

BEFORE THE METRO COUNCIL

RESOLUTION OF THE METRO COUNCIL ) RESOLUTION NO. 15-4645  
ACTING AS THE METRO CONTRACT REVIEW )  
BOARD, FOR THE PURPOSE OF ) Introduced by Chief Operating Officer Martha  
AUTHORIZING AN EXEMPTION TO THE Bennett in concurrence with Council  
COMPETITIVE BIDDING PROCEDURES FOR A President Tom Hughes  
PUBLIC IMPROVEMENT CONTRACT

WHEREAS, in July 1992, via Resolution No. 92-1637 (“For the Purpose of Considering Adoption of the Metropolitan Greenspaces master Plan”), the Metro Council adopted the Metropolitan Greenspaces Master Plan which identified a desired system of natural areas interconnected with greenways and trails;

WHEREAS, in May 1995 Ballot Measure 26-26 was approved, authorizing Metro to issue \$135.6 million for bonds for Open Spaces, Parks and Streams (the “1995 Open Spaces Bond Measure”);

WHEREAS, on July 25, 1996, via Resolution 96-2362, the Metro Council adopted a refinement plan for the OMSI to Springwater Corridor target area with objectives to acquire land and easements to connect OMSI to the Sellwood Bridge and the existing Springwater Corridor Trail,” and to provide the opportunity to develop a mostly off-street trail connection between OMSI and the Springwater Corridor;

WHEREAS, on March 9, 2006, the Metro Council adopted Resolution No. 06-3672B, “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection” (the “2006 Natural Areas Bond Measure”);

WHEREAS, in June 2006, Metro and Alta Planning + Design completed a report titled the “Springwater Missing Gap,” describing the optimal alignment to connect built trail segments, resulting in a recommendation for a rail-with-trail shared-use path;

WHEREAS, on September 6, 2007, the Metro Council adopted Resolution No. 07-3841, “Approving the Natural Areas Acquisition Refinement Plan for the Springwater Corridor Target Area” (the “Refinement Plan”), with a goal to “Complete the 1-mile corridor between the existing Springwater on the Willamette Trail and Three Bridges project at SE 19th Avenue in Portland east through Milwaukie and Gresham to Boring;”

WHEREAS, on August 5, 2010, the Metro Council adopted Resolution No. 10-4173, “Authorizing the Chief Operating Officer to Purchase a Quitclaim and Release of Certain Real Property Interests, Partly in Exchange for Real Property Owned by Metro, in the Springwater Corridor Target Area,” in which Metro acquired the rights to place a trail in a seven-block segment of the proposed Springwater Trail Corridor;

WHEREAS, construction of the trail by the City of Portland in the seven-block segment is scheduled to begin in spring 2016;

WHEREAS, since the next “missing gap” segment of the trail alignment is located in public right of way in which the Oregon Pacific Railroad (“OPRR”) operates, it is necessary to work with the railroad

operator to relocate its tracks in order to leave 19-ft. free for future trail use within the unimproved public right of way of SE Ochoco Street;

WHEREAS, Metro staff have negotiated an agreement with OPRR (the “Agreement”) wherein OPRR will move its tracks and agree to refrain from using the right of way where the trail will be located from SE 13th Avenue to SE 17th Avenue for railroad purposes in the future;

WHEREAS, the Agreement requires approval of the local contract review board under Metro Code Section 2.04.054(c) and ORS 279C.335, as an exemption from competitive bidding procedures for a public improvement contract because Metro intends to hire OPRR to move its tracks, as the owner and end-user of the rail within the existing right of way;

WHEREAS, the Metro Council, acting as the local contract review board, finds that:

a) the contract will not encourage favoritism because Metro does not expect to have any future contracts with OPRR and because the only reason Metro would hire OPRR directly is because OPRR is the owner of the tracks that require relocation;

b) the contract will likely result in cost savings and other substantial benefits to the contracting agency because:

(i) Metro asked another public agency to review the estimate contract price of the proposed relocation work and found it to be comparable;

(ii) it is reasonably anticipated that the railroad operator is in the best position and has the specialized experience to most efficiently move its own tracks;

(iii) OPRR desires to move its own tracks and there are few, if any, other construction companies that would be acceptable to OPRR and available to bid;

(iv) public benefits of awarding the contract are that it may result in a future trail in this corridor;

(v) granting the exemption will better enable Metro to control the impact that market conditions may have on cost and time due to the fact that the scope of work of the contract will enable coordination with the City of Portland’s trail construction on the adjoining trail segment, scheduled to start in the spring of 2016; and

(vi) Metro has previously entered into contracts with OPRR for successful results, demonstrating that Metro has the expertise and substantial experience to assist in developing the contracting method used to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract.

WHEREAS, in addition to the above, an exemption from competitive bidding procedures is appropriate in this instance because there are strict state and federal regulations for the operation of railroads, so it is best to have a railroad operator perform jobs such as laying track, and because OPRR will be the end user of the tracks so the work must be done to its satisfaction;

WHEREAS, the successful completion of the Agreement is in the public interest as it facilitates construction of an important segment of the Springwater Corridor, one of the most heavily used bicycle and pedestrian trails in the Metro region; now therefore

BE IT RESOLVED that the Metro Council acting as the local contract review board grants an exemption from the competitive bidding requirements for the proposed Agreement with OPRR, and authorizes the Chief Operating Officer enter into the Agreement, in a form approved by the Office of Metro Attorney, consistent with this Resolution and the estimated price and scope of the work set forth in the staff report.

ADOPTED by the Metro Council contract review board this <sup>1st</sup> <sup>Oct</sup> [insert date] day of [insert month] 2015.

  
\_\_\_\_\_  
Tom Hughes, Council President

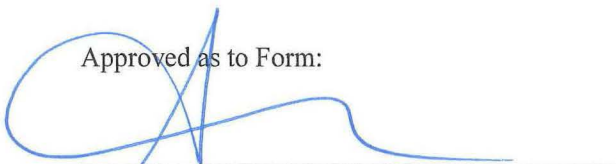
Approved as to Form:  
  
\_\_\_\_\_  
Alison R. Kean, Metro Attorney

Exhibit A

SE Umatilla

Three Bridges



## STAFF REPORT

### IN CONSIDERATION OF RESOLUTION NO. 15-4645 OF THE METRO COUNCIL ACTING AS THE METRO CONTRACT REVIEW BOARD, FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION TO THE COMPETITIVE BIDDING PROCEDURES FOR A PUBLIC IMPROVEMENT CONTRACT

---

Date: October 1, 2015

Prepared by: Dan Moeller, Interim Conservation  
Program Manager  
(503) 797-1819

## BACKGROUND

Metro has been working to complete the Springwater Corridor Trail since the 1995 Open Spaces bond measure. Six separate transactions using funds from both the Open Spaces bond measure and the 2006 Natural Areas bond measure have resulted in almost 5 miles of trail from OMSI to the Three Bridges area east of McLoughlin Boulevard.

- In May of 1998, Metro acquired more than 44 acres from PGE in accordance with the OMSI to Springwater Corridor Trail refinement plan, with funds from the 95 bond measure.
- In July of 1998, Metro purchased a right of way from the Oregon Pacific Railroad (“OPRR”) approximately 3 miles in length. This allowed for design and construction of the trail from OMSI to Oaks bottom and the Sellwood Bridge.
- In December of 2001, Metro purchased 10 parcels and right of way from Union Pacific Railroad totaling more than 7 acres resulting in a trail corridor in areas that was not in an existing road right of way allowing construction of the trail in the Three Bridges area.
- In April of 2003, Metro purchased an additional 2 lots from Portland General Electric totaling one acre in the Sellwood neighborhood.
- In June of 2006, Metro acquired a .16 acre parcel in Sellwood, bringing the total from the 1995 bond measure to 53 acres. The City of Portland (the “City”) has been responsible for building and maintaining the trail segments.

The Refinement Plan for the Springwater Corridor target area of the 2006 bond measure notes that the Springwater Corridor is the major southeast segment of the 40-Mile Loop, which was inspired by John Charles Olmsted’s 1903 plan for a parkway and boulevard loop connecting park sites in the Portland area. The goal for the Refinement Plan is to “[c]omplete the 1-mile corridor between the existing Springwater on the Willamette Trail and the Three Bridges project at SE 19<sup>th</sup> Avenue in Portland. This will provide the final connection of the Springwater Corridor between downtown Portland east through Milwaukie and Gresham to Boring.”

- In September of 2010, Metro acquired a trail easement from OPRR from SE Umatilla St. to SE 13<sup>th</sup> Ave, allowing construction of the trail in that area. Trail construction of this segment by the City of Portland is scheduled to start in spring of 2016.

There remains two “gaps” in the Sellwood portion of the Springwater Corridor Trail: Gap 1 is an approximate 1,600 foot unimproved section of SE Ochoco Street between SE 13<sup>th</sup> and SE 17<sup>th</sup> Avenues. Gap 2 is the block between SE 17<sup>th</sup> and SE 19<sup>th</sup> Avenues, going east toward the 3 bridges. The subject of this resolution is Gap 1 (Exhibit A). In 2005 and 2006, Metro commissioned Alta Planning and Design

to study possible scenarios to extend the Springwater Trail. The study recommended a trail along the north side of SE Ochoco between 13<sup>th</sup> and 17<sup>th</sup> Avenues. The SE Ochoco right-of-way is occupied by a main railroad track and a spur line track, owned and operated by OPRR. It is necessary for the tracks to be moved to the south portion of the ROW in order to accommodate a future trail.

## **THE PROPOSED AGREEMENT**

Metro staff have been in negotiations with OPRR to move its tracks and to perform the work needed to safely prepare the railroad right of way area and move the tracks. A public improvement contract will be awarded directly to OPRR, which requires the Metro Council to approve an exemption from the typical competitive bidding requirements for public improvement contracts. Staff have received a proposal from the OPRR owner to a) move and install new track in a location on the south side of the right of way, and b) install a retaining wall (consisting of jersey barriers) at some points within the right of way close to the southern boundary. This will protect the rail line and allow for a transition between the street grade and the higher level of some of the residential properties adjacent to the right of way. Metro staff believe that exempting the contract from competitive bidding is appropriate in this situation because a) there are strict state and federal regulations for the physical operation of railroads and jobs such as installing tracks and the supporting base material (called ballast) are best left to railroad operators, and b) because the OPRR will be the end user of the tracks and the work should be done to its satisfaction. The proposed agreement includes a promise by OPRR to refrain from using a 19 foot wide corridor along the north side of the ROW.

ORS 279c.335 sets forth several considerations in granting exemptions for competitive bidding, such as whether the exemption is unlikely to encourage favoritism for the vendor; whether there is a public benefit and public safety improvement; oversight of the construction budget, and a risk assessment for the public agency. The analysis of these factors is set forth in the resolution. Metro has had other Public Improvement Contracts with OPRR, and it has a good record of fulfilling the contracts on time and within the budget.

### Financial Information

The total cost of the contract will be just under \$1,000,000. Approximately \$400,000 will be used to remove portions of a berm on the south side of the right of way, and to put barriers in place to act as a retaining wall. Approximately \$441,000 will be used to relocate the crossing at SE 13<sup>th</sup> Avenue, move and replace the track, and various miscellaneous expenses. An additional \$150,000 will be paid as an incentive fee to OPRR to agree to move its tracks and agree that the northern 19 ft. wide corridor of the right of way will be off limits to the railroad in perpetuity.

## **ANALYSIS/INFORMATION**

1. **Known Opposition** There is no known opposition to this proposal. Metro staff will notify adjacent landowners of the work to be done in the SE Ochoco Street segment.

### **2. Legal Antecedents**

Metro Code Section 2.04.054(c) allowing an exemption from competitive bidding of public improvement contracts in accordance with state law.

ORS 279C.335 sets forth rules for the exemption of a public improvement contract from competitive bidding.

3. **Anticipated Effects** OPRR will relocate its tracks within the SE Ochoco Street between the area of the SE 13<sup>th</sup> Avenue intersection and SE 17<sup>th</sup> Avenue to accommodate a trail corridor.
4. **Budget Impacts** The contract price of approximately \$998,548 will be funded by 2006 Natural Areas bond Measure regional-share proceeds.

**RECOMMENDED ACTION**

The Chief Operating Officer recommends passage of Resolution No. 15-4645.