Exhibit A to Resolution 26-5602

Findings in Support of an Exemption from Competitive Bidding and Procurement of Constructional Manager/General Contractor Services by Competitive Request for Proposals for the Arlene Schnitzer Concert Hall HVAC Equipment Replacement

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Pursuant to ORS 279C.335(2) and (4), and Metro Local Contract Review Board Rule 49-0690, the Metro Contract Review Board makes the following findings in support of exempting the procurement of the Arlene Schnitzer Concert Hall HVAC Equipment Replacement from competitive bidding, and authorizing use of an RFP solicitation for a Construction Manager General Contractor (CM/GC) public improvement construction contract:

A. The exemption is unlikely to encourage favoritism or substantially diminish competition.

The Metro Contract Review Board finds that exempting the procurement of the construction of the Arlene Schnitzer Concert Hall HVAC Equipment Replacement from competitive bidding is "unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts" as follows: The RFP will be formally advertised with public notice and disclosure of the alternative contracting method and will be made available to all qualified contractors. Award of the contract will be based on the identified selection criteria and dissatisfied proposers will have an opportunity to protest the award. Full and open competition based on the objective selection criteria set forth in the Metro Contract Review Board resolution will be sought, and the contract will be awarded to the most advantageous proposer. Competition for the RFP will be encouraged by: Posting on Bid Locker, public advertisements placed in the Portland Business Tribune and other minority business publications; performing outreach to local small business groups and by contacting contractors known to Metro to potentially satisfy the RFP criteria. The subcontractor selection process will be a low bid competitive method for contracts by requiring a minimum of three bids per scope, unless there is an approved exception. Competition among subcontractors will be encouraged by: contacting local sub-contractors, including COBID firms and notifying them of any opportunities within their area of expertise and by performing outreach local small business groups.

B. The exemption will likely result in substantial cost savings to Metro.

The Metro Contract Review Board finds that exempting the procurement of the construction of the Arlene Schnitzer Concert Hall HVAC Equipment Replacement from competitive bidding will likely result in substantial costs savings to Metro, considering the "type, cost and amount of the Contract," the 14 factors required by ORS 279C.335(2)(b), and the "additional findings" per Metro Local Contract Review Board (LCRB) Administrative Rule 49-0630(3)(B) as follows:

Type, Cost and Amount of the Contract: (type of project, budgeted/expected overall cost (of project), budgeted/expected contract amount)

The current Capital Improvement Plan (CIP) includes $1,950,000 for this project. This is a rough-order-of-magnitude estimate developed prior to design. The Facility Condition Assessment estimated the cost of this project to be $2,385,000.

14 Statutory Factors

1. **Number of Entities Available to Bid:** The complex site logistics and uncertainties involved in mobilizing work on SW Broadway in downtown Portland and work scheduling requirements related to ongoing business/performances in the building during construction are likely to discourage bidders from participating in a traditional design-bid-build process. Additionally, these same complex site logistics present elevated risks that further discourage potential bidders. The opportunity to partner with the architecture and engineering team and perform investigative early work is likely to encourage more participation by contractors.

2. **Construction Budget and Future Operating Costs:** Utilizing an RFP process to select a General Contractor will allow Metro to obtain cost reductions through pre-construction services by the contractor during the design phase, including a constructability review, value engineering, and other services. Involving the contractor early in the design process fosters teamwork that results in a better design, fewer change orders, and faster progress with fewer unexpected delays, resulting in lower costs to Metro. The ability to have the Contractor do early work prior to completion of design shortens the overall duration of construction, resulting in less disruption and risk to revenue generation Portland'5 and its clients. Faster progress and an earlier completion date will also help Metro avoid the risk of inflationary increase in materials and construction labor costs.

   Contractor constructability review also allows for an ongoing review of the long-term operating costs of design options, allowing for midcourse design choices leading to a project having lower long-term operating maintenance and repair costs.

3. **Public Benefits:** The execution of the project by using the CMGC process will allow the schedule to be compressed sufficiently to address current supply chain issues and labor challenges being addressed by the construction industry. In addition to the public benefits from the cost savings noted above, the procurement of a CM/GC construction contract through the RFP process will help realize Metro's goal of obtaining COBID participation by enabling a qualitative review of proposers' approach to COBID outreach and mentoring partnerships. The CMGC process also facilitates the implementation of the Metro's Construction Career Pathways initiative by establishing the submittal and evaluation of the contractors' workforce development plans as an evaluation criteria.

4. **Value Engineering:** The process will enable the contractor to work with the project engineer and P'5 staff to help reduce construction costs by providing early input and constructability review to designers, avoiding costly redesign and change orders, and providing opportunities for the engineers and contractor to work together on both practical and innovative solutions to complex design issues. This type of contract will allow the engineers to more easily explore with the contractor the feasibility of innovative design solutions and incorporate ongoing value engineering.

5. **Specialized Expertise Required:** In addition to prior experience with historic buildings and performing arts center roof installation, contractor and subcontractors must be able to demonstrate in their proposal that they have worked in a busy urban area and understand the logistics of traffic control, access, removing demolished materials, etc. The selection of a contractor with such specialized expertise to construct the project will result in a substantially lower risk to Metro, because it increases the likelihood of the project being completed on or

ahead of schedule, resulting in lower costs and increased benefit to the community. The ability to factor expertise and experience into contractor selection is inherent in the RFP process, but is not part of the traditional low bid process.

6. **Public Safety:** The work will be done directly below street level, with limited headroom and restricted access. Removal and replacement of the chiller in its current location would likely require temporary opening of the structure above the mechanical room, including impacts at the street level, to facilitate equipment removal and installation, which could impact public safety if not performed with a level of expertise that can be ensured with a qualifications-based selection.

7. **Reduces Risk to Metro and the Public:** The risks to P'5's ongoing operations and contracting posed by the inability of the contractor to meet the schedule deadlines will be reduced by the selection of the contractor based on the demonstrated ability to perform the work as specified, rather than awarding the project to the low bidder.

8. **Exemption's Effect on Funding:** Does not apply.

9. **Better Control of Impact of Market Conditions on Cost and Time to Complete:** Engaging the contractor during the design and specification process will allow more nimble reaction to the current supply chain and labor shortage issues affecting the construction industry. Products under consideration can be evaluated based on availability and lead times. Subcontractors are more likely to bid and commit workforce to General Contractors who can demonstrate that they are already under contract for projects.

10. **Technical Complexity:** The exemption will allow the Contractor to pre-qualify/select subcontractors that have demonstrated technical expertise, knowledge, and experience with the logistical challenges of demolition and construction in a compressed urban site, all of which can be factored into the contractor selection in the RFP process. The selection of a contractor with demonstrated experience and success in implementing similar projects will result in a substantially lower risk to Metro, because it increases the likelihood of the project being completed on budget, with fewer construction delays and change orders, resulting in lower costs and increased benefit to the community. The RFP process will take into account each contractor's past performance and technical knowledge. Based on the necessary quality of the finished project, and the technical complexity of the undertaking, the Procurement Manager believes an alternative contracting process to be necessary and in the best interest of the agency.

11. **New Construction, Renovation or Remodel:** The scope of work has the potential to impact the comfort and safety of clients, customers and P'5 staff. Some of the design limitations and conditions are likely to be unknown until uncovered by exploratory demolition work performed under an early work amendment, which can be performed during design development to inform the design process.

12. **Occupancy During Construction:** The building will remain occupied during part of the construction period. Improper execution of the work could require cancellation of rehearsals, performances, and operational work, resulting in a loss of revenue for P'5, clients and staff.

13. **Phased Construction Work**: Some parts of the work must be done during a period without performances or events. Failure to complete the earlier phases by the committed "dark" period

will impact and potentially cause currently scheduled performances and events to be cancelled. Contractor integration with Metro and the architecture and engineering team during the preconstruction period to plan the phased work in light of the results of investigative early work is more likely to produce a project that avoids the risk of event cancellations.

14. **Availability of Personnel, Consultant and Legal Counsel with CM/GC Expertise:** The Office of Metro Attorney, Project Manager, and Project Engineer have the necessary qualifications and expertise to negotiate, administer, and enforce the terms of Metro's CM/GC public improvement contract, including prior experience governing large CM/GC projects and managing them to a successful completion.

Additional Findings:

1. Industry Practices, Surveys, Trends. The industry-accepted benefits of the CM/GC method include:

- Results in a better design that meets the owner's objectives.
- Encourages competition, especially for COBID subcontractors.
- Can be completed in a faster time frame.
- Costs less than a design-bid-build project that is designed and constructed in the traditional manner.
- Reduces the risks of delays, cost overruns, and disputes.
- Limits the number of change orders for unforeseen conditions.

2. Past Experience and Evaluation of Metro CM/GC Projects.

The Arlene Schnitzer Concert Hall Acoustic Enhancement Project. The benefits to the ASCH Acoustic Project achieved through the CM/GC process included:

- P'5 obtained cost reductions through pre-construction services by the contractor during the design phase, including a constructability review (e.g., materials, phasing, layout and design) and value engineering.
- Close cooperation between the architect and contractor allowed for rapid and successful solutions to challenges proposed by prior unknown conditions in the 92-year-old facility.

3. Benefits and Drawbacks of CM/GC to the Arlene Schnitzer Concert Hall HVAC Equipment Replacement.

Benefits - The CM/GC method provides an invaluable means of addressing the risks to Metro presented by the project's site conditions and timeline.

- Facility must remain open and operational, and the activity will take place above the audience chamber and stage house.
- Widespread public access and need to preserve a quality experience to maintain current revenues.
- Need to complete initial phases of the work in order to meet deadline posed by scheduled "dark" period.

By involving the contractor extensively during the design process, P'5 will be able to better account for, plan around, and address the above factors prior to and during construction. This avoids project delays and expensive change orders, helps to reduce liability and revenue risks to Metro, and provides a foundation of cooperation upon which a high-quality result may be achieved, on schedule and on budget. Pre-construction services provided during the process include a constructability review, value engineering, and other service during design. Involving a contractor during the design fosters teamwork that results in a better design, faster progress with fewer delays, and less costs.

Drawbacks - Given Metro's favorable experience with CM/GC, staff foresees no drawbacks to adopting the CM/GC method to implement the Arlene Schnitzer Concert Hall HVAC Equipment Replacement project.