

A BILL FOR AN ORDINANCE MAKING FINDINGS)
AND GRANTING AN EXEMPTION TO PUBLIC)
BIDDING REQUIREMENTS PURSUANT TO ORS)
279C.335 FOR THE PUBLIC IMPROVEMENTS TO)
BE CONSTRUCTED BY SAMARITAN HEALTH)
SERVICES IN THE CITY OF LEBANON)

ORDINANCE BILL NO. 3
For 2009

ORDINANCE NO. 2773

WHEREAS, ORS 279C.335 allows a contracting agency to grant exemptions from the public bidding requirements otherwise required in the construction of public improvements; and

WHEREAS, the Lebanon City Council, acting as the local contract review board for the City has adopted rules under ORS 279A.065; and

WHEREAS, on the 8th of April, 2009, the Lebanon City Council has approved an Economic Development Agreement between the City of Lebanon, the Urban Renewal Agency for the City of Lebanon and Samaritan Health Services; and

WHEREAS, the City has caused notice to be provided as required by law and has conducted a public hearing on April 8, 2009 for the purpose of allowing public comment on draft findings approving the requested exemption; and

WHEREAS, after due consideration of the evidence presented during said public hearing concerning the requested exemption to public bidding.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF LEBANON ORDAIN AS FOLLOWS:

Section 1. Based upon the above recitals and in consideration of the requested exemption, the testimony and the comments provided at the public hearing of April 8, 2009, the City Council for the City of Lebanon, acting as the local contract review board, makes the following findings of fact and conclusions of law:

A. The City of Lebanon (the "City"), the Urban Renewal Agency of the City of Lebanon (the "Agency") and Samaritan Health Services, Inc. ("SHS"), have authorized their respective officers to enter into entered into an economic development agreement (the "Agreement), a copy of which is attached hereto as Exhibit "A", pursuant to the provisions of ORS 94.504 through ORS 94.528. The Agreement provides for the performance of certain duties and the assumption of certain responsibilities by each of the parties to the agreement.

B. Among the duties and responsibilities of the Agreement are the construction of certain infrastructural public improvements, including without limitation, the construction of water and wastewater facilities, roadways and other improvements which will be ultimately maintained by the City. A listing of such projects is attached to the Agreement. The City adopts the recitals of the Agreement as findings herein.

C. Neither the Agency nor the City currently have financial resources available to finance the construction of the public improvements required by the Agreement. Consequently, the parties have agreed that SHS shall finance and construct the public improvements required by the Agreement. In return, as funds become available to the Agency, the agreement provides for certain repayment terms to SHS for the construction of the public improvements.

D. It is in the best interests of the people of the City of Lebanon that the projects, including the construction of private improvements for a medical school to be located in the City of Lebanon. The project will become the first medical school to be founded or located within the state of Oregon in many years. Additionally, the construction of the private improvements, which require the supporting public improvements, is in the best interest of the people of the City to encourage economic development within the City and the North Gateway Urban Renewal Area. Without entering into the Agreement, the construction of public improvements and infrastructure would be financially unfeasible for the City to construct within the foreseeable future.

E. The Agreement provides that SHS will enter into agreements for the construction of the public infrastructure. The Agreement further provides that Infrastructure Projects (defined in the Agreement) will be subject to ORS 279C.800 et. seq. (Oregon Prevailing Wage Law). SHS will be responsible for compliance with and reporting under the Oregon Prevailing Wage Law and its implementing rules. SHS will bid construction of the public improvement portion of the projects in the same manner as the City would if the City were doing the design, construction and construction management. Therefore, it is unlikely that the exemption sought will encourage favoritism in the awarding of the required public contracts, nor will this requirement substantially diminish competition for the awarding public improvement contracts.

F. It is reasonable that the construction of the public improvements, as required by the Agreement, as one project, rather than constructing elements of the complete project over time, will result in substantial cost savings for the public and the City.

G. The bidding process used by SHS in the construction of the public improvements listed in the Agreement makes it unlikely that an exemption will encourage favoritism in the awarding of public improvement contracts, or substantially diminish competition for public improvement contracts. As indicated above, SHS will use a bidding process that closely resembles the process that would be used by the City.

H. A major feature of the Agreement will result in SHS procuring engineering services for the designing of this project. Due to budgetary restraints, the City lacks sufficient personnel to provide in-house engineering services to support this construction project at this time or in the foreseeable future. This project includes designing a system for both public and private improvements. By including the combining of the design of public and private portions under one design contract, the use of the procurement of engineering services by SHS rather than by the

use of the City methods of procurement will save both time and costs on the design and bidding portion of the project. Additionally, the City will save funds by the provisions of the agreement which call for having SHS waive the design fee for the public improvement portion of the project. The project will be completed faster with an economics of scale by allowing this exemption, particularly by allowing the procurement of engineering services by SHS.

I. ORS 279C.335 allows the Contract Review Board, which is the Lebanon City Council, to exempt projects from the requirements of the public bidding generally required for the construction of public improvements under certain conditions and upon the making of certain findings. The local contract review board has considered the request of the contracting agency.

J. Notice of the public hearing of April 8, 2009 has been published in at least one trade newspaper of general statewide circulation a minimum of 14 days before the hearing. Copies of these draft findings have been available to the public as required by ORS 279C.335(5).

The City Council additionally makes the following specific findings with respect to this request:

K. Findings concerning the application of ORS 279C.330

(1) Operational, budget and financial data

The City has limited funds available for constructing new public improvements. As discussed in the findings related to ORS 279C.335(2)(b), allowing SHS to construct the public improvements will result in significant cost savings to the City. From an operational perspective, it is critical that the public improvement projects be completed in conjunction with the private improvements on the SHS campus, because the public infrastructure is designed to ensure that the impacts of private improvements are mitigated and that public transportation and utility facilities adequately serve the new SHS campus development. Therefore, allowing SHS to control the construction of public improvements will result in operational efficiencies and ensure that completion of the public improvements will correspond with the private development projects they are designed to serve.

(2) Public benefits

SHS management and control of the construction of the public improvements is vital to the feasibility of the SHS campus project, because of the need to assure the completion of the public improvements concurrently with the private improvements. The construction of the SHS campus will bring jobs and economic development that will be a benefit to the City. In addition to the immediate benefit, the public will also benefit from the SHS campus acting as a catalyst for future development in the area. The public will only have to pay for the public improvements as and when tax increment revenue is received by the City. The public will only receive these benefits if the project is feasible and the exemption is vital to such feasibility to assure concurrent completion of the public and private SHS Campus project improvements.

(3) Value engineering

Because SHS is providing the initial funding for the required infrastructure, and full reimbursement is not assured, SHS has an incentive to engineer the improvements as efficiently and cost-effectively as possible consistent with meeting all City infrastructure standards.

(4) Specialized expertise required / (7) Technical complexity

Specialized coordination and planning is critical due to the magnitude and complexity of this project. SHS is in the best position to manage and coordinate the construction and completion of the public and private improvements, because SHS is the only entity capable of having oversight of the entire project. There is no possibility of anyone other than SHS completing both the private and public improvements. Therefore, unless SHS manages and coordinates the public improvements there will never be a single entity with responsibility for both parts of this SHS Campus project.

(5) Public safety

Because the public infrastructure will be serving the SHS campus, SHS has added incentive to make sure that such improvements will protect members of the public utilizing the SHS facilities. In addition, public safety is enhanced during construction by the uniformity of construction zone management practices that will yield a safer environment for the workers, drivers and pedestrians.

(6) Market conditions

Due to the current financial instability of many construction contractors, contracting with SHS to provide the infrastructure reduces the City's risk, because of the financial stability and strength of SHS. Contracting with SHS for the infrastructure shifts to SHS the risk of assessing and selecting qualified construction contractors to complete the infrastructure on schedule. Because the health care industry is less affected by the current adverse economic conditions, SHS will provide insulation to the City against the financial failure of construction contractors.

(8) Funding sources.

As discussed above, the City has limited funds for public improvements. The City and SHS entered into a Development Agreement, which contains provisions for infrastructure to be funded through tax increment financing. SHS's willingness to pay the entire cost of the infrastructure without any assurance of full reimbursement from the City is based, in part, on SHS's ability to control its construction. As a result, the City's avoidance of putting its general funds at risk for payment of the infrastructure will be possible only if the SHS contract to provide the infrastructure is exempted.

L. Additional findings concerning the application of ORS 279C.335(2)(a):

It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts.

The proposed campus and mixed use development in Lebanon would never have come about without the substantial private investment and associated risk undertaken by SHS. Because this is a unique project that would not have come about but for SHS and the public-private partnership embodied in the Development Agreement, market conditions and the awarding of future contracts will not be negatively impacted by the exemption. In fact, market conditions will likely be impacted in a positive manner due to the number of subcontractors selected to work on the project through the SHS competitive bidding process.

SHS will procure all infrastructure construction contractors by advertising for bids in the same manner and process as the City would use if it were not exempting this project from the City's public works requirements. SHS will seek a minimum of five qualified bidders, three of whom may be contractors selected by the City to bid on the work. SHS will bid the work in a format consistent with the current ODOT/APWA Oregon Standard Specifications for Construction and the City's standard practice using contract forms for public works construction which are also compatible with ODOT/APWA Standard Specifications for Construction. The bid specifications will require all contractors to pay the prevailing wage for all labor. SHS will use a typical construction industry competitive sealed bid process, with each bid opened in the presence of a representative of both SHS and the City. SHS will provide the City with a copy of each bid. Each bid shall be on the bidder's letterhead and signed by the bidding party.

M. Additional findings concerning the application of ORS 279C.335(2)(b)

The awarding of public improvement contracts under the exemption will likely result in substantial cost savings to the contracting agency.

The awarding of the public improvement contracts to SHS will result in substantial cost savings to the City in a number of ways. One of the significant costs of public improvement projects is preparation of bid documents and the administrative costs of overseeing both the bid and construction process. SHS will be assuming the burden and expense of managing the bidding and construction of the infrastructure. By delegating this function to SHS, the City saves important staff time and resources. SHS will not charge a fee for its construction management, nor will SHS seek reimbursement for any fee charged by any construction management firm hired by SHS. In addition, SHS has incentive to minimize costs, because SHS runs the risk of not recovering any costs that exceed the proceeds from the tax increment financing. To the degree that SHS can implement value engineering and minimize costs, those cost savings will be passed along to the City. To the extent the cost exceeds the tax increment funds allocated to the project, the excess will be cost savings to the City. The costs will also be minimized due to SHS's ability to utilize economies of scale in both materials and labor, and to avoid duplicating start-up and management costs if the public and private

improvements were handled as two separate projects. Finally, allowing SHS to control the entire construction process ensures the project will be completed in a timely fashion related to the completion of the SHS campus, and eliminates the risk of cost overruns and financial liability if the project were to fall behind schedule or otherwise encounter unforeseen problems.

N. Based upon the forgoing, the City finds that the proposed exemption shall be granted, with those certain conditions which are stated as the requirements of the Economic Development Agreement

Section 2. Based upon the findings contained herein, the City Council does approve and grant an exemption from public bidding requirements of Oregon law pursuant to the requirements of ORS 279C.335 pursuant to the terms of the Economic Development Agreement attached as Exhibit "A" and approved by the City Council and the Urban Renewal Agency on April 8, 2009.

Section 3. This ordinance shall become effective thirty days after its passage by the Lebanon City Council.

4 Passed by the Lebanon City Council on this 8th day of April, 2009 by a vote of 4 for and 0 against.

CITY COUNCIL OF LEBANON, OREGON



Kenneth I. Toomb, Mayor
Bob Elliott, Council President

ATTEST:


Linda Kaser, City Clerk/Recorder

EXHIBIT A - Ordinance Granting Exemption to ORS279C.335 for Public Improvements Constructed by SHS in the City of Lebanon

DRAFT FINDINGS

1. On the 8th day of April , 2009, the City of Lebanon (the "City"), the Urban Renewal Agency of the City of Lebanon (the "Agency") and Samaritan Health Services, Inc. ("SHS"), entered into an economic development agreement (the "Agreement), a copy of which is attached hereto as Exhibit "A", pursuant to the provisions of ORS 94.504 through ORS 94.528. The Agreement provides for the performance of certain duties and the assumption of certain responsibilities by each of the parties to the agreement.
2. Among the duties and responsibilities of the Agreement are the construction of certain infrastructural public improvements, including without limitation, the construction of water and wastewater facilities, roadways and other improvements which will be ultimately maintained by the City. A listing of such projects is attached to the Agreement. The City adopts the recitals of the Agreement as findings herein.
3. Neither the Agency nor the City currently have financial resources available to finance the construction of the public improvements required by the Agreement. Consequently, the parties have agreed that SHS shall finance and construct the public improvements required by the Agreement. In return, as funds become available to the Agency and/or the City, the agreement provides for certain repayment terms to SHS for the construction of the public improvements.
4. It is in the best interests of the people of the City of Lebanon that the projects, including the construction of private improvements for a medical school to be located in the City of Lebanon. The project will become the first medical school to be founded or located within the state of Oregon in many years. Additionally, the construction of the private improvements, which require the supporting public improvements, is in the best interest of the people of the City to encourage economic development within the City and the Urban Renewal Area. Without entering into the Agreement, the construction of public improvements and infrastructure would be financially impossible for the City to construct within the foreseeable future.
5. The Agreement provides that SHS will enter into agreements for the construction of the public infrastructure. The Agreement further provides that All Infrastructure Projects will be subject to ORS 279C.800 et. seq. (Oregon Prevailing Wage Law). SHS will be responsible for compliance with and reporting under the Oregon Prevailing Wage Law and its implementing rules. SHS will bid construction of the public improvement portion of the projects in the same manner as the City would if the City were doing the design and construction management. Therefore, it is unlikely that the exemption sought herein will encourage favoritism in the awarding of the required public contracts, nor will this requirement substantially diminish competition for the awarding public improvement contracts.
6. It is reasonable that the construction of the public improvements, as required by the Agreement, as one project, rather than constructing elements of the complete project over time, will result in substantial cost savings for the public and the City.

7. The bidding process used by SHS in the construction of the public improvements listed in the Agreement makes it unlikely that an exemption will encourage favoritism in the awarding of public improvement contracts, or substantially diminish competition for public improvement contracts. As indicated above, SHS will use a bidding process that closely resembles the process that would be used by the City.

8. A major feature of this agreement will result in SHS procuring engineering services for the designing of this project. Due to budgetary restraints, the City lacks sufficient personnel to provide in-house engineering services to support this construction project at this time or in the foreseeable future. This project includes designing a system for both public and private improvements. By including the combining of the design of public and private portions under one design contract, the use of the procurement of engineering services by SHS rather than by the use of the City methods of procurement will save both time and costs on the design and bidding portion of the project. Additionally, the City will save funds by the provisions of the agreement which call for having SHS waive the design fee for the public improvement portion of the project. The project will be completed faster with an economics of scale by allowing this exemption, particularly by allowing the procurement of engineering services by SHS.

9. ORS 279C.335 allows the Contract Review Board, which is the Lebanon City Council, to exempt projects from the requirements of the public bidding generally required for the construction of public improvements under certain conditions and upon the making of certain findings. The local contract review board has considered the request of the contracting agency.

10. Notice of the public hearing of April 8, 2009 has been published in at least one trade newspaper of general statewide circulation a minimum of 14 days before the hearing. Copies of these draft findings have been available to the public as required by ORS 279C.335(5).

The City Council additionally makes the following specific findings with respect to this request:

Findings concerning the application of ORS 279C.330

(1) Operational, budget and financial data

The City has limited funds available for constructing new public improvements. As discussed in the findings related to ORS 279C.335(2)(b), allowing SHS to construct the public improvements will result in significant cost savings to the City. From an operational perspective, it is critical that the public improvement projects be completed in conjunction with the private improvements on the SHS campus, because the public infrastructure is designed to ensure that the impacts of private improvements are mitigated and that public transportation and utility facilities adequately serve the new

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Additional findings concerning the application of ORS 279C.335 (2)(a):

It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts.

The proposed campus and mixed use development in Lebanon would never have come about without the substantial private investment and associated risk undertaken by SHS. Because this is a unique project that would not have come about but for SHS and the public-private partnership embodied in the Development Agreement, market conditions and the awarding of future contracts will not be negatively impacted by the exemption. In fact, market conditions will likely be impacted in a positive manner due to the number of subcontractors selected to work on the project through the SHS competitive bidding process.

SHS will procure all infrastructure construction contractors by advertising for bids in the same manner and process as the City would use if it were not exempting this project from the City's public works requirements. SHS will seek a minimum of five qualified bidders, three of whom may be contractors selected by the City to bid on the work. SHS will bid the work in a format consistent with the current ODOT/APWA Oregon Standard Specifications for Construction and the City's standard practice using contract forms for public works construction which are also compatible with ODOT/APWA Standard Specifications for Construction. The bid specifications will require all contractors to pay the prevailing wage for all labor. SHS will use a typical construction industry competitive sealed bid process, with each bid opened in the presence of a representative

of both SHS and the City. SHS will provide the City with a copy of each bid. Each bid shall be on the bidder's letterhead and signed by the bidding party.

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Based upon the forgoing, the City finds that the proposed exemption shall be granted, with those certain conditions which include the requirements of the Economic Development Agreement