

EXHIBIT A**SW 10TH & YAMHILL SMARTPARK GARAGE RENOVATION PROJECT
CM/GC****FACTUAL FINDINGS FOR
PROPOSED EXEMPTION FROM COMPETITIVE BIDDING**

The Portland Bureau of Transportation (PBOT) 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 SW 10th/Yamhill SmartPark Garage Project (the “Project” or the “Garage”) 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 Portland Bureau of Transportation (“PBOT”) is responsible for transportation operations and improvements within the City’s public rights-of-way. It is also assigned responsibility for the management and continuing operations of the SmartPark garage system.

The SmartPark Garages are valuable assets of the City. The SmartPark mission is to support the economic viability of the Central City by providing an affordable system of parking garages, which primarily meets the short-term parking needs of shoppers, visitors and business clients and by investing in other Central City transportation improvements. The SmartPark garage system encompasses nearly, 4,000 parking spaces and approximately 71,803 square feet of commercial space.

The 10th & Yamhill SmartPark Garage (Garage) is a seven-story building with 27,000 square feet of leasable retail space at or near the ground level with 799 parking spaces on floors two through seven. Levels one through four consist of concrete framing and levels five through seven change to steel framing. The lateral force resisting system consists of concrete shear walls.

As part of the City’s SmartPark Garage System, the 10th & Yamhill Garage lends vital support to the downtown retail core by providing short-term parking at affordable rates to customers of nearby office, retail, and restaurant businesses. Since 2001, a series of planning documents were drafted and redevelopment scenarios pursued—all of which included re-positioning the Garage to be a catalyst for development, strengthening the City’s retail core, and responding to residents’ and business owners’ concerns regarding the vitality of the area.

In 2004 and 2005 the Portland Development Commission (“PDC”) and the City of Portland Bureau of Management and Finance (“OMF”) jointly explored the feasibility of implementing

the recommendations that included remodeling the Garage's ground floor retail storefronts. As part of this effort, PDC retained BOORA Architects to develop a conceptual study for the Garage parking structure known as, *10th & Yamhill Parking Garage Study*. The study provided recommendations concerning improvements to the retail experience and pedestrian environment as well as the elevators, stairs, and retail corners. The partnership efforts shifted in 2006 when OMF received interest from the private sector for a full redevelopment of the Garage.

From 2007-2011 PDC and OMF pursued a redevelopment program that called for the demolition of the Garage and construction of a new parking facility. This new facility would be publically owned, to compliment planned housing and retail. Due to macro influences beyond PDC and OMF's control, including amendments to the Urban Renewal Plan and the downturn of the economy, the redevelopment strategy was deemed no longer viable and a redevelopment program was not pursued.

Under PBOT's management, it was determined that the Garage requires a number of improvements beyond what could be considered standard maintenance and upkeep activities. Because PBOT repeatedly waited to undertake maintenance during intervening years while redevelopment was pursued, critical issues have now come to the forefront and must be addressed now that redevelopment is not occurring within the next several years. The most viable development program at this time is to keep the structure and address issues (including but not limited to) structural stability, building operational systems, ADA compliance, and retail frontage.

Based on the Findings, using a CM/GC contracting method would support successful completion of the Project in the most efficient and cost-effective manner to achieve PBOT goals.

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 Contractor will be selected through a competitive Request for Proposals ("RFP") process. 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 will be evaluated by a selection committee based on criteria such as experience, technical expertise, key personnel and staffing, diversity program, safety record, and percentage profit and overhead markup. The selection committee will review and rank the written proposals; hold interviews if necessary; and recommend a Contractor for the CM/GC contract award. As a consequence of the competitive RFP 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 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. Structuring the Project under a CM/GC contract that includes the Contractor in the design phase allows the selected firm to improve constructability, develop phasing and staging plans to efficiently perform the work, 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 price for the Project and to reduce their 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 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 and less expensive ways of achieving the same result. Because of diminished resources, cost containment is of critical importance to PBOT. This can result in more practical, constructible, and economic design solutions with less impact to street traffic and nearby businesses, while maintaining the design’s integrity and achieving the project’s safety goals. Participation in the design process also enables the Contractor to become more familiar with the Project features and requirements before it prepares its price 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 the Project, which will have a number of unique design and renovation features. The CM/GC contracting method allows the Contractor to understand and incorporate value-engineering ideas during the design phase to reduce the overall cost of the Project and to avoid costly change orders or disputes that impact PBOT’s budget for the Project.

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 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.

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

The Project will be funded by the SmartPark Garage Revenue, Tax Increment Financing and Debt Financing. The anticipated construction costs are estimated at \$14 million. The budget for the Garage renovation was set based on the preliminary estimates of necessary repairs supported through initial site investigations and assessments. 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 timing which will make the delivery of the full repair and renovation program within that budget more likely.

Using the CM/GC contracting method will allow the construction of the new and updated infrastructure to meet the highest possible construction standards and support a high level of expertise to successfully complete the specialized aspects of the Project. This will ensure the delivery of a high quality Project with less impact on street traffic and nearby businesses. The Project will be cost effective to maintain thereby keeping the operating costs for the Garage at a manageable level while providing a high level of service to the community.

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 very specialized Project on an expedited, challenging timeline.

During the design phase of the Project, CM/GC participation with and feedback to the Design Team will be invaluable in determining the correct method and price of performing the technical renovation and repair work as well as identifying alternatives for work that has greater impact on street traffic and nearby businesses.

During the construction phase, the CM/GC contracting method allows coordination of the contractor’s and subcontractors’ work, development of transportation impact plans and back-up plans in consideration of the schedule constraints. This coordination minimizes

disruption to the Garage activities and visitors, the local residents, the surrounding businesses, the adjacent Tri-Met and Streetcar activity that typically results from construction work, staging, parking, and access. The project is located adjacent to important regional transit facilities and is also located within Portland's downtown retail core. The alternative contracting method also allows the City opportunity to monitor the Contractor's outreach and utilization of D/M/W/ESB subcontractors to achieve equity goals with the Project during 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 enhanced on this Project as it has on other projects where the contractor has been selected before the design is completed. In that way, the contractor's suggestions can be incorporated into the schematic design and design development stages, rather than have the proposals come after the design is already completed, which may limit the amount of change that can be accomplished to the Project and still meet schedule requirements as well as the design intent. Changes after a project is competitively bid can result in higher costs for the City. 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 the design prior to the start of construction best leverages the value engineering ideas that are accepted and incorporated into the final design. 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 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 aggressive Project schedule. Specifically, the Project requires extensive renovations to the building, replacement of the elevators and stairs to meet safety and American with Disabilities Act (ADA) requirements and interior, exterior and new mechanical systems for the retail space. Additionally the Contractor must have expertise working in a complex urban environment.

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 of the Project.

F. Likely Increases in Public Safety

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The CM/GC contracting method allows a contractor's actual safety performance on similar projects to be considered as selection criteria. It also permits the City to work closely with the Contractor during the 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 Property is in a dense urban environment with surrounding residential and commercial neighbors, and because the Garage has thousands of visitors per year, it is imperative that the 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

The Project will be constructed within a major business center. To limit 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. This enables 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 allow early coordination of construction phases to minimize impacts to the surrounding residents, businesses and visitors.

A competitive selection of the Contractor through the RFP process allows the City to minimize disruptions to the local businesses, residents and transit systems during construction, as well as ensuring that the Project is delivered expeditiously to serve the community.

The RFP process for selecting the Contractor allows PBOT 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. The Project budget is likely to be more stable as a result of this approach and it is less likely that there will be Project overruns.

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

The construction Project budget is \$14 million and includes costs for Professional, Technical and Expert (PTE) services, pre-construction services, construction services, contingency and debt finance fees. The Project will be funded using SmartPark Garage revenue, Tax Increment Financing and Debt Financing. As the design process progresses from preliminary to final design, the confidence rating regarding the Project cost increases and, correspondingly, the contingency percentage decreases. 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 creates more financial certainty for the City. While funding does not change based on use of the CM/GC contracting method, the Project budget is likely to be more stable as a result of the alternative contracting method and it is less likely that there will be Project cost overruns.

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 CM/GC contracting method for the Project would reach the same or greater market of construction contractors as the traditional low bid process. Considering the size and location of the Project and major components of work, the RFP will reach the regional marketplace. The RFP will also require a response addressing the latest market innovations in sequencing and in construction means and methods. Selection of the Contractor will be made by a committee, that will evaluate qualifications, expertise and ability to deliver on the City's policy goals and community 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 building envelope/waterproofing of the existing structure, mechanical engineering renovation and stoa column repair specialists. 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 efficient manner possible.

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

The Project is for the renovation of an existing facility/structure and the Garage.

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

The Project will likely be phased so portions of the Garage can remain open to the public. Due to the heavy usage of the garage and lack of replacement parking options, 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.

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. The intent is to continue to operate the Garage during its renovations and repairs. One major concern is the ability to keep the garage operational during renovation work. Tenants within the Garage include The Real Mother Goose, Portland Swimwear, Kenton Collective, Peterson's on Morrison, Kale LLC and Solabee Flowers. To avoid extra costs and neighborhood impacts, the goal is to complete the construction in one year. Incorporating cost saving ideas in the design phase and avoiding hurried plans or adaptations during the construction phase allows PBOT 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 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.