

## EXHIBIT A

### SW CAPITOL HWY: MULTNOMAH VILLAGE – WEST PORTLAND TRANSPORTATION, STORMWATER AND WATER MAIN PROJECT

#### FACTUAL FINDINGS FOR PROPOSED EXEMPTION FROM COMPETITIVE BIDDING

The Portland Bureau of Transportation (“PBOT”), Portland Bureau of Environmental Services (“BES”), Portland Water Bureau (“PWB”) and Portland Office of Management and Finance - Procurement Services (“Procurement”) 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 SW Capitol Highway: Multnomah Village – West Portland Transportation, Stormwater and Water Main Project (the “Project”) from the competitive bidding requirements of ORS Chapter 279C and to approve the use of an alternative contracting method, specifically Construction Manager/General Contractor (CM/GC), for the selection of a contracting team for the construction of the Project. Capitalized terms used herein have the meaning ascribed to them in the Ordinance.

#### I. BACKGROUND

The SW Capitol Highway: Multnomah Village – West Portland Project is a joint PBOT/BES/ PWB project that will install pedestrian, bicycle, stormwater management and water main improvements on SW Capitol Highway between SW Garden Home Road and SW Taylors Ferry Road, and on limited segments of certain adjacent streets. The Southwest Portland community has advocated for the Project for over 25 years, and infrastructure deficiencies have existed along the Project corridor since before the City of Portland annexed the area in the mid-20th century. Multnomah County completed the concrete highway in 1916, improving regional access and opening surrounding lands to residential and commercial development. The City of Portland annexed the northern portion of the Project corridor in 1950 and the southern portion in 1978. While the roadway has been repaved several times, virtually no pedestrian, bicycle or stormwater improvements have been provided on this particular segment of Capitol Highway since its initial completion in 1916.

In 1996, PBOT completed the *Capitol Highway Plan* which addressed transportation needs along the full length of SW Capitol Highway from its northern terminus at SW Barbur Boulevard to its southern transition to SW 49th Avenue and SW Kerr Parkway near the City boundary. The *Capitol Highway Plan* divided the roadway into seven functional segments and 23 distinct projects with priority levels assigned. Ultimately, projects in the central areas of Multnomah Village and Hillsdale were chosen for implementation and PBOT completed them in the ensuing decade. The Project corridor remained unaddressed.

In 2009, PBOT secured federal funds to develop a conceptual design for the Project corridor. Completed in 2011, the *SW Capitol Highway Plan Refinement Report* engaged the public, developed a preferred cross section, performed geotechnical investigations, identified priority trees for preservation, proposed stormwater solutions, and resulted in a complete design concept with a cost estimate of over \$17 million. At that point, neither the City, region, State nor Federal government had monies available to proceed with design engineering and construction.

In 2016, BES and PBOT partnered in a design exercise that attempted to reduce the cost of improving the Project corridor. Entitled, *Capitol Highway Corridor Stormwater Concept Design*, the report proposed both reducing the spatial extent of the pedestrian/bicycle improvements as well as pursuing creative stormwater management solutions such as centralized detention basins. This design effort theoretically reduced the total Project cost to between \$8 million and \$13 million, depending on which of four concepts was chosen for implementation.

Also in 2016, Portland voters approved the Fixing Our Streets (FOS) ten-cent gas tax in the May election. The ballot measure authorized \$3,310,245 million in FOS spending on the Project. When joined by a previously-approved \$4,829,843 allocation of City of Portland Transportation System Development Charges (TSDCs) and a tentative commitment of approximately \$2,000,000 each from BES and the State of Oregon, the Project had sufficient funding to reinitiate design and public involvement. PBOT worked with the community, transportation modal committees and technical staff to refine the preferred cross section. BES mobilized a design team and began refining the concepts presented in the *Capitol Highway Corridor Stormwater Concept Design*. PBOT and BES forged a joint project team in early 2017 and agreed on a project schedule. Additionally, to demonstrate the effectiveness of the FOS gas tax, PBOT's FOS Program Manager and Oversight Committee recommended that the Project be in construction in 2019 and completed in 2020.

As design engineering ensued and the Project team gained a more precise understanding of the Project's on-corridor and off-corridor improvement needs, it became clear that additional financial resources would be needed. The Oregon State Legislature and Governor affirmed the State's commitment to the project through passage of Oregon House Bill 5006, which included a \$2 million allocation to the City for SW Capitol Highway safety improvements. BES affirmed its commitment to the Project in a February 7, 2018 Director's memo, allocating \$10,500,000 in BES funds to the Project.

In the spring of 2018, PWB completed its needs analysis in the Project corridor and determined that a water main upgrade is needed on SW Capitol Highway between SW Marigold Street and SW Garden Home Road, in addition to several smaller spot improvements such as fire hydrant and regulator upgrades. The water main upgrade, from six-inch pipe to eight-inch pipe, occupies approximately 50% of the Project corridor length. PWB committed to providing funding for the water system upgrades, while relocation work in non-upgrade locations would remain a funding responsibility of PBOT and BES.

The refined Project scope and amended Project budget are now in alignment, representing over \$18 million in constructed improvements and over \$26 million in total Project costs. Both the complexity and cost of the Project place it in the realm of potential alternative contracting. The Project scope includes the following:

#### Transportation Improvements

- Sidewalk and northbound protected bike lane on east side of SW Capitol Highway between SW Brugger Street and SW Garden Home Road.
- Paved multi-use path on west side of SW Capitol Highway between SW Collins Street and SW Garden Home Road.
- Sidewalk and bike lane infill on remaining portions of SW Capitol Highway between SW Taylors Ferry Road and SW Brugger Street.
- Improved pedestrian crossings of SW Capitol Highway at SW Alice Street, SW Dolph Court, SW Carson Street and SW Garden Home Road.
- Pavement grind and overlay on SW Capitol Highway between SW Taylors Ferry Road and SW Garden Home Road.
- Sidewalk on north side of SW Multnomah Boulevard for approximately 420 feet west of SW 40<sup>th</sup> Avenue.
- Sidewalk on south side of SW Dolph Court for approximately 250 feet east of SW Capitol Highway.
- Repaving and widening of pavement section to 17 feet using shared street design on SW Alice Street between SW 42<sup>nd</sup> Avenue and SW Capitol Highway.
- Paving of the gravel street using 17-foot shared street design on SW 42<sup>nd</sup> Avenue between Woods Memorial Natural Area and SW Alice Street.

#### Stormwater Improvements

- Stormwater inlet and conveyance system on SW Capitol Highway between SW Brugger Street and SW Garden Home Road; SW Garden Home Road between SW 42<sup>nd</sup> Avenue and SW Capitol Highway; and SW 40<sup>th</sup> Avenue between SW Garden Home Road and SW Multnomah Boulevard.
- Stormwater filter manhole and inlets at intersection of SW Capitol Highway and SW Taylors Ferry Road.
- Stormwater detention facility at terminus of SW 42<sup>nd</sup> Avenue adjacent to Woods Memorial Natural Area; associated stormwater main extension from SW Capitol Highway via SW Alice Street and SW 42<sup>nd</sup> Avenue.
- In-stream enhancement of Woods Creek tributary between stormwater detention facility and Woods Creek in Woods Memorial Natural Area.
- Stormwater detention facility on City property at SW Dolph Court and SW 40<sup>th</sup> Avenue; associated stormwater main extension from SW Capitol Highway via Dolph Court.
- Stormwater detention facility on property in process of being acquired on south side of SW Multnomah Boulevard in 4200 block.

- Stormwater detention facility on north side of SW Multnomah Boulevard in 4000-4100 block.

### Water Improvements

- Water main upgrade from six-inch cast iron to eight-inch ductile iron pipe in SW Capitol Highway between SW Marigold Street and SW Garden Home Road.
- Water main upgrade in SW Carson Street between SW 42<sup>nd</sup> Avenue and SW Capitol Highway.
- Replacement, repair and/or relocation of approximately nine fire hydrants.
- Upgrade of regulator access on east side of SW Capitol Highway south of SW Marigold Street.

Ancillary construction items include utility relocation, tree cutting, clearing and grubbing, grading, retaining walls, fencing/railing, tree and vegetation planting, and other items related to the primary scope.

Based on the Findings, use of an alternative contracting method would support successful completion of the Project in the most efficient and cost-effective manner to achieve PBOT, BES, PWB and broader City goals including the City's commitment to equity in construction contracting through use of the *Community Equity and Inclusion Plan* (CEIP). The alternative contracting method for the Project is anticipated to be the Construction Manager / General Contractor (CM/GC) approach. The Project team analyzed multiple alternative contracting methods including CM/GC and design/build, but found that the CM/GC contracting method was the best fit for this Project as the schedule required the advancement of the design during this analysis. Therefore this Findings document refers specifically to CM/GC, as opposed to alternative contracting in general.

City 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 use of the CM/GC 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 part of the process 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 Contractor will be selected through a competitive Request for Proposals (RFP) process. The RFP for a CM/GC Contractor 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 the RFP. The proposals submitted in accordance with the RFP will be evaluated by a selection committee based on criteria including experience, technical expertise, key personnel qualifications and staffing, CEIP program, safety record, and percentage profit and overhead markup. The selection committee will evaluate and rank the written proposals; conduct interviews if necessary; and recommend a Contractor for the CM/GC contract award. As a result of the competitive RFP process, the use of an alternative contracting method for the Project is unlikely to encourage favoritism in the awarding of this public contract.

The CM/GC process can result in even broader participation and greater competition than the traditional bidding process. All qualified general contractors and construction management firms will have an opportunity to compete. These firms include some that may be unwilling to face the uncertainties and potential financial risks associated with bidding and contracting for construction under a traditional design-bid-build competitive bid process. Structuring the Project under a CM/GC contract that will involve the Contractor prior to completion of the final design will allow the selected firm to improve constructability, develop phasing and staging plans to most efficiently perform the work with minimal disruption to traffic and other transportation facilities, and determine effective construction methods. This may make the Project more attractive to qualified firms because of the opportunity to better understand the Project prior to providing the City with a firm price for the Project, thus reducing their pricing risk in undertaking the Project. Therefore, competition will not be diminished, and may even be enhanced by advertising the Project through a CM/GC 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 to the public contracting agency.” This finding is appropriate for the Project and is supported by the following facts.

The CM/GC contracting process affords the opportunity for the Contractor to participate during the design phase of the Project, lending its expertise, knowledge, and experience to provide feedback as to whether the Project’s proposed design is feasible within the project parameters. Similarly, this allows the Contractor to make and/or incorporate value engineering suggestions, that is, suggestions that propose alternative and less expensive ways of achieving the same result. This can result in more practical, constructible, and economic design solutions with less impact to street traffic, adjacent properties and the

environment, while maintaining the design's integrity. Participation in the design process also enables the Contractor to become more familiar with the Project features and requirements before it prepares its firm pricing for the work. This familiarity means that the Contractor may not include cost contingencies that other contractors frequently include in their bids to offset uncertainties that are not resolvable during the brief bidding period under a traditional design-bid-build competitive bid process.

The CM/GC contracting method allows the Contractor to understand and incorporate value-engineering ideas, reducing the overall cost of the Project and potentially avoiding costly change orders or disputes that could impact budget for the Project. The CM/GC Contractor would become involved between the 60% and 90% level of design completion, facilitating involvement in the final plan development and the planning of construction sequencing. Contractor involvement at this stage could allow for savings to be realized from labor and materials during construction.

The CM/GC contracting method will provide the opportunity for careful consideration of means and methods of construction as well as cost saving measures through construction phasing and sequencing which will help promote the delivery of the Project within the established budget.

#### **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 (the "Additional Findings").

##### **A. How Many Persons are Available to Bid**

The CM/GC contracting method for the Project would reach the same or greater market of construction contractors as the traditional low bid process. The high-profile nature of the Project will likely attract a strong market. Considering the size and location of the Project and major components of work, the RFP will reach the broad regional marketplace.

All qualified general contractors and construction management firms will have an opportunity to compete. These firms will likely include those that may be unwilling to face the uncertainties and potential financial risks associated with bidding and contracting for construction under a traditional design-bid-build competitive bid process. Several qualified firms in the Portland area and beyond will be able to submit proposals for this Project. Additionally, continued market interest is evident as increasing contractor submittals for a variety of infrastructure projects have been observed in 2018.

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

The Project will be funded by State and City funds: FOS gas tax, City of Portland TSDCs, BES and PWB ratepayer dollars, and the State of Oregon. The anticipated Project costs are estimated at \$14 to \$20 million.

Using the CM/GC contracting method will allow the construction of the Project to meet the highest possible construction standards and support a high level of expertise to successfully complete the specialized aspects of this multi-bureau Project. This will promote the delivery of a high quality Project with less impact on the travelling public and nearby residents and businesses while being cost effective to maintain in the future.

## **C. Public Benefits That May Result from Granting the Exemption**

There are multiple public benefits in connection with exempting the Project:

- Construction of this complicated multi-bureau Project must be completed in 2020, and the CM/GC contracting method promotes schedule efficiencies through early Contractor involvement and the incorporation of schedule-saving approaches prior to the completion of the design.
- The City seeks opportunities to adhere to the CEIP to increase project diversity, apprenticeship participation, and local investment while meeting inclusivity objectives established by the City. Utilizing the CM/GC contracting method for this Project allows the City to monitor Contractor outreach and utilization of apprentices and D/M/W/ESB subcontractors and help the City achieve the CEIP objectives for this Project, and also to set the City and local economy on a path where more local contractors have the ability to provide CM/GC services while meeting the qualifications established by the CEIP.
- Sustainability goals may be better met with incentives for tree preservation.
- Neighborhood impacts may be handled in a better fashion by ensuring the contracting team has experienced public involvement resources for construction.

## **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. Value engineering will be utilized on the Project as it will be the first task of the contractor, occurring prior to design completion. Changes after a project is competitively bid can result in higher costs for the City in the form of change orders. A traditional competitive bid process cannot take value engineering into account during the design stage because the design is usually complete before bids are received.

Having the Contractor review and suggest improvements to the design prior to the start of construction best leverages the value engineering ideas that are accepted and incorporated into the final design and may decrease the cost of the Project. It is less expensive to

implement ideas during the design phase than to wait and provide a change order and potential redesign during construction.

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

Through the RFP process, the City will have an opportunity to evaluate and select the Contractor with the specialized expertise and experience required for the Project. The cost for such specialized expertise is included in the overall Project budget. The Project involves several components that require specialized expertise to implement a high quality Project as well as to meet the Project schedule. Specifically, the Project requires experience in retaining wall design and construction in West Hills soil conditions, minimization of impacts to mature trees, coordinating complex traffic detours including residential property access, and maximizing positive aesthetics for finished materials such as wall surfaces, railings and landscaping. Additionally the Contractor must have expertise working in a complex urban environment with all three Bureaus.

The CM/GC contracting method provides the best opportunity for the City to allocate additional weight in the selection process to contractors with a high degree of specialized expertise and experience necessary for the particular requirements and success of the Project.

#### **F. Likely Increases in Public Safety**

The CM/GC contracting method allows a contractor's safety performance on similar projects to be considered as a selection criterion. It also permits the City to work closely with the Contractor during the final design phase of the Project to ensure that the construction process provides appropriate safety measures, that the Contractor understands the City's safety concerns and that the Contractor will take appropriate steps to address them including submittal of a safety plan. As construction of this Project will take place near an active roadway in a dense urban environment with surrounding residential and commercial neighbors, it is imperative that the Contractor maintain good safety practices for themselves as well as the public within the construction work zone.

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

The Project will be constructed within a major right-of-way. Site conditions are complex and include steep topography, poor soils, mature trees and vegetation, and nearly 100 residential properties. Project sequencing is also complex due to the combination of transportation, stormwater and water infrastructure on and off corridor. The CM/GC contracting method allows for risks to the City posed by these conditions be potentially lessened by involving an experienced contractor team.

Additionally, limiting the time frame during which people and businesses are exposed to construction traffic or activity is a major scheduling goal. Using the CM/GC contracting method will allow the City to hire the Contractor during the design phase of the Project, enabling the Contractor to develop a comprehensive construction schedule before



initiating the work with input from the Project Team. The interaction between the Project Team and the Contractor during the design process makes it far more likely that the final design will take into account any potential construction problems and foster early coordination of construction phases to minimize potential risks during construction.

The RFP process for selecting the Contractor allows the City an opportunity to question the respondents to discern their expertise on contracting methods and phasing. This approach also offers the greatest flexibility, risk reduction, reliability, and ease of construction. Maximum construction contract amounts within the fixed budget will be negotiated with the selected Contractor. Because the Guaranteed Maximum Price (GMP) is negotiated close to final design, the CM/GC contracting method minimizes financial risk for the City by providing better financial certainty to the Contractor. The Project budget is likely to be more stable as a result of the CM/GC contracting method, as the potential for change orders is dramatically reduced.

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

The Project is funded through State and City funds which include the FOS gas tax. The City is required to advertise all contracts but there is no requirement to award the Project to the lowest bidder. Funding availability or utilization is not impacted by the use of the CM/GC contracting method.

#### **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**

Selection of the CM/GC Contractor will be made by a committee that, in addition to cost, will evaluate non-cost factors including qualifications, expertise, and the ability to deliver on the City's policy goals and community expectations. Because cost is one of the factors for evaluation and Contractor selection, competitive pricing is expected. Additionally, the CM/GC contracting method allows for an earlier procurement of materials such as pipes, manholes, and wall blocks which could be beneficial in promoting Project budget efficiency.

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

Technical complexities of the Project include site conditions with steep topography, poor soils, mature trees and vegetation, and nearly 100 residential properties, most with direct access to Capitol Highway. Street connectivity and right-of-way conditions are poor in the surrounding area, reducing viable detour options. Project sequencing is complex due to the combination of transportation, stormwater and water infrastructure on and off corridor, and the need to identify the most optimal order of operations. Additionally, the Contractor must have the expertise working in a highly complex, urban setting.

The CM/GC contracting method will allow the Contractor to proactively be involved in the design phase to help develop construction approaches and methods to maximize the quality and constructability of these areas. This early involvement during the design phase will allow the Project Team and the Contractor to actively work together to find solutions to complete the Project in the most safe and efficient manner possible.

Additionally, this project is expected to be in construction in 2019 and completed in 2020 to demonstrate effectiveness of the FOS gas tax. Procuring the Contractor during design and taking advantage of schedule savings associated with the CM/GC contracting method is necessary for Project success.

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

The Project involves both new construction as well as rehabilitation of existing infrastructure. Newly constructed features include sidewalks, bicycle lanes, stormwater inlets and conveyances, and stormwater detention basins. Rehabilitated features including grind and overlay of roadway paving, replacement and upgrading of water mains, and replacement of fire hydrants.

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

The Project will be occupied during construction as property access must remain open to the public. Lane closures will occur throughout the Project, accomplished through flagging and detours identified in the Project Traffic Control Plans.

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

An important goal of the Project is to complete the construction in an expeditious manner while providing access to properties and the regional road network. At least one-way or flagged-through travel must be maintained during the entire Project due to limited alternative routes and direct property accesses. Downstream stormwater facilities must be complete to accept flow from upstream collection points. For these reasons, staging and phasing of the project are important considerations in the design phase that must be implemented during construction to minimize the impacts to the community.

Incorporating cost saving ideas in the design phase and avoiding hurried plans or adaptations during the construction phase allows the City to avoid costly change orders or disputes that impact the schedule or budget. It is necessary to carefully consider the means and methods of construction and possible phasing options during the design phase of the Project to ensure a minimum of delays and costs during construction.

**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 and legal counsel have the expertise and experience necessary to effectively implement the CM/GC contracting method and to negotiate, administer and enforce the terms of the resultant construction contract for the Project. The three Bureaus each have delivered CM/GC projects in recent years including the SW Moody Avenue / Streetcar project, 10<sup>th</sup> and Yamhill Parking Garage, and Tryon Creek Headworks. However, the Project Team itself does not have extensive experience in CM/GC contracting. Accordingly, a consultant was retained by the City under a BES on-call contract to assist with the process, including alternative delivery analysis, RFP preparation, and preparation of CM/GC selection criteria.