

RESOLUTION NO. _____

A RESOLUTION GRANTING AN EXEMPTION FROM COMPETITIVE SELECTION REQUIREMENTS FOR A PERSONAL SERVICES CONTRACT RELATING TO DEVELOPER SERVICES AND DEVELOPER'S SELECTION OF GENERAL CONTRACTOR FOR CONSTRUCTION OF A PUBLIC PARKING FACILITY; AND APPROVING FINDINGS RELATING THERETO.

The City Council of the City of Eugene finds that:

- A.** The implementation strategies and policies set forth in the Downtown Plan, the Growth Management Policies and the Goals and Objectives from the Riverfront Urban Renewal District Plan (the "Implementation Strategies and Policies") support downtown development that enhances the urban qualities of density, vitality, livability and diversity. The Implementation Strategies and Policies recognize the advantage of public/private development opportunities in achieving the vision of an active, vital growing downtown, facilitating dense development in the area of the Wayne Morse Federal Courthouse ("Courthouse") and constructing a new parking facility that supports the east side of downtown and the new Courthouse district.
- B.** Broadway & High Associates, LLC owns approximately one-half of the city block located between 8th and Broadway and Mill and High Streets. The Oregonians Federal Credit Union (the "Credit Union") owns approximately one-quarter of the block and the City will acquire the remaining one-quarter block for the purposes of participating in this project. Broadway & High Associates, LLC and Gerding/Edlen Development Company (collectively, "B&H") have entered into a contract for development of this property, as owner and developer, respectively. B&H has entered into certain agreements with Whole Foods Market ("Whole Foods") and the Credit Union regarding the development of the entire block.
- C.** B&H's development plans include two projects: the construction of a grocery store with two levels of parking intended for private ownership and use (the "Whole Foods Project") and the construction of a four level, 260 space public parking structure that includes, on the ground level, a small publicly-owned commercial space and a second commercial space that will be privately owned and occupied by the Credit Union (the "Parking Project").
- D.** The Whole Foods Project and the Parking Project are consistent with the Implementation Strategies and Policies.
- E.** B&H has proposed, and the City of Eugene ("City") has agreed, that the City will participate in the development of the Parking Project. After construction of the Parking Project, B&H

shall establish condominium units and City shall purchase the Parking Facility (which shall be comprised of the parking facility, including a ground level commercial space, but not the space intended for use by the Credit Union), for approximately \$6,700,000.

- F. B&H proposes to act as the developer of the Parking Project and provide necessary developer-related services including, but not limited to, contracting for design services; conducting environmental investigations of the area in and around the Parking Project; obtaining all necessary government approvals and permits necessary for construction; selecting and contracting with a general contractor to construct the Parking Project; creating condominium units; post-construction, transferring ownership of the Parking Facility to the City; and providing such other services as may be described in the Agreement for the Disposition and Development of Property between the City of Eugene and B&H (the “DDA”). The Parking Project is scheduled to be completed by the fall of 2007.
- G. B&H has indicated to City that B&H wishes to select and enter into two separate construction contracts with Lease Crutcher Lewis, LLC (“LCL”) as the general contractor for both the Whole Foods Project and the Parking Project.
- H. It is the policy of the City to utilize public contracting practices and methods to maximize the efficient use of public resources and purchasing power of public funds. Absent particular circumstances, such rules and laws require the City to use a competitive selection process to select a developer to provide the types of services offered by B&H and to select and award a contract to a general contractor.
- I. The particular circumstances of the Parking Project, including the development proposal presented by B&H involving both the Whole Foods Project and the Parking Project (together, the “East Broadway Development Projects”), the needed level of experience and the current schedule for completion of the Parking Facility, do not allow for such a competitive selection process. Instead, the City Council, after considering the attached findings, wishes to directly procure developer-related services from B&H and to further authorize B&H to directly select LCL as the general contractor for the Parking Project, as set forth in the DDA.

NOW, THEREFORE,

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EUGENE, a
Municipal Corporation of the State of Oregon, as follows:**

Section 1. After considering and approving the findings attached to this resolution as Exhibit 1, the East Broadway Development Projects Disposition and Development Agreement between the City of Eugene and Gerding/Edlen Development Company, LLC and Broadway & High Associates, LLC (the “DDA”), which includes the direct selection of Lease Crutcher Lewis, LLC as the general contractor for the Parking Project, as defined herein, is specifically declared exempt from the state and city competitive selection requirements.

Section 2. This Resolution shall become effective immediately upon its adoption.

The foregoing Resolution adopted the ____ day of _____, 2006.

City Recorder

RESOLUTION NO. _____

Exhibit 1: Exemption from Competitive Selection - Findings

The City wishes to execute the DDA on or before June 30, 2006. In order to proceed with the direct procurement of B&H's developer-related services and authorize B&H to directly select LCL as the general contractor for the Parking Project, the City must consider and adopt certain findings and grant exemptions from the competitive selection process. The City may grant an exemption upon finding that a direct procurement (i) is unlikely to encourage favoritism or substantially diminish competition; (ii) is likely to result in substantial cost savings for the City or the public; and (iii) will otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with the competitive selection process. ORS 279B.085, ORS 279C.335, EC 2.1425, and City of Eugene Public Contract Administrative Rule R-1415, subsection 3.1.1.

1. The exemption of the personal services contract, the DDA, is unlikely to encourage favoritism or substantially diminish competition because of the unique nature of the East Broadway Development Projects and the conceptual plans and designs proposed by B&H. Even if the City were to use a competitive selection process, it is unlikely that other proposers would be able to provide a similar plan for development of the area because of B&H's ownership and control of the majority of the site targeted for development, existing contracts with Whole Foods and the Credit Union and B&H's unique plans for and familiarity with the entire development site. Similarly, authorizing B&H to directly select LCL as the general contractor for the Parking Project, including the Parking Facility, is unlikely to encourage favoritism or substantially diminish competition because of LCL's existing relationship with B&H and its existing familiarity with both projects. If the exemption is granted, B&H and LCL shall comply with all state and local laws relating to the development of the Parking Project as a public improvement and a public work.

2. The exemption of the personal services contract (the DDA) which includes authorization for B&H to directly select LCL as the general contractor for the Parking Project, is likely to result in substantial cost savings for the City. The City will be able to benefit from the efficiencies resulting from the familiarity of both B&H and LCL with the project site. The City is likely to benefit from the avoided time delays and costs associated with first a competitive selection process and then ramp-up time. As stated above, because of the unique characteristics of B&H, the City would not have the opportunity to participate in the development of the Parking Project absent B&H's involvement. If the City does not allow for an exemption from competitive selection for a general contractor, the current pricing for the Parking Project, including the Parking Facility, will increase. The following additional information in support of the cost-savings findings is provided in conjunction with the requirements of ORS 279C.330:
 - a. Operational, budget and financial data – Because of the unique nature of the East Broadway Development Projects, including B&H's ownership of the majority of the

Whole Foods Project property and LCL's role as general contractor for the construction of the Whole Foods Project and the Parking Project, the City is obtaining needed parking spaces within the downtown area at a lower cost than it would be able to obtain the parking spaces otherwise.

- b. Value engineering – LCL has already been involved in studying the different aspects of the Parking Project, including determining the price and value of the Parking Facility. Granting the exemption for the direct selection of LCL as the general contractor allows the City to benefit from LCL's past experience in value engineering on the project and to avoid the inefficiency, including cost increases, associated with bringing in a new general contractor.
- c. Market conditions – The construction industry is beginning to enter into its busy season when the availability of labor will decrease and the cost of both labor and materials will increase. The exemption for the direct selection of LCL ensures the City will be able to use LCL as the general contractor for the Parking Facility, allows the City to avoid the time delays associated with the competitive selection process, and allows the City to avoid such increased costs.
- d. Technical complexity – The construction of the Parking Facility, i.e., a multi-story, 260 space concrete parking structure that includes two commercial spaces, is a technically complex project and requires the contractor to understand the project and handle such technical complexities to construct the structure properly and within the required maximum cost and scheduling parameters. LCL has such familiarity and the requisite experience to complete the project on time and on budget, as further detailed below.
- e. Specialized expertise required – Because the construction of the Parking Facility is a technically complex project with a set completion date, the contractor must have sufficient specialized expertise in constructing such structures. LCL has successfully completed projects of similar size, complexity, type and cost and therefore has the specialized expertise necessary to act as the general contractor on the Parking Facility.
- f. Public safety – There are no public safety issues or findings associated with the exemptions for the Parking Project.
- g. Funding sources – To the extent possible, the City of Eugene Riverfront Urban Renewal Agency (the "Agency"), through an intergovernmental agreement between the City and the Agency, will pay for the majority of the cost of the Parking Facility and the remaining amount will be paid for by use of other city funds. These funds committed by the City and the Agency to the project will be included in the Fiscal Year 2005/2006 budget.

