

EXHIBIT A**STADIUM EXPANSION PROJECT****FACTUAL FINDINGS FOR A
PROPOSED EXEMPTION FROM COMPETITIVE BIDDING**

The Portland Office of Management and Finance (OMF) and the City of Portland Procurement Services (“Procurement Services”) recommend that the Portland City Council (“Council”) approve the following factual findings to exempt design and construction of the Providence Park (“Stadium”) Expansion Project (“Project”) from the competitive bidding requirements of ORS Chapter 279C.

I. BACKGROUND

These factual findings concern a proposed exemption from competitive bidding requirements in regard to design and construction of the Project.

A. Participants and interested parties

The City of Portland is the owner of the Stadium. The Stadium is a public improvement located in downtown Portland that is home to the Portland Timbers and Portland Thorns professional soccer teams. The Stadium was originally built in 1926 and has undergone a number of renovations and transformations over the ensuing years.

The Portland Timbers are a member of Major League Soccer (MLS) and have sold out every game since their inaugural season at the Stadium in 2011. The Portland Thorns are a member of the National Women’s Soccer League (NWSL) and are consistently at the top of the league in annual attendance. Peregrine Sports, LLC (“Peregrine”) is the owner of the Portland Timbers and the Portland Thorns. Peregrine is the operator of the Stadium.

The Project, as proposed by Peregrine, is a privately-financed, \$50,000,000 expansion of the Stadium in order to meet a high level of demand for Timbers season tickets and to stay competitive with newer stadiums in the rapidly expanding MLS.

B. History of MLS in Portland

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.

On July 23, 2009, the City Council approved Ordinance No. 183036, that authorized an exemption to the competitive bidding process as a sole source contract for Peregrine to develop a MLS stadium.

On February 3, 2010, the City Council approved Ordinance No. 183516 (As Amended) that approved a Redevelopment Agreement and Stadium Operating Agreement ("Stadium Agreements") for the renovation and operation of the Stadium to accommodate MLS play. These Stadium Agreements between the City and Peregrine remain in effect today.

The Stadium Agreements include provisions for the construction of future Enhancements to the Stadium beyond those constructed in the 2009-11 time-period prior to commencement of MLS play in the spring of 2011.

Peregrine is finalizing the Project cost estimates and final scope. However, the initial cost estimates place the Project cost for design and construction at approximately \$50,000,000. The entire Project design and construction cost will be paid for by Peregrine. The Project is expected to increase seating capacity at the Stadium by approximately 4,000 seats, bringing total capacity for soccer matches to approximately 25,000 seats.

On May 10, 2017, the City Council approved Resolution No. 37283 that declared the City's support for Peregrine's proposed expansion project and directed City bureaus to work collaboratively with Peregrine and their representatives to advance the Project.

The City will own the Project and under the terms of the Stadium Agreements has approval rights over the design of the Project. Peregrine will be responsible for designing and constructing the Project, using contractors approved by the City. An exemption from public bidding is desirable as soon as possible to ensure the Project may be constructed on schedule. Peregrine's current schedule anticipates a construction start in late 2017.

C. Proposed Agreements to be executed by the City

The City Council is anticipated to declare support by Resolution of a non-binding Term Sheet ("Term Sheet") in June 2017. This Term Sheet will include the basic terms, expectations, and restrictions for the Project and confirm amendments needed to various documents.

The City proposes to approve amendments to the existing Development Agreement and Stadium Operating Agreement and to approve other necessary legal documents as needed to allow construction of the Project to proceed. These amendments and documents are anticipated to be approved by the City Council later in 2017.

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 for the Project. Nonetheless, State law permits the City to designate an alternative contracting method if it is able to make Findings justifying an alternative approach. The factual bases to support the required findings, including the Additional Findings are set forth below.

II. NO FAVORITISM OR DIMINISHED 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 findings discussed below.

The Project could not be undertaken without the support of Peregrine. Without the willingness of Peregrine to privately finance the entire cost to design and build the Project, the Stadium would not be expanded.

To design and construct the Project, Peregrine will pay an estimated \$50,000,000. The City is unaware of any other person or entity that is willing to pay for the Project, particularly since Peregrine has exclusive operating rights to the stadium until at least 2035. There is no other party who would consider making this investment in the Stadium.

A requirement for Peregrine's private funding of the entire design and construction cost of the Project is that they provide construction contracting services. This provides them a much greater degree of schedule certainty in working with a known contractor with previous experience on the Stadium than would be possible if the City were to require competitive bidding of the design and construction work. For this reason, the Project will only proceed if an exemption to competitive bidding is granted.

In order for Peregrine to make the private investment in the Project, they must control the integrated design and construction team. Peregrine will select its architect and engineering team, construction manager and general contractor with the City approving the team per the terms of the

Stadium Agreements, 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.

III. SUBSTANTIAL 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 an agency to find that: *Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the contracting agency.* This conclusion is appropriate for this Project and is supported by the following:

The Project will require Peregrine to invest approximately \$50,000,000 in the Stadium, and provide financial guarantee that the Project will be completed. In addition, Peregrine will pay for all construction cost overruns. The City will make no contribution to the cost of design or construction of the Project.

The Project would not proceed as proposed, with 100% private financing, if the design and construction work were subject to a competitive bidding process. As the exemption to bidding requirements is a prerequisite to the Project proceeding, the exemption is required to keep the City's contribution at 0% of the Project cost.

Other substantial benefits are explained in IV C below and include economic benefits, both to the City's Spectator Venues Program and to the broader community as well as increased access to seats in the Stadium for soccer games that are in high demand.

IV. THE FACTUAL BASES TO SUPPORT THE FINDINGS

A. How Many Persons Are Available to Bid

Under the terms of the Stadium Agreements, Peregrine is the City's contracted operator of the Stadium through at least 2035. No other operator has the right to propose the Project. In order to design and construction the Project using their chosen, and City-approved, consultants and contractors, Peregrine requires this exemption from competitive bidding requirements. Without it, there is no Project.

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

The estimated \$50,000,000 Project will be funded by Peregrine. The ability to select the Project design and construction team – exempt from public competitive bidding requirements - is a prerequisite to Peregrine funding the Project. Granting the exemption to competitive bidding requirements is required to keep the City's contribution to the

design and construction cost at 0%. Operation of the Project once completed, will be governed by the Stadium Operating Agreement, executed in 2010, as it may be amended.

C. Public Benefits That May Result from Granting the Exemption

City Council has determined it is in the best interest of the public to support in the continued success of the Portland Timbers in their current location at the Stadium by undertaking the Project. Specific public benefits of the Project include:

The Project has a positive economic impact.

- 1) Increasing seating at the Stadium will allow more Portlanders to attend events at the Stadium. The Portland Timbers currently have a waiting list of approximately 13,000 people who want season tickets. The Project will allow more people to attend the games they want to see.
- 2) Construction of the Project will employ over 100 construction workers during periods of peak activity, and provide significant work to numerous design and engineering professionals in the City.
- 3) After completion, the Project will require an increase in Peregrine's number of regular employees and subcontracted employees involved in Stadium operations.
- 4) The Project will increase the likelihood that the Portland Timbers remain located at the Stadium beyond the current term of the Stadium Operating Agreement, continuing the positive economic contribution of MLS and NWSL games to the City.
- 5) The Project will make the Stadium a more suitable host venue for special exhibition events and concerts; including, but not limited to exhibition soccer matches, qualifying soccer matches, other venue-suitable sports events, and music festivals; bringing additional revenue and economic activity to Portland.

To meet Peregrine's schedule for design and construction, 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 fewer interruptions and Project delays than the traditional procurement method.

Peregrine has the thorough understanding of the requirements for Project construction, and the financial interest, to preserve the economic viability of the existing Stadium during construction of the Project. This is important as the City, under the terms of the Stadium Operating Agreement, collects a share of ticket revenue from events at the Stadium.

The private funding of this Project is a significant public benefit. As part of paying for the full design and construction cost of the Project, Peregrine will cover all cost overruns. The City will continue to own the Stadium including the improvements added through construction of this Project. The Stadium will be a more valuable public asset after completion of the Project.

D. Whether Value Engineering Techniques May Decrease the Cost of the Project

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 early design 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 additional 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. Peregrine requires this ability as a prerequisite for agreeing to cover the entire design and construction cost of the Project.

Value engineering is also achieved by having a single point of responsibility that involves an integrated team of operators, 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.

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

Stadium redevelopment and development is a field that requires unique expertise in the sporting events industry. Peregrine has unique knowledge of the Stadium based on the fact that they have operated it since 2011 and many of their staff have worked there for considerably longer. That knowledge is available to Peregrine and their contractors, but not to other contractors who might bid on the project if it were competitively bid.

F. Likely Increases in 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. For example, the phases for construction, the design of temporary facilities, construction staging areas, street closure plans, and coordination with utilities and neighbors 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 construction at the Stadium will occur during time periods in close proximity to its operation for events. Because Peregrine will be operating the Stadium during this time period, the construction and operations will be efficiently coordinated to ensure the safety of spectators and employees at these events.

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

The Project, as proposed, includes construction of an arcade-like structure above the sidewalk on the west side of SW 18th. This new feature of the Stadium has the potential to significantly increase pedestrian safety for users of the sidewalk as they will be protected from weather, and because fencing at the curb is proposed to keep pedestrians from entering the street between marked crossings and entering the travel lanes and light rail tracks.

G. Whether Granting the Exemption May Reduce Risks to the City related to the Project

As the entire Project design and construction cost, including potential cost overruns will be paid for by Peregrine, the City's risks associated with the Project are minimal. Granting the exemption makes 100% private financing possible, therefore it reduces the City's risk significantly. Peregrine will also provide suitable guarantees to complete the Project, and appropriate construction insurance according to the terms of the Stadium Agreements and Term Sheet prior to receiving approval to proceed.

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

The funding sources will be guaranteed by Peregrine and/or other private parties. There would be no Project without Peregrine's commitment to financing the entire design and construction cost.

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 who are paying for the Project and effectively stop the Project from proceeding. Granting the exemption is a requirement to obtain 100% private financing for the Project. The City has no intention of pursuing construction of the Project if there is no exemption.

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 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.

With appropriate City oversight and flexibility to allow sound and responsible business decisions that promote the Project's success, the Stadium Agreements ensure compliance with applicable State Prevailing Wage laws and requires compliance with the City's contracting policies. Furthermore, in its regulatory capacity, the City retains design review authority over the Project which will ensure it meets design expectations.

In addition, in order to achieve the maximum benefit, Peregrine desires the project to begin construction in Fall of 2017 and be completed in Spring of 2019. It is not possible for this timeline to be met if the Peregrine were required to produce a completed design of the facility before procuring a construction contractor.

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

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

- 1) Obtaining the necessary approvals for the arcade structure in the public right-of-way;
- 2) Design of the complex, cantilevered steel and fabric roof structure;
- 3) Providing private financing and guaranties for the Project;
- 4) Understanding the requirements for success in designing and operating a professional soccer Stadium in the Portland market;
- 5) The maintenance of viable operations at the Stadium during construction of the Project.

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 and their chosen consultants and contractors are in a position to efficiently manage the scope of these issues and integrate the solutions.

The City's separate contracted owner's representative team will be better able to provide necessary design and construction oversight as required by the Stadium Agreements with a single point of contact and integrated Peregrine team.

Because responsibility for design and construction will be placed on Peregrine, 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 would not have the background or access to information regarding the operation of the Stadium and the needs of the teams and patrons who use it.

K. Whether the Public Improvement involves new construction or renovates or remodels an existing structure;

The Project involves the removal of an existing section of the stadium roof, construction of several new stadium seating levels above the existing seats on the east side of the stadium, and construction of a new roof over that section.

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

The Stadium will be operational during some phases of construction, although much of the heavy construction will be performed during two or possibly three MLS off-seasons (typically November to March) when the stadium is not in use.

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

Construction will be phased to occur in phases with much of the more intense construction occurring during two MLS off-seasons (typically November to March) when the stadium is not in use for major events.

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 staff within the Spectator Venues Program and City Attorney's Office to oversee this Project. In addition, the City has retained outside legal counsel and an owner's representative consultant team including architects, engineers, and construction project managers to provide oversight and advise the City during design and construction of the Project.