

*City of St. Helens*  
**RESOLUTION NO. 2015**

A RESOLUTION ADOPTING THE FINDINGS FOR A SPECIAL  
PROCUREMENT FOR UNDERGROUNDING ELECTRICAL SERVICES ON  
THE S. 1ST STREET – STRAND STREET ROAD AND UTILITIES  
EXTENSION PROJECT AND AUTHORIZING THE CITY ADMINISTRATOR  
TO EXECUTE A PUBLIC IMPROVEMENT CONTRACT WITH MOORE  
EXCAVATION, INC.

**WHEREAS**, the City of St. Helens has identified the street and utility extensions project on the St. Helens Waterfront as a catalyst for redevelopment of the prime riverfront property (former Boise Veneer Property) along the Columbia River; and

**WHEREAS**, the S. 1st Street – Strand Street Road and Utilities Extension public improvements project includes constructing joint utility trenches to relocate overhead utilities underground; and

**WHEREAS**, the work of relocating overhead utilities underground also includes the undergrounding of the electrical services in the project area; and

**WHEREAS**, Oregon Revised Statute (ORS) Chapter 279C.300 requires a competitive bidding process for Public Improvement Contracts, unless specifically excepted or exempted from competitive bidding under Oregon Revised Statute (ORS) 279C.335 and any applicable Contracting Agency administrative rules; and

**WHEREAS**, ORS 279C.335 provides for alternatives to the competitive bidding requirement that otherwise applies to public contracting, and 279B.085 authorizes the head of a contracting agency, or a person designated under ORS 279A.075, to approve a special procurement upon the adoption of certain findings following a public process; and

**WHEREAS**, previous efforts to secure competitive proposals and competitive bids for the undergrounding electrical services on the S 1st Street – Strand Street Road and Utilities Extension project have been unsuccessful; and

**WHEREAS**, to ensure the S. 1st Street – Strand Street Road and Utilities Extension public improvements continue without further risk of costly delays to the City and substantial risk of loss, damage, interruption of services, and threat to public health or safety; and

**WHEREAS**, ORS Chapter 279B.085(5) permits exemptions to competitive bidding and allow a special procurement to be made when the City Council determines by passing a resolution that the public interest and necessity demand the immediate expenditure of public money to ensure the project can be completed without further costly delays, which includes substantially reducing the overall project implementation schedule which will provide cost savings under escalating market conditions; and

**WHEREAS**, the City Council may award a Contract as a Special Procurement without the use of competitive sealed Bidding or competitive sealed Proposals as authorized by ORS 279B.050 when the requirements of ORS 279B.085 and this rule are met; and

**WHEREAS**, the findings in Exhibit A to this Resolution address the criteria of ORS 279B.050 and ORS 279B.085:

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

**WHEREAS**, City staff have negotiated a contract price with Moore Excavation, Inc. as the only previous proposer on the project to perform the work under the emergency conditions as set forth in the Oregon Revised Statutes; and

**WHEREAS**, the City Council of the City of St. Helens acts as the local contract review board for the City, and in that capacity has authority to exempt certain contracts from the competitive bidding requirements of ORS Chapter 279C; and

**NOW, THEREFORE, THE CITY OF ST. HELENS RESOLVES AS FOLLOWS:**

**Section 1.** In accordance with ORS 279B.050(2), the contract for undergrounding overhead electrical services on the S. 1st Street – Strand Street Road and Utilities Extension Project is exempt from traditional competitive bidding.

**Section 2.** This exemption is supported by the findings attached in Exhibit A which are incorporated by reference herein.

**Section 3.** This Resolution is effective immediately upon its adoption.

**APPROVED AND ADOPTED** by the City Council on July 16, 2024, by the following vote:

Ayes:

Nays:

\_\_\_\_\_  
Rick Scholl, Mayor

ATTEST:

\_\_\_\_\_  
Kathy Payne, City Recorder

## EXHIBIT A

### **FINDINGS FOR AN EXEMPTION FROM COMPETITIVE BIDDING FOR UNDERGROUNDING ELECTRICAL SERVICES ON THE S. 1ST STREET – STRAND STREET ROAD AND UTILITIES EXTENSION PROJECT**

Oregon Revised Statute (ORS) 279C.300 requires competitive bidding of public works improvement contracts unless specifically excepted or exempted from competitive bidding under Oregon Revised Statute (ORS) 279C.335.

Oregon Revised Statute (ORS) 279B.085 authorizes the head of a contracting agency, or a person designated under ORS 279A.075 (Delegation), to approve a special procurement if the head of a contracting agency, or a person designated under ORS 279A.075 finds that a written request submitted under subsection (2) or (3) of this ORS 279B.085 demonstrates that the use of a special procurement as described in the request is:

- unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts, and
- is reasonably expected to result in substantial cost savings to the contracting agency or to the public; or
- otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055 (Competitive sealed bidding), 279B.060 (Competitive sealed proposals), 279B.065 (Small procurements) or 279B.070 (Intermediate procurements) or under any rules adopted thereunder

St. Helens Municipal Code Chapter 2.04 Public Contracting Code, Section 110 (5) allows a process for approval of special solicitation methods and exemptions, where the City of St. Helens City Council in its capacity as local contract review to “approve a special procurement if the local contract review board finds that the request submitted under subsection (2) of this section demonstrates that the use of a special procurement as described in the request”.

The determination to construct a project under special procurement circumstances must be approved by the City Council or designee, upon application of the solicitation agent, in which the solicitation agent submits facts that support a finding that the construction of the improvement under the proposed method is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts and is reasonably expected to result in substantial cost savings to the contracting agency or to the public. The City of St. Helens Local Contract Review Board (comprised of the City Council) may exempt a contract from competitive bidding under ORS 279C.335 based on two findings:

1. The exemption is unlikely to encourage favoritism in the 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 St. Helens.

Under St. Helens Municipal Code 2.04.110(5), the City Council may exempt a particular contract from formal competitive requirements and shall consider:

1. The exemption is unlikely to encourage favoritism in the 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 St. Helens

In exempting the public works improvement from competitive bidding 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 14 items under ORS 279C.335(2)(b)(A-N).

This document presents information the City of St. Helens City Council (Local Contract Review Board) will consider in its finding to exempt the undergrounding of electrical services on the S 1st Street – Strand Street Road and Utilities Extension Project from competitive bidding and to use the Special Procurement method where the City may award a contract without using normal competitive procurement processes.

This document presents information the City of St. Helens City Council (Local Contract Review Board) will consider in its finding to exempt the electrical services on the S 1st Street – Strand Street Road and Utilities Extension Project from competitive bidding and to use a Special Procurement.

## **I. PROJECT BACKGROUND**

S. 1st Street – Strand Street Road and Utilities Extension public improvements project is the first phase of the Riverfront Connector Plan projects that will reconstruct the entire roadway section from S. 1st Street at Cowlitz Street to the newly constructed S. 1st Street – Tualatin Street intersection. The improvements will include a new roadway sections along S. 1st Street and Strand Street, new intersections of S. 1st Street - Tualatin Street and S. 1st Street - Wapama Way, reconstructed intersections at S. 1st Street - Cowlitz Street, Strand Street - Cowlitz Street, and Strand Street - Plaza Square, improved storm drainage and stormwater quality facilities, new sanitary sewer facilities, new sewer pump station, and new water main extend through the former Boise Veneer site up to Plymouth Street, crosswalks, street lights, sidewalks, bike lanes,

and will underground franchise utilities. This first phase of the project will serve as a catalyst for the redevelopment of the prime riverfront property in St. Helens along the Columbia River.

Constructing these improvements in the St. Helens downtown makes this the most complex public improvement project ever undertaken by the City. The added effort of securing a contractor to underground the electrical services in the project area has been unsuccessful and attempts to secure bids and proposals were met with either no bids received or unreasonably high-priced cost proposals.

During previous attempts to secure bids and proposals, the only proposal the City received was from Moore Excavation Inc. (MEI), the current general contractor for the S. 1st Street – Strand Street Road and Utilities Extension project. Since this time, City’s Project Team has been negotiating with MEI to secure a more reasonable price to perform this work. On May 28, 2024, the City was able to successfully secure a cost of \$602,891 for the work, which was originally estimated at \$871,726. This is a substantial savings of over \$260,000.

An exemption granted from the competitive proposal process will allow the project to be completed without further costly delays. This undergrounding of the electrical services is critical and must be completed in order to perform and complete the remaining S. 1st Street – Strand Street Road and Utilities Extension improvements. It is necessary to secure a contract to complete the undergrounding of the electrical services.

The benefit contracting with MEI to perform this work is that they are already onsite and thoroughly familiar the site and all issues concerning the project. MEI is also the only contractor who has submitted a bid proposal for the work despite multiple attempts to secure bids for the work through the competitive bidding process.

Per ORS 279B.085(5), public notice of the approval of the special procurement will be provided in the same manner as provided in ORS 279B.055 (Competitive sealed bidding) (4).

## II. SUMMARY OF FINDINGS

With regard to ORS 279C.335, the City of St. Helens Local Contract Review Board shall consider the following in its decision to exempt the Project from competitive bidding and use the Special Procurement method:

**1. The exemption is unlikely to encourage favoritism in the awarding of the public improvement contract or substantially diminish competition for the public improvement contract because:**

- a. The City has exhausted all channels to secure competitive bids for this work and has found no other contractor willing to bid or propose on the project except for Moore Excavation Inc.

- On October 10, 2022, the City solicited for competitive proposals to Underground the Electrical Services on the St Helens Waterfront. One proposal was received on November 17 from Moore Excavation, Inc. The proposal was rejected on the basis that it did not clearly address the information requested in the RFP and did not provide sufficient clarity on how the work described in the RFP would be accomplished to allow the City to move forward with the project.
- On July 5, 2023, the City solicited for bids to Underground the Electrical Services on the St Helens Waterfront. Bids for the project were due on July 25. No bids were received.

Proposed Finding: The City has used competitive process to secure bid for the work. No other contractor other than MEI has submitted bids and proposals. Selecting MEI to perform the work makes the exemption unlikely to encourage favoritism in the awarding of the public improvement project 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 St. Helens because:**

- a. Awarding the work to MEI, who is already the prime contractor on the S. 1st Street – Strand Street Road and Utilities Extension project provides substantial benefits to the City,
  - City staff have been working with MEI to lower their bid on the work and has succeeded in reducing the proposed price of work by over \$260,000.
  - Substantial cost savings to the City will be seen in being able to have the contractor who is already mobilized onsite and has been the only firm that has shown an interest on performing the work by reducing project delays and eliminating project startup costs.
  - Substantial staff time and cost is expended to prepare Invitations for Bid solicitation documents, associated public notices, administer solicitation period activities, open bid proposals, review and select bids, conduct reference checks to confirm bidder responsibility and qualifications, prepare council reports for contract award, and prepare contracts once the council award is made. The competitive bid procurement in lieu of authorizing this special procurement would take approximately three months to conduct, would incur time delay costs on the S. 1st Street – Strand Street Road and Utilities Extension project, and staff labor and material costs for administering the bid solicitation and contracting process ranging from \$15,000 to \$25,0000.

- b. Use of Special Procurement will substantially reduce the overall project implementation schedule, which provides cost savings under escalating market conditions

Proposed Finding: Awarding the project under the exemption provides an opportunity for cost savings and provides other substantial benefits to the City. The exemption allows City staff to expedite the project by securing a direct contract with MEI on a price that has already been negotiated which will reduce costly project delays and help the project be completed in a timely manner. This benefit also reduces risks to public safety because it will allow the project to move forward and bring the City streets and walkways back to safe use much faster.

Additionally, substantial benefits of using the Special Procurement method include increased safety of the public and City staff and better ability to control the impact that current market conditions have on construction costs.

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

In approving the finding under ORS 279C.335(2)(b), the Local Contracting Review Board must consider the type, cost, and amount of the contract and, to the extent applicable to the particular public improvement contract the 14 items outlined in ORS 279C.335(2)(b)(A-N). Information considered by the Local Contract Review Board related to each of these requirements follows:

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

Information to be considered by the Local Contract Review Board: City staff solicited bids for the work in October 2022 and July 2023. One proposal from MEI was received in October 2022. No bids were received in July 2023. In both cases the project was advertised in the Oregon DJC, multiple Plan Holders, the City’s website, and on Oregonbuys. City staff had negotiated with MEI for a cost for the work. MEI’s initial bid proposal was \$871,726. The final negotiated price is \$602,891.

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

Information to be considered by the Local Contract Review Board: The estimated construction cost for the project is \$500,000.

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

Information to be considered by the Local Contract Review Board: Benefits to the public will result from the work along Strand Street, S. 1st Street, and Cowlitz Street being completed and fully reopened without substantial project timeline delay. Public safety will also be benefited because the work on these streets cannot be completed until all of

the electrical services have been relocated underground. After permanent work has been completed, the public will benefit from safer streets.

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

Information to be considered by the Local Contract Review Board: City staff negotiated with the MEI on the work to be , walked to site to determine where cost savings could be incurred, and successfully reached a price for the work which can be constructed more efficiently at a greater savings to the City.

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

Information to be considered by the Local Contract Review Board: Construction of the Project requires a licensed electrical contractor to perform the work of relocating electrical services underground after the main power lines are moved underground. Licensed electrical contractors with this expertise are available in the Pacific Northwest.

The cost and availability of specialized expertise necessary for public improvement is not impacted by an exemption from competitive bidding and use of the Emergency Procurement method. Procurement of these services will be secured by the general contractor.

(F) Any likely increases in public safety:

Information to be considered by the Local Contract Review Board: It is important to construct the Project in a manner to ensure safe working conditions for the contractor, the neighbors, and the public that could be affected by the Project. Currently the S. 1st Street, Cowlitz Street, and Strand Street in downtown are in a transitional state, which has created safety issues with an increase pedestrian slips, trips, and falls, risky driver behavior, and hazardous worker exposures.

The Special Procurement method will allow the work to move quickly forward allowing for full buildout of the streets after the electrical services relocated underground and the remaining street construction can then be completed creating safe walkways and streets and traffic calming measures which will provide for the safe and efficient movement of vehicles, bicyclists, and pedestrians (including persons with disabilities in accordance with the Americans with Disabilities Act).

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

Information to be considered by the Local Contract Review Board: The Special Procurement method for relocating the electrical services underground will not have an



impact on risks to the City or the Public because the work will still be performed under the City's standard public improvement contract.

(H) Whether granting the exemption will affect project funding sources:

Information to be considered by the Local Contract Review Board: The Project funding source will not be impacted by an exemption from competitive bidding and use of the Special Procurement method of delivery.

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

Information to be considered by the Local Contract Review Board: The bidding market for public works projects in 2023 and 2024 have been impacted significantly as a result of increased commercial construction across the country and specifically in the Pacific Northwest. A shortage of skilled craftsmen and laborers, shortages of building materials, increased inflation and rising interest rates have resulted in a 24% rise in construction costs since 2022. Even when historical cost data and reliable sources are used, construction cost estimates for building trades and labor have proven to be inaccurate without real time construction pricing. Using the Special procurement method allows the City to get the project out earlier using real-time construction costs to keep the Project within budget.

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

Information to be considered by the Local Contract Review Board: The characteristic of the project in regard to its technical complexity is coordination. The exemption will have no negative impacts on the technical complexity of the public improvement.

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

Information to be considered by the Local Contract Review Board: The public improvement will relocate existing electrical services from overhead utilities to the underground. The site is currently in a transitional state and has been excavated prior to reopening to traffic so the risk of discovering unknown conditions and damaging existing infrastructure is minimal.

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

Information to be considered by the Local Contract Review Board: Areas where existing electrical services will be relocated from overhead utilities to the underground are already in the active construction zone of the S 1st Street – Strand Street Road and Utilities

Extension project and measures are already in place to direct vehicles and pedestrians to safe passage areas.

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

Information to be considered by the Local Contract Review Board: Construction will be completed in a single phase. However, the work involves several elements, which will require additional work which will not be a part of this contract. This includes moving poles off the site after the undergrounding is complete.

(N) Whether the City has, or has retained under contract, and will use city 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 City will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract

Information to be considered by the Local Contract Review Board: The City has experience using alternative contracting methods and will use specialized advisor services when necessary and the law firm of Jordan Ramis for legal counsel support for the Project. The City also contracted with Otak, engineering consultant, to assist on the project during construction.

In addition, Jordan Ramis, PC's attorneys act as general and special counsel for local governments (counties, cities, and special purpose districts) throughout Oregon. They provide advice on public contracting, design and construction litigation, property issues (including negotiation, acquisition, and condemnation), insurance coverage and defense, public meetings, public records, finance, system development charges, utility ratemaking, telecommunications, environmental and natural resources, energy, government ethics for public officials, franchise fees and privilege taxes, and other matters associated with conducting government affairs. They have provided legal counsel to municipal clients on a number of alternative delivery projects.

## **II. SUMMARY OF EMERGENCY PROCUREMENT BENEFITS TO THE CITY**

The City is seeking to utilize the special procurement model to minimize the substantial risk of loss, damage, interruption of services, and costly construction delays on the S 1st Street – Strand Street Road and Utilities Extension project. The savings and benefits are expected to be significant. The use of the special procurement method will allow the City to restore essential services to the public in the shortest amount of time, and will promulgate the following benefits for the City:

- Will allow the City to expedite a contract with the sole bidder on the project and immediately begin project implementation.
- Will allow schedule acceleration which will allow the City to complete the reconstruction of City streets and walkways while not incurring further costs delays, reducing overall project costs.
- Will allow the City to lock in the negotiated price for the work that reflects the City's budget most accurately.

It is the recommendation of staff that the City Council adopt and make the findings as set forth above and exempt the Undergrounding Electrical Services on the S. 1st Street – Strand Street Road and Utilities Extension project from competitive bidding and to use a Special Procurement method of delivery by directly contracting with Moore Excavation, Inc. to perform the services for the agreed upon price of \$602,891.00 plus standard contingency under a standard public improvement contract.