EXHIBIT A

NORTH PORTLAND AQUATIC CENTER CONSTRUCTION

FACTUAL FINDINGS FOR PROPOSED EXEMPTION FROM COMPETITIVE BIDDING

The Portland Bureau of Parks and Recreation ("PP&R") 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 North Portland Aquatic Center Project (the "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

PP&R is in the position to greatly improve its service delivery in North Portland through the use of System Development Charge (SDC) funds and State of Oregon Lottery Funds Grant to fund a new Aquatic Center in North Portland. The development and construction of the Project is a very important step in the direction of equity for all Portlanders.

PP&R planning documents, including Parks 2020 Vision, have consistently supported and recommended a new indoor Aquatic Center for the gap in indoor aquatic services for North Portland. The indoor Aquatic Center will serve all North Portland residents with a culturally responsive approach and programming to reach underserved communities who have historically been excluded from public pools or felt unwelcome in these public spaces. It will provide young children and communities from diverse backgrounds a place to learn basic water survival skills.

A new North Portland Aquatic Center will provide North Portland residents increased access to recreational aquatic programming and facilities, including a focused outreach to underserved communities who have been historically excluded from public pools. Portland Parks & Recreation (PP&R) has projected 70,000 people will be served by the Aquatic Center -- of them, 24% are Black people, Indigenous people, or People of Color, and 14% live below the federal poverty line. Currently, this community has an inadequate level of access to aquatic facilities based on PP&R's defined level of service goals – to provide a full-service indoor aquatic center within three miles of every resident. All

community users will feel a sense of belonging and ownership of this new facility, regardless of backgrounds, abilities, and lifestyles.

The Project has the potential to fill a big void. To meet the community expectations, to ensure equity in service delivery, and to avoid high future maintenance costs, Contractor collaboration and input in the Project design efforts is critical to successfully delivering the Project. Timely construction is a high priority for PP&R in its efforts to create equity in service delivery across the City as well as minimize neighborhood impact. Design development, construction documentation and permitting is anticipated to occur 2024 through 2027 with construction of the Project to commence in 2027. Completion is anticipated for 2029.

The Findings support the use of a CM/GC contracting method to achieve successful completion of the Project in the most efficient and cost-effective manner possible consistent with community and PP&R goals. Ordinarily, the City is required to use competitive sealed bidding as the process to award a contract for the proposed Project. Accordingly, the Project needs to be exempted from the requirements of ORS 279C.300 that requires, among other things, the solicitation of competitive bids. Council is the Local Contract Review Board with the authority to exempt certain public contracts from the competitive bidding requirements of ORS 279C based on the Findings. With the present action, Council will exempt the Project from the competitive bidding requirements of ORS 279C and authorize the CM/GC contracting method. State law permits the City to exempt certain contracts if Council is able to approve certain findings justifying an alternative approach. The factual basis to support the Findings in connection with the Project, including the Additional Findings (as hereinafter defined) are set forth below.

II. NO FAVORITISM OR DIMINISHED COMPETITION

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

The Contractor will be selected through a competitive Request for Proposals (“RFP”) process. The RFP will be advertised in Portland’s Daily Journal of Commerce and on the City’s online procurement portal three to four 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 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 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 ("DBB") 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 procuring the Project construction services 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. 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 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 DBB competitive bid process. This is especially true for the Project, as aquatic facilities have a unique number of specialized 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 PP&R's budget for the Project.

IV. THE FACTUAL BASIS 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 DBB competitive bid process.

The CM/GC contracting method has the added benefit of allowing the selected Contractor to solicit competitive bids for various aspects of work as the work is ready to be bid. The Contractor will be able to prepare materials and equipment submittals early and issue bid packages to suppliers and vendors during design for timely delivery.

Additionally, this method provides increased opportunity to identify and outreach to Disadvantaged, Minority, Women, and Emerging Small Business Service-Disabled Veterans Business Enterprises, D/M/W/ESB/SDVBE) subcontractors that may otherwise not have an opportunity to participate in the Project through the implementation of the Regional Workforce Equity Agreement (RWEA).The RWEA seeks to optimize through contracting processes diverse community participation inclusive of racial and ethnic minorities, women, and disadvantaged enterprises and employees. The RFP will include equity in contracting and workforce outreach and utilization goals to encourage maximum diverse participation on the Project.

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

The Project will be funded by SDCs. The anticipated construction cost is estimated between $54,500,000 (25-meter pool) or $69,900,000 (50-meter pool) dependent upon funding availability.
The budget for the new Aquatic Center is set based on the goals outlined through the vigorous community supported schematic design process. The CM/GC contract method will provide the opportunity for careful consideration of means and methods of construction as well as cost saving measures through construction sequencing and timing which will make the delivery of the full design program more likely.

The estimated ongoing costs for the NPAC project (including operations and maintenance, programming, and capital major maintenance) will be developed in conjunction with the design and programming plan. Based on similar facilities and best practices, it is expected that ongoing costs will be several million dollars. Those ongoing costs will begin to be incurred in FY 2028-29.

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 the Project. This will ensure the delivery of a high-quality Project which will be cost effective to maintain while providing a high level of service to the North Portland community.

C. Public Benefits That May Result from Granting the Exemption

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

During construction, the CM/GC contracting method will allow coordination of the subcontractors and development of back-up plans in consideration of the schedule constraints thereby minimizing disruption to the neighborhood as a result of construction staging, parking, and access due to the limited access points and the lack of street frontage. The alternative contracting method also allows the City greater opportunities to monitor the Contractor's outreach and utilization of D/M/W/ESB/SDVBE subcontractors and diverse workforce to achieve equity goals of the RWEA with the Project during pre-construction and 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 the Project as it is on other projects where the contractor can be selected before the design is completed. In that way, the Contractor's expertise and resulting revisions can be incorporated into the Project at the design development stage, 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. During the competitive bid process, bidder questions and clarifications often lead to an extended bid process, which causes delays and increases costs. Changes after the Project is competitively bid can result in increased costs for the City as well in a change order process. 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 design components that require specialized expertise to implement a high-quality Project as well as to meet the Project schedule. Aquatic facilities have specialized building envelopes, MEP systems, pool chemical control and storage, pool construction and pool play features.

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 specific requirements of the Project.

F. Likely Increases in Public Safety

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 Project is sited in an active Parks property, maintaining good safety practices will be foremost in the Contractor's approach.

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

The CM/GC project delivery method fosters early coordination between designer, Contractor, and City staff which leads to a better outcome than with a traditional low-bid procurement project; challenges and issues can be anticipated and resolved earlier in the process, allowing the Project to be completed on time.

It is necessary to carefully consider the means and methods of construction and construction sequencing during design to ensure a minimum of delays, construction costs, and impacts to public. Having the Contractor involved during the design phase will provide information on constructability issues and allow development of a logical sequence for construction.

The CM/GC project delivery method will facilitate a much greater Project understanding by the Contractor before construction starts, and involvement throughout the design phase in which to craft a thoughtful and comprehensive construction schedule that accommodates these challenges. It would be challenging for even an experienced Contractor to produce a plan of this quality without the lead time and project team interaction the CM/GC project delivery method provides, because traditionally the design-bid build process allows no time or opportunity for interaction with the Project Team or designers before the construction Notice to Proceed is issued.

By maximizing team collaboration and incorporating creative, cost savings ideas throughout the design phase, it is likely that the City's Project Management Team can mitigate costly change orders and disputes. Utilization of the CM/GC project delivery method permits the Contractor not only to understand the designer's intent and assumptions, but to be a part of the design process. The design-bid-build project delivery method does not allow for input on the part of the Contractor during the design phase. This lack of involvement can lead to plans and specifications not as well suited to construction means and methods.

The Project will be constructed in an existing, active PP&R park property. The Contractor will be able 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 issues and allow early coordination of construction sequencing to minimize impacts to the neighborhood and to the park.

A competitive selection of the Contractor through the RFP process allows the City to minimize disruptions to school children and neighbors during construction, as well as ensuing that the Project is delivered expeditiously to serve the neighborhood.

The RFP process for selecting the Contractor allows PP&R an opportunity to question the respondents to discern their expertise on contracting methods and sequencing. 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 cost overruns.

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

The anticipated construction cost is estimated between $54,500,000 (25-meter pool) or $69,900,000 (50-meter pool) and is dependent upon funding availability. The Project is partially funded through SDCs and a State of Oregon Lottery Funds Grant. The contingency is a percentage of the Project costs above the stated amount that the Project might be expected to exceed. 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 will 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 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 and social equity goals and community expectations, among other things, in addition to cost to ensure the best combination to achieve the Project objectives.

The construction industry is a volatile industry with prices fluctuating almost constantly. Since COVID, we have experienced unprecedented times in the design and construction industry. Historically, a two-year period in the construction industry would yield inflation of about 7 percent. The ENR Building Cost Index (BCI) was up 15 percent increase in 2022, exceeding the 12.5 percent increase in 2021. Recent bids (regionally in all construction types) reflect a market that is still very volatile with 14% escalation as a conservative reserve for project budgeting. Lead times, fuel price increases, and labor availability and material costs continue to challenge suppliers, contractors, and projects. By designing to a GMP, having open books among the entire Project Team, and establishing a high degree of trust and collaboration among the Project Team, market fluctuation can be accommodated for and folded into the design of the Project. By bringing together a creative set of minds that have a deep and thorough understanding of the Project's intricacies, the design can be more nimble and the approach can be more efficient. Additionally, the means and methods can be thoroughly integrated into the design.

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 specialized building envelope considerations, Mechanical Electrical Plumbing systems, pool chemical control and storage, pool construction, chlorine resistant finishes and pool play features. 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.

In addition, there will be a substantial amount of specialized equipment and materials. The CM/GC process allows for early procurement of materials and

equipment which often causes delays and scheduling issues on traditional low bid projects.

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

The Project is for new construction of an Aquatic Center.

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

The Project is a new Aquatic Center, and it will be unoccupied during Project construction.

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

Portland Parks & Recreation has an important goal to rectify inequity in the distribution and development of park facilities throughout Portland – particularly in system deficient areas such as in North Portland. The expeditious construction of an expansive aquatic facility in the location fulfills an important access equity goal for the Bureau and the City.

With the CM/GC contractor engaged early in the design process, the Team may consider early work packages and permitting packages to support completing the Project quickly and efficiently. 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. This has been demonstrated with previous City CM/GC projects.