

## ORDINANCE No. 186266

\*Approve findings and authorize exemptions to competitive bidding requirements, waive performance and payment bonds, authorize execution of a Development Agreement with Peregrine Sports, LLC and authorize Portland Parks and Recreation funding for the Delta Park Project (Ordinance; repealing Ordinance No. 186059 and Ordinance No.186142)

The City of Portland ordains:

### Section 1. The Council finds:

1. Portland Parks and Recreation (“PP&R” or the “City”) owns Delta Park which includes seven softball fields, one all-weather synthetic sports field and eight grass sports fields.
2. PP&R’s 2020 Vision Plan (the “Vision”) for Delta Park contemplates converting the existing grass sport fields to all-weather synthetic sport fields and the addition of field lights.
3. The City recognizes the significance of Delta Park as a regional sports facility, contributing to the vitality of the community and economy. Over the years, Delta Park has experienced increasing demand for its use by sport field users.
4. As a result, PP&R, consistent with the Vision, plans to solicit competitive bids for the conversion of four of the grass sport fields to all-weather synthetic sport fields with lights (collectively, the “Fields Project”).
5. PP&R was previously authorized by Ordinance No. 186059 dated May 29, 2013 to expend \$2,000,000 in System Development Charge (“SDC”) funds for sport fields at Delta Park and \$100,000 in SDC funds for PP&R permitting, design and construction staff for sport fields at Delta Park and by Ordinance No.186142 dated July 3, 2013 to expend \$100,000 in SDC funds for an additional sport field and a building project at Delta Park and \$25,000 in SDC funds for PP&R permitting, design and construction staff for the additional sport field and a building project at Delta Park. The funding previously authorized by Ordinance No. 186059 and Ordinance No.186142 is collectively referred to as the “Prior PP&R Funding”.
6. The improvements to Delta Park contemplated by the above-referenced ordinances, including certain agreements authorized thereunder, did not, for a number of reasons, come to fruition.
7. Instead, PP&R reconceived the improvements to Delta Park to now be comprised of the Fields Project described above and the Building Project (as hereinafter defined) to be designed, constructed and financed by Peregrine Sports, LLC (“Peregrine”). PP&R also intends to reallocate the Prior PP&R Funding as follows: \$2,100,000 in SDC funds for the Fields Project and \$125,000 in SDC funds for PP&R permitting, design and construction staff for both the Fields Project and the Building Project (the “PP&R Funding”).

8. The Building Project, together with the Fields Project is referred to herein as the “Delta Park Project”.
9. Peregrine has committed to design and construct a sports field support building at Delta Park that includes a field support space, bathrooms and locker rooms (collectively, the “Building Project”) pursuant to the Development Agreement generally in the form attached hereto as Exhibit A (the “Development Agreement”).
10. The City will own the Building Project and will have approval rights over the specifications used to implement the Building Project (the “Specifications”). Based on the Findings (as hereinafter defined), the City desires to allow Peregrine to contract for the design and construction of the Building Project in accordance with the Specifications and the Development Agreement.
11. Critical to the viability of the Delta Park Project, under the Development Agreement, Peregrine shall, in exchange for 2,000 hours annually of free use of a certain portion of the Fields Project and exclusive use of the field support space in the Building Project: (i) pay all design and construction costs (estimated at \$400,000) associated with the Building Project, including any cost overruns; and (ii) contribute \$700,000 to the Fields Project for a total financial contribution of \$1,100,000 (the “Private Funding”) to the Delta Park Project by Peregrine.
12. Aside from the incidental SDC funds for PP&R permitting, design and construction staff for the Building Project, the PP&R Funding will be used exclusively for the competitively bid Fields Project.
13. Under the Development Agreement, Peregrine shall manage the permitting, design and the construction of the Building Project without the solicitation of competitive bids contemplated by ORS 279C.300.
14. The City intends to award the Development Agreement to Peregrine as a sole source procurement in accordance with ORS 279B.075.
15. Council is the Local Contract Review Board with the authority to exempt certain public contracts, including the Development Agreement, from the competitive bidding requirements of ORS 279B and ORS 279C.
16. Draft findings addressing favoritism, competition, substantial costs savings, operational, budget, financial data, public benefits, value engineering, specialized expertise, public safety, market conditions, technical complexity and funding sources recommended by the City, substantially in the form attached hereto as Exhibit B (the “Findings”), were made available and a notice of the public hearing of this Ordinance was published fourteen (14) days in advance of this public hearing.
17. Similarly, the City’s determination regarding the sole source procurement that would award the Development Agreement on that basis was published on the City’s Procurement Services’ website for at least seven (7) days in advance of the public hearing of this Ordinance.

18. Based on the Findings, the exemption of the Building Project from the competitive bidding requirements of ORS 279C is: (i) unlikely to encourage favoritism or to diminish competition for public contracts because, among other things, there is no other entity that, like Peregrine, willing to provide the Private Funding necessary to bring the Delta Park Project to fruition; and (ii) likely to result in substantial cost savings to the City because of, among other things, Peregrine's commitment to contribute the Private Funding that not only covers the entire cost of the Building Project but also secures \$700,000 for the competitively bid Fields Project.
19. Due to the unique structure of the Delta Park Project, including the Private Funding, and interest of Peregrine not only as an ultimate user of the Building Project, but also for the financial risk it is assuming for cost overruns for the Building Project, based on the Findings, the City knows of no other source willing to provide such goods or services on the terms and conditions set forth in the Development Agreement. As such, the goods and services necessary for the Building Project are available from only one source and the Development Agreement with Peregrine should be awarded as a sole source procurement under ORS 279B.075.

NOW, THEREFORE, the Council Directs:

- a. Council hereby approves the Findings and on that basis exempts the Building Project from the competitive bidding requirements of ORS 279C.
- b. The Development Agreement, which is fully incorporated herein by reference, is hereby determined, based on the Findings, to be a sole source procurement under ORS 279B.075 and shall be awarded to Peregrine on that basis.
- c. Council hereby waives, in accordance with ORS 279C.380(1)(a), the requirement of Peregrine to post a payment and performance bond in connection with the Building Project with the understanding that such payment and performance bonds shall be posted by the contractor selected by Peregrine and under which the City shall be named as an obligee.
- d. The Director of PP&R is hereby authorized to execute the Development Agreement, and any other documents necessary to effectuate the Delta Park Project. All such documents shall be approved as to form by the City Attorney.
- e. Ordinance No. 186059 and Ordinance No.186142 are hereby repealed.
- f. The Director of PP&R is hereby authorized to expend the PP&R Funding on the Delta Park Project.
- g. While PP&R already receives O&M funds for Delta Park grass fields, Council acknowledges the need to fund the on-ongoing O&M costs of the proposed Delta Park Project. The cost is estimated at \$56,904 and Council directs the City Budget Office to increase PP&R's ongoing current appropriation level ("CAL") by that amount beginning in FY 2014-15.

- h. In accepting responsibility for the proposed Building Project, Council acknowledges the need to fund the on-going O&M costs. Upon final completion of the Building Project, PP&R will create a cost estimate for Council review. Upon approval by Council, the City Budget Office will increase Parks' ongoing CAL by the approved amount beginning in FY 2014-15.

Section 2. The Council declares that an emergency exists in order to avoid further delay in the Delta Park Project; therefore, this Ordinance shall be in force and effect from and after its passage by Council.

Passed by the Council: SEP 25 2013  
Commissioner Fritz  
Prepared by: Todd Lofgren

**LaVonne Griffin-Valade**  
Auditor of the City of Portland

By   
Deputy

Agenda No. **ORDINANCE NO. 186266**

Title

\*Approve findings and authorize exemptions to competitive bidding requirements, waive performance and payment bonds, authorize execution of a Development Agreement with Peregrine Sports, LLC and authorize Portland Parks and Recreation's funding, all in connection with the Delta Park Project (Ordinance; repealing Ordinance No. 186059 and Ordinance No.186142)

<p><b>INTRODUCED BY</b> Commissioner/Auditor: <b>Amanda Fritz</b></p>	<p>CLERK USE: DATE FILED <u>SEP 20 2013</u></p>
<p><b>COMMISSIONER APPROVAL</b></p> <p>Mayor—Finance and Administration - Hales</p> <p>Position 1/Utilities - Fritz <i>T. Bujan</i></p> <p>Position 2/Works - Fish</p> <p>Position 3/Affairs - Saltzman</p> <p>Position 4/Safety - Novick</p>	<p>LaVonne Griffin-Valade Auditor of the City of Portland</p> <p>By: <i>[Signature]</i> Deputy</p>
<p><b>BUREAU APPROVAL</b></p> <p>Bureau: Portland Parks &amp; Recreation Bureau Head: Mike Abbate <i>[Signature]</i></p> <p>Prepared by: Todd Lofgren Date Prepared: September 10, 2013</p> <p>Financial Impact &amp; Public Involvement Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/></p> <p>Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p><b>City Auditor Office Approval:</b> required for Code Ordinances</p> <p><b>City Attorney Approval:</b> <i>[Signature]</i> required for contract, code, easement, franchise, comp plan, charter</p> <p>Council Meeting Date: September 25, 2013</p>	
<p><b>ACTION TAKEN:</b></p>	

**AGENDA**

**TIME CERTAIN**   
Start time: ~~9:30 AM~~

**Total amount of time needed:** ~~5 minutes~~  
(for presentation, testimony and discussion)

**CONSENT**

**REGULAR**   
**Total amount of time needed:** 5 minutes  
(for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
	YEAS	NAYS
1. Fritz	<input checked="" type="checkbox"/>	
2. Fish	<input checked="" type="checkbox"/>	
3. Saltzman	<input checked="" type="checkbox"/>	
4. Novick	<input checked="" type="checkbox"/>	
Hales	<input checked="" type="checkbox"/>	