EXHIBIT A

CAROLINA TRUNK WORK ZONES 01 AND 03 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 Carolina Trunk Work Zones 01 and 03 Rehabilitation Project from the competitive bidding requirements of ORS 279C and to approve the Construction Manager/General Contractor (CM/GC) as the alternative contracting method for the Project.

I. BACKGROUND

The *Carolina Trunk Work Zones 01 and 03 Rehabilitation Project* (Project) is a secondary project under primary Large Diameter Sewer Rehabilitation Project E10576. The Large Diameter Sewer Rehabilitation Project is part of the Large-Scale Sewer Rehabilitation Program (LSSRP). The goals of the Project are to repair the deteriorated Carolina Trunk in Work Zones 01 and 03 to provide continuous reliable sanitary and drainage service, and to add infrastructure for a planned future stormwater and sanitary sewer separation effort.

The Carolina Trunk is located in Southwest Portland and includes 42-inch horseshoe-shaped monolithic concrete pipes and a short run of 36-inch circular pipe. The trunk was constructed in the 1930s and has deteriorated after about 90 years of service. A comprehensive alternatives analysis of pipe rehabilitation methods and project delivery approaches for the Project was initiated in June 2020 and will complete in October 2021. As part of analysis, a deep condition assessment revealed the trunk segment crossing highway I-5 continued to deteriorate and was estimated to be in a non-stable category in 5 years. Observed structural defects include concrete spalling, fractures, missing channel pavers, and longitudinal cracks. It was also noted that multiple trunk segments have very limited Remaining Useful Life (RUL) and the preliminary analysis recommends rehabilitation or replacement of approximately 1,600 ft of the existing 42-inch and 36-inch pipes that are included into Work Zones 01 and 03 according to their locations.

In addition to trunk rehabilitation, the BES also seeks to install a new trunk parallel to the existing Carolina Trunk crossing under the highway Interstate 5 (I-5) in the Project. The new trunk will provide additional capacity for future peak flow and offer the opportunity to separate stormwater and sewer conveyance from the upper basin.

The followings are major risks associated with the Project:

- Complicated Field Conditions
    - The existing trunk is up to 70 ft deep and crosses under the highway I-5. Several deep shafts will be constructed for rehabilitating the existing trunk and trenchless

construction of the new trunk. Based on preliminary geotechnical investigations, subsurface conditions are challenging for construction as there are multiple layers of backfills and high groundwater.

  - A significant portion of trunk in the Project is on private properties. Extensive outreach will be required for easement acquisition and work on the private properties.
  - A main construction site in the Project will be in an environmental zone and wetland area. Mitigation measures are required.

- Construction Constraints
  - Dry weather season is preferred for construction since bypassing large amounts of stormwater during wet weather is a concern.
  - A significant amount of night work may be required for construction in proximity to the highway. The night work will impact the nearby residents.
  - It is anticipated months of combined sewer bypassing will be required for construction. Some bypassing locations will be on private properties.
  - Construction space is limited as construction location will be near existing buildings or adjacent to highway I-5.
- Permitting and Easement Acquisition
  - Permits are required from multiple state and local agencies. Extensive coordination is required for securing the permits.
  - Temporary construction easements and sewer easements will be required on private properties for staging and construction work.
- Traffic Control
  - Construction access will be from the highway I-5 and local streets requiring complex traffic control.

A quick delivery of the Project is desired due to a major concern about further deterioration of the existing trunk under the highway I-5. In July 2021, the technical review committee in BES reviewed alternative analysis and agreed to seek Council authorization to use the CM/GC contracting method to deliver the Project. Use of an alternative contracting method would allow the BES to select a highly qualified and experienced Contractor for the Project, which would reduce the project risks and avoid project delays.

Design of the Project will start in October 2021 and construction is anticipated to start in 2023 and completed in 2024. The scope of the Project includes the following:

- Rehabilitating or replacement of approximately 1,600 ft of the existing Carolina Trunk
- Installing approximately 800 ft of new trunk crossing under the highway, local streets and private properties
- Constructing shafts for facilitating trunk rehabilitation and new trunk installation
- Installing new sewer pipes for separating sanitary sewer from the existing Carolina Trunk

Based on the Findings in Section IV of this Exihibit, 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.

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 construction contractors. 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, the Community Equity and Involvement Plan (CEIP), 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, determine effective construction approaches, and develop phasing and staging plans to efficiently perform the work minimizing impacts to public. 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 for involvement by the Contractor in the design phase. The Contractor can both understand and incorporate value-engineering ideas, determine construction and flow bypassing approaches, verify the easement acquisition needs, and coordinate with the Oregon Department of Transportation (ODOT) for traffic control and construction in ODOT Right of Way. Contractor involvement in the design phase reduces project risks and avoids significant change orders or disputes that impact BES's budget or schedule for the Project.

Contractor participation during the design phases of the Project allows for constructability feedback on the Project's proposed design , based on the Contractor's expertise, knowledge, and experience. CM/GC also includes value engineering evaluation to identify the opportunities of using alternative, more efficient, and more cost-effective approaches to achieve the same project goals and performance. This typically results in more practical and economic design solutions with reduced risks 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 and allows the Contractor to conduct necessary preconstruction activities for verifying field conditions and the Project parameters before it prepares its price and schedule for the work. This familiarity means that the Contractor may not include cost contingencies that otherwise would be included by contractors 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 involves extensive coordination with many project stakeholders, including multiple state and local agencies and private property owners, and requires deep underground construction with complicated geotechnical conditions, long-term sewage bypassing, extensive easement acquisition efforts for work on private properties, traffic control on both highway and local streets, and an extended period of night work. These all pose risks to Contractors, but the risks could be minimized or reduced by Contractor's early involvement and preconstruction investigations during the design.

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

Projects such as this with complicated field conditions and risks, the CM/GC contracting method typically draw more bidder's interests than traditional bidding process. All qualified general contractors and construction management will have the opportunity to compete. These firms will include some contractors that might not submit bids for the Project under a traditional design-bid-build competitive bid process due to uncertainties and potential risks associated with bidding and contracting.

There are several qualified firms in the Portland area and beyond which will be able to bid on this Project. The project team will also introduce the project to local and regional contractors through Contractor Associations, such as Northwest Utility Contractors Association, before the Request for Qualification (RFQ) and Request for Proposal (RFP) of the project are issued.

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

The Project will be funded by the Sewer System Operation Fund from BES. The anticipated construction contract costs are estimated at approximately $20 million. The CM/GC method will provide opportunities for reducing construction risks, optimizing construction means and methods, applying innovative construction approaches, and using cost saving measures through the Project design and construction delivery phases. The CM/GC method will also enable the Contractor to better meet or exceed project delivery goals and better manage construction budget through careful construction planning, staging, phasing, and timing.

C. Public Benefits That May Result from Granting the Exemption

Multiple public benefits are also achievable in connection with granting exemption for the Project.

- The CM/GC process is critical to delivering this complicated Project with the least disruptions to the public, business, and property owners.
- 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.
- The CM/GC process provides the Contractor sufficient time to evaluate and secure construction access need and minimize traffic impact of construction to public and residents through early involvement and coordination with ODOT and PBOT prior to construction.
- The CM/GC process gives the Contractor time to develop noise mitigation measures and abatement alternatives.
- The CM/GC process provides the opportunity of incorporating the Contractor's inputs and coordination with private property owners to minimize the impacts of easement acquisition.
- Utilizing the CM/GC process for this Project allows the City to monitor Contractor outreach and utilization of apprentices, D/M/W/ESB subcontractors and help the City better achieve social equity objectives in contracting, and also to set the City and local

economy on a path where more local contractors have the ability to provide CM/GC services through implementation of the CEIP.

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

Value engineering is defined as the process by which subject experts evaluate and propose cost saving opportunities to deliver the Project without reducing project quality or changing the project functionality.

The subject experts in value engineering team are selected based on their specialized experience and knowledge on construction methods and approaches used in the Project. They will review the project conditions and design documents to determine its constructability, identify the potential issues, propose more cost-effective solutions, and provide cost reduction suggestions with achieving the same project goals and performance.

For such a large and complex project, it is expected that value engineering process could provide potential cost saving opportunities and improve the project delivery with high quality construction product and reducation of changes during construction. .

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

The project requires specialized expertise in construction of deep underground sewer structures and trenchless drilling under complicated subsurface conditions. Additionally, the Project requires extensive experience of construction on private properties and in proximity to a highway; night work with noise control; and complex traffic control plans for highway and local traffic. There are several local and regional contractors that have the specialized expertise required for the project.

Procurement of the CM/GC based on qualifications, understanding of the project, specialized expertise and experience, and approach to project cost and risk control best assures the City of retaining a qualified firm to meet the Project goals. Inclusion of the cost of CM/GC services performed in design phase and the CM/GC markup on the cost of work in construction phase enables the City to select a Contractor that provides overall best value to the City.

F. Likely Increases in Public safety

Construction of the Project will occur underground on private properties, in a highway right-of-way, and busy streets. It is critical for the Contractor to promote safety foremost for themselves, City staff, neighbors, and the traveling public. 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 to ensure that the design requires appropriate safety measures, that the Contractor understands the City's safety concerns, and that the Contractor will take appropriate steps to implement measures and address deficiencies in a timely manner.

G. Whether Granting the Exemption May Reduce Risk to the City Related to the Project

The CM/GC contracting method allows early involvement by the Contractor to review construability and to develop appropriate risk mitigation measures prior to construction. These steps implemented early in the project could facilitate the City controlling and reducing overall Project risks.

The Contractor's qualifications, expertise, and experience are critical selection criteria for the City in the CM/GC contracting method. Compared to traditional design-bid-built contracting method, the CM/GC selection criteria allows the City to retain the most qualified Contractor, which would reduce the risk of poor quality or incomplete construction.

CM/GC contracting method allows the Contractor to manage specialized construction through collaboration with the City during design and construction, thereby reducing the risks of costly change orders and schedule delays.

The partnering relationship provided through the CM/GC contracting method also provides the opportunity for the City to work closely with the Contractor to ensure safety measures are followed and revised where needed to reduce risks to the public.

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

The estimated construction contract cost for the Project is approximately $20 M. The total project budget is approximately $30 M, including planning, design, management, construction, and startup costs. The Project will be funded by the Sewer System Operation Fund from BES. Funding availability or utilization is not impacted by using 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

CM/GC contracting method allows the opportunity for the Contractor to solicit competitive bids for various aspects of work (e.g. equipment, materials, labor, etc.) and coordinate construction activities among all resources to minimize construction risks and delays and achieve cost savings. CM/GC contracting method also allows for an early procurement of materials and equipment and issuing purchase orders to the Contractor prior to construction. Thus, it will enable the City to better control the impact of price increases occurring in the current market by locking in prices early in the project and to avoid project delay resulting from long lead time products by purchasing them early before construction. Additionally, the CM/GC contracting method provides increased opportunity to identify and reach out to qualified small businesses that may otherwise not have an opportunity to participate in the project.

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 trenchless installation of underground sewer pipes crossing the highway; excavation for and construction of deep and large shafts near buildings and highway; work on private properties, environmental zones and wetland area; long term continuous sewer bypassing; night work close to a residential area; and traffic control on highway and busy arterial streets. Additionally, the construction planning and sequencing is complex due to potential wet weather impact on construction, tight construction schedules, limited night work hours, work window allowed in proximity of highway, a long term sewer bypassing effort and construction impact to private properties and public.

The technical complexity of the Project requires the Contractor to effectively manage all aspects of work and integrate work across the project site. The CM/GC process allows the City to select a contractor based on qualifications. Qualifications include a contractor with adequate staffing for construction management and with experienced subject matter experts to resolve construction challenges, as opposed to a minimally staffed contractor secured through award to the lowest responsive, responsible competitive bidder under traditional the design-bid-build delivery method. As a result, it is more likely that the CM/GC can address the technical complexities and size of the project more effectively.

Additionally, the CM/GC contracting method allows the Contractor to proactively be involved in the design, assisting in the selection of appropriate construction methods and development of construction sequencing. This early involvement allows the City and the Contractor to actively work together to address technical complexity of the Project and 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 trunk will increase sewer system capacity for future peak flow and provide opportunity for future sewer and stormwater separation. Rehabilitation will occur on existing sewer trunk to repair its structural defects and extend its service life. Selecting a contractor with experience in both areas of work avoids potetnial delays and added costs.

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

The public improvements in the Project will be unoccupied during construction. However, as some construction will occur on private properties, the selected Contractor will provide the public and property owners safe, access to private properties in the project area where it is required.

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

Construction of the Project will be completed in one single phase. CM/GC contracting method allows Contractor to plan construction sequencing early in the project to ensure all components of the Project being constructed without delay.

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

The City will retain a consultant who has expertise and experience in the CM/GC method to assist the CM/GC procurement process and contract management. They will assist City staff to implement the CM/GC contracting method, develop the RFP and evaluate the Contractors' qualifications, and negotiate, administer, and enforce the terms of the resultant construction contract for the Project.