EXHIBIT A

CBWTP WET WEATHER CLARIFIER AND HYPOCHLORITE MODIFICATIONS

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 and collectively, the Findings) to exempt the Columbia Boulevard Wastewater Treatment Plant (CBWTP, or the Plant) Wet Weather Clarifiers and Hypochlorite Modifications Project (Project) from the competitive bidding requirements of ORS Chapter 279C and to approve Construction Manager/General Contractor (CM/GC) as the alternative contracting method for the selection of a CM/GC Contractor (Contractor) for the Project. Capitalized terms used herein have the meaning ascribed to them in the Ordinance.

I. BACKGROUND

BES owns and operates the CBWTP that protects public health, safety and the environment by treating wastewater from the City of Portland. The Plant was built in 1952, with secondary treatment facilities expanding in the early 1970s. CBWTP is located at 5001 N Columbia Blvd in Portland, Oregon and treats an annual daily average of 76 million gallons per day of municipal wastewater and a peak flow of 450 million gallons per day of combined sewer flows. The Plant receives wastewater and processes biosolids at all times.

The Project includes the rehabilitation of the wet weather clarifiers and the hypochlorite disinfection system, which are critical assets in achieving National Pollutant Discharge Elimination System (NPDES) permit compliance. The following improvements improve their functionality, resilience and reliability: eight existing wet weather clarifier upgrades, gravity thickener demolition and sodium hypochlorite disinfection system replacement. Project elements must be designed, sequenced and built to sustain continuous operations. This Project requires specialized skills and experience in construction methodology, problem solving, sequencing, scheduling, and cost estimating to successfully complete the work.
Design and construction of the Project is expected to be challenging given system age, size, complexity of work, continuous plant operational requirements, weather impacts, seismic considerations, specialty equipment availability, regulatory requirements and a dense network of active underground utilities including water, sewer, gas, electric, and communication lines. Past investigations of subsurface conditions show that work will be impacted by poor soil conditions and high groundwater. Extensive literature, data, and field investigations are required to characterize these essential Plant elements, deliver quality design and complete construction of these CBWTP asset upgrades. In addition, the Project must comply with City, State and Federal regulatory requirements.

Due to Project complexity, required continuous operations and the anticipated magnitude of construction, use of a CM/GC contracting method increases the likelihood that cost saving solutions are identified early in the project and reduces the risk of operational impacts, schedule delays, cost overruns, claims and workmanship issues. Early contractor involvement will help reduce constructability, sequencing and operational risks. In addition, this approach decreases the likelihood of disputes and potential costly change orders that could impact the budget and schedule of the Project.

In addition, CM/GC contracting upholds a broader community, BES, and City commitment to social and racial equity, diversity and inclusion in construction contracting through use of the recently-adopted Regional Workforce Equity Agreement (RWEA) and Construction Diversity and Inclusion Policy (CDIP).

The City is typically required to use competitive sealed bidding as the process to award a contract for a proposed Project. Accordingly, an exemption from ORS 279C requirements is proposed. Portland City Council is the Local Contract Review Board with the authority to exempt certain public contracts from the competitive bidding requirements of ORS 279C, given factual findings justify an alternative approach.

With the present action, Council will exempt the Project from competitive bidding requirements of ORS279C and authorize the CM/GC contracting method. The factual findings are provided in the following sections.

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 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, ability to comply with the RWEA and CDIP, safety record, and percentage profit and overhead markup. The selection committee will evaluate and score the written proposals, conduct interviews if necessary, and recommend a Contractor for 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.

Early involvement during the design phase will allow for a Contractor to evaluate construction means and methods, develop phasing and staging plans to perform the work most efficiently. 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.

Finding: *Based on the information above, implementing a CM/GC contracting method is not anticipated to encourage favoritism or diminish competition in the selection 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 affords the opportunity for the Contractor to participate during the design phase of the Project, lending its expertise, knowledge, and experience to provide feedback as to whether the Project's proposed design is feasible within the project parameters. Similarly, this allows the Contractor to make and/or incorporate technical suggestions that propose alternative and less expensive ways of achieving project objectives. This can result in more practical, constructible, and economic design solutions with less impact to operations, maintenance and the environment, while maintaining the design's integrity. Early participation in the design process also enables the Contractor to become more familiar with the Project requirements before preparing firm pricing and a schedule for the work. The Contractor will become involved at the 30% level of design completion, facilitating involvement in the plan development, permitting and the planning of construction sequencing.

Finally, the development of a negotiated Guaranteed Maximum Price (GMP) proposal, as opposed to a low-bid proposal, provides the City with greater transparency and ownership into the actual costs of construction, including pricing for risk and contingencies. This collaboration is not possible under a traditional design-bid-build process.

Finding: *The CM/GC contracting method allows the Contractor to understand and provide constructability reviews during the design phase, which can reduce the potential of costly change orders or disputes during the construction phase that could impact the schedule and budget of the Project. Additionally, early Contractor involvement could reduce contingency costs in comparison to the traditional design-bid-build delivery method that includes only a very brief bidding period. Overall, Contractor involvement during design can result in more practical, constructible and economical design solutions while maintaining the design's integrity.*

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

Nationwide and locally, an increasing number of contractors are gaining experience with alternative delivery projects. The size of this project is suited for contracting teams that have experience in alternative delivery and can build on their relationships with the local subcontracting community and union halls for workforce hiring. These firms will include some contractors that might not bid for the Project under a traditional design-bid-build competitive bid process due to uncertainties and potential risks associated with bidding and contracting.

The CM/GC method allows the opportunity for a contractor to better understand a project prior to completion of the final design. 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. Many firms in the Portland area and beyond are qualified to propose on this Project.

Finding: *The City believes a number of firms are available and intend to propose on the project.*

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

The Project will be funded by the Sewer System Operating Fund. The anticipated construction contract value is approximately $63 million, with a low level of certainty at this early stage of the Project. The total Project budget is estimated at $125 million. At planning level, the Project budget includes a -50 percent to +100 percent cost estimating uncertainty. The CM/GC construction method will provide the opportunity for careful consideration of means and methods of construction and support cost saving measures through construction phasing to deliver construction without disrupting existing Plant operations.

Adding the Contractor to the design team at 30% design will allow for the sharing of information on constructability and develop a logical sequence for construction. The interaction of the Project team and the Contractor team during the design process means that it is more likely that the final design will also take into account potential construction challenges. Participation in the design process also enables the Contractor to become more familiar with the Project before it prepares its price and schedule for the work.

The development of a negotiated Guaranteed Maximum Price (GMP) proposal, as opposed to a low-bid proposal, provides the City with greater transparency and ownership into the actual costs of construction, including pricing for risk and contingencies.

Finding: *The City's total estimated project cost is $125M with a low level of certainty.*

C. Public Benefits That May Result from Granting the Exemption

Exempting the Project from low-bid may yield multiple public benefits. The CM/GC contracting method will facilitate the completion of this complicated Project without interrupting the ability of the existing facilities to treat wastewater. During the design phase of the Project, Contractor participation and feedback to the design team will be invaluable in determining design features that are critical to successful completion including ensuring continuity of existing plant operations, including compliance with water quality requirements and minimizing impacts on residences and public amenities, including the 40-mile loop trail.

The alternative contracting method also allows the Contractor to plan and promote outreach to encourage the utilization of a diverse set of workers, including women and minority apprentices and COBID-certified subcontractors, to help achieve equity in contracting and workforce diversity goals with the Project during construction.

Finding: *Using the CM/GC contracting method means that the Contractor has more time to conduct outreach to achieve social equity in contracting goals and consider construction methods that minimize the public impacts caused by the work. The CM/GC method allows more time for the Project team and Contractor to understand construction impacts and meaningfully engage in public involvement to consider measures to minimize and mitigate these impacts.*

D. Whether CM/GC Techniques May Decrease the Cost of the Project

Using the CM/GC contracting method will allow BES and the Contractor to evaluate and propose the most cost-effective ways to deliver a project without reducing project quality and functionality. The CM/GC contracting method supports the following elements:

- Providing the Contractor an opportunity to partner with BES Design, Construction, and possible consultants or other support staff, in performing value engineering and constructability reviews. In contrast, contractor input during the design phase is not possible using the conventional DBB contracting method.
    - Best leverages the engineering and constructability ideas that are accepted and incorporated into the final design, as it is less expensive to implement ideas during design than to wait and provide a change order and potential redesign during construction.
- Integrating Contractor input on project permits early may reduce permit fees, resulting from unanticipated changes, and application process duration.
- Procuring specialty electrical, mechanical, and structural support systems early to address potential long-lead times and increasing product costs.
- Applying 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 prevent disruption at the Plant.

Finding: *The CM/GC method allows for the integration of value engineering and constructability review ideas into the design, which is not feasible in the traditional DBB method. Early partnering of the Contractor, design and regulatory teams can reduce the likelihood of permit fees, change orders, claims, and delays during construction, resulting in potential for cost savings and delivery of quality construction while meeting the Project schedule.*

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

With the CM/GC contracting method, 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 that improves system resiliency: experience in construction of upgraded facilities while ensuring continued operation of existing plant facilities, high water table conditions, unstable soils, concrete rehabilitation, structural improvements to aging infrastructure, disinfection equipment, hazardous substance management, and coordination of mechanical, electrical, instrumentation and controls disciplines.

The DBB process can, through the use of contractor pre-qualifications, ensure that only qualified contractors bid on the project, but it does not allow the City to select the most qualified contractors to perform the work. The CM/GC method is important to allow a contractor to be involved in the design, schedule, risk-reduction, and overall successful completion of this Project.

Finding: *The CM/GC method is more likely to result in hiring a contractor with experience and expertise for completing the technical components of the work. The traditional DBB method does not allow the City to choose a contractor based solely on qualifications.*

Therefore, the CM/GC contracting method provides the best opportunity for the City to select a contractor with a high degree of specialized expertise and experience necessary for the particular requirements of the Project.

F. Likely Increases in Public Safety

The Plant is an actively operating wastewater treatment facility that must remain accessible for operations and maintenance activities by City staff at all times, it is imperative that the Contractor maintains good safety practices within the construction work zones.

Finding: *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 they understand the City's safety concerns and verify appropriate safety mitigation steps are planned and documented.*

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

The Project will be constructed in the middle of an existing wastewater treatment plant, adjacent to the Columbia Slough. BES's risk for a discharge permit violation is higher when temporary facilities are required to modify the existing plant. Limiting the time frame during which plant operations rely upon temporary facilities is a major scheduling goal.

The solicitation process for selecting the Contractor allows BES 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 cost overruns.

The CM/GC contracting method allows for a better identification and allocation of risks, negotiated before construction starts, than with a traditional low-bid procurement process where risks are perceived, not negotiated, and rarely transparent.

Finding*: Using the CM/GC contracting method will allow BES to hire a Contractor during the design phase of the Project. This allows for the development of a comprehensive construction schedule before initiating the work with input from the Project team to reduce risk of discharge permit violations. 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 identified construction risks to minimize impacts to the Plant and surrounding residents and businesses.*

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

The approximate overall Project budget is $125 million, including predesign, design, permitting, preconstruction services, construction, and startup and closeout. The Project will be funded by the Sewer System Operating Fund, regardless of the contracting method. The Project is funded in the current fiscal budget and is expected to be included in the fiscal year budgets through FY 2024-25.

Finding: *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

The CM/GC method uses a competitive selection process, with qualifications being one of the criteria. The committee will review bids based on selection criteria that include non-cost factors, including qualifications, expertise, and the ability to deliver on the City's policy goals and community expectations. This selection does not significantly change the pool of contractors qualified to bid on the Project but does allow the City to select the most qualified contractor for the Project, while ensuring competitive pricing through the negotiations for materials and labor for the Guaranteed Maximum Price (GMP).

The construction industry is a relatively unpredictable industry with prices fluctuating constantly. The CM/GC contracting method allows for more cost-control capabilities, such as utilizing a contingency fund to mitigate paying for contingent risks, as well as open-book cost estimating, with the potential for more trust and collaboration among the entire project team. The risks associated with market pricing fluctuation can be mitigated via early procurement of materials and equipment, a tool not-easily implemented via traditional design-bid-build project delivery. Thus, the CM/GC method can enable BES to control the impact of price increases occurring in the current market and to avoid schedule delays resulting from long lead-time products by purchasing them before construction, if appropriate.

The CM/GC method allows more time for a Contractor to conduct outreach to subcontractors certified by the Certification Office for Business Inclusion and Diversity (COBID), workforce training agents, and meet RWEA/CDIP goals, because they are involved in a project earlier than the DBB contracting method. Using the CM/GC method, the Contractor will solicit bids from potential subcontractors earlier in the process than the traditional DBB.

Findings**:** *The CM/GC contracting method reaches the same or greater market of construction contractors than the traditional DBB method of delivery. It allows more time for a Contractor to conduct outreach to subcontractors, increasing the likelihood of meeting RWEA/CDIP goals for the project. The CM/GC method can also allow for early procurement of project materials which can help ensure that the Project meets the schedule.*

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

Special technical complexities of this large, complex Project include construction while ensuring continued operation of existing plant facilities, high water table conditions, unstable soils, concrete rehabilitation, structural improvements to aging infrastructure, disinfection equipment, hazardous substance management, and coordination of sophisticated mechanical, electrical, instrumentation and controls disciplines.

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 and to assist in obtaining required Project permits. Also, having the Contractor issue competitively bid treatment equipment procurement packages prior to design completion will allow the design team to tailor the facility design to the actual

treatment equipment that is being furnished rather than providing a design that can accommodate all of the potential equipment that could meet the treatment equipment specifications. This early involvement during the design phase and early procurement of treatment equipment will allow the Project Team and the Contractor team to actively work together to find solutions to complete the Project in the most efficient manner possible.

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 team to actively work together to find solutions to complete the Project in the most safe and efficient manner possible. The DBB method does not allow the City to discuss and coordinate on the project until after the final design is completed.

Finding: *The CM/GC method will allow the contractor to provide constructive input on the final design and support successful completion of this large, complex Project in the timeliest and cost- effective manner.*

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

The Project includes new construction, system upgrades and connections to existing facilities to maintain Plant NPDES permit compliance and improve system resiliency. Using the CM/GC contracting method, discussion of Project risks and constraints, such as constructability, sequencing and continuous operations, can occur during the design phase with the Contractor team, rather than after the completion of design the traditional DBB method.

Finding: *This Project involves new construction and renovations.*

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

The Project will be occupied and treating wastewater for the duration of the Project. The CM/GC contracting method allows for early review of construction sequencing plans and measures to ensure delivery of services during construction.

Finding: *The CM/GC contracting method will allow for early review of sequencing plans and construction activities that will ensure continuous Plant operations.*

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

The CM/GC contracting method allows for careful consideration of construction means and methods, and construction phasing options, during design. For this project, the Contractor team and designer will work together to evaluate potential treatment plant flow scenarios that could significantly reduce construction duration, which could result in a single or multiple phases of construction depending on the project's needs.

Finding: *The project may require multiple phases of construction, which will be determined during design development.*

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

BES has successfully delivered several CM/GC projects, including the Downtown/Old Town SW Main/Taylor Sewer Rehabilitation Project, Kelly Butte Reservoir Project, the Corrosion Control Improvements Project, the Washington Park Reservoir Improvement Project, and the Tryon Creek Headworks project.

Finding: *The City has the required expertise and experience to procure and deliver the Project and its contract.*