



AGENDA*
Regular Commission Meeting
September 14, 2022
9:30 a.m.

The Board of Commissioners of the Port of Portland will hold its monthly meeting in the Chinook Room on the 8th floor of the Port of Portland Headquarters Building, located at 7200 N.E. Airport Way in Portland, Oregon 97218. The meeting will also be held virtually for those Commissioners, members of the public, presenters and staff unable to attend in person.

The meeting will be streamed live on the Port's website and YouTube channel.

Written public comments can be submitted via email at testimony@portofportland.com. If you wish to provide live testimony, you may do so in person, or you may send an email with your first and last name to testimony@portofportland.com and you will be provided with a link to testify via MS Teams. The deadline to sign up for live testimony via MS Teams is noon on the day prior to the Port of Portland Commission Meeting.

Minutes

Approval of Minutes: Regular Commission Meeting – August 10, 2022

Executive Director

Approval of Executive Director's Report – August 2022

Public Comments

Consent Items

1. AMENDMENT TO JANITORIAL AND PEST CONTROL SERVICES CONTRACT – VARIOUS PORT OF PORTLAND FACILITIES
*ERIC VAN DER BURGHT
NATHAN DICKIE*
Requests approval to amend a janitorial and pest control service contract with Relay Resources to provide for an additional year of services in the Portland International Airport terminal.
2. DESIGNATION OF THE PORT OF PORTLAND'S REPRESENTATIVE FOR URBAN FLOOD SAFETY AND WATER QUALITY DISTRICT
KEITH LEAVITT
Requests approval to designate Kenneth Anderton as the Port of Portland's agent and representative with the authority to exercise the Port's rights as a landowner within the Urban Flood Safety and Water Quality District.

*Certain discussion, consent and agenda items may contain forecasts/estimates. Actual results may differ.

Action Items

3. EXEMPTION FROM COMPETITIVE BIDDING FOR PUBLIC IMPROVEMENT CONTRACT – PDX NEXT GROUND SOURCE HEAT PUMP SYSTEM – PORTLAND INTERNATIONAL AIRPORT *GEORGE SEAMAN*

Requests approval of an exemption from competitive bidding requirements for the PDX Next Ground Source Heat Pump System project at Portland International Airport.

4. PUBLIC IMPROVEMENT CONTRACT – COMPRESSED NATURAL GAS FUEL STATION COMPRESSOR REPLACEMENT – PORTLAND INTERNATIONAL AIRPORT *JANELLE BRANNAN*

Requests approval to award a public improvement contract to Stellar J Corporation for the Compressed Natural Gas Fuel Station Compressor Replacement project at Portland International Airport.

5. FIRST READING AND PUBLIC HEARING – PORT OF PORTLAND ORDINANCE NO. 478-R, AMENDING PORT OF PORTLAND ORDINANCE NO. 448 REGARDING CUSTOMER FACILITY CHARGES ON RENTAL CAR TRANSACTIONS – PORTLAND INTERNATIONAL AIRPORT *STEVE KOESTER*

Requests a first reading and public hearing on proposed Port of Portland Ordinance No. 478-R, which amends Port of Portland Ordinance No. 448 regarding Customer Facility Charges on rental car transactions at Portland International Airport.

AMENDMENT TO JANITORIAL AND PEST CONTROL SERVICES CONTRACT – VARIOUS PORT OF PORTLAND FACILITIES

September 14, 2022

Presented by: Eric van der Burght, Terminal
Operations & Infrastructure Mgr.
Nathan Dickie, Sr. Contracts
Administrator**REQUESTED COMMISSION ACTION**

This agenda item requests approval to amend a janitorial and pest control service contract with Relay Resources (Relay) to provide for an additional year of services in the Portland International Airport (PDX) terminal.

BACKGROUND

Relay provides janitorial and pest control services under two primary contracts with the Port. The first contract (the Terminal Contract) covers the PDX terminal, including both concessions and non-concessions areas, and related Port of Portland (Port) facilities. The second contract (the HQ/RCC Contract) covers the Port's Headquarters (HQ) and Rental Car Center (RCC) buildings at PDX.

Relay is an OregonForward contractor (OFC). OregonForward is a purchasing program administered by the Oregon Department of Administrative Services (DAS). OregonForward supports meaningful work opportunities for Oregonians living with physical, mental and developmental disabilities. Oregon law requires that when a public agency intends to procure a service that a qualified and available OFC provides, the agency must procure the service from an OFC at pricing established by DAS.

The Port has contracted with Relay for janitorial and pest control services at various Port facilities since 1996. The current contracts became effective on October 1, 2021, after the Commission approved their award at the September 2021 regular meeting.

AMENDMENT TERMS

For each of these contracts, after the initial one-year term, the Port has nine options to extend the term for one year at a time. The Commission pre-approved the Port's award of each annual option term, provided that the total compensation payable for a given option year does not exceed the previous year's expenditures plus 7.5%.

As stated above, DAS establishes pricing for OFCs. The pricing adjustment mechanism in the governing regulations is primarily market-based, driven in part by actual costs the OFC incurs to perform services. Based on the DAS-approved increase for the first option year of the Terminal Contract (year 2), the total compensation for year 2 is expected to exceed the first year's

AMENDMENT TO JANITORIAL AND PEST CONTROL SERVICES CONTRACT – VARIOUS
PORT OF PORTLAND FACILITIES

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expenditures by more than 7.5%. Accordingly, Commission approval is being sought to amend the Terminal Contract to implement this increase. The HQ/RCC Contract annual increase will not exceed 7.5%.

The Port also intends to modify both contracts to better align their annual rate increase mechanisms with DAS' pricing adjustment mechanism for the OregonForward program.

Pricing

Expenditures under the Terminal Contract for 2021-2022 were \$8,571,959. The projected total compensation payable for 2022-2023 is \$9,816,537, which is a 14.5% increase. The increase is primarily due to the following factors:

- The Port's July 1, 2022 increase in the hourly minimum wage that the Port contractually requires certain PDX service contractors to pay their employees;
- Subcontractor cost increases for pest control and window/glass cleaning;
- Increased cost of supplies and other consumables; and
- Increase in Relay's overhead costs.

Annual Rate Increases

The Port intends to amend both contracts to remove the 7.5% annual rate increase guidepost. This provision was intended to reduce the need for annual Commission approvals, while allaying concerns about unreasonable price increases. However, because DAS ultimately controls OFC pricing, the Port cannot control the percentage increase in a given year. Pricing increases are expected to remain reasonable because DAS must follow the pricing adjustment mechanism contained in the OregonForward program regulations, which requires a reasonable and adequate price that will recover the OFC's costs.

EXECUTIVE DIRECTOR'S RECOMMENDATION

The Executive Director recommends that the following resolutions be adopted:

BE IT RESOLVED, That approval is given to amend the contract with Relay Resources for janitorial and pest control services at Portland International Airport and related Port of Portland facilities, consistent with the terms presented to the Commission; and

BE IT FURTHER RESOLVED, That the Executive Director or his designee is authorized to execute the necessary documents on behalf of the Port of Portland Commission in a form approved by counsel.

DESIGNATION OF THE PORT OF PORTLAND'S REPRESENTATIVE FOR URBAN FLOOD SAFETY AND WATER QUALITY DISTRICT

September 14, 2022

Presented by: Keith Leavitt
Chief Commercial Officer**REQUESTED COMMISSION ACTION**

This agenda item requests approval to designate Kenneth Anderton, Senior Manager, Real Estate Development, of the Port of Portland's (Port) Trade and Equitable Development department, as the Port's agent and representative with the authority to exercise the Port's rights as a landowner within the Urban Flood Safety and Water Quality District. If approved, Mr. Anderton will replace outgoing Urban Flood Safety and Water Quality District Board member Ann Gravatt.

BACKGROUND

As communities across the country face increased flooding and potentially disastrous levee breaches, the 2019 Oregon Legislature approved legislation to establish a safer and more sustainable way to manage flood safety along the Columbia River in the Portland metro region. Senate Bill 431 created the Urban Flood Safety and Water Quality District, a new special district responsible for: operating, maintaining and improving the 27-mile levee system from North Portland through Gresham, Fairview and Troutdale; contributing to improved water quality, fish and wildlife habitat in the managed floodplain; promoting equity and social justice across the district's operations; and preparing for and adapting to the impact of climate change in the managed floodplain.

Currently, four independent drainage districts manage parts of this levee system. Established in 1917 to drain the land for year-round agricultural use, the drainage districts were not designed to manage a major urban levee system. Not only is it inefficient to operate a single levee system through four separate agencies, but the drainage districts have only been able to afford to fund basic operations and maintenance work with limited capital investment and have not been able to keep up with changing federal safety standards for levees. As a result, the levee system is not currently certified, which puts Federal Emergency Management Agency accreditation of the levee system at risk.

Further, the lands protected by the Columbia River levee system in northern Multnomah County were deemed to be of statewide and regional significance because they contain significant industrial and economic lands, one of the state's most important transportation hubs, the Portland International Airport, the second largest source of drinking water in Oregon, and a number of important natural assets.

The initial board of directors consists of 17 appointees representing the four drainage districts that currently manage the local levee system, the five cities in the impacted area, Multnomah County, Metro, and the Port, as well as five Governor-appointed positions. This

DESIGNATION OF THE PORT OF PORTLAND'S REPRESENTATIVE FOR URBAN FLOOD
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initial board is currently tasked with establishing a new sustainable revenue structure for the district to fund ongoing operations and capital improvement needs. The initial board of directors of the district will then call for the dissolution of the four existing drainage districts that currently manage the levee system and take over operations of the infrastructure. At that point, a permanent board (as defined by Senate Bill 431) will be established.

EXECUTIVE DIRECTOR'S RECOMMENDATION

The Executive Director recommends that the following resolutions be adopted:

BE IT RESOLVED, That Kenneth Anderton is designated as the Port of Portland's representative for acting on the Port of Portland's behalf as a landowner within the Urban Flood Safety and Water Quality District, effective September 14, 2022; and

BE IT FURTHER RESOLVED, That all previous Port of Portland agent and representative designations for the Urban Flood Safety and Water Quality District be rescinded; and

BE IT FURTHER RESOLVED, That the Executive Director or his designee is authorized to execute the necessary documents on behalf of the Port of Portland Commission in a form approved by counsel.

**EXEMPTION FROM COMPETITIVE BIDDING FOR PUBLIC IMPROVEMENT CONTRACT –
PDX NEXT GROUND SOURCE HEAT PUMP SYSTEM – PORTLAND INTERNATIONAL
AIRPORT**

September 14, 2022

Presented by: George Seaman
Engineering Project Manager**REQUESTED COMMISSION ACTION**

This agenda item requests approval of an exemption from competitive bidding requirements, enabling the Port of Portland (Port) to use a competitive, qualifications-based Request for Proposals (RFP) process to procure a public improvement contract for construction manager/general contractor (CM/GC) services for the PDX Next Ground Source Heat Pump (GSHP) System project, which is associated with the Terminal Core Redevelopment (TCORE) project at Portland International Airport (PDX).

BACKGROUND

The Port has established aggressive goals to reduce both the energy consumption and carbon emissions caused by its operations. To further these goals, the Port has elected to install a GSHP system as part of the TCORE project. The TCORE project itself has been described in detail in earlier agenda items.

This system will provide heating and cooling for PDX facilities in a more energy and carbon efficient manner than traditional systems. Installing the system will require new extraction and reinjection wells, associated equipment buildings, piping, power, information technology systems, and related new equipment in the Central Utility Plant (CUP) to integrate it with the existing cooling system at PDX. Additional project information is provided below, and details can be found in the Findings in Support of an Exemption from Competitive Bidding (Findings) which are attached as Exhibit A.

The GSHP system portion of the TCORE project is now eligible for Federal Aviation Administration (FAA) grant funding. Due to FAA grant restrictions, the Port must deliver the GSHP system under a separate contract from the TCORE project contract, after a newly-advertised procurement. The Port has determined that completing the project using the CM/GC delivery method is in the Port's best interests.

EXEMPTION FROM COMPETITIVE BIDDING

With limited exception under Oregon law, public agencies must deliver public improvement projects by selecting contractors based upon competitive bid, often referred to as the design-bid-build (DBB, or "low bid") method. Using a competitive bid process, a public improvement contract is awarded to the responsive bidder that submits the lowest-priced bid.

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Oregon law also allows a public agency's contract review board to grant an exemption from competitive bidding requirements, allowing agencies to award public improvement contracts using an alternative contracting method. Alternative methods allow public agencies to consider factors in addition to price when selecting a contractor, such as experience, qualifications, safety and small business participation.

The Port has successfully used alternative contracting methods on numerous projects, including the following projects at PDX: Port Headquarters/Long-Term Parking Garage; In-Line Baggage Handling System; Deicing Facility; Access Control Replacement; Terminal Balancing; Rental Car Quick Turnaround Facility; TCORE; and the Parking Additions and Consolidated Rental Car Facility.

Port staff considered multiple available contracting methods to deliver this project, including traditional low bid and CM/GC. As discussed in more detail in the Findings, this project involves the deployment of new technologies and use of water from an aquifer that provides potable water with reinjection to the aquifer after circulating through the GSHP system. It also involves heavy construction within occupied and operational facilities, as well as on the PDX airfield. These factors pose significant risks in the areas of public safety, project schedule, adoption of new technology and environmental impacts. Primarily for these reasons, Port staff recommends the use of an alternative contracting method to deliver this project.

Specifically, the Port intends to conduct a competitive RFP procurement to select a contractor to deliver this project using the CM/GC method. Conducting an RFP will allow the Port to select the contractor based on various criteria, such as:

- The proposer's qualifications and experience with similar projects.
- The proposer's project management approach and safety plan to ensure timely and safe delivery.
- The proposer's ability to provide construction management support, both during the preconstruction and the public improvement construction phases.
- Cost, based on a guaranteed maximum price (GMP).
- The proposer's disadvantaged business enterprise (DBE) participation plan.
- Social equity considerations.

As discussed in the Findings, this selection process is considered unlikely to encourage favoritism in awarding the contract or to substantially diminish competition for the contract. It would also likely result in substantial cost savings and other substantial benefits to the Port. Notice of the RFP would be advertised publicly and posted on the Port's online vendor contracting portal.

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After public notice and as required under Oregon law, the Port held a public hearing on September 2, 2022, to take comments on the draft Findings. The final Findings, attached, summarize the results of the hearing. The Port now seeks the Commission’s approval of the Findings, acting in its capacity as the Port’s Contract Review Board. The Port also requests that the Contract Review Board grant an exemption from competitive bidding to allow the Port to procure the project public improvement contract using an RFP.

SCHEDULE

Preliminary design	November 2017 – April 2019
Airport Airline Affairs Committee (AAAC) approval	June 2019
Design	June 2019 – July 2022
Contract Review Board approval (exemption from competitive bidding)	September 14, 2022
Commission approval (award contract)	November 9, 2022
Commission approval (approve GMP amount)	April 12, 2023
Construction	May 2023 – December 2025

BUDGET

	GSHP System Budget	TCORE Budget
CM/GC services (including construction)	\$33,000,000	\$1,662,000,000
Consultant design services	\$1,500,000	\$209,000,000
Procurements/equipment	\$0	\$65,000,000
Port staff/contracted services	\$2,000,000	\$85,000,000
Permits	\$500,000	\$19,000,000
Contingency	\$2,500,000	\$110,000,000
Total project	<u>\$39,500,000</u>	<u>\$2,150,000,000</u>

The GSHP system project budget resides within the overall TCORE project budget. The contingency for the project, representing 6.8% of the project cost, is considered reasonable given the risk profile for the project and the complexity of the work site.

The project costs will be funded by the Airline Cost Center, which is composed primarily of revenues from the Port’s commercial airline service business lines. In addition, as mentioned above, the Port expects \$18,400,000 of the contract costs to be funded by a grant from the FAA.

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EXECUTIVE DIRECTOR'S RECOMMENDATION

The Executive Director recommends that the following resolutions be adopted:

BE IT RESOLVED, That the Port of Portland Commission, in its capacity as the Port of Portland Contract Review Board, approves the findings set forth in the attached Exhibit A, "Findings in Support of an Exemption from Competitive Bidding: PDX Next Ground Source Heat Pump System Project," dated September 2, 2022; and

BE IT FURTHER RESOLVED, That the Port of Portland Commission, in its capacity as the Port of Portland Contract Review Board, specifically exempts from competitive bidding the public improvement contract for the PDX Next Ground Source Heat Pump project, consistent with the terms presented to the Commission.



**FINDINGS IN SUPPORT OF AN
EXEMPTION FROM COMPETITIVE BIDDING**

PDX Next – Ground Source Heat Pump System

PROJECT NO. 102191

DATE OF DRAFT FINDINGS: AUGUST 16, 2022

DATE OF FINAL FINDINGS: SEPTEMBER 2, 2022

Project Background

The Port of Portland has established aggressive goals to reduce both the energy consumption and carbon emissions caused by its operations. To further these goals, the Port has invested significant resources to improve existing operations, as well as to ensure that new facilities, systems, and equipment are as energy and carbon efficient as is practical.

As part of the PDX Next Terminal Core Redevelopment (TCORE) project at Portland International Airport (PDX), the Port worked with the design team, including ZGF Architects and PAE Consulting Engineers, to analyze nine options for the design of the central heating and cooling systems to serve the area being expanded, as well as the existing facility. The analysis utilized a life cycle cost approach that forecasted both the financial costs as well as the environmental costs (energy use and carbon emissions). The ground source heat pump (GSHP) option that was selected provides the desired balance between the financial and environmental costs. The design of the GSHP system was initially completed under the TCORE project.

The GSHP system project is now eligible for Federal Aviation Administration (FAA) grant funding. Due to FAA grant restrictions, the Port must now deliver the GSHP system separately from the TCORE project, under a newly-advertised procurement. In order to optimize project delivery, the Port wishes to procure the project contract using a competitive Request for Proposals (RFP) rather than awarding this contract on a low-bid basis.

Project Description

The project elements include, but are not necessarily limited to:

- Demolition and removal of existing steam boilers, piping, and miscellaneous equipment from the Central Utility Plant (CUP).
- Installation of new heat recovery chillers, pumps, heat exchangers, and associated equipment in the CUP.
- Construction of two extraction wells and an associated well equipment building.
- Construction of four reinjection wells and two associated well equipment buildings.
- Installation of piping, power, and information technology systems to support the GSHP system.

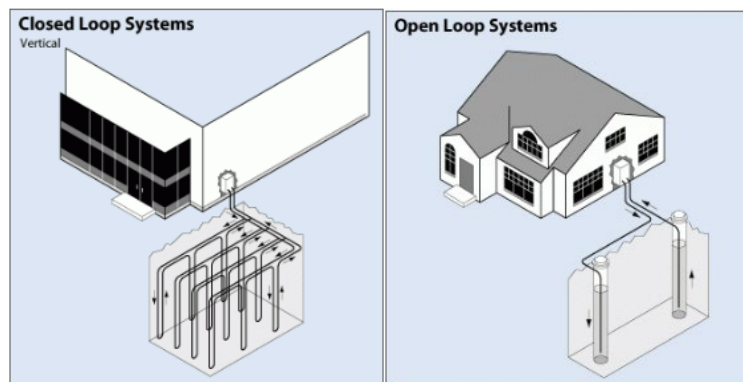
- Installation, programming, and commissioning of a plant control system that controls both the new and existing systems to provide reliable and efficient cooling and heating.

Ground source heat pumps are a relatively new approach to providing heating and cooling for large facilities. This project is particularly challenging due to its size, complexity, and the way in which the system interacts with the environment. Each of these challenges is discussed briefly below.

The GSHP is sized to provide 1,200 tons of cooling capacity (4,220 kW) and 20,000 MBH of heating capacity (5,800 kW). The system is expected to provide over 90% of the annual heating and cooling requirements for PDX. This will be the largest GSHP system in Oregon, and possibly in the Pacific Northwest.

In addition to the complexity with any GSHP system design, this project includes integration with the existing cooling system and new high-efficiency boilers in the PDX terminal, which will provide supplemental cooling and heating when the facility cooling or heating loads exceed the GSHP system's capacity, as well as serving as backups when the GSHP system is offline. This integration poses special challenges in the scheduling and phasing of the work, as well as in the implementation of the plant control system that will manage the daily operation of the new and existing equipment.

Finally, the GSHP system design is based on an open loop approach. Historically, GSHP systems have mostly utilized a closed loop approach in which a working fluid is pumped through pipes in the ground. The fluid is isolated from the ground however, so it cannot contaminate, or be contaminated by the ground (see diagram on left below). The existing GSHP serving the Port Headquarters building utilizes this approach. This new project will utilize an open loop approach in which ground water will be utilized as a working fluid (see diagram on right below). This creates a risk of cross-contamination, which is compounded by the fact that the ground water will come from, and be reinjected into, an aquifer that is also a source of potable (drinkable) water.



From U.S. DOE Website

All these challenges pose additional risks to the Port beyond the construction of traditional boiler and chiller systems, like those currently in use at PDX. The Port's Engineering department has evaluated these challenges and risks and determined that the most effective mitigation strategy is to ensure that the contractor selected to perform the work has the qualifications, experience, approach, and resources to successfully complete the work.

Alternate Contracting Methods; Exemptions from Competitive Bidding

Under Oregon’s Public Contracting Code (Code), public agencies generally must procure public improvement contracts using competitive sealed bidding, awarding the contract to the lowest responsible bidder.¹ However, the Code also embraces alternate contracting methods for complex public improvement projects, enabling agencies to select contractors based on factors in addition to price.

A stated policy goal of the Code is to: “[p]rovide a public contracting structure that can take full advantage of evolving procurement methods as they emerge within various industries, while preserving competitive bidding as the standard for public improvement contracts unless otherwise exempted.”² Similarly, the Port’s Contracting Rules promulgated under the Code are intended to: “maximize the Port’s flexibility in adjusting its contracting procedure to the specific circumstances of each procurement, and to ensure that the Port receives the maximum benefit from the public funds expended on public contracts.”³

Under the Code, when appropriate, an agency’s local Contract Review Board (CRB) may direct the use of alternate contracting methods that “take account of market realities and modern practices and are consistent with the public policy of encouraging competition.”⁴

An agency’s CRB directs the agency to use an alternate contracting method by granting an exemption from competitive bidding.⁵ In granting the exemption the CRB must require and approve or disapprove written “findings”⁶ that support the award of the contract without the competitive bidding requirement.⁷ The findings must show that the exemption of the contract complies with the requirements set forth below under “Findings.”⁸

Proposed Procurement Method

For the reasons discussed above and as further explained below, Port staff propose to use an open, competitive RFP to select a contractor and award a public improvement contract. Notice of the RFP would be advertised publicly and posted on the Port’s online vendor bidding portal. The Port may also solicit proposals directly from firms the Port believes are qualified to perform the work.

A team administered by the Port’s Contracts and Procurement department will review and score proposals based on evaluation criteria set forth in the RFP. The RFP evaluation criteria will allow the Port to consider factors in addition to price when selecting the contractor, such as experience, qualifications, safety, and small business participation.

¹ ORS 279C.335(1); ORS 279C.375(1)

² ORS 279A.015(6)

³ Port Contracting Rule A.015

⁴ ORS 279C.335(4)(a)

⁵ ORS 279C.335(2)

⁶ “Findings” means the justification for a conclusion that an agency, in seeking an exemption from competitive bidding, reaches based on the considerations set forth in this document under the heading “Findings.” ORS 279C.330(2)

⁷ ORS 279C.335(4)(b)

⁸ ORS 279C.335(4)(b)

Project Delivery Method

Based on this project's characteristics, Port staff have determined that procuring a public improvement contract for Construction Manager/General Contractor (CM/GC) services is the best delivery method for this project. Obtaining an exemption from competitive bidding sought under these Findings will enable the Port to conduct a competitive RFP to select the CM/GC.

As of the issuance of these Findings, anticipated features of the project contract include:

- During the preconstruction services phase, the CM/GC will participate on a project team led by the Port that also includes architects, engineers, and other consultants. As part of that team the CM/GC will contribute to schedule development, estimating, and similar construction management tasks.
- During the public improvement phase of the CM/GC contract, the parties will establish a Guaranteed Maximum Price (GMP) for all construction work based on reimbursable expenses and a fixed fee. The CM/GC will act as general contractor and provide associated expertise, hold all subcontracts, self-perform portions of the work as the Port may allow, coordinate and manage the building process, and continue to act as a member of the project team.

However, as provided under the Code, the final parameters of the contract will be those characteristics or specifics announced in the solicitation document.⁹

In accordance with Port Administrative Procedure No. 6.1.15, *Project Labor Agreement Use*, the Port has determined that a project labor agreement will not be used on this project.

Findings

Under the Code, the Port's CRB may exempt a public improvement contract from competitive bidding upon approval of findings submitted by Port staff that justifies the exemption. The two required findings are underlined below, with supporting information following each. Because the GSHP system project was formerly a part of the TCORE project and the two projects share certain attributes, some findings below are similar to findings made at the time the TCORE project was exempted from competitive bidding.

1. The exemption is unlikely to encourage favoritism in awarding the contract or substantially diminish competition for the contract.

This exemption is unlikely to encourage favoritism in awarding the contract because multiple contractors are expected to submit proposals, which will be evaluated by a team in order to mitigate the effect of any individual bias in reviewing proposals. Competition will not be substantially diminished because the RFP remains an open, advertised, competitive selection process. The Port believes that rather than being diminished, competition will be expanded by encompassing qualifications as well as price in the solicitation. To solicit proposals, the Port will advertise notice of the RFP in a local publication as well as on the Port's online bidding system. All interested firms will be invited to submit proposals.

⁹ ORS 279C.335(6)

2. Awarding the contract under the exemption will likely result in substantial cost savings and other substantial benefits to the agency.

Issuing this project on a competitive low-bid basis would create significant additional costs to the Port in the form of risk. Three key risk areas include safety, schedule, and technical complexity, which are each addressed in more detail below. Selection of a potentially unqualified or unprepared contractor through a low-bid process would increase these risks, and if trouble arose the Port would be required to respond with expensive countermeasures. A countermeasure common to all three risk areas would be to increase the oversight and supervision of the work by Port and contracted staff, and our consultants. This additional labor is quite expensive at an average cost in the range of \$150 to \$250 per hour. If issues arise due to poor execution related to technical complexity, the Port may be burdened with increased costs for operation and maintenance, as well as increased utility costs for the life of the system. The Port estimates that the cost of these countermeasures could easily reach 10% of the estimated construction costs, or \$3.3 million.

(a) Type, cost, and amount of the contract. The CRB is required to consider the type, cost, and amount of the contract in considering this finding.¹⁰

This will be a CM/GC construction contract that will include reimbursement for subcontractor expenses at cost, plus a fixed fee based on a percentage of the reimbursable costs, with a negotiated, not-to-exceed GMP. The contract value is currently estimated at \$33.7 million.

(b) Other factors. To the extent applicable, the CRB must also consider the following additional factors in considering this finding.¹¹ Where applicable, Port staff has provided supporting information.

A. How many persons are available to bid. There are multiple firms, both regionally and nationally, that are capable of successfully performing this project. Given the high level of market activity currently, it is difficult to predict how many firms will be interested in submitting a proposal.

B. The construction budget and the projected operating costs for the completed public improvement. Construction costs are estimated at \$33.7 million. The overall project budget is \$39.6 million including staff and outside service costs and project contingency. All of these costs are already included in the TCORE project's approved budget.

C. Public benefits that may result from granting the exemption. A potentially significant benefit of granting an exemption and conducting an RFP is the potential to unlock additional small or disadvantaged business participation. With a low bid procurement, there is no advantage to the contractor to exceed the minimum requirements included in the contract. With an RFP, a proposer can score additional points for exceeding the levels of participation proposed by competitors.

D. Whether value engineering techniques may decrease the cost of the public improvement. There will likely be opportunities as the project develops for value engineering to decrease the project cost. These opportunities may take the form

¹⁰ ORS 279C.335(2)(b)

¹¹ ORS 279C.335(2)(b)

of innovative construction methods, less expensive yet equivalent materials, or different phasing options.

- E. The cost and availability of specialized expertise that is necessary for the public improvement. This exemption is not anticipated to affect the cost or availability of any specialized expertise required for the project.
- F. Any likely increases in public safety. This project's scope includes a substantial amount of demolition and construction within the existing CUP. Work in this environment must be carefully planned and executed so as to not damage or impair the existing equipment that is to remain, and to protect the safety of both contractor and Port personnel in the area. The project also includes work on the active airfield to install the piping to the reinjection well site. This work on the airfield must also be carefully planned and executed to avoid interfering with airfield operations, and to avoid injury to personnel. It is likely that public safety will be better served by this exemption. The RFP selection process allows the Port to take the proposer's safety program and record into account. Further, a CM/GC contract will allow the Port to be part of the selected contractor's safety planning process. All work will be performed in accordance with applicable OSHA regulations.
- G. Whether granting the exemption may reduce risks to the Port or the public that are related to the public improvement. In addition to the safety risks described above, there is a significant project risk associated with the project schedule. This project must closely coordinate its schedule with the work on the TCORE project. Delays in the completion of this project's work could delay the completion of the TCORE project or could cause the Port to rely on older equipment for longer than planned. The RFP process allows the Port to evaluate the proposer's experience, approach, resources, and other factors that will contribute to meeting the schedule challenges in the work.
- H. Whether granting the exemption will affect the sources of funding for the public improvement. This work is anticipated to be funded partly by the airline cost center as part of existing TCORE project funding, and partly by an FAA grant. Awarding a CM/GC contract for this work under an exemption may help the Port meet certain FAA grant program deadlines and requirements.
- I. Whether granting the exemption will better enable the Port to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement. Currently, our local and regional construction market is very active, and resources are very constrained. In addition, costs have been escalating very rapidly due to both the levels of demand, as well as the underlying costs of labor, equipment, materials, fuel, and other commodities. In these conditions, Port staff believes that an RFP will attract more qualified proposers than a competitive low-bid procurement. This is due to the proposer's ability to differentiate themselves on important factors other than price.
- J. Whether granting the exemption will better enable the Port to address the size and technical complexity of the public improvement. The design of this project includes elements that are very unique and, in some cases, untried in our regional market. Failing to meet these technical challenges could result in a project that

fails to provide the necessary heating and cooling functions reliably and efficiently. It could also result in significantly higher costs over the life of the system. The RFP process allows the Port to evaluate the proposer's experience, approach, resources, and other factors that will contribute to meeting the schedule challenges in the work.

- K. Whether the public improvement involves new construction or renovates or remodels an existing structure. This project combines new construction and remodel elements. There will be an extensive remodel of the CUP facility, including significant demolition and installation of new equipment. There will also be new construction of infrastructure including water wells, small equipment buildings, underground piping and utilities, and associated work.
- L. Whether the public improvement will be occupied or unoccupied during construction. The CUP will be occupied and operational during the entire project duration. The elements of the work that are located outside the CUP are located on, or adjacent to, active roadways, the PDX airfield, and tenant operations (Atlantic Aviation and the Sheraton Hotel). The proximity of the work to ongoing operations increases the project risk profile. Using an RFP process will allow the Port to review the proposer's qualifications and approach to perform the necessary planning and coordination to minimize the risks of the work.
- M. Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions. It is anticipated that the work will occur in a single phase.
- N. Whether the Port has, or has retained under contract, and will use Port personnel, consultants, and legal counsel that have necessary expertise and substantial experience in alternative contracting methods to assist in developing the alternative contracting method that the Port will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract. The Port has significant institutional knowledge related to alternative contracting methods and procuring and administering CM/GC contracts. Port project experience with the CM/GC delivery method includes the Port Headquarters Building, the In-line Baggage Handling System, the Deicing Facility, Access Control Replacement, Terminal Balancing, Rental Car Quick Turnaround Facility, and TCORE projects at PDX. The Port also completed the Parking Additions and Consolidated Rental Car Facility project using the design-build delivery method. Individual Port staff with the necessary expertise will develop the RFP and participate in negotiating, administering, and enforcing the contract's terms. Key participants that have extensive experience with RFP and contracting process, include the Contracts and Procurement Manager and in-house legal counsel. The Port's construction managers, project engineers, construction inspectors, and project manager have many years of experience administering and enforcing public improvement contracts of this type.

Public Hearing

Under the Code, before the Port's CRB approves the Findings proposed above and before granting the exemption from competitive bidding, the Port must hold a public hearing to allow the Port to take comments on the draft findings for an exemption from the competitive bidding

requirement.¹² Draft findings summarizing the requested exemption from competitive bidding were published in compliance with the Code's notice requirements, and a public hearing was held on September 2, 2022 to allow interested parties to appear and present comments on the proposed exemption. No members of the public attended the hearing or separately provided comments.

Summary

Port staff find that the proposed exemption from competitive bidding (i) is unlikely to encourage favoritism in awarding the contract or substantially diminish competition for the contract, and (ii) will likely result in substantial cost savings and other substantial benefits to the Port. As a result, Port staff conclude that the proposed exemption from competitive bidding is consistent with the Code's stated policy of embracing alternate contracting methods when appropriate. Port staff recommends that the public improvement contract for this project be exempted from the Code's competitive bidding requirement.

¹² ORS 279C.335(5)

**PUBLIC IMPROVEMENT CONTRACT – COMPRESSED NATURAL GAS FUEL STATION
COMPRESSOR REPLACEMENT – PORTLAND INTERNATIONAL AIRPORT**

September 14, 2022

Presented by: Janelle Brannan
Engineering Project Manager

REQUESTED COMMISSION ACTION

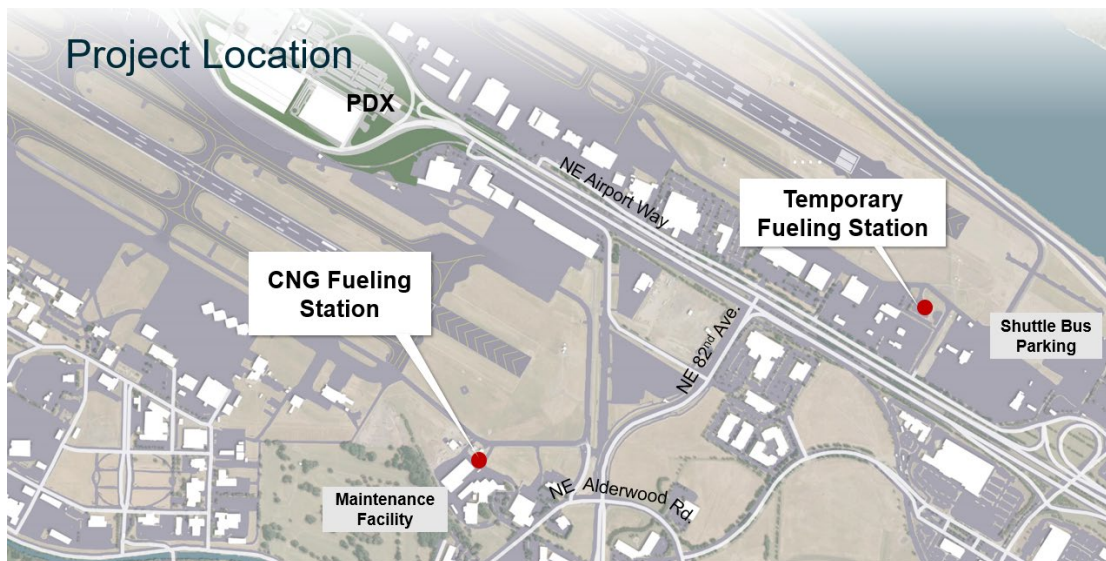
This agenda item requests approval to award a public improvement contract to Stellar J Corporation for the Compressed Natural Gas (CNG) Fuel Station Compressor Replacement project at Portland International Airport in the amount of \$999,995.

BACKGROUND

The CNG fueling station is the sole source of fuel for PDX’s fleet of 32 shuttle buses and 20 maintenance vehicles. Fueling for the shuttle buses occurs once or twice daily to provide uninterrupted service for passengers.

The CNG fueling system was installed at the PDX Maintenance Facility in 1996. Maintenance and repairs of the CNG compressor has become increasingly difficult as the system ages. Replacement parts are no longer available locally; for a past project to repair the compressor, the lead time for the part was six months.

This project will remove and replace the CNG compressor unit at the fueling station with a unit of similar size. Additionally, a temporary fueling system will be installed for the shuttle buses and maintenance vehicles to maintain uninterrupted service.



CONTRACT SCOPE OF WORK

This project includes the following key scopes of work:

- Removal of existing CNG compressor and installation of new CNG compressor
- Associated electrical and natural gas connections
- Integration of controls within the existing CNG fuel dispensing island
- Installation of a temporary fueling station

SCHEDULE

Design	July 2021 – April 2022
Commission approval (award public improvement contract)	September 14, 2022
Construction	October 2022 – April 2023

CONTRACT SOLICITATION

Solicitation Results

The Port of Portland (Port) procured this public improvement contract utilizing a competitive sealed bidding solicitation under Oregon Revised Statutes, Chapter 279C. The solicitation was advertised on May 24, 2022 and bids were opened on June 22, 2022. Stellar J Corporation submitted the lowest responsive bid.

The bids were as follows:

Stellar J Corporation	\$999,995
Viking Engineering	\$1,076,818
Engineer’s Estimate	\$727,000

Small Business Participation

Based on an availability analysis, the Port’s small business enterprise (SBE) program participation goal for this contract was 5% of the total amount bid. The lowest responsive bid identified a 6.2% participation level. The SBE includes firms certified by Oregon or Washington as minority, women, service-disabled veteran-owned, or as an emerging small business.

PUBLIC IMPROVEMENT CONTRACT – COMPRESSED NATURAL GAS FUEL STATION
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RISKS

Risk: Disruptions to shuttle bus service

Mitigation Strategies:

- Close coordination with operations prior to and during construction
- Installation of a temporary fueling station near the shuttle bus parking to reduce disruptions during construction

Risk: Unforeseen conditions. The concrete pad and utilities appear to be in good condition. However, it is possible that once the existing compressor is removed, damage or other issues may become apparent.

Mitigation Strategies:

- Close communication within the project team to quickly determine solutions as unforeseen conditions arise
- Provide sufficient Port resources on-site to quickly respond to unforeseen conditions

BUDGET

Public improvement contract (construction)	\$1,000,000
Port staff (in-house design) and contracted services	\$283,000
Contingency	\$236,000
Total budget	\$1,519,000

The contingency, representing 18% of the project cost, is considered reasonable given the risk profile for the project and the complexity of the work site.

The project costs will be funded by the Port Cost Center, which is composed primarily of revenues from the Port's public parking, rental car, and ground transportation operations at the Portland International Airport.

EXECUTIVE DIRECTOR'S RECOMMENDATION

The Executive Director recommends that the following resolutions be adopted:

BE IT RESOLVED, That approval is given to award a public improvement contract to Stellar J Corporation for the Compressed Natural Gas Fuel Station Compressor Replacement project at Portland International Airport, in accordance with its bid; and

BE IT FURTHER RESOLVED, That the Executive Director or his designee is authorized to execute the necessary documents on behalf of the Port of Portland Commission in a form approved by counsel.

FIRST READING AND PUBLIC HEARING – PORT OF PORTLAND ORDINANCE NO. 478-R,
AMENDING PORT OF PORTLAND ORDINANCE NO. 448 REGARDING CUSTOMER
FACILITY CHARGES ON RENTAL CAR TRANSACTIONS – PORTLAND INTERNATIONAL
AIRPORT

September 14, 2022

Presented by: Steve Koester
Interim Senior Manager
Landside Business & Properties

REQUESTED COMMISSION ACTION

This agenda item requests a first reading and public hearing on proposed Port of Portland (Port) Ordinance No. 478-R, which amends Port Ordinance No. 448 regarding Customer Facility Charges (CFCs) on rental car transactions at Portland International Airport (PDX). The ordinance provides for limited circumstances under which a CFC may not be charged on rental car transactions at PDX.

BACKGROUND

Port Ordinance No. 448 became effective in 2014. It allows the Port to implement a CFC, which rental car companies operating at PDX collect and remit to the Port to fund rental car facilities. The CFC is currently collected on all rental car transactions at PDX that are conducted by rental car companies that operate at PDX under an operating agreement with the Port.

Peer-to-peer car vehicle sharing programs have become prevalent nationwide in recent years. These businesses enable individual owners to rent their private vehicles directly to customers, by using a mobile device application or other online platform provided by the business. Peer-to-peer rental car companies have begun to conduct business at PDX without operating agreements permitting them to do so. Their customers are picking up and dropping off their rental vehicles in the Port's public parking garages and lots. Because these businesses do not have a permit to operate at PDX, the Port is not receiving any revenue from their operations and is unable to otherwise regulate their activities. However, these businesses do not have a physical presence at PDX, and the vehicles rented through these businesses do not use certain CFC-funded facilities such as the rental car quick-turn-around facility.

EFFECT OF ORDINANCE

Ordinance No. 478-R amends Ordinance No. 448. It deems peer-to-peer vehicle sharing programs that use PDX facilities to be rental car operators and provides that rental car operations conducted at certain off-site facilities are not subject to the CFC. The effect of Ordinance 478-R is that peer-to-peer rental car companies that use designated, off-site facilities at PDX will not be required to collect and remit CFCs to the Port. To avail themselves of this opportunity, these businesses must enter into an operating agreement with the Port that will generate Port revenue and prohibit their use of CFC-funded facilities.

FIRST READING AND PUBLIC HEARING – PORT OF PORTLAND ORDINANCE NO. 478-R,
AMENDING PORT OF PORTLAND ORDINANCE NO. 448 REGARDING CUSTOMER
FACILITY CHARGES ON RENTAL CAR TRANSACTIONS – PORTLAND INTERNATIONAL
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A copy of proposed Ordinance No. 478-R is attached to this agenda item.

EXECUTIVE DIRECTOR'S RECOMMENDATION

The Executive Director recommends that the following resolutions be adopted:

BE IT RESOLVED, That Port of Portland Ordinance No. 478-R be given a first reading by title only; and

BE IT FURTHER RESOLVED, That a public hearing be held concerning proposed Port of Portland Ordinance No. 478-R.

ORDINANCE NO. 478-R

AN ORDINANCE AMENDING ORDINANCE NO. 448 OF THE PORT OF PORTLAND REGARDING CUSTOMER FACILITY CHARGES ON RENTAL CAR TRANSACTIONS AT THE AIRPORT.

BE IT ENACTED BY THE PORT OF PORTLAND:

Section 1. Purpose This Ordinance is enacted to amend Ordinance No. 448 to set forth limited circumstances under which Rent-A-Car (**RAC**) Customers are not required to pay, and RACs are not required to collect and remit, Customer Facility Charges (**CFCs**) on rental car transactions at the Airport.

Section 2. Authority to Amend Ordinance No. 448

Ordinance No. 448 may be amended pursuant to the Port's authority to enact ordinances to regulate the use of its properties under Oregon Revised Statutes 778.260(1).

Section 3. Definitions

Capitalized terms used in this Ordinance shall have the meanings assigned to such terms in Ordinance No. 448, unless (i) another meaning is specifically assigned below or in the language of this Ordinance, or (ii) the context clearly requires otherwise.

a. "Ordinance" means this Ordinance, providing the terms under which Ordinance No. 448 is amended, together with any ordinances supplemental or amendatory hereto.

b. "Ordinance No. 448" or the "CFC Establishing Ordinance" means Ordinance No. 448, adopted December 11, 2013, and effective January 10, 2014, as amended and restated thereafter and hereafter from time to time.

Section 4. Amendment to Section 2.11 of Ordinance No. 448

Subsection 2.11 of Section 2 of Ordinance No. 448 (entitled "**Definitions**") is hereby amended and restated as follows (additions shown in **bold underline** format and deletions shown in ~~strikethrough~~ format for convenience):

2.11 "RAC" shall mean any rental car business, **including without limitation peer-to-peer vehicle sharing programs**, operating or using Airport facilities at the Airport either under a Concession Agreement, lease, sublease, permit, **operating agreement**, or any other sort of agreement with the Port or other RAC.

Section 5. Amendment to Section 2.12 of Ordinance No. 448

Subsection 2.12 of Section 2 of Ordinance No. 448 (entitled "**Definitions**") is hereby amended and restated as follows (additions shown in **bold underline** format and deletions shown in ~~strikethrough~~ format for convenience):

2.12 "Rent-A-Car Customer" shall mean any person or entity renting a ~~vehicle~~ **Rental Car** from a RAC **that is** operating at, or from, ~~the~~ **or otherwise using any** Airport **facility** under a Concession Agreement, lease, sublease, permit, **operating agreement**, or any other sort of agreement with the Port or other RAC.

Section 6. Amendment to Section 2.14 of Ordinance No. 448

Subsection 2.14 of Section 2 of Ordinance No. 448 (entitled "Definitions") is hereby amended and restated as follows (additions shown in **bold underline** format and deletions shown in ~~strikethrough~~ format for convenience):

2.14 "Rental Car Facilities" shall mean those facilities which relate to rent-a-car operations and are used either exclusively or in part by the RACs; **provided however that Off-Site Airport Facilities are not Rental Car Facilities for purposes of this Ordinance.**

Section 7. New Section 2.17 of Ordinance No. 448

A new subsection 2.17 is added to Section 2 of Ordinance No. 448 (entitled "Definitions") to read as follows:

2.17 "Off-Site Airport Facility" shall mean a facility at the Airport which is: (i) not contiguous with or adjacent to the Airport terminal building; (ii) not funded in any way by CFC funds or the proceeds of debt issuances which are payable from CFCs; and (iii) specifically designated in writing by the Port as a permissible location for use by RACs to conduct Rental Car transactions. Off-Site Airport Facilities may include Airport parking lots, but do not include the Rental Car Facilities or other Airport facilities including, without limitation, the Airport terminal building, the Airport parking garages, commercial roadway and the airfield.

Section 8. Amendment to Section 3.1 of Ordinance No. 448

Subsection 3.1 of Section 3 of Ordinance No. 448 (entitled "Customer Facility Charge") is hereby amended and restated as follows (additions shown in **bold underline** format and deletions shown in ~~strikethrough~~ format for convenience):

Beginning on the Implementation Date, each Rent-A-Car Customer shall pay a fee for the use of the ~~Airport~~ Rental Car Facilities set by the Executive Director, as may be changed from time to time, for each Transaction Day a Rent-A-Car Customer rents ~~an automobile~~ **Rental Car**. The initial fee was provided to the RACs no less than thirty (30) days prior to the Implementation Date. Each RAC shall collect and remit such fee to the Port.

Section 9. New Section 3.5 of Ordinance No. 448

A new subsection 3.5 is added to Section 2 of Ordinance No. 448 (entitled "Customer Facility Charge") to read as follows:

3.5 No Customer Facility Charge shall be payable by, or collected from, a Rent-A-Car Customer for a Rental Car Transaction under this Section 3 when the Rent-

A-Car Customer and the applicable RAC solely uses Off-Site Airport Facilities to conduct such Rental Car Transaction.

Section 10. Amendment to Section 8 of Ordinance No. 448

Subsection 8.1 of Section 8 of Ordinance No. 448 (entitled “Notice of Violation”) is hereby amended and restated as follows (additions shown in **bold underline** format and deletions shown in ~~strikethrough~~ format for convenience):

8.1 The Port shall have the authority to issue a Notice of Ordinance Violation. The Notice shall set forth:

8.1.1 The nature of the violation(s) which is the reason for the violation;

8.1.2 The date of the violation(s); and

8.1.3 The date on which the violation shall result in a default under the Concession Agreement **or any other agreement the RAC has with the Port.**

Section 11. Section Headings; Table of Contents

The headings or titles of the several sections hereof, and any table of contents appended hereto or copies hereof, shall be solely for the convenience of reference and shall not affect the meaning, construction, interpretation or effect of this Ordinance.

Section 12. Publication and Effectiveness of This Ordinance

A concise summary of this Ordinance, including the location within the Port where a complete copy of this Ordinance may be obtained without charge, shall be published within five (5) days after passage once in a newspaper of general circulation within the Port. This Ordinance shall become effective thirty (30) days after enacted.

[Remainder of page intentionally blank]

PASSED AND ENACTED by the Board of Commissioners of the Port of Portland at a meeting held on _____, 2022 and signed by its President on the same date.

THE PORT OF PORTLAND

Commission President

Approved as to Form:

Orrick, Herrington & Sutcliffe LLP
Bond Counsel