

EXHIBIT A**DOWNTOWN/OLD TOWN: MAIN-TAYLOR SEWER REHABILITATION PROJECT****FACTUAL FINDINGS FOR
PROPOSED EXEMPTION FROM COMPETITIVE BIDDING**

The Portland Bureau of Environmental Services (BES) and the City of Portland 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 Downtown/Old Town: SW Main-Taylor Sewer Rehabilitation Project (Project) from the competitive bidding requirements of ORS Chapter 279C and to approve the Construction Manager/General Contractor (CM/GC) as the alternative contracting method for the selection of a Construction Manager/General Contractor (Contractor) for the Project. Capitalized terms used herein have the meaning ascribed to them in the Ordinance.

I. BACKGROUND

The *SW Main-Taylor Sewer Rehabilitation Project* (Project) is the third Downtown/Old Town (DTOT) Sewer Rehabilitation Project to start Design. DTOT is one of three programs in the Large Scale Sewer Rehabilitation Program (LSSRP). The other two programs are the Small Diameter Program and the Large Diameter Program. The Project is in SW Main, Salmon and Taylor Streets between SW Naito Parkway and SW 13th Avenue, inclusively. The Project is in the Portland Downtown Neighborhood, the Central Business District and the portion between SW 4th and SW 10th is also known as the Downtown Core.

Design and construction of the Project is expected to be challenging given its commercial/urban land use setting, multi-modal public transportation, dense underground utilities, and vaulted subsurface garages/basements, e.g., under sidewalks. While the downtown core is vibrant with daily pedestrian traffic, there are also high-density residential apartment/condominium buildings, grocery stores, and restaurants within the project area. Thus, there is also pedestrian traffic extending into evening hours. Several streets with, and without, public transportation corridors have high daily peak traffic volumes. While many of these factors are considered in the consequence of failure of the sewer pipe, they are also factors in design and construction planning.

The Project public rights of way is congested with active underground utilities, including water, sewer, gas, electric and communication. These utilities create design challenges within these congested corridors. Design is further complicated by numerous *inactive* underground utilities, many of which are poorly documented or not documented at all. Distinguishing these utilities will require extensive field investigations depending upon the type of construction method chosen to rehabilitate, construct new, or replace or the sewer asset(s).

In addition to the above challenges, the approach to scoping and scheduling the Project sewer rehabilitation work is constrained by essential coordination requirements with other City

bureaus, City and State agencies, private development, TriMet and various public uses, i.e., street restoration and holiday moratoriums. Coordination with these entities, activities and essential services is paramount to the success of the overall project.

The Project scope includes the following:

- Cured in place pipe (CIPP) rehabilitation of 8,100 linear feet of sanitary sewer pipe ranging in size from 8 to 30-inches in diameter.
- Upsizing 1,000 linear feet of existing 12-inch diameter vitrified clay pipe to diameters ranging from 15 to 21-inches to meet capacity needs.
- Resolution of 23 non-conforming sewer properties. Work includes a potential of 9 new sewer extensions, 5 new service laterals and adopting 3 existing long private laterals.
- Determining means and methods for bypassing service laterals not accessible in the right-of-way. This involves private property agreements, building plumbing research, and possible modifications of private plumbing.

Possible additional construction items include franchise utility relocations, water line relocations and street paving.

Based on the Findings, use of a CM/GC contracting method would support successful completion of the Project in the most efficient and cost-effective manner to achieve community, BES, and broader City goals including the City's commitment to equity in construction contracting through use of the Subcontractor Equity Program or the Subcontractor and Supplier Plan. Ordinarily, the City is required to use competitive sealed bidding as the process to award a contract for a proposed Project. Accordingly, the Project needs to be exempted from the requirements of ORS 279C which includes, among other things, the solicitation of competitive low bids. 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.

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 alternate contracting process will not limit competition or encourage favoritism in the selection process when compared to the standard "low bid" process. BES will issue a Request for Proposals (RFP) for a Contractor for this project in accordance with established RFP procedures that will attract competition for this contract from numerous contractors in the construction community. The RFP for a CM/GC 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 an 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 commerce, 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 method allows the Contractor to both understand and incorporate value-engineering ideas, and to determine service lateral bypassing methods during the Project design phase, reducing the overall cost of the Project and avoiding costly change orders or disputes that impact BES’s budget or schedule for the Project.

The CM/GC contracting process affords the opportunity for the Contractor to participate during the design phases 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 value engineering suggestions, that is, suggestions that propose alternative, more efficient and less expensive ways of achieving the same result. This can result in more practical, constructible, and economic design solutions 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 price and schedule for the work. This familiarity means that the Contractor may not include cost contingencies that other contractors frequently include in their bids to take account of uncertainties that are not resolvable during the brief bidding period under a traditional design-bid-build competitive bid process. This is especially true for this Project, which requires bypassing sewage flow from the

buildings' service laterals. The multitude of underground utilities, light rail tracks and building basements extending under sidewalks makes installing cleanouts for bypassing very difficult or impossible leaving the only other option to do the bypassing inside the buildings.

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 to the extent applicable to this Project (collectively, the "Additional Findings").

A. How Many Persons are Available to Bid

The CM/GC contracting method will result in 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 might not be willing to face the uncertainties and potential financial risks associated with bidding and contracting for construction under a traditional design-bid-build competitive bid process. There are a number of qualified firms in the Portland area and beyond that will be able bid on this Project.

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

The Project will be funded by BES ratepayer dollars. The anticipated construction contract costs are estimated at approximately \$6.75 million. The total Project budget is \$12.9 million. The CM/GC construction method will provide the opportunity for careful consideration of means and methods of construction as well as cost saving measures through construction phasing and timing. This will allow for construction with minimal disruption to the travelling public and nearby residents and businesses.

C. Public Benefits That May Result from Granting the Exemption

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

- The CM/GC process is critical to facilitating this complicated Project with the least amount of disruptions to the general public, business and property owners, and commerce.
- The CM/GC process promotes schedule efficiencies through early Contractor involvement and the incorporation of schedule-saving approaches prior to the completion of the design.
- Utilizing the CM/GC process for this Project allows the City to monitor Contractor outreach and utilization of apprentices, SDVBE/D/M/W/ESB subcontractors and help the City achieve 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.
- The Contractor will have more time to engage in noise abatement alternatives.
- Traffic control (vehicular, bicycle and pedestrian), the Contractor will be able to adjust their work in response to public access needs prior to being in construction

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

Value engineering is defined as the process by which multiple subject experts evaluate and propose the most cost effective ways to deliver a project without reducing project quality and functionality.

- CM/GC contracting method will give the Contractor an opportunity to partner with BES Design, BES Construction and BES design consultants in performing value engineering and constructability reviews. In contrast, contractor input during the design phase is not possible using the conventional design-bid-build contracting method.
- The Contractor's specialized construction experience and knowledge and their early awareness of the project objectives and conditions will help identify and resolve issues prior to construction and will aid in early identification of effective measures to minimize disruption in the Downtown Neighborhood.
- Early partnering of the Contractor and the design team will reduce change orders, claims, and delays, resulting in significant cost savings and delivery of quality construction products on time.
- Early determination of the means to bypass service laterals is crucial to maintaining the project construction schedule.

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

Through the solicitation process, the City will have an opportunity to evaluate and select a Contractor with the specialized expertise required to meet the Project goals. 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. Specifically, the Project requires experience in trenchless sewer pipe replacement and rehabilitation, service lateral bypassing of sewage flows inside buildings, and coordinating complex traffic (vehicular, bicycle, scooter and pedestrian) control plans for the downtown business corridor.

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 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. Because the downtown corridor is vibrant with pedestrians, scooters, bicyclists, motorists, Portland Streetcar, and TriMet buses and light rails, it is imperative that the Contractor maintains good safety practices for themselves as well as the public within the construction work zones.

G. Whether Granting the Exemption May Reduce Risk to the City Related to 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 trenchless installation and rehabilitation of sanitary sewers, coordinating complex traffic detours, construction work zones with high voltage overhead light rail power lines, and the ability to maintain the construction schedule while coordinating with all necessary entities in the work zone. 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.

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

The Project construction budget is \$7,100,000. It includes preconstruction services, construction, and startup and closeout of the Project by the Contractor. The Project will be funded by BES ratepayer dollars. 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 and CIPP liners 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 dense underground utilities (both documented and undocumented) located above the sanitary sewers, high levels of transit service, and basement bypassing of service laterals. Project sequencing is complex due to the combination of maintaining all modes of transportation, private development within the Project boundary, weather dependency of the construction work, and just the general nature of working in the Downtown Neighborhood.

The CM/GC contracting method will allow the Contractor to proactively be involved in the design phase to assist in selecting appropriate construction methods, sequencing, and in

developing a realistic comprehensive construction schedule to maximize the quality and constructability of the work. 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.

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

The Project includes both new construction and rehabilitations to existing infrastructure. New construction of sewer mains will resolve capacity issues and maintain required levels of service to property owners. Rehabilitation will occur on existing sewer mains by lining them with CIPP and adding over 60 years to their remaining useful life.

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.

Dry weather is required for CIPP work and a means to bypass the service laterals is required prior to the CIPP work. For these reasons, the Contractor most likely will phase the work. Since it is necessary to carefully consider the means and methods of construction and possible phasing options, it makes sense to utilize the CM/GC delivery method. Allowing the Contractor to have input during the design phase of the Project ensures 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 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. BES has procured a consultant experienced with the CM/GC process to assist with the RFP and the selection and negotiation of a CM/GC contractor. By the time the CM/GC contract is awarded, the BES will have proceeded with selection of design consultant for the Project where qualifications to work collaboratively under a CM/GC project delivery will be considered.