

RESOLUTION NO. 2019-01

A RESOLUTION OF CITY OF LA PINE ADOPTING FINDINGS TO SUPPORT AN EXEMPTION FROM COMPETITIVE BIDDING FOR A NEW INDUSTRIAL PARK WASTEWATER LIFT STATION PROJECT.

WHEREAS, the La Pine City Council (the "Council") acts as the local contract review board (the "LCRB") for City of La Pine ("City"); and


WHEREAS, pursuant to ORS 279C.335, Council held a public hearing on January 7, 2019 for purposes of taking comments on draft findings submitted by City staff in support of exempting the contract for the construction of a new industrial park wastewater lift station (the "Project") from competitive bidding, which findings are attached hereto as Exhibit A; and

WHEREAS, based on the findings contained in Exhibit A, Council desires to exempt the contract for the Project from competitive bidding and approve the direct appointment alternative contracting method.

NOW, THEREFORE, BE IT RESOLVED, by and through the Council meeting in regular session, the following:

1. Findings. The above-stated findings are hereby adopted. Council, acting as the LCRB, hereby adopts the findings contained in the attached Exhibit A.
2. Exemption. Pursuant to the findings contained in the attached Exhibit A, Council hereby exempts the Project from competitive bidding procedures and authorizes and approves the use of a direct appointment procedure.
3. Miscellaneous. All pronouns contained in this resolution and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. The provisions of this resolution are hereby declared severable. If any section, subsection, sentence, clause, and/or portion of this resolution is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law, and (b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this resolution. This resolution may be corrected by order of the Council to cure editorial and/or clerical errors.

APPROVED, ADOPTED, AND MADE EFFECTIVE by the Council on January 7, 2019.


Daniel Richer, Mayor

ATTEST:


Melissa Bethel, City Manager

Exhibit A
Findings

(attached)

City of La Pine
Wastewater Lift Station Construction Project
Findings in Support of Exemption from Competitive Bidding

A. General.

1. Oregon public contracting rules outline competitive bidding requirements for public improvement construction projects in OAR 137-049-0130. Under ORS 279C.335(2), a local contract review board may exempt certain contracts from the traditional competitive bidding methods by showing that an alternative contracting process is unlikely to encourage favoritism or diminish competition, and that it will likely result in substantial cost savings to the public agency. City of La Pine ("City") has prepared these findings to comply with ORS Chapter 279C requirements and Ordinance No. 2016-08 (the "Public Contracting Ordinance").

2. For the reasons set forth more fully below, the Project (as defined below) is proposed to be exempted from traditional competitive bidding methods. A public hearing and acceptance of these findings by the La Pine City Council, acting as the local contract review board, will be required prior to proceeding with the construction of the Project.

B. Project Background.

1. Biogreen Sustainable Energy Co., LLC ("Biogreen") is proposing to construct a power generation facility (the "Plant") on certain industrial property in City's industrial park. Biogreen requires City's collection system have the capacity to convey wastewater from the Plant to City's wastewater treatment plant ("WWTP"). The existing lift station is undersized and reaching the end of its service life. In its present condition the existing station does not have the capacity to serve the Plant as well as City's other demands.

2. To serve the Plant and expected future customers, certain improvements to City's wastewater system are required, including, without limitation, (a) replacement of the existing lift station located at 16800 Reed Road, La Pine, Oregon 97739 with a new lift station designed to meet a future demand of 514 gallons per minute, (b) replacement of up to 1,180 feet of four-inch (4") diameter force main with six-inch (6") diameter force main, (c) replacement of up to eighty-feet (80') of eight-inch (8") gravity main with twelve-inch (12") gravity main, and (d) demolition and removal of the existing lift station upon completion of the new lift station. To this end, Biogreen will construct a new industrial park wastewater lift station (the "Project") and transfer ownership of the completed Project to City prior to interconnecting to City's wastewater system.

C. Findings – ORS 279C.335. City makes the following findings in support of an exemption from the competitive bidding requirements in accordance with ORS 279C.335(2).

1. ORS 279C.335(2)(a) – Unlikely to Encourage Favoritism or Substantially Diminish Competition. The Project has similarities to a public improvement project constructed by a private developer pursuant to a land use condition of approval. Because the infrastructure upgrades are needed, at least in part, to meet Biogreen's development, City is requiring Biogreen construct (or cause to be constructed) the Project pursuant to a water and wastewater services agreement. As a result, the Project is directly related to Biogreen's construction of the Plant and, importantly, would not be constructed at this time absent the development and construction of the Plant. In other words, the

Project is unlike ordinary public improvements constructed by City because it is contingent on a larger private development. Thus, exempting the Project from competitive bidding procedures is unlikely to encourage favoritism or substantially diminish competition for City public improvement projects.

2. ORS 279C.335(2)(b) – Likely to Result in Substantial Cost Savings and Other Substantial Benefits to City and the Public. The Project will increase City's collection system capacity to convey wastewater from the Plant and other future City customers. Exempting the Project from competitive bidding procedures will result in City avoiding expenditure of costs and expenses of competitively bidding the Project in City's ordinary course of operations. To this end, cost savings will be realized through reduced City staff and consultant time to design, negotiate, and administer any solicitation and contract. The following factors under ORS 279C.335(2)(b) support the conclusion that it is reasonable to expect substantial cost savings:

a. Budget; Funding. The budget for the work to be performed on the Project is approximately \$852,000.00. Granting the exemption will not affect the sources of funding for the Project.

b. Public Benefits. The public will benefit from the Project as it will increase City's collection system capacity to convey wastewater. Moreover, the Project is being constructed in connection with and as a condition of City's agreement to provide water and wastewater services sufficient for the operation of the proposed Plant.

c. Market Conditions. No negative impact is expected as a result of exempting the Project so that Biogreen may construct (or cause to be constructed) the Project in connection with the development and construction of the Plant.

d. New Construction; Occupancy. Although the Project involves new construction, the Project will replace the existing lift station located in City's industrial park. The Project will not be occupied during construction.

e. Single Phase Construction. The Project will require a single phase of construction work.

f. Additional Factors. Because the Project is being constructed by Biogreen (or Biogreen's contractors) in connection with the development of the Plant, the following factors under ORS 279C.335(2)(b) are not applicable to the Project: (A), (D), (E), (G), (H), (J), (K), and (N). With respect to ORS 279C.335(2)(b)(F), the Project will not impact public safety.

D. Conclusion. Exempting the Project complies with the criteria outlined in ORS 279C.335(2), including the factors in ORS 279C.330. Namely, it is unlikely the exemption will encourage favoritism or substantially diminish competition. Also, the exemption will result in substantial cost savings and other substantial benefits to City. In addition, and as discussed above, having Biogreen perform (or cause to be performed) the work will result in value added to the Project that could not otherwise be obtained through a traditional competitive bidding method.