EXHIBIT A

CBWTP BLOWER SYSTEM AND BUILDING IMPROVEMENTS 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 Columbia Boulevard Wastewater Treatment Plant (CBWTP or the Plant) Blower System and Building Improvements 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

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 flow of 76 million gallons per day and a peak flow of 450 million gallons per day.

CBWTP utilizes primary and secondary treatment processes to achieve National Pollutant Discharge Elimination System (NPDES) permit compliance. The blower system is a critical asset in the secondary treatment process which operates 24 hours per day, 365 days a year. The system consists of four blowers and air piping to supply air to aeration basins for wastewater treatment. All blowers are about 30 to 50 years old now and are at the end of their useful life. The air piping is also aged and has had leaks in multiple locations which reduce system efficiency. In recent years, capacity demands on the existing blower system has increased due to varying weather patterns. As a result of the deteriorating conditions and increased capacity needs, replacing the blowers will improve BES' ability to reliably meet its NPDES permit compliance requirements.

The Project includes replacement of the existing blowers, upgrade of the blower electrical and control equipment, rehabilitation and replacement of air piping, and structural improvements to the blower building. The Project is aimed to improve blower system reliability, enhance energy efficiency, reduce system failure risks, and meet the future operation needs and NPDES permit 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 method would allow the BES to select a highly qualified and experienced Contractor to receive the best value for the Project and uphold a broader community, BES, and City commitment to social and racial equity in construction

contracting through the implementation of the 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 of the Project from the competitive bidding requirements of ORS 279C is requested. Portland City Council is the Local Contract Review Board with the authority to exempt certain public contracts from the ORS 279C requirements, given factual findings justify an alternative approach. The factual findings of the Project 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 competitive RFP procedures, that will attract competition for this contract from numerous contractors in the construction community. The RFP for a CM/GC will be advertised in Portland's Daily Journal of Commerce and on the City's Online Procurement Center at least three weeks in advance of the deadline set for submitting responses to the RFP. The proposals submitted in accordance with the RFP will be evaluated by a selection committee based on criteria including experience, technical expertise, key personnel qualifications and staffing, ability to meet the RWEA objectives, 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 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 may result in broader participation than the traditional Design-Bid-Build (DBB) process. Qualified general contractors and construction management firms will have an opportunity to compete to oversee the project with its associated risks, while standard DBB contractors will be able to compete for subcontract packages. These firms may otherwise be unwilling to face the uncertainties and potential financial risks associated with bidding and contracting for the overall construction under a traditional DBB competitive bid process.

Structuring the Project under a CM/GC contract will involve the Contractor during a substantial portion of the design phase, which will allow for a contractor to determine effective construction methods, develop phasing and staging plans to perform the work most efficiently with minimal disruption to the plant operation. 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 Guaranteed Maximum Price for the Project, thus reducing their pricing risk in undertaking a project of this complexity.

Finding: *Based on the information above, it is not anticipated that competition will 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 offers 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 and constructible 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 schedule for the work.

The CM/GC Contractor will become involved at the 60% level of design completion, facilitating involvement in the plan development, permitting and the planning of construction sequencing. Integrating planned means and methods in early permit applications may reduce fees and potential delays.

Finding: *The CM/GC contracting method allows the Contractor to understand the project and perform 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's early 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

The CM/GC contracting method may result in broader participation and greater competition than the traditional bidding process. Qualified general contractors and construction management firms will have an opportunity to compete. Procurement Services provides early outreach and notifications to potential contractors. 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.

In addition, 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. Many firms in the Portland area and beyond have such experience and are qualified to bid on this Project. Recent BES and PWB projects using the CM/GC method include the Downtown/Old Town, SW Main/Taylor Sewer Rehabilitation Project, Kelly Butte Reservoir Project, the Washington Park Reservoir Improvement Project, the Carolina Trunk Work Zone 01/03 Rehabilitation Project, and the CBWTP Secondary Treatment Expansion Project.

Finding: *The CM/GC contracting method may be an attractive option for firms who are seeking to avoid the financial risks associated with the traditional DBB method. A number of firms have been, or currently are contracting with the City under the CM/GC contracting method.*

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 $26.3 million. The total budget of the Project is estimated at $51.5 million. At planning level, the Project budget includes a -50 percent to +100 percent cost estimating uncertainty. The CM/GC method will provide the opportunity for careful consideration of construction means and methods and support cost saving measures throughout the project.

Contractor's involvement will start at 60% design to allow for the sharing of information on constructability and develop a logical sequence for construction. The interaction of the design and operations team and the Contractor 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. This familiarity means that the Contractor could better manage the construction cost through careful construction planning, staging, and sequencing.

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

Finding: *The City's total estimated project cost is $51.5M with a low level of certainty. The CM/GC method will support cost-saving measures for construction and provide the City greater transparency and ownership on construction cost via a negotiated project GMP and associated risks.*

C. Public Benefits That May Result from Granting the Exemption

Exempting the Project from low bid may yield multiple public benefits. The CM/GC process will facilitate this complicated Project without interrupting the plant operation, which will benefit the public as it reduces the risk of adverse environmental impact due to impaired plant operation. In the CM/GC method, Contractor's early involvement prior to construction will give the Contractor more time to optimize construction means and methods to minimize construction impacts on the CBWTP neighbors.

The CM/GC method also directs the Contractor to plan and promote outreach in preconstruction services, increasing opportunities to achieve the City's equity goals during

construction through implementation of the RWEA ad CDIP and their associated goals for the utilization of Certification Office for Business Inclusion and Diversity (COBID) certified subcontractors and of a diverse workforce for people of color and women.

Finding: *Using the CM/GC method provides many benefits to the public. Early Contractor involvement in the CM/GC method means the Contractor has more time to conduct outreach to achieve social equity in contracting and diverse workforce hiring goals. The CM/GC method allows more time for the Project team and Contractor to understand construction risks and meaningfully engage in early involvement to consider measures to minimize and mitigate negative impacts, particularly as it relates to interruption of the plant operations.*

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

Using the CM/GC method will allow the Contractor to work collaboratively with the BES and its project consultants 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 support the BES, and engineering consultants or other project stakeholders, 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 and application process duration.
- By negotiating contingent risks that only are paid out if risks arise, the City and the Contractor can potentially remove costs that Contractors otherwise would include in their bids.
- Contractor to procure specialty electrical, mechanical, or other time-critical components prior to construction 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 mitigate construction risks which would otherwise be mitigated at a greater cost during construction.

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 delay, construction change orders, and claims, 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

Through the CM/GC solicitation process, the City will have an opportunity to evaluate and select a Contractor with the specialized expertise required to meet the Project goals. The cost for such specialized expertise is included in the overall Project budget.

The Project requires specialized expertise in construction of wastewater facilities and extensive experience of upgrading facilities while ensuring continued facility operation, retrofitting new equipment into the existing facility, structural improvements to the aging building, installation of medium voltage electrical and control equipment, hazardous substance management, and coordination of mechanical, electrical, instrumentation and controls disciplines. There are some local and regional contractors that have worked on wastewater facilities and have the specialized expertise required for the project.

Finding: *The CM/GC method is more likely to result in the hiring of a contractor with the qualifications and high degree of specialized expertise and experience necessary for the particular requirements of the Project.*

F. Likely Increases in Public Safety

CBWTP is an actively operating wastewater treatment plant that must remain accessible for operation and maintenance activities at all times. It is imperative that the Contractor maintains good safety practices within the construction work zones and access areas in the Plant.

During selection, the CM/GC method allows a contractor's safety performance on similar projects to be considered as a selection criterion. During design, it provides the opportunity for the City to work closely with the design team and the Contractor to ensure that the design is compatible with appropriate construction safety measures, and that the Contractor understands and prepares appropriate plans to address the City's safety concerns and requirements.

Finding: *The CM/GC method allows a Contractor's actual safety performance on similar projects to be considered as selection criterion. It also permits the City to consider the impacts of design approaches to construction safety, as well as ensure that safety plans addressing specific risks of the project and site are being implemented and promoted in the Project.*

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

Compared to traditional DBB method, the CM/GC solicitation process allows the City to question Proposers to discern their expertise and therefore retain the most qualified Contractor for the specific project risks.

During design, the CM/GC method allows the City to collaborate with the design team and the Contractor to review constructability, identify project risks, and develop and assign risk mitigation approaches prior to construction, which will help the City to control and reduce these risks. This includes the development of construction sequencing plan prior to construction, which reduce the risk of interrupting continuous plant operation. Additionally, early involvement of the Contractor in the CM/GC method will help identifying market pricing for subcontractors and equipment to reduce the risks of costly change orders and schedule delay during construction.

***Finding**: The CM/GC offers the greatest flexibility, risk reduction, reliability, and ease of construction. The Contractor can develop a comprehensive construction schedule before initiating the work with input from the City and design team to reduce risk of operational interruption and discharge permit violations. The CM/GC method allows collaboration of the Project team throughout the Project to reduce construction risks and ensure a high-quality project delivery.*

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

The overall Project budget is estimated at $51.5 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 delivery method. The Project is funded in the current fiscal budget and is expected to be included in the fiscal year budgets through Fiscal Year 2023-2028.

***Finding:** Funding availability or utilization is not impacted by using the CM/GC 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 allows the Contractor to solicit competitive bids for various aspects of work (equipment, materials, labor, etc.) and coordinate construction activities among all resources to minimize construction risks and achieve cost savings. Using the CM/GC method, the Contractor will reach out subcontractors and solicit bids from them earlier in the process than the traditional DBB, which offers them more time to prepare bids and reduces potential financial risks and uncertainties associated with bidding. The CM/GC method will ensure the City receiving competitive price through negotiations of the Guaranteed Maximum Price (GMP) of the Project.

Additionally, the CM/GC method allows for an earlier procurement of equipment and materials, which is beneficial for the City in meeting the Project schedule and controlling the Project cost by purchasing long lead time items prior to construction and locking in product prices early in the Project to avoid significant price increase occurring in current market.

***Findings**: The CM/GC method will allow BES to better identify, plan for, and control the impacts of price increases and schedule delays. The CM/GC method of procurement reaches the same or greater construction market and allows more time for the Contractor to conduct outreach to subcontractors prior to construction, which enables them to better price risks and provide the City with competitive pricing and control the project cost and schedule. The CM/GC method can also allow for early procurement of project materials and equipment which can help ensuring that the Project meets the schedule and controls the cost.*

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

Technical complexities of this large Project include construction while ensuring continued

facility operation, replacement and retrofitting of large equipment, structural improvements to the aging building, hazardous material management, and coordination of sophisticated mechanical, electrical, instrumentation and controls disciplines.

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 method allows the City to select a Contractor based on qualifications that include adequate staffing for construction management and experienced subject matter experts to resolve construction challenges. 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, nor does it allow input on appropriate staffing levels to manage the construction complexities of a project of this nature.

Using the CM/GC method, the Contractor will proactively be involved in the design phase to develop construction approaches to address the Project challenges and improve the quality and constructability of the Project. Also, the early procurement of major equipment could help address technical complexity and mitigate the risk by tailoring the design to actual equipment that is being furnished rather than providing a design to accommodate all equipment that could meet equipment specifications. The early involvement and early procurement will allow the City, the design team, and the Contractor to actively work together to find solutions to complete the Project in the most safe and efficient manner possible.

Finding: *Using the CM/GC method, the Contractor will offer qualified expertise and resources and be involved early in the Project to provide constructive input into the design. This will allow the City to more holistically address the size, technical complexities, and associated risks of the Project prior to construction 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 and modifications to existing facilities. The Project includes new construction, system upgrades and connections to existing facilities which all contribute 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 a Contractor team qualified in this type of work, which will help ensure the Project achieves the intended goals.

Finding: *The CM/GC method will allow the City to select the Contractor who is qualified and experienced in both new construction and modifications to the existing facilities. Early involvement of the Contractor in the CM/GC method will mitigate the project risks and benefit the City.*

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

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

Finding: *The CM/GC method will allow for early review of sequencing plans and construction activities to 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 method allows the Project team, which includes the Contractor, for careful consideration of construction means and methods, and construction phasing options, prior to construction. Construction of this Project could be completed in a single phase or multiple phases in responding to the plant operation requirements and construction conditions, which will be evaluated collaboratively during the design phase.

Finding: *The CM/GC contracting method allows the Contractor to provide input during the design to consider project phasing options beneficial to project outcomes, including maintenance of plant operation, safety, costs, and schedule. Using the CM/GC method, the Contractor could plan construction phasing early in the project to minimize the risk of l Project delays or ineffective construction sequencing.*

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 has delivered and continues to deliver several CM/GC projects, including the Washington Park Reservoir Improvement Project, the Downtown/Old Town SW Main/Taylor Sewer Rehabilitation Project, the Carolina Trunk WZ01/03 Rehabilitation Project, and the CBWTP Secondary Treatment Expansion Project. The City has retained personnel, consultants, and legal counsel that have necessary expertise and substantial experience in implementing the CM/GC method.

Finding: *City personnel implemented or is implementing several projects using the CM/GC contracting method. The project team will apply the expertise and experience gained from recent projects to effectively implement the CM/GC method and to negotiate, administer, and enforce the terms of the resultant pre-construction and construction contracts for the Project.*