

# City of Lebanon Oregon

DRAFT FINDINGS FOR AN EXEMPTION FROM COMPETITIVE BIDDING

CITY OF LEBANON, OREGON

ECONOMIC DEVELOPMENT AGREEMENT  
BETWEEN THE CITY OF LEBANON AND LARRY SPIRES



Oregon Revised Statute (ORS) 279C.300 requires competitive bidding of public works improvement contracts unless specifically excepted or exempted from competitive bidding as provided under ORS 279C.335. Under ORS 279C.335, the City of Lebanon Local Contract Review Board may exempt a contract from competitive bidding based on approval of two findings:

1. The exemption is unlikely to encourage favoritism in awarding of the public improvement contract or substantially diminish competition for the public improvement contract.
2. Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the City of Lebanon.

In approving the finding under ORS 279C.335(2)(b), the Local Contract Review Board must consider the type, cost and amount of the contract and, to the extent applicable to the particular public improvement contract, all items outlined in ORS 279C.335(2)(b)(A-N).

This document presents information the City of Lebanon Local Contract Review Board will consider in its approval of the findings to exempt all public infrastructure contracts associated with the Economic Development Agreement between the City of Lebanon, hereafter referred to as CITY, the Urban Renewal Agency of the City of Lebanon, hereafter referred to as AGENCY and Larry Spires, hereafter referred to as DEVELOPER.

## **BACKGROUND**

The CITY, AGENCY AND DEVELOPER entered into an Economical Development Agreement (“EDA”) to provide reimbursement for public improvement infrastructure costs associated with the Mill Race Development, specifically those attached in **Exhibit XX**.

Neither the AGENCY or CITY currently have financial resources available to finance the construction of the public improvements required by the EDA. Consequently, the parties have agreed that the DEVELOPER shall finance and construct the public improvements required by the EDA. In return, as funds become available to the AGENCY, the EDA provides for certain repayment terms to the DEVELOPER for the construction of the public improvements.

## **SUMMARY OF FINDINGS**

With regard to ORS 279C.335, the City of Lebanon Local Contract Review Board has considered the following two findings in its decision to exempt the public improvements infrastructure for the Mill Race Development from competitive bidding:

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

*Analysis:* The EDA provides that the DEVELOPER will enter into agreements for construction of the public infrastructure. The EDA further provides that all Infrastructure Projects will be subject to ORS 279C.800 (Oregon Prevailing Wage Law). The DEVELOPER will be responsible for compliance with the reporting under the Oregon Prevailing Wage Law and its implementing rules. The DEVELOPER will bid

*construction of the public improvements in the same manner as the CITY would if the CITY were doing the design and construction management. Therefore, it is unlikely that the exemption sought herein will encourage favoritism in the awarding of the required public infrastructure improvement contracts, nor will this requirement substantially diminish competition for awarding the public infrastructure improvement contracts.*

*Finding: As indicated above, the exemption is not likely to encourage favoritism or substantially diminish competition as the DEVELOPER will be required to bid the public infrastructure improvement projects in the same manner as the CITY would.*

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

*Analysis: A major feature of this agreement will result in the DEVELOPER procuring engineering services for the design of this project. Due to budgetary constraints, the CITY lacks sufficient personnel to provide in-house engineering services to support this construction project now or in the foreseeable future. The overall project includes both private and public improvements. By combining design of the public and private infrastructure under one contract, the use of the procurement of engineering services by the DEVELOPER rather than by use of the CITY methods of procurement will save both time and costs on the design and bidding portion of the overall project. The overall project can be completed faster with an economics of scale by allowing this exemption, particularly by allowing the procurement of engineering services by the DEVELOPER.*

*Finding: The exemption is likely to result in decreased costs and time due to the DEVELOPER procuring engineering services for both the public and private infrastructure improvements. This will result in an economics of scale that would not be realized if the procurement were done by CITY methods.*

### **RESPONSE TO ITEMS UNDER ORS 279C.335(2)(b)**

In approving the finding under ORS279C.335 (2)(b), the Local Contracting Review Board must consider the type, cost and the amount of the contract, and to the extent applicable to the particular public improvement contract items outlined in ORS 279C.335(2)(b)(A-N). Information considered by the Local Contract Review Board related to each of these requirements is outlined below:

- (A) How many persons are available to bid:

*Information considered by the Local Contract Review Board: The public improvement contracts will be bid by the DEVELOPER in the same manner as if the CITY were doing them. This method will allow multiple qualified contractors the opportunity to bid on the public infrastructure improvement contracts.*

- (B) The Construction budget and the projected operating costs for the completed public improvement:

*Information considered by the Local Contract Review Board: The Engineers Estimate values the cost of the public improvements at \$7,000,000. Operating costs shall be incorporated into the CITY's yearly budget and will be paid through water,*

sewer and drainage user fees. Street operations will be paid through yearly gas tax receipts. The projected overall operations/maintenance costs of the public improvements is approximately \$25,000/year.

(C) Public benefits that may result from granting the exemption:

Information considered by the Local Contract Review Board: The CITY will likely spend less for the public improvements by the DEVELOPER combining the design of both the private and public improvements. There will also be savings as the DEVELOPER can watch market trends and construct the improvements as market conditions are favorable.

(D) Whether value engineering techniques may decrease the cost of the public improvement:

Information considered by the Local Contract Review Board: The DEVELOPER will be financing the public improvement projects and be reimbursed by tax increment values of the private portion of the development. To minimize the public improvement financing cost, the DEVELOPER has incentive to provide innovative ideas to cut costs.

(E) The cost and availability of specialized expertise that is necessary for the public improvement:

Information considered by the Local Contract Review Board: Specialized coordination and planning are critical due to the magnitude and complexity of constructing both the public and private infrastructure simultaneously. It is likely to be more cost efficient to have one firm complete the design of both the public and private infrastructure to meet timelines and find optimum market conditions for construction.

(F) Any likely increases in public safety:

Information considered by the Local Contract Review Board: It is important to build the project with safety foremost in the contractor's approach to ensure safe working conditions for the contractor, neighbors, and the traveling public. The CITY will review all aspects of the project (both public and private infrastructure) to ensure that it meets or exceeds all standard safety protocols.

(G) Whether granting the exemption may reduce risks to the contracting agency or the public that are related to the public improvement:

Information considered by the Local Contract Review Board: This exemption reduces the financial risk to the CITY and or the public substantially. The DEVELOPERs willingness to pay the entire cost of the infrastructure without any assurance of full reimbursement from the CITY is based, in part, on the DEVELOPERs ability to control construction costs. As a result, the CITY's avoidance of putting its funds at risk for payment of the infrastructure will be possible only if the DEVELOPERs contract to provide infrastructure is exempted.

(H) Whether granting the exemption will affect the sources of funding for the public improvement:

Information considered by the Local Contract Review Board: *This exemption does not affect the funding for the overall project. All construction costs for the public improvements shall be paid for by the DEVELOPER and reimbursed when and if tax increments to the CITY are received.*

(I) Whether granting the exemption will better enable the CITY to control the impact that market conditions may have on the cost and time necessary to complete the public improvements:

Information considered by the Local Contract Review Board: *Through the Economic Development Agreement, the DEVELOPER is responsible for financing the costs of the public infrastructure improvements. By exempting this project, the DEVELOPER will have the opportunity to ensure that market conditions are optimum prior to construction of any improvements. This in turn will ensure that any reimbursement through tax increment financing from the CITY to the DEVELOPER is done based on optimum market conditions.*

(J) Whether granting the exemption will better enable the CITY to address the size and technical complexity of the public improvement:

Information considered by the Local Contract Review Board: *It is vital that the DEVELOPER be able to manage and control construction of the public improvements concurrently with the private improvements. The CITY will only have to pay for the public improvements when and if tax increment revenue is received by the CITY. The public will only receive these benefits if the project is feasible and the exemption is vital to such feasibility to assure concurrent completion of any one part or the whole project. This will ensure that if market conditions change dramatically the development can be postponed prior to the expense of the public infrastructure.*

(K) Whether the public improvement involves new construction or renovates or remodels an existing structure:

Information considered by the Local Contract Review Board: *All public infrastructure improvements will be of new construction.*

(L) Whether the public improvement will be occupied or unoccupied during construction:

Information considered by the Local Contract Review Board: *The public improvements included in this exemption include new water mains, storm drainage pipes, sanitary sewer pipes, and streets. There will be no public buildings being constructed or occupied under this exemption.*

(M) Whether the public improvement will require a single phase of construction work or multiple phases of construction to address specific project conditions:

Information considered by the Local Contract Review Board: *It is likely that there will be multiple phases of construction for the entire development. However, each*

*phase of public infrastructure improvements will be directly related to private infrastructure improvements and occur simultaneously. The multiple phases will be done to ensure feasibility that market conditions are optimum prior to installing public and private utilities.*

## **CONCLUSION**

The proposed development would never have come about without substantial private investment and associated risks undertaken by DEVELOPER. The Economic Development Agreement, market conditions, and the awarding of future contracts will not negatively impacted by the exemption. In fact, market conditions will likely be impacted in a positive manner due to the number of subcontractors selected to work on the project through competitive bidding by DEVELOPER.