

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING AN) Resolution No. 17-4781
EXEMPTION FROM COMPETITIVE)
BIDDING AND DIRECT AWARD OF THE) Introduced by Chief Operating Officer
CONSTRUCTION CONTRACT FOR THE) Martha Bennett in concurrence with
NEW PRIMATE HABITAT PROJECT AT) Council President Tom Hughes
THE OREGON ZOO BY AMENDMENT TO)
THE CM/GC CONTRACT FOR THE)
CONSTRUCTION OF THE NEW POLAR)
BEAR HABITAT AND ASSOCIATED)
INFRASTRUCTURE)

WHEREAS, at the General Election held on November 4, 2008, the Metro Area voters approved Oregon Zoo Bond Measure 26-96, entitled “Bonds to Protect Animal Health And Safety; Conserve and Recycle Water,” major components of which are the construction of a new polar bear habitat, which includes associated infrastructure work such as a public plaza with guest amenities, visitor path upgrades, and utility upgrades (the “Polar Bear Habitat”), and the construction of new Primate and Rhinoceros Habitats (the “Primate Habitat”); and

WHEREAS, ORS 279C.335 and Metro Code 2.04.054 require that all Metro public improvement contracts shall be procured based on competitive bids, unless exempted by the Metro Council, sitting as the Metro Contract Review Board; and

WHEREAS, Metro Code Section 2.04.054(c) authorizes the Metro Contract Review Board to exempt a public improvement contract from competitive bidding and direct the appropriate use of alternative contracting methods that take account of market realities and modern innovating contracting and purchasing methods, so long as they are consistent with the public policy of encouraging competition, subject to the requirements of ORS 279C.335; and

WHEREAS, in accordance with the Metro Contract Review Board’s November 15, 2015 Resolution No. 15-4656, “For the Purpose of Authorizing an Exemption to Competitive Bidding and Authorizing the Procurement of Construction Manager/General Contractor (“CM/GC”) Services by Competitive Request for Proposals for the Construction of the New Polar Bear Habitat and Associated Infrastructure at the Oregon Zoo,” the Chief Operating Officer issued a competitive Request for Proposals (“RFP”) for CM/GC services for the new Polar Bear Habitat project; and

WHEREAS, on May 11, 2016, Metro selected Lease Crutcher Lewis to be the CM/GC contractor for the Polar Bear Habitat project; and

WHEREAS, Metro now wishes to expand the above set forth authorization to permit the simultaneous construction of the Primate Habitat with the Polar Bear Habitat, and therefore seeks a new exemption from competitive bidding, authorizing Metro to contract directly with

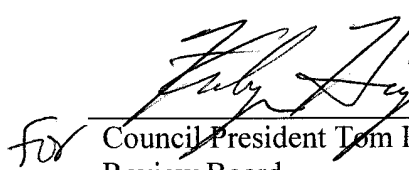
Lease Crutcher Lewis (“LCL”) for the simultaneous construction of the Primate Habitat and the Polar Habitat projects, via amendment to the Polar Bear Habitat CM/GC Contract; and

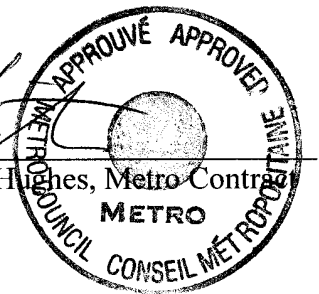
WHEREAS, Oregon Administrative Rule 137-049-0630 and ORS 279C.335(2) and (4) and Metro Code Section 2.04.054(c) require that the Metro Contract Review Board hold a public hearing and adopt written findings establishing, among other things, that: the exemption of a public improvement contract from competitive bidding is unlikely to encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts; and that said exemption will likely result in substantial cost savings and other substantial benefits to Metro; now therefore

BE IT RESOLVED THAT THE METRO CONTRACT REVIEW BOARD:

1. Exempts from competitive bidding the procurement and award of a public improvement contract for the construction of the Primate Habitat at the Oregon Zoo; and
2. Adopts as its findings in support of such exemption the justifications, information and reasoning set forth in the attached Exhibit A, which is incorporated by this reference as if set forth here in full; and
3. Authorizes the Chief Operating Officer to directly award a contract to Lease Crutcher Lewis for the construction of the Primate Habitat at the Oregon Zoo, by amendment to the Polar Bear Habitat and Associated Infrastructure CM/GC contract with Lease Crutcher Lewis.

ADOPTED by the Metro Contract Review Board this 6th day of April 2017.

For 
Council President Tom Hughes, Metro Contract
Review Board



Approved as to Form:



Alison R. Kean, Metro Attorney

EXHIBIT A

Findings in Support of an Exemption from Competitive Bidding and Direct Award of the Construction Contract for the New Primate Habitat project at the Oregon Zoo by Amendment to the CM/GC Contract for the New Polar Bear Habitat and Associated Infrastructure

Pursuant to ORS 279C.335 (2) and (4), and Metro Code Section 2.04.054(c), the Metro Contract Review Board makes the following findings in support of exempting the procurement of the Primate Habitat Project at the Oregon Zoo from competitive bidding, and authorizing use of a Request for Proposals (RFP) solicitation for a Construction Manager/General Contractor public improvement construction contract:

1. **The exemption is unlikely to encourage favoritism or substantially diminish competition.**
 - a. **Lease Crutcher Lewis Advantage in Timing and Proximity.** Combining the Primate Habitat Project with the Polar Bear Habitat Project is unlikely to encourage favoritism or substantially diminish competition because, due to the proximity of the primate exhibit to the polar bear exhibit and the overlapping project schedules, Lease Crutcher Lewis (“LCL”) already has a distinct advantage in the competitive process for the Primate Habitat Project if an RFP or Invitation to Bid (ITB) were to be conducted. Any competitor for the Primate Project would have to coordinate project activities and schedule with LCL to work around the adjacent LCL Polar Bear Habitat Project, which will already be under way. LCL, on the other hand, would be able to combine project working space and management personnel to save money and time. Furthermore, potential competitors would undoubtedly be aware of LCL’s advantage and thus less than enthusiastic about investing the effort to submit a proposal in the current construction environment, in which there are presently many large projects in the region coming to bid. As a result, it is conceivable that LCL could be the only firm to respond if an RFP or ITB were to be conducted. This exemption to competitive bidding does not encourage favoritism or substantially diminish competition, it simply acknowledges advantages that exist as a result of construction environment at the Zoo, project timing, proximity and the current construction market.

Competition will be preserved for the vast majority of the Primate Habitat Project work, as LCL will be required to competitively bid the subcontracts for all project construction work, and will not self-perform work that can be subcontracted.

- b. **Robust Polar Bear Habitat Project Procurement.** Combining the Primate Habitat Project with the Polar Bear Habitat Project is unlikely to encourage favoritism or substantially diminish competition because it follows upon and takes advantage of the robust competitive process that was carried out through the Polar Bear Habitat CM/GC RFP. The Polar Bear Habitat RFP was formally advertised and made available to all qualified contractors by posting on ORPIN (Oregon Procurement Information Network), the Oregon Daily Journal of Commerce and a minority business publication. Lease Crutcher Lewis was chosen from a field of three well-qualified respondents, based on robust selection criteria, including the inclusion of aspirational COBID contracting goals, and no dissatisfied proposers protested the award. Furthermore, as with the Polar Bear

Habitat Project, LCL’s subcontractor selection process will be a low-bid competitive method for contracts by requiring a minimum of three bids per scope, unless there is an approved exception. LCL intends to subcontract for all project construction work, and will not self-perform work that can be subcontracted. Competition among subcontractors will be encouraged by: contacting local subcontractors, including COBID firms, and notifying them of any opportunities within their area of expertise, and by performing outreach to local business groups representing minority-owned, women-owned, emerging small businesses, and service-disabled veteran-owned businesses. LCL is recommending a COBID aspiration goal for the combined projects of 15 percent to 18 percent.

2. **The exemption will likely result in substantial cost savings to Metro.**

The Metro Contract Review Board finds that exempting the procurement of the construction of the Polar Bear habitat from competitive bidding will likely result in substantial costs savings to Metro, considering the following factors required by OAR 137-049-0630 and ORS 279C.335:

- a. **Direct Construction Cost Savings Due to Shortened Schedule.** Combining the projects will substantially reduce the total construction costs by shortening their duration by eight months. The estimated reduction from 30 months to 22 months reduces the management, labor and general conditions costs of the general contractor and subcontractors as follows:

Estimated savings in General Conditions and direct labor, LCL:	\$753,000
Estimated savings from Subcontractors:	<u>\$525,000</u>
Total Estimated Saving:	\$1,278,000

- b. **Staff Cost Savings/Restored Revenue Generation Due to Shortened Schedule.** Combining the projects will substantially reduce the impacts to the Zoo of staff time and resources to coordinate with the design and construction efforts, because it shrinks two overlapping major design and construction efforts into one effort with a shorter duration. The shorter length of the combined projects will also reduce the duration of the impacts to Zoo revenues resulting from construction impacts on the guest experience and temporary loss of revenue-generating visitor amenities.
- c. **Number of entities available to bid.** As a result of the proximity of the two projects and the overlap in construction schedules, LCL has an advantage in the competitive process for the Primate Habitat Project. This, combined with a construction market with no shortage of projects, causes an inherent disincentive for other capable firms to compete for the Primate Habitat Project. This will likely result in decreased interest and an erosion of the competitive procurement process for the Primate Habitat Project were an Invitation to Bid or RFP to be issued.
- d. **Construction budget and future operating costs.** Combining the two projects under one CM/GC firm will allow Metro to obtain cost reductions through preconstruction services by the contractor during the design phase, including a constructability review, value engineering, and other services. The high degree of complexity of interface of the project improvements, and the need to integrate both with each other and the Zoo’s pre-existing infrastructure, calls for integrating their design and construction under one

design firm and one CM/GC. Given the challenging environmental and topographical site constraints, integrating the two projects and involving the same contractor early during the design process fosters teamwork that results in a better more holistic design, fewer change orders, and faster progress with fewer unexpected delays, resulting in lower costs to Metro. The ability to have the CM/GC do early work prior to completion of design shortens the overall duration of construction, resulting in less disruption to the Zoo as the state's top paid tourist attraction. Faster progress and an earlier completion date will also help Metro avoid the risk of inflationary increase in materials and construction labor costs.

CM/GC constructability review also allows for an ongoing review of the long-term operating costs of design options, allowing for midcourse design choices leading to a project having lower long-term operating maintenance and repair costs.

Metro has experience benefitting from CM/GC on constructability review with Elephant Lands, the Zoo's largest project to date.

- e. **Public Benefits**. Combining the two projects under one common CM/GC contractor will help realize Metro's aspirational COBID construction subcontractor goals. LCL is recommending a COBID aspirational goal for the combined projects of 15 percent to 18 percent, which is more than the Polar Bear Project's 15 percent goal. LCL has partnered with a COBID-certified woman-owned civil and paving contractor for pre-construction services on the Polar Bear Project, and the partnership will extend to the Primate Habitat Project.

LCL has a history with the Zoo of mentoring COBID contractors, and LCL is a registered agent of the Oregon Bureau of Labor and Industries (BOLI) that trains and mentors carpenter and laborer apprentices on most projects. LCL will submit a workforce diversity and contracting plan prior to seeking subcontractor bids on the project.

- f. **Value engineering**. Combining the two projects under one CM/GC firm allows Metro to consider otherwise unavailable value engineering opportunities for guest common area spaces shared by these two adjacent associated habitat spaces. The CM/GC process enables the contractor to work with the project architect and the Zoo bond staff to help reduce construction costs by providing early input and constructability review to designers, avoiding costly redesigns and change orders, and providing opportunities for the architects and contractor to work together on both practical and innovative solutions to complex design issues.

- g. **Specialized expertise required**. Unique projects require special qualifications. The Primate Habitat Project includes work that can only be performed by a few specialists and which will require a design team and contractor with depth of experience, including but not limited to: large-scale construction work through identified landslide area; guest safety on campus; specialized animal containment and barriers; and project phasing to minimize impacts to guests, animals, and Zoo operations. The combination of the two projects under LCL will ensure that the Primate Habitat Project will benefit from LCL's substantial experience on Elephant Lands, and its preconstruction planning already

performed for the Polar Bear Habitat Project increasing the likelihood of the project being completed on or ahead of schedule, resulting in lower costs and increased benefit to the community.

- h. **Public safety.** The Polar Bear and Primate Habitat Projects are both complex projects subject to aggressive construction schedules. Construction will occur across a large swath in the center of the Zoo, disrupting the flow of visitors on Zoo street, while the rest of the Zoo must remain safely open to the public. Combining the two projects under one CM/GC contracting process will shorten the duration of this disturbance and enable the project architect and the Zoo construction and design staff to work with one construction manager (instead of two) to plan for minimizing safety hazards and coordinate the projects and ongoing Zoo operations, by providing early input into issues of project phasing, construction staging areas, construction access corridors for both projects simultaneously. This will limit risks to public safety, thus reducing the risk of costly injury claims. Metro's experience using CM/GC on Elephant Lands demonstrated the success in planning in advance for visitor needs and safety.
- i. **Reduces risk to Metro and the public.** The Primate Habitat Project is a major construction project that will take place in the heart of the Zoo at its central hub. As such, it will have an impact on the revenue-generating operations of the Oregon Zoo. Combining the two Projects under one CM/GC contracting process will reduce the risk to Zoo operations by minimizing the duration of the construction disruption through early work amendments. Early, simultaneous Construction Manager (CM) involvement in the phasing and planning of both projects reduces the risk of change orders, thus shortening the likely duration, lessening the risk of late delivery, and will inform the decisions of designers and the Zoo Bond so that Zoo operations may continue in and around construction efforts meanwhile preserving the safety of visitors. Coordination of the design of the infrastructure and project connections between the two projects will be greatly enhanced and there will be fewer disconnects and less likelihood of incompatibility when designing both holistically. This will result in fewer change orders and constructability surprises. Metro's experience with CM/GC on Elephant Lands demonstrated the reduced risk in change orders on a large scale project.
- j. **Exemption's effect on funding.** The exemption of the Primate Habitat Project from competitive bidding will have no effect on funding for the project.
- k. **Effect on ability to control impact of market conditions.** Construction costs are presently escalating at an estimated 4 percent to 4.5 percent per year. Combining the projects will allow the Primate Habitat Project subcontracts to be bid a year or more earlier than if procured separately. Furthermore, the ability to implement early work amendments will enable the Zoo to save on labor and material costs for early work elements in an environment where construction costs are escalating rapidly. The ability to do early work shortens the project's overall duration, allowing bids to be obtained sooner, before further inflationary increases occur. The CM/GC firm will be working alongside the design team to identify measures to keep the project within budget during the design phase.

- l. **Technical complexity.** The design and construction of Zoo exhibits requires technical expertise, knowledge, and experience, all of which was factored into the contractor selection in the Polar Bear Habitat RFP process. LCL has demonstrated experience and success in implementing similar projects. Combining the two projects under LCL as CM/GC will result in a substantially lower risk to Metro, because it increases the likelihood of the project being completed sooner and on budget, with fewer construction delays and change orders, resulting in reduced short term revenue loss and increased benefit to the community.
- m. **New construction.** Both projects involve new construction and the extensive replacement of existing antiquated infrastructure, much of which is underground and some of which is of unknown location, quality and condition. Some of the design limitations and conditions are likely to be unknown until uncovered by work performed under an early work amendment, which can be performed during design development to inform the design process. Combining the two projects avoids the need to connect new Polar Bear Habitat utilities and infrastructure to old Primate Exhibit utilities and infrastructure, only to have those connections torn out when the Primate Habitat Projects begins construction
- n. **Occupancy during construction.** Construction will occur across a large swath in the center of the Zoo while the rest of the Zoo must continue to operate safely and be open to the public. Combining the two Projects under one CM/GC construction contract will shorten the duration of this disturbance and enable the project architect and the Zoo construction and design staff to work with one CM/GC, instead of trying to coordinate the efforts of two, to minimize conflict between the projects and ongoing Zoo operations, by providing a coordinated project phasing plan, construction staging areas, construction access corridors, and scheduling design to minimize as much as possible the disruption of the guest experience and revenue losses due to the displacement of revenue-generating amenities. Construction staging areas for the projects can be merged when using one CM/GC contractor, and combining the project allows the Zoo to limit the construction access to one point of entry, Washington Park gate J, keeping the Zoo middle service road open for visitor crossing and Zoo operations.
- o. **Multi-phase construction.** The combined projects would be conducted jointly in phases, allowing for early work amendments to start on the beginning construction phases while finalizing overall design, which ultimately saves time on the overall project. Early work phases are expected to uncover latent conditions at the project site that, once exposed, will then be addressed efficiently and less expensively during ongoing design, avoiding costly redesigns and change orders.
- p. **Availability of personnel, consultants and legal counsel with CM/GC expertise.** The Zoo Bond Program has established a successful track record of negotiating, administering and enforcing the terms of Metro's CM/GC public improvement contract. This team, or a team equivalent in qualifications and expertise, will be deployed on the combined project.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 17- 4781, FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION FROM COMPETITIVE BIDDING AND DIRECT AWARD OF THE CONSTRUCTION CONTRACT FOR THE NEW PRIMATE HABITAT PROJECT AT THE OREGON ZOO BY AMENDMENT TO THE CM/GC CONTRACT FOR THE CONSTRUCTION OF THE NEW POLAR BEAR HABITAT AND ASSOCIATED INFRASTRUCTURE

Date: March 22, 2017

Prepared by: Heidi Rahn, 503-220-5709

BACKGROUND

In 2008, voters approved \$125 million in bond funds to support animal welfare, conservation education, and sustainable infrastructure investments at the Oregon Zoo. This funding has since increased to \$149 million due to bond sale premiums, interest earnings, and grants, donations and rebates.

The Oregon Zoo is confident in its ability to complete all of the projects approved by the voters and to deliver on the public promise. The zoo has completed construction of five major projects to date, all within approved budgets. The final three projects – Polar Passage, primate habitat and rhino habitat – are scheduled to be complete by 2020.

Staff recommends that one contractor oversee the construction of the remaining three projects. This requires a modification to the Construction Management General Contractor (CM/GC) contract for Polar Passage. The building demolition scope modification proposed for the primate project results in a change to the location of the construction on the zoo campus. Construction of the new primate habitat will occur directly adjacent to the construction of Polar Passage, and right through the center of the zoo. Staff proposes to combine the primate/rhino project construction with Polar Passage.

Managing the construction of the remaining projects with one CM/GC contract will reduce the total construction schedule from 30 months to 22 months and save an estimated \$1.3 million in construction costs. In addition, coordinating the mobilization and staging of construction equipment on site, construction phasing, and project management will lower the impact on zoo operations and the guest experience. Combining construction management for the projects will not impact competitive bidding since the contract requires bids from a minimum of three subcontractors and suppliers in every scope of work. Cost savings from the construction coordination of the three remaining projects will support animal welfare, conservation education, and sustainable infrastructure.

ANALYSIS/INFORMATION

1. **Known Opposition** None
2. **Legal Antecedents** Metro Code 2.04.054; Oregon Revised Statutes 279C.335(4).
3. **Anticipated Effects** Managing the remaining projects with one CM/GC contract will reduce the overall construction schedule, lower the construction impact on zoo operations and guest experience, and result in cost savings. See Resolution Exhibit A: Findings in Support of an Exemption from

Competitive Bidding and Direct Award of the Construction Contract for the New Primate Habitat project at the Oregon Zoo by Amendment to the CM/GC Contract for the New Polar Bear Habitat and Associated Infrastructure, Metro Contract No. 934194.

4. **Budget Impacts** Managing the construction of the remaining projects with one CM/GC contract will reduce the total construction schedule from 30 months to 22 months and save an estimated \$1.3 million in construction costs. Cost savings will be redirected to support animal welfare, conservation education, and sustainable infrastructure. Project budgets will not be impacted.

RECOMMENDED ACTION

Approve a new exemption from competitive bidding, authorizing Metro to contract directly with Lease Crutcher Lewis (“LCL”) for the simultaneous construction of the Primate Habitat and the Polar Habitat projects, via amendment to the Polar Bear Habitat CM/GC Contract.