RESOLUTION NO. UR 11-006

RESOLUTION GRANTING EXEMPTION FROM COMPETITIVE BIDDING FOR CONSTRUCTION OF THE NEW CITY OF CANBY POLICE DEPARTMENT FACILITY BY MEANS OF A CONSTRUCTION MANAGER/GENERAL CONTRACTOR AND AUTHORIZING SELECTION BY REQUEST FOR PROPOSALS

WHEREAS, the Canby Urban Renewal Agency ("Agency") acts as the local contract review board for the Agency, and in that capacity has authority to exempt certain contracts from the competitive bidding requirements of ORS Chapter 279C; and

WHEREAS, ORS 279C.335(2) provides a process for exempting certain contracts from competitive bidding and authorizes the selection of a contractor through the request for proposal ("RFP") process; and

WHEREAS, draft findings ("Findings") addressing competition, operational, budget and financial data, public benefits, value engineering, specialized expertise required, market conditions, technical complexity, public safety and funding sources recommended by the Agency were available 14 days in advance of the public hearing on this Resolution; and

WHEREAS, the Agency determines that the new Police Department Facility Project should be constructed by a CM/GC. NOW THEREFORE,

The Agency finds as follows:

1. The Agency adopts the Findings set forth in Exhibit "A" to this Resolution.

2. The exemption of the CM/GC contract from competitive bidding will promote competition and will not encourage favoritism, because the CM/GC will be chosen by the request for proposals process, and the major portion of the construction work will be performed by subcontractors chosen by competitive bidding.

3. The exemption of the CM/GC contract from competitive bidding is likely to result in substantial cost savings to the City, for the reasons set forth in the adopted Findings.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Agency as follows:

The contract for construction of the new Police Department Facility Project by a Construction Manager/General Contractor for a Guaranteed Maximum Price is exempt from competitive bidding, and the CM/GC shall be selected by the Request for Proposal method in accordance with the Agency's public contracting rules and the process described in the Findings.

This Resolution shall take effect on March 16, 2011.

ADOPTED this 16th day of March, 2011, by the Canby Urban Renewal Agency.

Richard Ares
Chair

ATTEST:

Kimberly Scheafer, CMC
City Recorder

EXHIBIT A

FINDINGS OF FACT
FOR EXEMPTION FROM COMPETITIVE BIDDING AND
THE USE OF THE CONSTRUCTION MANAGER/GENERAL CONTRACTOR
(CM/GC) METHOD OF CONTRACTING FOR THECANBY POLICE DEPARTMENT
FACILITY

1. General

ORS 279C.335 (2) permits a local contract review board to exempt contracts from traditional competitive bidding upon approval of findings of fact showing that an alternative contracting process is unlikely to encourage favoritism or diminish competition and that the process will result in substantial cost savings to the public agency. The Canby Urban Renewal Agency ("Agency"), through its Commissioners, acts as the Local Contract Review Board ("LCRB") for the Agency.

ORS 279C.400 – ORS 279C.410 describe the Request for Proposals method of solicitation as an alternative to traditional competitive bidding. Pursuant to ORS 279C.410 (8), a public agency using the Request for Proposals method may award a contract to the responsible proposer "whose proposal is determined in writing to be the most advantageous to the contracting agency based on the evaluation factors set forth in the request for proposals and, when applicable, the outcome of any negotiations authorized by the request for proposals."

ORS 279C.330 defines "Findings" and identifies specific information to be provided as a part of the agency justification. Under ORS 279C.335(5) a public hearing must be held before the findings are adopted, allowing an opportunity for interested parties to comment on the draft findings.

PURPOSE OF THESE FINDINGS: The Urban Renewal Agency has held a public hearing as required by ORS 279C. 335 and makes the following findings with respect to the issue of whether the new Police Department Facility Project ("Project"), as defined herein, should be exempt from competitive bidding. The Agency seeks to utilize the CM/GC method of alternative methods of contracting. The Findings of Facts apply to the CM/GC method of public improvement projects described below, in accordance with ORS 279C.335 (2).

2. Background

The City of Canby's current Police Facility, formerly a garage, was renovated in 1980. It is a seventy year old building with approximately 6,000 sq. feet of work/office space. The Canby Police Department, through the Canby Urban Renewal Agency is planning a new facility to accommodate current needs, with expansion space for future growth. The anticipated work space needed would be approximately 24,000 square feet, based on the Preliminary Architectural Report of November, 2010.

The program includes but is not limited to the following:

The new Canby Police Department Facility Project will consist of approximately 24,000 square feet on a main floor level with approximately 10,000 square feet of future shelled space on a lower daylight basement level built into the hillside of the site located at 1175 NW 3rd Avenue. The building is anticipated as being constructed on a pile foundation with a structural steel frame with concrete floor slabs and glazed and masonry exterior walls. The site, 13.91 acres in size, is sufficient to easily support the proposed Police Department Facility along with the necessary parking and landscaping that it will required. Water, storm sewer, and sanitary sewer utilities are available to the site from NW 3rd Avenue, and a half street improvement would be required for the south side of NW 3rd Avenue for the Project.

The location of the proposed site, (previously used as a landfill for the City of Canby), does present some challenges. The Agency had a Geotechnical Investigation, Site Specific Seismic, and a Hazard Evaluation completed by GEOCON Northwest, Inc. in September of 2010. Under the conclusions and Recommendations of this report it was noted that, "the primary geotechnical concern associated with the project development is the presence of fill soil, encountered during the investigation to depths of 10 feet. Parking lot and slab on grad construction will also require remediation." The report further states that "Although no landfill/garbage materials were encountered within the borings excavations of this investigation, local areas of landfill/garbage material may be present within the proposed building foot print." There is a recommendation that there be confirmation sought from the DEQ regarding the "No Further Action" letter from that Agency if the site is disturbed as presently considered, and that a passive ventilation system should be installed beneath the floor slab in any building that is underlain by land fill waste. If landfill materials are encountered, it will be necessary to properly manage and transport them off site to an approved disposal location.

Another strong consideration for use of this site in addition to the potential of encountering organic fill material, is the site's sensitivity to wet weather construction. Considerations might be to double the requirements of dry weather construction, the use of cement treatment of soils, and there exists a potential for perched or static groundwater during prolonged wet conditions given the presence of mottling in the near-surface soils. Drainage and dewatering systems will need to be designed and constructed by the Contractor.

Also there are options available for the founding of the building at this site that consist of conventional spread and wall footings with potential soil improvements techniques which would include Geopiers, or fill soil removal and replacement with compacted soil or rock. An alternative to this soil improvement might be pile foundations, auger cast piles may be a feasible pile system. Each of these options will need to reviewed and evaluated as to which would be the most acceptable and cost effective to be used for this facility and its site improvements.

It becomes critical to maintain both the schedule and budget of this project that the soils conditions be fully evaluated and understood, and that site work start during this summer's dry weather conditions.

In consideration of these facts, an alternate method of construction should be considered. Therefore, the following findings support an exemption from competitive bidding and the use of the Request for Proposal Construction Manager/General Contractor method of construction contracting.

FINDINGS OF FACT

SUMMARY FINDINGS

Use of the CM/GC process for the Police Department Facility Project complies with the criteria outlined in ORS 279C.335(2):

1. It is unlikely the exemption will encourage favoritism or substantially diminish competition. The selection process will be fair and open to all interested proposers as established within the findings below.

2. The exemption will result in substantial cost savings to the Agency. The Agency has found several areas in which substantial cost savings to the Agency will be achieved. Also, value will be added to the Project that could not otherwise be obtained.

SPECIFIC FINDINGS which substantiate the summary findings are as follows:

1. **The CM/GC will be selected through a competitive process in accordance with the qualifications-based selection process authorized by the Agency. Therefore, it is unlikely that the awarding of the construction contract for the Project will encourage favoritism or substantially diminish competition. This finding is supported by the following:**

   A. **SOLICITATION PROCESS:** Pursuant to ORS 279C.360, the CM/GC solicitation will be advertised at least once in the Daily Journal of Commerce, and in as many additional issues of publication as the Agency may determine.

   B. **FULL DISCLOSURE:** To ensure full disclosure of all information, the Request for Proposals solicitation package will include:

      a. Detailed Description of the Project
      b. Contractual Terms and Conditions
      c. Selection Process
      d. Evaluation Criteria
      e. Role of Evaluation Committee
      f. Provisions for Comments
      g. Complaint Process and Remedies Available

   C. **COMPETITION:** As outlined below, the Agency will follow processes which maintain competition in the procurement of a CM/GC.

      a. The Agency anticipates that competition for this contract will be similar to that experienced in other projects of this type. The competition will remain open to all qualifying proposers.

      b. The Agency has been communicating with the construction contracting

community as well as the engineering consulting community about the CM/GC contracting method.

c. The evaluation and solicitation process employed will be open and impartial. Selection will be made on the basis of final proposal scores derived from price and other components, which expand the ground of competition beyond price alone to include experience, quality, innovation factors, etc.

d. The competitive process used to award subcontracts for all competitively bid construction work will be specified in the CM/GC contract and will be monitored by the Agency. The Agency will designate in the contract the proposed percentage of construction work that must be subcontracted and may not be self performed by the CM/GC.

D. SELECTION PROCESS: Other highlights of the selection process will include:

a. A pre-proposal vendor conference will be announced and held. This conference will be open to all interested parties. During this pre-proposal conference, as well as any time prior to ten (10) days before the close of the solicitation, interested parties will be able to ask questions, request clarifications and suggest changes in the solicitation documents if such parties believe that the terms and conditions of the solicitation are unclear, inconsistent with industry standards, or unfair and unnecessarily restrictive of competition.

b. The evaluation process will determine whether a proposal meets the screening requirements of the RFP, and to what extent. The following process will be used:

- Proposals will be evaluated for completeness and compliance with the screening requirements of the RFP. Those proposals that are materially incomplete or non-responsive will be rejected.

- Proposals considered complete and responsive will be evaluated to determine if they meet and comply with the qualifying criteria of the RFP. If a proposal is unclear, the proposer may be asked to provide written clarification. Those proposals that do not meet all requirements will be rejected.

- Proposals will independently be scored by the voting members of the Evaluation Committee. Scores will then be combined and assigned to the proposals.

- The Evaluation Committee will convene to select from the highest-scoring proposers, a finalist(s) for formal interviews.

- The Evaluation Committee will conduct the interviews.

- The Evaluation Committee will use the interview to confirm the scoring of the proposal and to clarify any questions. Based upon the revised scoring, the

Evaluation Committee will rank the proposers, and provide an award recommendation.

- The Urban Renewal Agency Manager will negotiate a contract with the top-ranked firm. If an agreement cannot be reached, the Agency will have the option to enter into an agreement with the second-ranked firm, and so forth.

c. Competing proposers will be notified in writing of the selection of the apparent successful proposal and will be given seven (7) calendar days after receipt of the notice to review the RFP file and evaluation report at the Agency Office. Any questions, concerns, or protests about the selection process will be subject to the requirements of the OAR 125-249-0450, must be in writing, and must be delivered to the Urban Renewal Agency Manager within seven (7) calendar days after receipt of the selection notice. No protest of the award selection shall be considered after this time period.

d. The contract achieved through this process will require the CM/GC to use an open competitive selection process to bid all components of the job. The CM/GC's general conditions and fee makes up 10-15% of the total cost, and will be evaluated as one of the scoring criteria. General Conditions, which includes supervision, bonding, insurance, and mobilization, must be within the industry standard range of approximately 10%. The CM/GC's fee must be within the industry standard range of 3-5%. Since these amounts will be scored as part of the competitive RFP process, the entire dollar value of the project will be awarded through open competitive processes, at either the general contractor or subcontractor level.

2. FINDING: The awarding of the construction contract for the Project using the CM/GC method will likely result in substantial cost savings to the Agency. This finding is supported by the following information required by ORS 279C.335(2)(b) and ORS 279C.330.

A. OPERATIONAL, BUDGET, FINANCIAL DATA

a. BUDGET: The Agency has a fixed budget available for the Project that cannot be exceeded. The completion date cannot be exceeded. Early reliable pricing provided by the CM/GC or other alternatively contracted contractor during the design phase will reduce the potential for time delays due to later discovery of higher-than-anticipated costs and consequent changes of direction.

b. LONG TERM COSTS: The Project will require expertise regarding the constructability and long-term cost/benefit analysis of innovative design. That knowledge is best obtained directly from the construction industry. Many decisions will be required during the design process that will encompass immediate feedback on constructability and pricing. Under the traditional design-bid-build process, there is a high risk of increased change orders and schedule impacts for a project of this size and complexity. Since there are significant costs

associated with delay, time is of the essence. The CM/GC process will assist in providing a scope of work and constructible design that best meet the requirements of the Project with significantly lower risk to the project costs. Involving the CM/GC during design will allow project risks to be addressed early and teamwork between the Agency, the design consultant, and the construction contractor (CM/GC) to minimize those risks.

c. FEWER CHANGE ORDERS: When the CM/GC participates in the design process, fewer change orders occur during project construction. This is due to the CM/GC's better understanding of the owner's needs and the architect's design intent. As a result, the project is more likely to be completed on time and within budget. In addition, fewer change orders reduce the administrative costs of project management for both the Agency and the contractor.

d. GMP CHANGE ORDERS COST LESS: The fewer CM/GC change orders discussed above will be processed at a lower cost under the GMP. The design-bid-build method typically results in the contractor charging 15% markup on construction change orders. The GMP method applies lower predetermined markups. The experience of the industry has been that the markup is in the range of 3-5%.

e. SAVINGS: Under the GMP method the Agency will enjoy the full savings, if actual costs are below the GMP. When the CM/GC completes the project, any savings between the GMP and the actual cost accrue to the Agency.

f. CONTRACTOR'S FEE IS LESS: Contracts with CM/GC's are designed to create a better working relationship with the contractor. As a consequence, the overhead and profit fee is generally in the 3-5% range, and the contractors indicate this is slightly lower than the fee anticipated on similar design-bid-build contracts.

g. FUNDING SOURCE: The Project will be funded by urban renewal funds that are available during a fixed budget period.

B. PUBLIC BENEFITS

a. TIME SAVINGS: Use of CM/GC or other alternative contracting methods will allow construction work to commence relatively rapidly on some portions of the work while design continues on the remaining portions. This will shorten the overall duration of the construction and provide for completion of the project by the due date. It becomes critical to maintain both the schedule and budget of this project that the soils conditions be fully evaluated and understood, and that site work start during this summer's dry weather conditions.

b. COST SAVINGS: The Project will benefit from the active involvement of a CM/GC contractor or other alternative contracting method during the design process in the following ways:

- The contractor's input regarding the constructability and cost-effectiveness of various alternatives will guide the design toward the most economic choices.

- Consideration of the specific equipment available to the contractor will allow the designer to implement solutions that utilize the capacity of that equipment.

- The contractor will be able to provide current and reliable information regarding the cost of materials that are experiencing price volatility and the availability of scarce materials.

- The contractor will also be able to order materials while design is being completed in order to avoid inflationary price increases and provide the lead-time that may be required for scarce materials.

c. GUARANTEED MAXIMUM PRICE (GMP) ESTABLISHES A MAXIMUM PRICE PRIOR TO COMPLETION OF DOCUMENTS: The CM/GC will be able to obtain a complete understanding of the Agency's needs, the architect's design intent, the structural peculiarities of the existing building, the scope of the project, and the operational needs of the police officer, staff, and administration of the Police Department by participating in the construction document phase. With the CM/GC participating in this phase they will be able to offer suggestions for improvement and make suggestions that will reduce costs. With the benefit of this knowledge, the CM/GC will also be able to guarantee a maximum price to be paid by the Agency for constructing the Project.

C. **VALUE ENGINEERING**

a. **WITH THE DESIGN-BID-BUILD PROCESS:** If the Agency were to utilize the design-bid-build method, the contractor would not participate in this evaluation. In conducting value engineering under the design-bid-build approach, a value engineering consultant is hired to participate in the design and cost evaluation process. This process adds extra costs and administrative complications, without providing the same benefits of early contractor participation.

b. **WITH CM/GC:** The CM/GC process offers a unique opportunity for value engineering that is not possible through the design-bid-build process. An essential part of each construction project is the value engineering evaluation. Value engineering is the means used to determine the best project design that meets the needs and priorities of the owner, within the owner's budget. Value engineering is done most effectively by a team consisting of the owner, architect, consultants, and the contractor. When the contractor participates, the team can render the most comprehensive evaluation of all factors that affect the cost, quality, and schedule of the project.

The CM/GC method has the benefit of:

-the ability to set the schedule;
-the ability to sequence work; and
-commitment from the contractor to implement the design within the schedule and budget.

Through integrated participation, a project scope and design evolve that has greater value for the owner, and is not likely to be the same project created by the design-bid-build method.

D. **SPECIALIZED EXPERTISE:** Early selection of the CM/GC creates more informed, better quality decision making by the project construction team. A more efficient construction team saves the Agency money.

The construction project is highly complex because it involves significant construction over a short mandated period of construction. Use of a CM/GC in conjunction with the team approach will result in a better coordinated project, speedy completion, and minimize disruption to operations. The CM/GC clarifies several critical variables valuable to the project design. The CM/GC: guarantees the maximum price (GMP) to complete the project; determines the construction schedule; establishes the sequence of work; is contractually bound to implement the final project design within the GMP; and participates as an essential member of the project design and construction team.

Several benefits of participation by the CM/GC on this project will be realized: developing the design documents to reflect the best work plan that accommodates the Agency, the design team, and contractor; the best grouping of the bid packages that will help insure better trade coverage; the most efficient construction staging area on the new Police Department campus; the most cost effective route through the campus and buildings for the various utilities; and to help in adjusting the work plan when the needs change along the way. This component cannot be addressed by the usual design/bid/build method of construction because the usual method is skewed towards the lowest bidder.

E. **PUBLIC SAFETY:** All work must be coordinated to avoid safety risks to the public and to ensure efficiency in construction. The coordination between the Agency, designer and the CM/GC will assure coordination of work and consideration for the safety of vehicular and pedestrian paths crossed by the Project. In addition, CM/GC contracting of the Project will ensure that public safety is being effectively managed in a "fast track" mode to minimize delays.

F. **MARKET CONDITIONS:** As well as the multitude of construction market factors that exist today in Oregon (e.g., competition of other projects, environmental issues that limit construction materials, variable bid market, high unemployment, etc.), the difficulty in establishing the best work sequence complicates our ability therefore, to accurately estimate the cost of this project. The economy today makes it necessary for many contractors to bid for jobs for which they might not be qualified. Alternative contracting methods will be more likely to result in a more experienced and better suited contractor

for the particular project than the usual completive procurement. The complexities which need to be addressed to accomplish the tasks are not well served by the usual competitive procurement. The lowest bidder may not be the best suited for the particular project.

G. **TECHNICAL COMPLEXITY:** Technical expertise will be required for environmental management, quality management, scheduling, estimating, meeting sustainable facilities standards and guidelines, and ensuring energy efficiency. The geotechnical and environmental issues discussed in the Background section above will require special expertise. However, the Project will draw upon existing skills and capabilities available in the construction community, as the Project presents overall challenges similar to those faced on many public works projects. Specialized skills will be required of the CM/GC to negotiate and price multiple options and schedule complex tasks. A high level of coordination among the Agency and all the design and construction entities is required and facilitated by the CM/GC approach.

H. **FUNDING SOURCES:** The Agency intends to fund the Project with urban renewal available funds and proceeds of City surplus property disposition.