CITY OF **MILWAUKIE**

COUNCIL RESOLUTION No. 22-2024

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ACTING AS THE LOCAL CONTRACT REVIEW BOARD, ADOPTING FINDINGS IN SUPPORT OF USING THE DESIGN-BUILD ALTERNATIVE CONTRACTING FOR THE JOHNSON CREEK SOLAR PROJECT.

WHEREAS the city adopted Public Contracting Rules (PCR) by Resolution 52-2022 to be in effect as of June 30, 2022; and

WHEREAS the design-build form of alternative contracting is allowed per PCR 10.105.A; and

WHEREAS the use of a design-build procurement for the Johson Creek solar project complies with PCR 10.105.A by allowing the city to select a contractor based on qualifications and expertise beyond normal construction work; and

WHEREAS the use of a design-build procurement for the Johnson Creek solar project requires the inclusion of equity criteria in its solicitation and promotes contracting opportunities to minority-owned, women-owned, service-disabled veteran-owned and emerging small businesses.

Now, Therefore, be it Resolved that the City Council, acting as the local contract review board for the City of Milwaukie, hereby adopts findings attached as Exhibit A pursuant to the authority granted to the board by Milwaukie Municipal Code (MMC) Chapter 3.05.030, to allow the use of the design-build alternative contracting method for the Johnson Creek solar project.

Introduced and adopted by the City Council on **May 21, 2024**.

This resolution is effective immediately.

Lisa M. Batey, Mayor

ATTEST:

Scott S. Stauffer, City Recorder

APPROVED AS TO FORM:

Justin D. Gericke, City Attorney

CITY OF MILWAUKIE

EXHIBIT A

FINDINGS IN SUPPORT OF ALTERNATIVE CONTRACTING METHOD FOR THE JOHNSON CREEK SOLAR PROJECT

Introduction

Use of Alternative Contracting methods, such as design-build, is made possible under ORS Chapter 279C and the city's adopted Public Contracting Rules (PCR), which permits certain contracts or classes of contracts to be exempt from competitive public bidding under strict procedural safeguards. Like other alternative contracting methods, design-build has significantly different legal requirements than a typical low-bid project delivery method.

Pursuant to ORS 279C.335 and PCR 10.110, a local contract review board may exempt specific contracts from traditional, competitive bidding by showing that an alternative contracting process is unlikely to encourage favoritism or diminish competition and will result in cost savings and other substantial benefits to the public agency. PCR 10.110.D provides for public notice and opportunity for public comment on draft findings in favor of an exemption before final adoption.

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

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

Findings

Operational, Budget, and Financial Data

In August 2023, the city was awarded grant funds from the Oregon Department of Administrative Services to install solar panels at the Johnson Creek Public Works facility.

This solar installation is estimated to produce approximately 118,000 kWh of electricity annually which would provide approximately 65% of the current facility's total load.

Design-build provides opportunities for cost saving in a variety of ways, primarily by allowing for smooth transition from design and scoping of the project to construction and installation. Rather than utilizing two different firms, one for design and another for installation, in a design-build, the city will benefit from the continuity of one firm handling both the design and the install.

Public Benefit
The project will be built by a qualified contractor that has experience with solar panel projects. The energy savings from this project will benefit Milwaukie residents for years to come.

Value Engineering
The design-build process provides many benefits and opportunities for cost savings. Design-build sets up a collaborative approach between the contractor and the city from the design phase through to construction completion, saving the city the time and money it would have taken to complete two separate solicitations. The design-build contractor will tailor the project design to existing conditions, project goals, city priorities, and environmental factors. The design-build contractor will be invested in the design, knowing that they, themselves, will do the installation as well. This contracting method will provide the greatest value to the city.

The design-build process is collaborative and flexible, offering opportunities to maximize sustainability, to limit environmental impact, to utilize and substitute sustainable/green materials, and to reduce costs over the entire life-cycle of the project.

The design-build contracting method also allows the city to award a minimum of 20% of the total score towards equity criteria, increasing the contracting opportunities for disadvantaged business owners and promoting economic growth amongst disadvantaged businesses. A portion of the 20% will be awarded to proposers that are certified with the State of Oregon Certification Office for Business Inclusion and Diversity (COBID), while the remaining equity score may be based on (but is not limited to) whether proposers award or attempt to award subcontracts to COBID-certified businesses or commit to a certain percentage of materials/labor be given to COBID-certified businesses through subcontracts.

All these beneficial actions by the design-build contracting method will improve design, expedite construction, eliminate potential for costly change orders, and encourage utilization of disadvantaged businesses. The benefits of value engineering are not available with the low-bid process.

Specialized Expertise Required
The design-build contractor must be a certified trade ally of the Energy Trust of Oregon (ETO) and must design and install a project that will meet the grant funding requirements and any applicable ETO incentives. The design-build contractor must provide a solar

installation that will function well for many years into the future despite the ever-changing landscape of technology.

The design-build selection process is based on experience, qualifications, expertise, project approach, proposed energy savings, and pricing. The proposed project cost is, however, less important than the overall qualifications and specialized expertise of the selected design-build contractor. The City will benefit by contracting with a solar vendor that has established experience and specialized expertise to manage this project. A low-bid process does not provide an opportunity to obtain the most qualified contractor with the specialized expertise needed for the project. In addition, the contractor will be able to provide expertise on well-sourced materials, made in the U.S.A., with proven track record of durability and cost-effectiveness.

Public Safety

The Project will provide for safe public access and compliance with ADA requirements. All work during the project will be done in accordance with Oregon Occupational Safety and Health Administration (OR-OSHA) safety regulations. The selected design-build contractor will be highly qualified and capable of showing evidence of construction safety practices that are at the highest level of integrity.

The design-build method of delivery is a collaborative approach and provides for a high level of responsibility and visible adherence to public safety. The contractor's performance on prior projects in satisfying these safety needs, and inclusive design / ADA compliance, can be determined as part of the City's contractor selection process. This determination is not available under the low-bid process.

Market Conditions

The design-build contracting process is a modern construction delivery method used by both public and private organizations. The design-build contractor is tasked with keeping the Project Team up to date on the latest technology in both the design and installation of the solar panels. The design-build contractor will inform the Project Team of current market conditions, labor and materials availability, and construction methodologies that can reduce design and construction time and costs.

Using the design-build process will allow trades and vendors to become involved earlier in the process. The current market for construction services has become increasingly tight with substantial increases in material and labor costs for public and private construction projects. By involving the same firm who does the design, to also perform the installation, the project team will achieve a higher quality product for the City and its residents.

Technical Complexity
Solar technology is a specialized area with technical complexities that will be best addressed through a collaborative team approach, with the design-build contractor working directly with the City to achieve project goals.

The design-build process enables the City to competitively select a contractor who has expert level knowledge in solar technology and will provide a sound design, quality workmanship, dependable performance, fair and reasonable pricing, and efficient project management. Under a low-bid process, the technical competence of the contractor is difficult to evaluate.

Funding Sources
The State of Oregon Department of Administrative Services (DAS) awarded $375,000 in General Funds to Milwaukie for design and construction of a solar panel installation at its Johnson Creek Public Works Facility. The design-build process, with its not-to-exceed negotiated contract price, will provide the necessary predictability.

The design-build method of contracting provides cost controls, by using the same firm for design and construction, that benefit the City. The collaborative approach, the design and existing conditions analysis, and constructability reviews provide the best and most effective project outcome. It is critical, and also consistent with the spirit of collaboration encouraged throughout the process, that everyone on the Project Team works towards a budget of which they can take ownership.

Summary
After careful consideration, the City has found the Alternative Contracting Method design-build more appropriate than a traditional low-bid process to meet the overall project objectives for the Johnson Creek Solar Project. Upon approval of the alternative contracting method, the city plans to release a formal solicitation on or near the end of June 2024.