

# **Exhibit A**

## **Resolution No. 2024-12**

### **Findings in Support of Formal Procurement Approach Flexibility (Request for Proposals (RFP) or Invitation to Bid (ITB)) for a Class of Phase 1 Water and Wastewater Utility System Related Public Improvement Services**

Oregon Law requires contracting agencies to award contracts for public improvements (i.e., contracts for construction, reconstruction, or major renovation) via an Invitation to bid (ITB) or Request for Proposals (RFP) that is awarded to the lowest responsible, responsive bidder. In certain cases, however, an agency may wish to consider additional factors beyond price when selecting a viable contractor for a public improvement or may require an expedited procurement process to effectively respond to the needs of maintaining or restoring reliability of a water or wastewater system asset. In such circumstances, an agency may exempt a contract (or class of contracts) from this process where its local contract review board (“LCRB”) finds that:

- (a) An exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts; and
- (b) Awarding public improvement contracts under the exemption will likely result in substantial cost savings and other substantial benefits to the contracting agency.

The Sandy City Council serves as the LCRB for the City of Sandy (“City”). City staff worked with legal counsel and Stantec Consulting Services Inc. to draft this document, which Council may adopt to permit additional formal procurement flexibility and an increased formal procurement threshold for a certain class of public improvements (as defined below). If approved, City staff intends to utilize this procurement flexibility to strategically choose, as needed, whether to select a prospective contractor based on lowest bid only, or to select one based on additional, qualifications-based criteria. In addition, staff intends to use the increased formal procurement process threshold to streamline public improvement work in connection with this project class. These exemptions are justified for the reasons provided below.

#### **Project:**

##### **1. Nature of the Project:**

City currently owns physical assets whose purpose is to collect, treat and dispose of wastewater and to treat, store and distribute potable water to its customers. These physical assets require systematic maintenance, repair and replacement of individual components to ensure their functionality, reliability, and general ability to maintain regulatory compliance. However, a lack of sufficient maintenance and repair attention provided to these individual asset components over the past several years has exposed the City to undue risk of component failure that in turn could result in either health violations or unpermitted environmental discharges.

Recent requirements imposed by the Bilateral Compliance Agreement with the Oregon Health Authority regarding the City’s utilization of the Portland Water Bureau Bull Run Supply of potable water and the US Environmental Protection (USEPA), Department of Justice (DOJ), State of Oregon’s Clean Water Act

consent decree provided by the EPA further demonstrate that the need for water and wastewater system asset maintenance and reliability is paramount.

The City desires to pursue a Programmatic approach to systematically making substantial investments in both their water and wastewater systems. These Programs, known as the Sandy Drinking Water Reinvestment Program (SDWRP) and the Sandy Clean Waters Program (SCWP) were implemented in 2022 to achieve the goals of resolving challenges faced by both the potable water and wastewater systems and their assets. Both SDWRP and SCWP outlined a three phased approach to the necessary series of capital improvement projects for both systems:

**Phase One (referred to as Near Term)**, whose goals and objectives are to stabilize and complete immediate critical repairs to existing equipment and assets for the sole purpose of improving reliability and functionality for the benefit of human health protection and environmental permit compliance of the City's existing assets and infrastructure. Projects identified for completion within Phase One are considered minor in nature and are intended to replace, repair and maintain existing assets to achieve an additional 3 to 5 years of performance.

**Phase Two (referred to as Mid Term)**, whose goals and objectives are to define, design, and construct replacement or new assets for the purpose of meeting the requirements of the Bilateral Compliance Agreement and the Clean Water Act Consent decree. The projects considered for Phase Two are considered as significant capital improvements, expansion of capacity, and treatment efficacy with an intended design life of 20 plus years.

**Phase Three (referred to as Long Term)**, whose goals and objectives are to complete planning for management of the City's assets over a longer period, however, do not anticipate construction of facilities for 20 plus years into the future. This planning of Phase 3 is focused on a future horizon timeline and anticipated growth and demand for services in year 2045 and beyond.

To enable the completion of Phases One and Two, the City will require the services of multiple construction contractors in order to complete the required asset repairs, maintenance, replacement or construction of new assets.

## 2. **Class Definition and Characteristics:**

When exempting a class of public improvements, the contracting agency must provide a clear identification using the class's defining characteristics. As noted above, the City has identified the immediate need for a series of routine maintenance, repair and replacement activities in connection with both the water and wastewater infrastructure (see Phase One, above). Moreover, these Phase One public improvement activities are needed immediately to preserve the operational integrity of the water and wastewater systems and solely for the purpose of extending the operational life of these assets and their components for three to five years until more permanent and advanced resolutions are implemented in Phase Two. These activities require an efficient, flexible method of acquiring construction services to quickly enact critical equipment repairs and replacement of assets that have deteriorated for the reasons mentioned above. Therefore, the City seeks this exemption for this class of public improvement work required during Phase 1 of this project.

## **Public Notice and Public Hearing:**

As required by ORS 279C.335(5), the City published notice for interested parties to request a public hearing to comment on these findings in the May 6, 202 edition of the Daily Journal of Commerce.

## **Additional Analysis:**

*The following discussion is offered in support of ORS 279C.335(2) to show the exemption will be unlikely to encourage favoritism and will likely yield cost savings and other benefits to the City.*

### **1. Availability of Potential Contractors.**

This class of public improvement work is technical in nature and requires a general contractor familiar with public works contracting methodologies and policies, working under tight deadlines and on existing and operating assets without disruption of services and oftentimes requires a combination of electrical, mechanical, structural and heavy civil capabilities.

These required qualifications considerably narrow the number of potentially available contractors. Given the current market conditions, many general contractors who may be qualified for this class of work are already fully engaged on existing contracts and assignments and repeated bidding of low value projects by the City will likely result in little to no bids being received.

By allowing for a best value contracting option that establish a short list of pre-qualified contractors, staff anticipates generating the required interest of the contracting community such that the City has a qualified and incentivized pool of prospective contractors. Utilizing this pool of prospective and qualified contractors, the City will then solicit price proposals for each assignment, thereby assuring responsible fiduciary stewardship of the ratepayer-based funding.

### **2. Budget.**

City anticipates completion of the Phase One public improvements to occur over the next three to five years and the anticipated total expenditure will be between \$5 and \$15 million. Given the lack of definition currently known around the number of needed repairs and the actual condition of the assets and asset components, the costs are not quantified with a high sense of certainty. This is a significant reason why the City needs flexibility in timing and procurement methods for public improvement services for this class of projects.

City intends to award up to three master service on call public improvement contracts, each with a \$5 million cumulative limit for the 12- to 24- month duration of planned activities. In addition, City recognizes that it may have a continued need for these services for up to 36 months beyond its intended construction timeline. These budgetary and cumulative contract limits will provide sufficient volume of work potential to attract a qualified pool of contractors, enable contractors to remain competitive throughout the duration of the master services contract and provide the City with flexibility to quickly, efficiently and cost effectively address the most severe risk of failure of assets and components of its water and wastewater systems.

### **3. Public Benefits of Exemption.**

The City and its citizens would benefit significantly from this exemption. Similar to the standard formal procurement process for goods and services found in ORS 279B, this exemption would afford the City necessary flexibility in awarding formal contracts, saving the City both time and money.

As noted above, the class of work anticipated for this exemption includes the repair, maintenance and in some cases replacement of existing assets and individual components. Failure of these assets or components will result in immediate and direct impact to both human health and the inability to meet environmental regulations for the discharge of treated wastewater. As mentioned, the City is under considerable scrutiny with potential fines imposed should permit violations occur, or in some cases, requiring boil water notices should drinking water standards not be met.

Given the critical and dire need for this work to be completed as quickly and efficiently as possible, City needs to have the ability to have a pool of qualified contractors available to be able to react quickly and cost effectively in preventing catastrophic failure of assets or components. As previously noted, given the current market conditions many contractors may not be available or be willing to participate in a lengthy and expensive bid and procurement process. However, if they were pre-qualified in a select pool of potential bidders, the contractor community will be more likely to submit a qualified proposal and be shortlisted for select portions of work that will fit their current work schedule, capabilities and company resources.

It is anticipated that shortlisting a pool of prequalified contractors will save between 25 and 50 percent of the time and effort as compared to individual invitation to bid (ITB) process over the period of Phase One activities. This time savings and efficiency gains will enable the City to react more quickly, addressing these critical repairs and maintenance and avoiding failures and resulting human health hazards and permit violations and fines.

Finally, this exemption will not result in favoritism because it will still afford a public formal solicitation process for prospective contractors. By mirroring the flexibility afforded to formal goods and services procurements, the City will ensure that prospective contractors are fully informed of available procurements while being afforded the opportunity to compete for an award. In addition, when utilizing a tiered selection process as described above, the City will build a targeted cost-based selection process into its formal request for proposals (RFP).

### **4. Value Engineering.**

Given the nature of the repairs, maintenance and replacement activities anticipated, multiple opportunities exist for implementing value engineering principals regarding materials selection, equipment vendor availability, construction sequencing, timing and unique construction techniques. By having a qualified pool of contractors available to the City, input can be sought and obtained during the pricing process to ensure the best value of qualifications, quality, performance and cost.

### **5. Cost and Availability of Specialized Expertise.**

The current market conditions for the general construction of publicly owned infrastructure has resulted in a decreased number of available contractors with the specialized experience and expertise required by work on public infrastructure and public contracting requirements. These market conditions make it

extremely challenging for the City to locate, solicit and award construction tasks quickly, efficiently and cost effectively as tasks arise. By providing the City with flexibility in the procurement of construction services beyond simply lowest price evaluation, while maintaining a best value approach of quality, safety, availability as needed and cost, will enable the City to best control its exposure to the untimely failure of assets and components that would result in human health and/or environmental permit compliance.

#### **6. Public Safety.**

As noted, public safety is paramount to the City in owning, operating and maintaining public infrastructure for drinking water and wastewater collection and treatment. The City's systems are in critical need of emergency repairs, maintenance and/or replacement for certain assets and components that are essential to the overall performance of these systems. Providing the City with a procurement model that enables efficient, timely, and flexible procurement of contractors to address these repairs, maintenance and replacement as quickly as possible will increase public safety and attenuate the risk of failure and human health concerns.

#### **7. Risk Reduction.**

By granting an exemption to the City to allow for a best value approach to contracting the required maintenance, repair and replacement of failing critical infrastructure, the exposure risk of failure can be mitigated. The City and its residents will benefit from establishing a pool of qualified and available contractors who can quickly and cost effectively complete the assignments and relieve the risk of failure by addressing the problems before failure is realized. This risk reduction is a critical reason as to why the City is seeking this exemption.

#### **8. Effect on Funding Source.**

City has been awarded American Rescue Plan Act (ARPA) funding that requires all construction contracts to be executed by December 31, 2024. This funding is targeted as the source of payment for this Phase 1 class of activities. Eligibility of project costs for ARPA funding requires that construction contracts must be executed prior to the December 2024 expiration deadline. The City needs to move very quickly to secure construction contracts and expend/commit its ARPA funding sources. By granting this exemption, City will be provided the flexibility to contract with construction contractors quickly and cost effectively to secure the funding sources and reduce financial burden on the City rate payers.

#### **9. Market Conditions.**

As noted previously, market conditions are not favorable for securing construction contractors to provide services for smaller and schedule driven projects. By providing procurement flexibility and a best value approach to contracting, the City can overcome the challenges present in the marketplace by offering secure agreement provision with minimal effort and cost to the contractor community. This will result in a favorable response to the request for qualifications and developing a pool of experienced, qualified, and available contractors for the City to employ to address these critical issues.

#### **10. Technical Complexity.**

The assets and components are currently in services 24 hours per day, seven days per week and the public relies upon the unwavering performance of the equipment to collect, treat and discharge wastewater and to treat, store and distribute drinking water throughout the City. The repair, maintenance and/or replacement of these failing assets and components must be done on an active basis, meaning the work

must be started and completed all while maintaining the integrity of the entire system performance in an uninterrupted manner. This requires a unique skill set and experience of a construction contractor who has familiarity in working in a highly technical and complex environment, possessing experience, equipment and personnel who are trained in protecting the integrity of disinfected water sources that are consumed by the public and/or bypass pumping, sanitation and personal protections to safeguard against pathogens, viruses and bacteria present in wastewater collection and treatment systems. Due to the technical complexity of the desired work, it is important to permit the City to solicit prospective contractors for this class of public improvements by considering factors other than price.

**11. Nature of Public Improvement.**

This class of public improvements involves substantial reconstruction, maintenance or repairs of existing pieces of infrastructure.

**12. Occupancy**

The contemplated public improvement activities will be to existing equipment, assets and components that are currently in service and will remain in service during the activity as part of the larger operating water or wastewater system. The need for ongoing service lends further complexity to the needed contractors, as mentioned in Section 10 above.

**13. Construction Phases.**

As noted above, construction phases are not anticipated as the repair and maintenance projects anticipated will require full completion for each system and are not conducive to a phased approach.

**Expertise of Staff and Consultants**

City staff, independent engineering experts, and legal counsel have the necessary expertise to solicit, negotiate, administer, and enforce both RFP and ITB procurements and resulting individual and master contracts.

***End of Findings***