

EXHIBIT A

Findings in Support of an Exemption from Competitive Bidding and Authorizing the Procurement by RFP of a CM/GC Contractor to Perform General Construction Services for Blue Lake Regional Park Renovation Project

Pursuant to ORS 279C.335(2) and (4), and Metro Administrative Rule LCRB 49-0620 through 49-0660 and 49-0690, the Metro Contract Review Board makes the following findings in support of exempting the procurement of the Blue Lake Regional Park Renovation from competitive bidding, and authorizing use of a Request for Proposal (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 Blue Lake Regional Park Renovation 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, public advertisements placed in the Portland Business Tribune and other minority business publications; performing outreach to local business groups representing minorities, women, and emerging small businesses, 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 to 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 Blue Lake Regional Park Renovation 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: A CM/GC contract will likely result in substantial cost savings to Metro as set forth in findings 2, 4, 7, 9 and 12 below. The current rough-order-of-magnitude estimate for the entire project is \$16.1 million.

14 Statutory Factors

- 1. Number of Entities Available to Bid:** The complex site logistics, including uncertainties involved in mobilizing work at Blue Lake Regional Park, and operational requirements on site during construction, are likely to discourage bidders from participating in a traditional design-bid-build process. Additionally, these same complex site logistics elevate risks that further discourage potential bidders. The opportunity to partner with Metro and the design consultant team and perform early investigative work prior to agreement on cost is likely to encourage more participation and less risk by contractors and subcontractors.
- 2. Construction Budget and Future Operating Costs:** Utilizing an RFP process to select a General Contractor will allow Metro and contractor to work together during pre-construction to control costs 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 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 can shorten the overall duration of construction, resulting in less disruption for Blue Lake Regional Park staff and guests. 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 dialogue and 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 CM/GC process, including the ability to perform early work and/or procure long lead time materials and equipment, may help address schedule concerns associated with uncertainty in the supply chain and labor market within 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 certified business participation by enabling a qualitative review of proposers' approach to outreach and mentoring partnerships. The CM/GC process also facilitates the effective implementation of the Regional Workforce Equity Agreement (RWEA) by establishing early and frequent collaboration among the general contractor, subcontractors, labor unions, and Metro. This leads to more seamless, efficient, and successful compliance by contractors and subcontractors with the workforce diversity, apprenticeship, recruitment and retention, anti-harassment, high road and equity contracting requirements of the RWEA, and results in projects being appropriately scoped and budgeted to include the delivery of these crucial public benefits.
- 4. Value Engineering:** The process will enable the contractor to work with the design consultant team and Park 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 design consultant team and contractor to work together on both practical and innovative solutions to complex design issues. This type of contract will allow the design consultant team 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 complex sites and phased projects, contractor and subcontractors must be able to demonstrate in their proposal that they have worked on complex sites and understand the logistics of traffic control, access, removing demolished materials, and maintaining park or other operational requirements during construction. 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.
6. **Public Safety:** The work being done at Blue Lake Regional Park 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 the Park'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 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 uncertainty in the supply chain and labor market experienced by 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, construction, habitat restoration, and in water lakeshore improvements within the Park, 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 consider 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, health and safety of Park guests and 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. Phased Construction Work: Contractor integration with Metro and the design consultant team during the preconstruction period to plan the optimal sequence and phasing of work is more likely to produce a project that avoids the risk of project delays.

13. Availability of Personnel, Consultant and Legal Counsel with CM/GC Expertise: The Office of Metro Attorney and Project Manager 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.

Recent benefits to Metro, via the 2008 Oregon Zoo Bond projects completed through the CM/GC process, include:

- Zoo 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.
- The bond program provided opportunities for COBID certified firms.

3. Benefits and Drawbacks of CM/GC to the Blue Lake Regional Park Renovation.

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

- Demonstrated technical expertise, knowledge, and experience with the logistical challenges of demolition, construction, habitat restoration, and in water lakeshore improvements can be considered to ensure high quality, efficient project completion.
- Potentially unknown site conditions can be discovered and addressed in the pre-construction period, avoiding schedule delays and costly change orders.

By involving the contractor extensively during the design process, the Blue Lake Regional Park Renovation project 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 other risks to the Park, 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 services 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 Blue Lake Regional Park Renovation project.