

ORDINANCE NO.

Adopt findings, authorize an exemption to the competitive bidding process for development of an MLS Stadium and a Triple-A Stadium, pursuant to ORS 279C.330 and City Code Section 5.34.810 and 5.34.820. (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. The City plans to finance, develop and construct: (i) renovations to PGE Park to convert PGE Park to a soccer stadium, consistent with the requirements of Major League Soccer (the “MLS Stadium”); and (ii) a new Triple-A baseball stadium of between 7,500 to 9,500 seats in the Rose Quarter of Portland and potentially on the site of Memorial Coliseum (the “Triple-A Stadium”) which will be operated by Peregrine Sports, LLC (together, the “Project”). The City will own both the MLS Stadium and the Triple-A Stadium and will have approval rights over the design of these facilities.
2. This Project is intended to provide a venue for the Portland MLS franchise and to provide a new venue for the Portland Beavers Triple-A baseball franchise. The franchises are controlled by Peregrine Sports, LLC, the proposed Project developer and operator.
3. The City proposes to enter into a Development Agreement with Peregrine Sports, LLC to provide architectural, engineering, construction management, and construction contracting services for, and the operation of, the Project, without solicitation of competitive bids for the Project.
4. The City Council is the Local Contract Review Board with the authority to exempt certain public contracts from the competitive bidding requirements of ORS Chapter 279C.
5. Draft Findings addressing competition, operational, budget and financial data, public benefits, value engineering, specialized expertise required, market conditions, technical complexity, public safety, and funding sources recommended by the City were available 14 days in advance of the public hearing of this ordinance. Those Findings, attached to this ordinance as Exhibit A, are hereby adopted and incorporated by reference.
6. The exemption of the MLS Stadium / Triple-A Stadium Project from the requirements of competitive bidding outlined in ORS Chapter 279C is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts because there is only one available developer/operator for the Project. In addition, the exemption will result in substantial cost savings to the public because of the substantial private investment and the City risk reduction features in the Project. Furthermore, an integrated development team can provide improved project staging, accelerated scheduling, integrated and innovative technical design, and ongoing constructability review, as shown in more detail in the Findings.

NOW, THEREFORE, The Council directs:

- a. The Findings attached as Exhibit A to the original of this Ordinance, are hereby adopted.
- b. The MLS Stadium / Triple-A Stadium Project is hereby exempt from the competitive low bidding requirements of ORS Chapter 279C and the City may enter into negotiations with Peregrine Sports, LLC., or any successor person or entity that agrees to execute a Development Agreement along the lines of the Proposed Transaction previously approved by Council in Resolution No. 36687 (As Amended).
- c. Any proposed Development Agreement shall be brought back to City Council for approval before its execution.

Passed by the Council,

Mayor Adams
Prepared by Jeff Baer
April 2, 2009

GARY BLACKMER
Auditor of the City of Portland
By

Deputy

EXHIBIT "A"

MLS STADIUM / TRIPLE-A STADIUM PROJECT

FACTUAL FINDINGS FOR A PROPOSED EXEMPTION FROM COMPETITIVE BIDDING

BACKGROUND:

These factual findings concern 1) a proposed exemption from competitive sealed bidding in regard to improvements at PGE park and a new public improvement, a Triple-A baseball stadium in the Rose Quarter of Portland, potentially at the present location of Memorial Coliseum; and 2) a proposed special procurement to permit the City to enter into an operating agreement for both PGE Park and the Triple-A baseball stadium.

A. Participants and interested parties

The City of Portland is the owner of PGE Park and Memorial Coliseum. PGE Park is a public improvement and multi-purpose stadium located in downtown Portland that is home to the Portland Beavers Triple-A baseball team and the Portland Timbers, a professional soccer team. The stadium was originally built in 1926 and has undergone a number of renovations and transformations over the ensuing years.

Memorial Coliseum is a public improvement and indoor arena located in the Rose Quarter of the City of Portland, on the east side of the Willamette River and close to downtown.

The Portland Beavers are a Triple-A baseball franchise affiliated with the Pacific Coast League. Triple-A is the highest level of minor league professional baseball played in the United States. The Beavers are under contract as a farm team for Major League Baseball's (MLB) San Diego Padres.

The Portland Timbers are a member of the United Soccer Leagues' (USL) First Division. USL is an organization of elite-level soccer leagues in North America. The First Division is the highest level of competitive play in the USL. A higher level of competitive play is found only in Major League Soccer (MLS). MLS is the top-flight professional soccer league in the United States and was founded in 1996.

Shortstop LLC is the owner of the Portland Timbers and Portland Beavers. Merritt Paulson is the President of Shortstop LLC.

Peregrine Sports LLC is a company formed to finance, develop, construct and thereafter operate: (i) PGE Park, if renovations that would make the stadium more suitable for Major League Soccer; and (ii) a new Triple-A baseball stadium of between 7,500 to 9,500 seats in the Rose Quarter, potentially on the site of Memorial Coliseum, if that stadium is built. The two public improvements will hereafter be referred to as the "Project."

B. Background to the introduction of MLS in Portland

In the spring of 2008, MLS announced its intention to take proposals for two additional expansion franchises that would begin play in 2011. Merritt Paulson, as President of Shortstop LLC, the owner of both the Portland Timbers and Portland Beavers, approached the City and indicated he wanted to submit a proposal to MLS for one of the available expansion franchises. MLS is the highest level of competitive soccer played in the United States.

On March 11, 2009, the City Council approved Resolution No. 36687 (As Amended) that declared the City's support for Peregrine's bid to bring a MLS franchise to the City and approved a proposed transaction between the City and Peregrine. The Resolution and Proposed MLS/Triple-A Transaction Terms are incorporated herein by reference and hereafter referenced as the "Proposed Transaction."

The Proposed Transaction includes renovations to PGE Park as well as the construction of a new Triple-A baseball stadium with approximately 7,500 to 9,500 seats on the site of Memorial Coliseum. The Proposed Transaction approved by the City recognized that a company other than Peregrine may take Peregrine's place as the formal entity with whom the City will execute a Development Agreement that will require the construction of renovations at PGE Park and the construction of a new Triple-A baseball stadium. Throughout the remaining portions of these Findings, the reference to "Peregrine" shall mean Peregrine or any successor person or entity that agrees to execute a Development Agreement along the lines of the Proposed Transaction.

On March 20, 2009, MLS announced its conditional approval of an MLS franchise for Portland. A condition of franchise award is an unconditional commitment to fund the renovations to PGE Park by September 1, 2009. The Proposed Transaction contemplates relocation of the Beavers' venue if a MLS franchise was awarded. In order to make the renovations and relocate the Beavers in the time required project

costs and sources of funds to pay those costs must be identified in a very short time period.

Peregrine provided, and the City has accepted, preliminary Project cost estimates totaling \$ 88,785,000. However, until the Project is designed to a point that costs can be more precisely estimated, Project costs are uncertain and the parties cannot finalize the public/private partnership. However, in order to meet dates related to the beginning of the MLS professional soccer season and the Triple-A baseball season in order that both will be ready by April 2011, development of the Project must begin immediately.

The City proposes to grant Peregrine the right to develop and operate on behalf of the City a Major League Soccer (MLS) Stadium at the current PGE Park and to permit Peregrine to construct a new baseball stadium in the Rose Quarter, potentially at the Memorial Coliseum site, initially to be undertaken pursuant to a Predevelopment Agreement between Peregrine and the City, as may be amended or superseded by an anticipated Development Agreement between Peregrine and the City.

As noted in the proposed transaction terms, the City will continue to own PGE Park and will own the Triple-A stadium at the end of construction.

MLS reports that it has elevated the sport's stature in North America by building soccer-specific stadiums. In 1999, the League began moving aggressively to create custom-made venues for its teams that generate the atmosphere and intimacy the game deserves. The seating capacity for these stadiums is between 18,000 and 27,000 and the stadiums share design concepts with some of the finest soccer venues in the world. In 2008, eight of the League's 14 teams will compete in stadiums built specifically for professional soccer.

MLS also intends for the Portland franchise to be played in a soccer-specific stadium. It has been determined that it would be less costly to modify PGE Park for Major League Soccer and construct a new minor league baseball stadium than to retain baseball at PGE Park and develop a soccer-specific stadium for the MLS team elsewhere. Therefore, PGE Park will require renovation to meet MLS stadium requirements. The remodel would include permanent seating along the east side of the field, necessitating the relocation of the baseball team.

In addition, the large size of PGE Park is a significant impediment to the Portland Beavers business and a smaller ballpark would be more appropriate for the Beavers and their fans. Therefore, the proposed project requires the construction of a new Triple-A baseball stadium seating 7,500 to 9,500.

The MLS Stadium and the Triple-A Stadium constitute the “Project.” As used in these findings, “Peregrine” refers to Peregrine Sports LLC and any other entity managed by the managing parties of Peregrine LLC. The City will own the Project and will have approval rights over the design of the Project facilities. Peregrine will be responsible for designing and constructing both facilities, using contractors approved by the City. An exemption from public bidding must be considered by April 15, 2009, to expedite the Project in order to ensure the MLS Stadium and Triple-A stadiums are available by the start of the 2011 seasons (April 2011), as required the MLS and Triple-A leagues.

C. Proposed Agreements to be executed by the City

The City proposes to enter into a Predevelopment Agreement with Peregrine until a Development Agreement is reached.

The City proposes to enter into a Development Agreement pursuant to which Peregrine would hire contractors to renovate PGE Park to make it a soccer-friendly stadium, build a new Triple-A baseball stadium in the Rose Quarter, and if the Rose Quarter site requires it, to demolish Memorial Coliseum. The Development Agreement will require Peregrine to hire designers to design the renovations to PGE Park and the Triple-A baseball stadium. The Development Agreement will also include the terms for financing the Project, including both public and private sources for Project funding.

The City proposes to enter into operating agreements with Peregrine to operate both the newly renovated PGE Park and the new Triple-A baseball stadium.

D. State law requirements regarding public improvements

The City ordinarily is required to use competitive sealed bidding as the process to award a contract for public improvements for the cost contemplated by the Proposed Transaction. Nonetheless, State law permits the City to designate an alternative contracting method if it is able to make Findings justifying an alternative approach.

I. FINDINGS REGARDING REQUIRED INFORMATION

1. OPERATIONAL, BUDGET, AND FINANCIAL DATA:

The Project could not be undertaken without the support and assistance of Shortstop LLC, Merritt Paulson, and Peregrine. Without the willingness of Mr. Paulson and/or his company to pay the MLS franchise fee, MLS would not arrive in Portland.

In addition, the Proposed Transaction shows that Peregrine will pay the amount of \$12,500,000 (“\$12.5M”) to help renovate PGE Park and construct the Triple-A baseball stadium. The City is unaware of any other person or entity that is willing to pay a portion of the costs for the Project, let alone the amount of \$12.5M. Therefore, there will be substantial cost savings to the City in executing a contract with Peregrine

Because these Findings are entered into in advance of the execution of a Development Agreement, it is possible some terms and conditions of the Development Agreement may vary from that of the Proposed Transaction. Nonetheless, so long as Peregrine promises to contribute the amount of \$12.5M or a similar substantial amount toward construction costs, the execution of a contract with Peregrine for the Project will result in substantial cost savings over a competitively bid contract in which the contractor would not contribute toward its costs.

A Development Agreement between Peregrine and the City will provide the City the advantage of a single point of responsibility, clear definition of the construction outcome, cost containment, reduced change orders, fast-track design and construction, private financial participation in construction costs, private guaranties of certain revenues used to support certain City issued bonds to pay Project design and construction costs, and cost overrun sharing with a private entity. Peregrine would provide design, engineering, construction management and construction contracting services for the Project. None of these outcomes are likely or possible if the City were to competitively bid the Project.

The Development Agreement will require that Peregrine make significant private investment in the Project and share a portion of construction cost overruns. Furthermore the financial backers of Peregrine will personally guaranty City revenue streams from the Project facilities that constitute the City’s source of repayments of bonds for the Project costs. Again, none of these outcomes are likely or possible if the City were to competitively bid the Project.

2. PUBLIC BENEFITS:

City Council has determined it is in the best interest of the public to support expansion of major league sport in Portland by undertaking the Project. Specific public benefits to the Project include:

- The Project construction jobs are estimated to be in the 650 range and the construction period will approach two years. A construction project of this scale will benefit a sector of the economy greatly impacted by the current recession;
- The creation of 300 permanent jobs has been forecasted as a result of the Project; and
- Shortstop LLC already has a community foundation that supports youth soccer and baseball programs in the region. MLS has a program that requires teams to be involved in the community and actively support youth soccer programs. Shortstop LLC has a goal to grow its foundation work and this growth coupled with the MLS program, MLS WORKS, should result in a significant increase in support for youth soccer programs. The community will benefit from the increase in outreach and support for youth sports. If the Project were competitively bid, it is not likely, or even possible, that another contractor would make the contributions to Youth Programs, outlined in Paragraph 6 of the Proposed Transaction.

Other non-economic benefits the City may derive from an MLS team include:

- The exposure Portland receives through MLS - both nationally and internationally – which will raise Portland's profile and could attract additional business and tourism activity.
- MLS will increase interest in professional soccer and stimulate interest in the sport generally.

To meet the conditions of the MLS franchise that the MLS stadium be open by the season starting April 2011, the construction must be undertaken on a fast track while Shortstop LLC, an entity under the same management as Peregrine continues to meet contract requirements to play Triple-A baseball in 2009 and 2010, and to comply with current PGE Park lease terms. A single point of contact and an integrated team of qualified architects, engineers and contractors provide more assurance that construction of the Project will proceed smoothly with a minimal amount of interruptions and Project delays than the traditional procurement method.

In addition, the Peregrine team has the thorough understanding of the requirements for Project construction, and the financial interest, to preserve the economic viability of the existing PGE Park during construction of the Project.

Under the Development Agreement, a portion of the Project costs will be funded with private financial participation, including personal guaranties of the revenue stream to repay the City debt incurred for Project construction and cost overrun sharing. The private funding is a significant public benefit. It is not likely, or even possible, that a construction contractor would offer such guaranties if this project were to be competitively bid.

3. VALUE ENGINEERING:

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 this Project as it is on other projects where the contractor can be selected before the design is completed. In that way, the contractor's suggestions can be incorporated into the schematic design and design development stages, 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. Changes after a project are competitively bid can cost the City money. A traditional "low bid" system cannot take value engineering into account during the design stage because the design must be complete before bids are received.

Value engineering is also achieved by having a single point of responsibility that involves an integrated team of designers and contractors. This team structure provides the opportunity to evaluate project parameters from the very start of the Project and provide constructability reviews throughout. In a fast track, tight budget project like this, value engineering should be enhanced from the beginning.

In addition, the potential for value engineering is enhanced because the Development Agreement would require Peregrine, which is responsible for the design and construction of the Project, to share in cost overruns. Moreover, Peregrine and Shortstop LLC would suffer the damages of any delay in the substantial completion of the Project, further enhancing the prospects for early consideration of value engineering. In a typical "low bid" project, the contractor is not responsible for design problems. By having both design and construction responsibility in a single entity,

Peregrine cannot approach the City and ask for additional funding as a result of its design errors.

4. SPECIALIZED EXPERTISE:

Stadium redevelopment and development is a field that requires unique expertise in the sporting events industry. Peregrine is under common management with Shortstop LLC, the owner of two sports franchises which play at the MLS Stadium site. Peregrine has unique knowledge of PGE Park based on the knowledge that Mr. Paulson and Shortstop LLC have in their two years as operator. That knowledge would be available to Peregrine, but not to other contractors who might bid on the project.

Furthermore, Peregrine's initial work in preparing the franchise proposal and the proposal to the City for the Project has established access to leading national designers and contractors for the Project who would be brought onto the Project development team subsequent to approval of this exemption and a pre-development agreement between the City and Peregrine. Contractors who might otherwise bid on the Project would not have that expertise immediately available and given the short time lines in which construction bids are prepared would be unlikely to acquire the same amount of knowledge as the persons involved with Peregrine.

5. PUBLIC SAFETY:

Given the Project fast track schedule, the design and construction of the Project must be coordinated to establish plans for public safety during construction of the Project at two central city sites. For example, the phases for construction, the design of temporary facilities, construction staging areas, street closure plans, coordination with utilities and neighbors, and potentially, demolition procedures, will evolve as the design and construction needs are identified.

The team approach contemplated by Peregrine enhances coordination of the initiation and implementation of the necessary plans. Moreover, some of the early construction at PGE Park will occur during time periods when in it is operation for other events. Because an entity under the same management as Peregrine would be operating PGE Park during this time period, the construction and operations could be efficiently coordinated to ensure the safety of customers at these events.

The system of competitive low bidding does not permit the same team approach between the designers and the contractors because they are separate legal entities. Having a single point of responsibility for public safety can only enhance it.

6. MARKET CONDITIONS:

The Project will take advantage of current market conditions with its use of subcontractors and suppliers. The proposed Project would never have come about without the substantial private investment and associated risk undertaken to be undertaken by Peregrine. Because this is a unique project initiated by Peregrine, market conditions and the awarding of future contracts will not be negatively impacted by the exemption.

With appropriate flexibility to allow sound and responsible business decisions that promote the Project's success, the Development Agreement will ensure compliance with applicable State Prevailing Wage laws and require compliance with the City contracting policies. Furthermore, the City retains design review over the Project which will enhance its role as a catalyst for development and to attract additional vendors and related projects.

In addition, in order for the MLS franchise to be successful, this Project must commence immediately in order that the renovations to PGE Park, and the construction of the new Triple-A baseball stadium, are completed by April of 2011. It is unlikely, and perhaps not even possible, for this timeline to be met if the City has to produce a completed design of both facilities.

7. TECHNICAL COMPLEXITY:

This project includes several features that are technically complex, including:

- a. Securing and complying with the terms of the MLS franchise agreement
- b. Operating and moving a Triple-A baseball franchise
- c. Providing private financial financing and guaranties for the Project,
- d. The maintenance of viable operations at PGE Park during the Project;
- e. Potential demolition of a major public building in a central city location near major thoroughfares, the I-5 freeway, and light rail; and
- f. Design and construction of a major public building in proximity to a highly successful major sports and event venue without disruption of the programming of that facility.

The Project team will have to apply creativity to the development processes to resolve these significant technical issues, particularly given the short Project schedule. Only Peregrine is in a position to efficiently manage the scope of these issues and integrate the solutions given Peregrine's position.

Because responsibility for design and construction will be placed on a single entity, and because this will enhance value engineering on the Project, Peregrine will be in a better position to manage the technical complexities of this Project than a contractor selected as a result of the competitive low bid process, who will not have the background in regard to the franchise, the baseball team, and the design.

8. FUNDING SOURCES:

The Project is estimated to cost \$ 88,695,000 for designing, engineering, managing, and constructing the Triple-A Stadium and the renovation of PGE Park. In addition, Peregrine has committed to pay the MLS franchise fee. The identified funding sources are a combination of public and private investment.

A significant portion of the funding sources are either private or privately guaranteed by Peregrine. Without the Development Agreement committing the private investment, the City would have insufficient funds to complete the Project. Peregrine has a clear interest in mitigating Project cost and expediting Project delivery since Peregrine would share in excess construction cost overruns and would suffer damages from a late opening of the Project.

If the City were to require that the Project be competitively bid, it would take effective control of construction away from the City's private partners.

II. FINDINGS REGARDING COMPETITION

Based on all the findings above, the following conclusions can be reached:

COMPETITION: ORS 279C.335 (2) requires that an agency make certain findings as a part of exempting public contracts or classes of public contracts from competitive bidding. ORS 279C.335 (2) (a) requires an agency to find that: *It 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 conclusion is appropriate for this project and is supported by the draft findings that were discussed above.

Peregrine is the only entity reasonably available to enter into the Development Agreement to construct, finance and operate the Project. Because entities under Exhibit A-Factual Findings for MLS Stadium/ Triple-A Stadium Project

common management with Peregrine own the Triple-A baseball and MLS franchises, it is the only entity capable of ensuring that both franchises would commit to a long-term lease/operating agreement with the subject stadiums. As a result of these relationships, it is the only entity that can provide the financial commitment and guaranties for the Project that are required to make Project financing viable. The integrated construction and funding elements of the Project require Project development by the entity that controls the operations of the major users of the Project.

Peregrine will select its architect and engineering team, construction manager and general contractor with the City approving the team, thus ensuring that the City is satisfied with the process Peregrine will use to identify and select those key contractors, and the expertise and experience of the selected firms. Peregrine's selected team will offer subcontracting and employment opportunities in compliance with applicable City policies.

III. FINDINGS REGARDING COST SAVINGS

Based on the findings above, the following conclusion can be reached:

COST SAVINGS: ORS 279C.335 (2) requires that a public agency make certain findings as part of exempting public contracts or classes of public contracts from competitive bidding. ORS 279C.335 (2) (b) requires and agency to find that: *The awarding of public improvement contracts under the exemption will result in substantial cost savings to the public contracting agency.* This conclusion is appropriate for this Project and is supported by the following:

The Development Agreement would require Peregrine to provide or guaranty a significant amount of the Project funding sources. In addition, Peregrine will pay a portion of any construction cost overruns. Each of these features of the Development Agreement would save the City direct dollars and reduce the Project financial risk.

Peregrine's obligation to design and build this Project creates a noteworthy opportunity for significant cost and time saving through innovation. These innovations include improved project staging, incremental completion of design and commencement of construction, integrated planning between designers and contractors from the beginning of the Project.

A single point of responsibility for the design and construction fosters innovation, allows for concurrent acquisition, design, and construction functions, and takes advantage of the ability to acquire materials and order fabrication incrementally if advisable. It also

provides incentives to the contractor to engineer and stage the project to optimize efficiencies in construction. These all contribute to reduced project duration and potential cost savings.

Early involvement by the construction contractor in the design process will allow for fast track development of the Project without undue duplication of work at each stage. This will result in reduced overall cost for the Project.

Early involvement of the construction contractor in the design process allows for distinctive methods of that contractor to be integrated in the design and specification process. This will reduce startup costs and allow for value engineering in the design process, resulting in the minimum possible Project cost.