

EXHIBIT A**COLUMBIA BOULEVARD WASTEWATER TREATMENT PLANT WASH WATER AND
HYPOCHLORITE TUNNEL PIPING REPLACEMENT PROJECT****FACTUAL FINDINGS FOR
PROPOSED EXEMPTION FROM COMPETITIVE BIDDING**

The Portland Bureau of Environmental Services (“BES”) and the City of Portland Procurement Services (“Procurement Services”) recommend that the Portland City Council (“Council”) approve the following factual findings, including the Additional Findings (as hereinafter defined) (collectively, the “Findings”) to exempt the Columbia Boulevard Wastewater Treatment Plant (“CBWTP” or the “Plant”) Wash Water and Hypochlorite Piping Replacement Project (the “Project”) from the competitive bidding requirements of ORS Chapter 279C and to approve the Fixed-Price Design-Build (“FPDB”) as the alternative contracting method for the selection of a Design/Builder (“DB Contractor”) for the Project. Capitalized terms used herein have the meaning ascribed to them in the Ordinance.

I. BACKGROUND

BES owns and operates the CBWTP, which protects public health, safety, and the environment by treating municipal wastewater and stormwater from the City of Portland. The CBWTP, which was originally constructed in 1952, is located on North Columbia Boulevard in the northern part of Portland. The CBWTP treats an annual average flow of 76 million gallons per day (MGD) and is rated to treat peak hourly flows of 450 MGD.

Various critical plant processes and maintenance activities rely daily on plant (wash) water to meet service demands, including biosolids dewatering, seal water, chlorination makeup water and tank washdowns. The plant has a projected peak wash water demand of approximately 6 MGD. The wash water lines are mainly routed below grade, in the plant’s utility tunnels. The wash water lines were some of the earliest lines installed in these tunnels. Since the first of these lines were installed nearly 40 years ago, the tunnels have filled with piping and equipment for various treatment processes, providing limited access to the original pipes. These primary wash water lines are severely corroded and at risk of failure.

The plant uses sodium hypochlorite to disinfect plant effluent, assist in biological system control, and to provide odor control for different process areas. The chemical is essential in meeting the City’s discharge permit. The sodium hypochlorite pipe networks consist of approximately 5200 linear feet of single wall plastic piping and approximately 2000 linear feet of parallel double containment plastic piping, the latter of which is used in overhead sections throughout the tunnels. The most recent hypochlorite lines were installed in 2004 and due to the severe nature of the chemical, the plastic piping has started to leak at the glued joints and the piping needs replacement. The rate of failures has increased in the past years where spot repairs are no longer adequate.

Regular capital investments are required to maintain system functions, respond to changing regulatory requirements, accommodate service area demand, and make improvements to

watershed health. Due to the two pipelines' co-location, same single division of labor, replacement needs, and constructability concerns, they are combined within this single project.

This project will address the following wash water line deficiencies:

- Severe corrosion of the piping.
- Corrosion of wash water line valves.
- Poor access to valves making operations and maintenance difficult.
- Complex flow configuration in the tunnels from previous system expansions making operational changes challenging.
- Limited expansion of future, wash water dependent processes.

This project will address the following hypochlorite line deficiencies:

- Carrier (inner) pipes leaks in the double containment sections that fill the outer containment piping and expedite failure of the pipe system's joints.
- Leaks at the single wall pipe's threaded fittings cause hypochlorite to drip onto other piping and equipment.
- Old, brittle piping that is hard to repair.
- Hard to access degassing valves that cannot be easily maintained and allow hypochlorite to escape the system and spray/drip onto other piping and equipment.

Both of these systems are necessary for continued Plant operations of the vital plant processes that treat the city's wastewater. Because the Plant continuously receives wastewater 24 hours a day, 365 days per year, the Project must be designed in a way that the pipe replacements can be sequenced and constructed in a manner that maintains the Plant's ability to continuously provide wash water and sodium hypochlorite during Project's construction. Due to field access issues, concerns with maintenance of plant operations, most of the project risks lie with constructability issues that cannot be mitigated by more extensive design. The standard design-bid-build approach is anticipated to yield a large number of field fitting issues and change orders. For these reasons, it has been determined that a FPDB contracting method is most appropriate to minimize risks of cost overruns, schedule delays, claims, and workmanship issues, and ensure that the City receives the best value.

Based on the Findings, using a FPDB contracting method would support successful completion of the Project in the most efficient and cost-effective manner to achieve community and BES goals. Accordingly, the City would benefit from having this Project exempted from the competitive bidding requirements of ORS 279C. Council is the Local Contract Review Board with the authority to exempt certain public contracts from the competitive bidding requirements of ORS 279C if it is able to approve certain findings justifying an alternative approach.

With the present action, Council will exempt the Project from the competitive bidding requirements of ORS 279C and authorize the FPDB contracting method. The factual bases to support the required findings, including the Additional Findings are set forth below.

II. NO FAVORITISM OR DIMINISHED COMPETITION

ORS 279C.335 (2) requires that Council make certain findings as a part of exempting public contracts or classes of public contracts from competitive bidding. ORS 279C.335 (2) (a) requires Council to make a finding that, “[i]t is unlikely that such an exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts.” This finding is appropriate for the Project and is supported by the following facts.

The Design Build Contractor (“DB Contractor”) will be selected through a competitive two-step selection process, including a Request for Qualifications (“RFQ”), followed by a Request for Proposals (“RFP”). Both RFQ and RFP for a FPDB will be advertised in Portland’s Daily Journal of Commerce and on the City’s Online Procurement Center at least three weeks in advance of the deadline set for submitting responses to each request. The proposals will be evaluated by a selection committee based on criteria such as proposed cost, project approach, project team experience, technical expertise, key personnel and staffing, diversity program, safety record, and price. The selection committee will review and rank the written proposals; hold interviews if necessary; and recommend a DB Contractor for the FPDB contract award. As a result of the two-step competitive selection process, the use of an alternative contracting method for the Project is unlikely to encourage favoritism in the awarding of public contracts.

The alternative process can result in even broader participation and greater competition than the traditional bidding process. All qualified general contractors and construction management firms, hereafter called Construction Contractor(s), will have an opportunity to partner with or contract with design firms, hereafter called Designer(s), and compete. Additionally, firms that would not find this Project advantageous under a Design-Bid-Build delivery approach for financial, staffing, and/or constructability reasons may participate in the proposal process. This includes firms that specialize in design-build projects, firms which have both design and construction divisions, or design and construction firms having successfully partnered before. Structuring the Project under a FPDB contract which includes both the Designer and Construction Contractor at project onset to develop the project approach allows the team to collaboratively determine cost effective design approaches and construction methods on which the Agreement will be based. This may make the Project more attractive to qualified Construction Contractors because of the opportunity to provide useful constructability input and feedback early on in the Project’s design process, which can reduce their risk in undertaking the Project. Therefore, competition will not be diminished, and may even be enhanced by advertising the Project through a FPDB process.

III. SUBSTANTIAL COST SAVINGS

ORS 279C.335 (2) requires that Council make certain findings as part of exempting public contracts or classes of public contracts from competitive bidding. ORS 279C.335 (2) (b) requires Council to find that “[t]he awarding of public improvement contracts under the exemption will result in substantial cost savings and other substantial benefits to the public contracting agency.” This finding is appropriate for the Project and is supported by the following facts.

Structuring the Project under a FPDB contract which allows the DB Contractor team to collaboratively determine cost effective design approaches and construction methods on which the Agreement will be based. The FPDB contracting method therefore allows both the Designer and Construction Contractor to collaborate at the proposal stage not only to provide constructability

and value-engineering ideas to the City, but to evaluate innovative concepts to reduce the overall cost of the Project. This can result in more practical, constructible, and economic design solutions while maintaining the Owner's intent's integrity. Because the proposing DB Contractors are made up of teams of Designers and Construction Contractors, constructability constraints can be worked into the Statement of Qualifications' approaches and some of the constructability risk can be dealt with prior to preparing a price for the work during the RFP stage. Reducing these risks prior to submitting proposals means that the DB Contractor may not include cost contingencies that other contractors frequently include in their bids to take account of uncertainties that are not usually resolvable during the brief bidding period under a traditional design-bid-build competitive bid process. Particularly, the corrosive nature of the hypochlorite contained in the pipes will require special qualifications for work with harmful chemical to minimize the risks of accidental release.

Additionally, the FPDB contracting process allows the DB Contractor to participate in the building permit process related to pipe supports. By including the actual means and methods with the permit applications the City will avoid delays and increased costs associated with permit acquisition while avoiding permit conditions that require prescriptive specifications for a competitively bid contract that can lead to change orders and disputes when the low bidder proposes alternate means and methods of construction.

IV. THE FACTUAL BASES TO SUPPORT THE ADDITIONAL FINDINGS

In order to declare the exemption, Council must approve additional findings in the areas set forth below (collectively, the "Additional Findings").

A. How Many Persons are Available to Bid

The alternative process can result in even broader participation and greater competition than the traditional bidding process. All qualified Construction Contractors, will have an opportunity to partner with or contract with Designers and compete. Additionally, firms that would not find this Project advantageous under a Design-Bid-Build delivery approach for financial, staffing, and/or constructability reasons may participate in the proposal process. This includes firms that specialize in design-build projects or that have both design and construction divisions. Structuring the Project under a FPDB contract that includes the both the designer and construction Contractor in the design phase allows the selected team to jointly optimize constructability and develop phasing and staging plans to efficiently perform the work with minimal disruption to Plant operations. This can reduce their respective risks during construction and make this joint contract more appealing.

B. The Construction Budget and the Projected Operating Costs for the Project

The Project will be funded by the Sewer System Operating Fund, FY17 Budget, Bureau of Environmental Services, Project Number E10567. The anticipated DB Contractor Costs are estimated at approximately \$4.0 million with a total budget of \$5.4 million for the Project. Prior to issuing the RFQ, BES will develop detailed performance criteria and constraints to include in the solicitation documents. The competitive bid will provide an incentive for the DB Contractor to carefully consider the means and methods of construction as well as cost saving

measures that they can accomplish through material selection, construction phasing, and scheduling to minimize Plant operation disruptions. By utilizing the FPDB delivery approach, risk to the construction budget, and thus the risk to the overall project budget, is lessened.

The CBWTP Operations and Maintenance budget is not expected to change as a result of the Project, though emergency repairs will be lessened. The new wash water line will include new valves and a more simplistic pipe network that will make operations a little easier but the time savings will be minimal. The new hypochlorite lines will include new piping and valves that are routed/located in a way that makes high maintenance aspects of the system easier to maintain but the time savings will be nominal. The large benefit comes from the new system's reliability and low risk of failure.

C. Public Benefits That May Result from Granting the Exemption

There are multiple public benefits in connection with exempting the Project. The FPDB process is critical to facilitating this constructability-driven Project without interrupting the ability of the Plant to provide wash water and sodium hypochlorite to different process areas. With collaboration between the Designer and Construction Contractor from project onset, both team member's participation and feedback will be invaluable in determining design features that are compatible with effective construction means and methods which minimize impacts to plant processes. The FBDB method is anticipated to provide assurance of final completion, along with assurance on the cost of the Project. With a guaranteed final completion and accelerated replacements, the public benefits from a lower risk of water quality issues related to impaired plant operations both during construction and due to system failures.

The alternative contracting method also allows the City opportunities to monitor the DB Contractor's outreach and utilization of D/M/W/ESB subcontractors during construction and to achieve Workforce and Apprentice equity goals with the Project.

D. Whether Value Engineering Techniques May Decrease the Cost of the Project

Value engineering is defined as a process by which multiple subject experts evaluate and propose the most cost effective ways to deliver a project without reducing project quality and functionality. Because both Designer and Construction Contractor will form a single team who has agreed to a maximum price and certain schedule, value engineering will be continuous and optimized on the project. In that way, the Construction Contractor's suggestions are vetted with the Designer and incorporated into the proposal, rather than after a design is completed and a bid price proposed. Changes after a project is competitively bid can result in project delays, design revisions, and higher costs for the City. Due to the nature of this project, a high number of change orders are anticipated under a standard design-bid-build approach.

Because the Designer and Construction Contractor work as a team, addressing changes during construction will be effectively dealt with between these partners, rather than through the City, as long as there are no changed conditions or the changes are approved and within the Owner's Allowance. Utilizing the FPDB process with both the Designer and Construction Contractor on one project team at the source of the Agreement will allow the City to realize the full benefits of value engineering while minimizing administrative costs.

E. The Cost and Availability of Specialized Expertise Required for the Project

Through the selection process, the City will have an opportunity to evaluate and select the DB Contractor with the specialized expertise required for the Project. The cost for such specialized expertise is included in the overall Project budget. The Project requires specialized expertise to implement a high-quality Project, specifically, in industrial facilities with essential process piping design and replacements in constrained spaces while the plant remains operational.

The FPDB contracting method provides the best opportunity for the City to allocate additional weight in the selection process to design/builders with a high degree of specialized expertise necessary for the particular requirements of the Project.

F. Likely Increases in Public Safety

The FPDB contracting method allows a DB Contractor's actual safety performance on similar projects to be considered as selection criteria. It also permits the City to work closely with the Construction Contractor during the design phase of the Project to ensure that the construction process provides appropriate safety measures, that the Construction Contractor understands the City's safety concerns and that the Construction Contractor will take appropriate steps to address them. Because the Plant is an actively operating wastewater treatment facility that must remain accessible for operations and maintenance activities by City staff at all times, it is imperative that the Construction Contractor maintain good safety practices within the construction work zone.

G. Whether Granting the Exemption May Reduce Risks to the City related to the Project

Using the FPDB contracting method brings the Construction Contractor and the Designer together as a single team, prior to the design phase of the Project. This enables the Construction Contractor to develop a comprehensive construction schedule and plan before initiating the work with input from the Project Team. The interaction between the Construction Contractor and the rest of the Project Team during the design process makes it far more likely that the final design will take into account any potential construction problems (i.e. the electrical banks and existing equipment sitting directly under the pipes) and reduce the risk of damaging plant assets. And because the Designer and Construction Contractor have chosen to work together as a team rather than being selected (and managed) individually by the Project Team's City staff members, it is more likely that a collaborative and flexible working relationship develops among the Project Team rather than an adversarial one.

Also, the structure of the FPDB contract allows design risk to be kept with the DB Contractor through construction, whereas it would normally be transferred to the City after the design phase is complete. This method's collaborative relationship between the Designer and Construction Contractor allows the DB Contractor to reduce their construction risk during design while not transferring it to the City during construction and thus also reducing the risk to the City. This approach offers the greatest risk reduction, schedule compliance, and ease of construction. The Project budget and schedule is likely to be more stable for this project as a

result of this approach and it is less likely that there will be Project overruns, compared to using a Design-Bid-Build approach.

H. Whether Granting the Exemption will Affect the Funding Sources for the Project

The overall Project budget is \$5.4 million and includes costs for a Design Builder (combination of Professional, Technical and Expert (PTE) services and construction services), internal and administrative costs, and contingency. The Project will be funded by the Sewer System Operating Fund. The exemption will not impact Project funding nor funding source.

The contract cost is established before design with the FPDB method. Because it will be competitively bid and bid earlier than it would be with a Design-Bid-Build approach, a well-defined scope will help facilitate accurate and reasonable proposed costs and remove contract cost uncertainty near the beginning of the Project. Though it may seem that a Design-Bid-Build approach would have less risk at the point that the construction contract is established, for this specific Project, most design criteria are well understood in advance, with the exceptions of exact pipe routing, construction phasing, and temporary facilities. Because the selected Construction Contractor will be working with the Designer, providing constructability input, both on the proposal for the contract and then during the design, there is more certainty for the construction of the project than there would be after the design under a Design-Bid-Build approach. This means less risk for both the City and the Construction Contractor and thus more accurate bids with fewer costly change orders. And if the highest scoring proposers do not have bids within what the project budget has established for the contract, it can be dealt with and adjustments can be made to scope or budget before the project is partway complete.

I. Whether Granting the Exemption will Better Enable the City to Control the Impact That Market Conditions May Have on the Cost of and Time Necessary to Complete the Project

The FPDB contracting method for the Project would reach the same or greater market of Construction Contractors as the traditional low bid process. Considering the location of the Project and major component of work, the RFP will reach the regional marketplace. The RFP will also require a response addressing the latest market innovations in pipe materials, sequencing and in construction means and methods. Selection of the DB Contractor will be made by a committee that will evaluate qualifications, expertise, approach, and ability to deliver on the City's Project criteria and expectations, among other things, in addition to cost to ensure the best combination to achieve the Project objectives.

J. Whether Granting the Exemption Will Better Enable the City to Address the Size and Technical Complexity of the Project

Special technical complexities of the Project include the replacement of continuously operating wash water and hypochlorite lines, both in constrained areas where exact routing, especially for the wash water line is related to constructability rather than function. Routing of the hypochlorite lines are largely in place, however pipe materials and pipe supports are subject to durability and installation cost considerations. Because of the need for continuous operation of the washwater line, the FPDB contracting method will allow the DB Contractor to proactively

be involved in the developing cost effective means and methods to minimize plant operation disruption. A large portion of the cost on the hypochlorite line replacement is related to the type of material selected, where suitable pipe materials present different constructability benefits and challenges, including availability, pipe supports modifications, and joining methods. The City will benefit from having the Construction Contractor and Designer tailor the piping design to current market pricing for the most effective combination of pipe material and pipe supports, while taking permitting considerations into account. Early involvement during the design phase and early procurement of piping materials and equipment will allow the Project Team and the DB Contractor to actively work together to find solutions to complete the Project in the most efficient manner possible.

K. Whether the Project Involves New Construction or Renovates an Existing Structure.

The Project involves renovations to an existing structure.

L. Whether the Project Will be Occupied or Unoccupied During Construction

The Project area will be occupied by Plant staff routinely throughout the Project as they need to access various process lines and equipment for Plant maintenance and operations.

M. Whether the Project Will Require a Single Phase or Multiple Phases of Construction Work to Address Specific Project Conditions.

The Project will be completed in a single phase once construction commences. It is necessary to carefully consider the project approach, including means and methods of construction and possible phasing options during the selection of the DB Contractor.

N. Whether the City Has or Will Retain Personnel, Consultants and Legal Counsel that Have Necessary Expertise and Substantial Experience in Alternative Contracting Methods to Assist in Developing the Alternative Contracting Method and to Help Negotiate, Administer and Enforce the Terms of the Project Contract

City personnel have the expertise and experience necessary to effectively implement the FPDB contracting method and to negotiate, administer and enforce the terms of the resultant Project Contract. Additionally, an on-call Consultant with expertise in the Design-Build contracting method is scoped to provide support to the City in the development of the RFP criteria and contract terms as well as review the draft Design-Build contract.