are in the public's interest.

In addition, collaboration with a qualified CM/GC contractor early in the Project 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.

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 NCPRD expects to result in a more innovative project, at a lower cost, with a shortened project completion time.

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 Project. The design and construction of specific project elements, including the interactive water feature and nature-based 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 project will result in a substantially lower risk to NCPRD, because it increases the likelihood of the project being completed on or ahead of schedule, resulting in lower costs and increased benefit to park visitors.

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 responsibility criteria. The ability to consider each proposer's degree of expertise in these areas is an integral component of the 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 NCPRD the best opportunity to select contractors with proven, successful safety records.

This Project will require the utmost attention to public safety, as the surrounding uses include the existing elements of the public park (including watercraft access to the river and parking), adjacent state route (OR-99/McLoughlin Boulevard), and the Kellogg Water Resource Recovery Facility. In addition, the segment of the regional Trolley Trail that currently runs through the site will need to be closed and re-routed 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. 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 to understand, plan for, and minimize safety hazards and conflicts between the project and ongoing park operations. 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 NCPDR 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.

- 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 state grants and funds from NCPDR Zone 1 System Development Charges (“SDCs”). The state grants are awarded with a two-year window for use of funds while 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. NCPDR expects both of these to enable the project team to accept and utilize critically needed grant funds within the grant agreement timelines 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 NCPDR to manage construction bid risks within a robust construction market. NCPDR 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 NCPDR to collaborate with the contractors on items and installations that are not off-the-shelf, such as the nature 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 NCPDR 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

This project faces several complexities making site design and construction more complex:

- *Site conditions and context:* steep slopes, variable soils, sensitive vegetation protection, constrained site access, a project area within an larger site where recent improvements have been made, the need to maintain or detour public access;
- *Unique project elements:* the nature play area, interactive water feature and installation of public art which require specialized and/or site-specific technical expertise, knowledge, and experience; and
- *Schedule and financing:* anticipated grant funding agreements stipulate project completion in roughly 2.5 years, and full funding relies on a unique combination of funding that is only accessible in the 2020-22 time period.

As noted previously, the CM/GC delivery method will better enable NCPDR 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.

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 NCPDR and the public.

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 a RFP process for the CM/GC method, which will include several evaluation criteria in addition to price, allows NCPDR to evaluate a contractor's experience in similar work and in successfully working through similar complexities.

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

The Project is primarily for new construction and landscape improvements, however, it is on a site with previous land uses and structures that could present unforeseen conditions and that includes some demolition and reconstruction of an existing concrete sidewalk and stairway. It also requires protection of hardscape, furnishings, parking and landscape elements around the entire perimeter from recent phases of construction as well as protection of existing stormwater facilities and a large mature tree within the site. NCPDR must ensure that the Project is 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 NCPRD 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 NCPRD to select a contractor with experience in addressing unforeseen conditions.

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

As part of a public park, the construction area will be proximate to, but closed off from, other sections of the park that can remain accessible. In addition, there is a segment of the regional Trolley Trail running through the park that will need to be closed during all or part of the construction. A CM/GC contractor provides the expertise on construction staging, access, detouring, sequencing and scheduling that will be required to maintain public access as much as possible in the park and vicinity without compromising safety 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 Project will be a single phase. However, NCPRD 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 Project's design, 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 NCPRD, County Counsel, and County Procurement that will actively participate in the project from inception to completion. NCPRD will retain the services of an owner's representative to assist with the procurement and contracting phase and services during construction administration. NCPRD has also retained the services of a landscape 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 NCPRD 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 Directors 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 NCPRD 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 occurs and that favoritism is not an element of the selection process. All these factors will assist NCPRD 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 NCPRD 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.

NCPRD 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 select a CM/GC contract.