



## City of Medford Draft Findings

Page 1 of 3

### SUPPORTING AN EXEMPTION FROM COMPETITIVE BIDDING REQUIREMENTS FOR THE EXTENSION OF EXCEL DRIVE AND TRAFFIC SIGNALS AT DELTA WATERS ROAD AND LEAR WAY

#### **FACTUAL BACKGROUND:**

- PROPOSED FACILITY IMPROVEMENTS

Delta Center PUD was approved through a stipulated Writ of Mandamus. As a condition of the Writ of Mandamus, the Developer contributed \$400,000 to the City for the extension of Excel Drive and the installation of a traffic signal at the intersection of Delta Waters and Lear Way. The Writ also stipulates any excess funds, once the improvements are complete, are remitted to the developer of Delta Center PUD. The standards for the extension of Excel Drive shall be consistent with Commercial Street standards, including a 36-foot wide roadway, curbs, gutter, driveways, sidewalks, and street lights from Delta Waters Road to the Northerly Boundary of the Delta Center PUD, south approximately 315 feet. The traffic signal shall be installed at the intersection of Delta Waters Road with all associated striping and appurtenances. The roadway and signal is being designed by the City of Medford.

- PROPOSED CONTRACTUAL PROCESS

The requirement for the City of Medford to extend Excel Drive through a Writ of Mandamus is a unique circumstance. Under typical circumstances, the developer for Delta Center PUD would have been conditioned to construct an access to Excel Drive to improve connectivity and mitigate the impacts of his development. The City proposes to enter into a standard form Public Improvement Contract, including but not limited to payment of prevailing wage, with the developer of Delta Center PUD to construct the Excel Drive Extension and the traffic signals. The developer would be accepting the responsibility to complete the improvements at or under the \$400,000 deposited.

- REQUIREMENTS FOR EXEMPTION

The City of Medford employs strict criteria to determine if a project has met the conditions for exemption from “competitive bidding.” This project meets the conditions for exemption from competitive bidding as shown by the findings (below). Medford Code Sections 2.611(1) and 2.613 require that: “The proposed exemption to competitive bidding is unlikely to encourage favoritism or substantially diminish competition for public contracts” and: “The awarding of this contract pursuant to the exemption will result in substantial cost savings to the City of Medford or the public.” Furthermore, ORS 279C.330, states that: “Findings” means the justification for an agency conclusion that includes, but is not limited to, information regarding: (a) Operational, Budget, and Financial Data. (b) Public Benefits. (c) Value Engineering. (d) Specialized Expertise Required. (e) Public Safety. (f) Market Conditions. (g) Technical Complexity. (h) Funding Sources.

In order to accommodate the protest period of ORS 279C.335(5) (e), the award will not be effective until September 7, 2010.

Many of these criteria support the use of the developer's contractor to construct the improvements. These facts support the following findings:

**FINDINGS REGARDING REQUIRED INFORMATION:**

- 1) Operational, Budget, and Financial Data:** In addition to the public improvements required by the Writ, the developer is required to extend a private access drive from Phase 1 of Delta Center PUD to Excel Drive. It is best if this work is done contemporaneously with the Excel Drive improvements, since it could all be completed with one contract, instead of two separate contracts.

If the City were to contract this project, the City's contracting process will require approximately four to five weeks to award a contract. This delay would place much of the construction into the rainy season and compromising the quality of the finished roadway. The City will realize a cost savings by reducing the amount of staff time needed to prepare and administer a City contract and by the developer financially accepting the risks should the project costs exceed \$400,000.

- 2) Public Benefits:** The public will benefit by the greater potential for the project to be completed a month or more prior the City completing the road project. By allowing the developer to accept the responsibility for completing the roadway, the public will realize a cost savings by reduced staff time being expended to administer a public contract, and not having to accept the risk of the project exceeding \$400,000.

Allowing the developer to build the roadway is unlikely to encourage favoritism or substantially diminish competition as this is typically a developer responsibility anyway. The City being required to construct the roadway and signals, through the Writ of Mandamus is a very unique circumstance.

- 3) Value Engineering:** Value is increased when, for instance, essentially the same function is achieved at lower cost. The City will realize the completed road project to its standards, and the developer, who is building this project with his own money is much more motivated to complete the project in a timely and cost efficient manner to get back as much of the \$400,000 as possible.

- 4) Specialized Expertise Required:** N/A

- 5) Public Safety:** Getting the Excel Drive connection made will reduce congestion and the number of illegal turns at the intersection of Delta Waters Road and Highway 62. Since all egress from Delta Center PUD is right-in and right-out forces vehicles who desire to travel north on Lear Way to make an illegal U-turn at this intersection. Completing the Excel Drive connection will eliminate the need for this unsafe U-turn movement.

- 6) Market Conditions:** The developer for Delta Center PUD is partial owner of a construction company qualified to build roads and City infrastructure. This factor gives the developer a significant advantage for getting the project completed at a lower cost, and gives the developer more control getting the work done in a timely manner.
- 7) Technical Complexity:** N/A
- 8) Funding Sources:** The funding for this project is coming from the \$400,000 deposit the developer provided as required by the Writ of Mandamus.